Epistemic Rights in the Era of Digital Disruption

Edited by
Minna Aslama Horowitz · Hannu Nieminen
Katja Lehtisaari · Alessandro D'Arma

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Foreword

It is an honour to welcome this collection within the Palgrave/IAMCR series *Global Transformations in Media and Communication Research.* Over the years, the series has provided a forum for collective knowledge production and trans-disciplinary, global exchanges. It has been a space to rethink concepts and categories and to reflect upon challenges that emerge from ever-changing communication environments, all of which constitute the core of media and communication scholarship. This volume reflects both the rationale of the series and its continued interest in imagining media and communication for the benefit of communities and societies.

I am particularly grateful to the editors, as the topic of this collection is close to my personal history and experience as a socially engaged researcher. Ten years ago, the Palgrave/IAMCR series hosted its first edited volume, *Communication Rights and Social Justice: Historical Accounts of Transnational Mobilizations.* Back then, co-editor Andrew Calabrese and I aimed to trace the roots of mobilisations around communication practices and policies in their interplay with fundamental human rights. Today, severe threats and actual violations of communication rights continue. In this context, the present volume opens a new space for reflection, inviting close consideration of values such as freedom of expression, access to information, and knowledge sharing as core to democracy, in a historical moment of expanding and multi-dimensional inequalities.

This collection is powerful. Thanks to contributions from a number of well-known as well as younger scholars from all world's regions and

cultural backgrounds, it gathers voices that together constitute a cogent dialogue that reflects the diversity of issues, concerns, and geographically articulated challenges while engaging with the same core issue: how to acknowledge and promote epistemic rights for the benefit of societies.

The collection is scientifically productive. By engaging with both theoretical concerns and concrete experiences—of regulatory arrangements, social mobilisations, and resistance to knowledge hierarchies and economic hegemonies—it contributes to clarifying epistemic rights both as a concept and in relation to different actors' responsibilities in different locales, thus, making clear that the promotion of epistemic rights requires the commitment of many institutions, including but not limited to the media.

Finally, the collection is prospective. Acknowledging that what's required to be an informed citizen today is different from what was meant just ten years ago (see Hannu Nieminen's chapter in this volume), the authors address pressing issues—related to digital disruption, biases, and divides, but also competence gaps and surveillance and censorship—that are crucial to assess the state of democracy across the world's regions today, but also in the years to come.

I see this collection as a valuable attempt to press on previous conversations, reflecting epistemic rights in the trajectory of long-standing debates around communication and human rights. There is a decades-long history of mobilisations around these issues—from the 1970s through the early 2000s to more recent debates. There never was a unified global movement, but there have been occasions for different strands of activism, as well as institutional actors, to come together and consider paths for consistently fostering media and communication with the principles enshrined in international charters and agreed-upon normative frameworks. This happened, for instance, on the occasion of the UN-promoted World Summit on the Information Society (WSIS) in 2003, where a *World Forum on Communication Rights* was organised by a collective of civil society organisations. Today, follow-ups to those debates can be found both within the formal spaces emanating from the WSIS process—like the annual Internet Governance Forum and the Internet Rights and Principles Dynamic Coalition therein—as well as beyond institutional venues, where transnational networks of advocates push on reframing issues and keeping them on the global agenda—one example being the Just Net Coalition established in 2014.

By adopting a historically aware perspective but also a specific focus and language and addressing slightly different questions—how to revive and affirm knowledge-related rights and how to reassert democratic principles in a media and communication context that has undergone profound transformations over the last twenty years?—this volume opens spaces for dialogue with actors and locales where discussions around communication and fundamental rights are ongoing.

Editors and authors keep asking questions scholars may be familiar with, including if new rights should be recognised. Or can epistemic rights—the rights to information, data, knowledge, understanding, and participation—constitute an umbrella term to indicate the interdependency of existing rights pertaining to knowledge societies in the digital age?

At the same time, the epistemic rights framing of issues offers a new entry point to reflect on a variety of aspects, including the need to strengthen existing systems of rights protection; the role that state and non-state actors should play in this respect; the contribution that may/should derive from public policies adoption; the possibility for epistemic rights to constitute a salient issue to support new mobilisations and imaginaries.

Thus, epistemic rights may be considered a discursive dispositive aimed at reinterpreting human rights in the digital ecosystem.

Furthermore, both the more theoretical reflections included in this collection and contributions focused on case studies bring new light on persisting communication problems—including oligopolistic powers, mis- and disinformation, and old and new communicative inequalities—while highlighting new challenges faced by the plurality of subjects who are (supposed to be) entitled to epistemic rights: citizens, workers, women, minorities, communities.

Finally, the diversity of contemporary contextual conditions worldwide emerges prominently from the volume when national and regional cases are presented and discussed, including situations where legal instruments have been adopted. Still, implementation remains an issue, and there are many instances where authoritarian regimes join forces with commercial interests to reduce individual and collective spaces for the enjoyment of epistemic rights.

In the end, we are reminded of the unstable achievements in the recognition and enforcement of rights and the need for supportive conditions

to make principles thrive and related regulations meaningful. This volume is a renewed call to different stakeholders to assume responsibility for creating a favourable environment where principles of equality, understanding, and free expression are not only affirmed but realised. To this end, the maps—both conceptual and geo-political—resulting from the chapters are precious instruments for further discussions and for taking action.

Padova, Italy   Claudia Padovani
10 February 2023

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Hannu Nieminen is Professor Emeritus of Media and Communications Policy, University of Helsinki, and Professor of Communication (part-time) at Vytautas Magnus University, Kaunas. In 2021, he took up a visiting professorship in the London School of Economics and Political Science (LSE) which will run until 2025. In his academic career, Nieminen has written extensively on media and democracy, communication rights, media and inequality, and public service media. He is a long-standing member of the Euromedia Research Group (EMRG).

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LIST OF TABLES

Foundations

Introduction: The Epistemic Turn

Alessandro D'Arma, Minna Aslama Horowitz,
Katja Lehtisaari, and Hannu Nieminen

In today's era of accelerating digital disruption, optimism about democratic dialogues, diversity, inclusion, and other such good things is hard to come by. As much as the recent global pandemic and geopolitical crises have demonstrated the fragility of the way we communicate and receive information, even without it, we would be weary, among other things, of

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biases created by algorithms and other possible dangers of generative artificial intelligence, digital divides created by economic or competence gaps, digital surveillance, and the continuing increase in online disinformation and hatred. In many ways, digitalisation may empower us to connect and communicate, but it is also increasingly impeding our fundamental rights.

Although media and communication research has addressed the so-called communication rights in seminal texts such as *Communication Rights and Social Justice* (Padovani & Calabrese, 2014) and has recently attempted to define and analyse those rights in the digital era (see, e.g., Aslama Horowitz et al., 2020), the complexity of the dilemmas and contexts warrants more scholarship. In this book, we argue that because of the multitude of challenges, it is not enough to speak about communication or digital rights. A more comprehensive term is needed to grasp the multifaceted challenges of the current situation to citizens, organisations, and democratic structures.

The starting point of this book is thus the claim of epistemic equality: in a functioning democracy, citizens should be equally capable of making informed choices about matters of societal importance. This claim includes the notion that citizens have equal access to all relevant information and knowledge necessary for informed will formation.

Discussions of epistemic justice have been vast and rich in philosophy. The focus on rights, however, is more recent, and the research around either has only recently entered the field of communication and media scholarship. Concerned voices have warned of an epistemic crisis in the public realm and public discussion caused by the avalanche of online content, often indiscriminate in terms of quality or veracity and the way we process that information (e.g., Dahlgren, 2018). In addition to the structural transformations to democratic debates and deliberation, digital platforms and social media have challenged our ability for self-reflection and self-knowledge (Fisher, 2022): algorithmic digital media, by collecting our personal data and offering us certain content accordingly, feed us knowledge about ourselves without us participating in forming and reflecting on this knowledge.

Calls for epistemic rights and justice regarding the digital media era have recently been expressed by scholars such as Shoshanna Zuboff (2019) regarding the so-called surveillance capitalism that monetises our data. As another example, philosopher Lani Watson (2021) has theorised the need

for epistemic rights in her groundbreaking book *The Right to Know: Epistemic Rights and Why We Need Them*. Watson (2018) has specifically highlighted the case of journalism and Brexit, demonstrating how misinformation is a kind of violation of epistemic rights. Lately, digital rights activist organisations such as the Just Net Coalition and IT for Change (2020) have also argued for the epistemic rights of marginalised groups.

Today, we are witnessing a turn in media and communication-related research towards epistemic rights. However, the discussions remain somewhat fragmented. This book is intended as the first holistic response to an urgent need to address epistemic rights regarding communication as a central public policy issue, an academic analytical concept, and a crucial theme for informed public debates.

Epistemic rights concern people's capability to understand information and knowledge offered by epistemic institutions (such as the media and the like) and, based on this understanding, their ability to act for their own interests and needs, as well as those of society as a whole. In a democratic society, epistemic rights presume, among others, equality in all aspects relating to the access to and the availability of information and knowledge, symmetric relations in public communication, equality in obtaining critical literacy in information and communication, and equal protection of personal privacy from any form of public intrusion. In the digital era, our epistemic rights are increasingly challenged in novel ways by state and commercial actors alike.

This edited volume showcases the history and diversity of current debates around communication rights and digital rights as precursors of the need for epistemic rights, both as a theoretical concept and as an empirically assessed benchmark. In the foundational chapter (Chap. 2), **Hannu Nieminen** introduces the concept of epistemic rights, building on the basic definition of democracy as the rule of the people, by the people, and for the people. According to him, epistemic rights refer to the requirement that in order to have equality in decision-making, society should guarantee that truthful information and knowledge are made available to all and that people have the competence to use these for their benefit and that of society as a whole. As a background, Nieminen offers a short review of the communication rights movement that has paved the way for the present discussion on epistemic rights.

What follows is a section focusing on concepts and issues central to policies supporting media environments conducive to epistemic rights. **Bart Cammaerts** in Chap. 3 underlines the challenges of both liberal radical and socialist radical imaginaries that have empowered democratic public interventions in the context of media and communication and calls for their expansion and reinvention in the current conjuncture era of (digital) inequality, surveillance, mis- and disinformation, and oligopolistic power. **Philip M. Napoli** in Chap. 4 provides a typology of information inequalities ranging from digital divides and disparities in media ownership to news deserts, disinformation divides, and algorithmic bias. The chapter provides concepts for policymaking that support individual and collective epistemic rights. **Tarlach McGonagle** in Chap. 5 offers a detailed review of the European Convention of Human Rights from the viewpoint of epistemic rights. Analysing several European Court of Human Rights cases, he calls for more explicit attention on the epistemic dimension within the human rights framework. Terry Flew, in Chap. 6 continues the critical inventory of the current conditions by outlining a prominent tension in tech policy between the digital rights of the individual versus the idea of communications forming epistemic commons. Flew argues for an inclusive version of digital citizenship in policymaking that narrows the gap between technocratic decision-making and politics. In Chap. 7, **Maria Michalis** and **Alessandro D'Arma** discuss one traditional tool for supporting epistemic rights—public service media (PSM). The authors argue that notwithstanding the risks of marginalisation they are currently facing, PSM organisations, given their institutional mandates, have a major role to play in supporting epistemic rights and promoting epistemic justice. The chapter identifies the main conditions and governance implications for PSM organisations if they are to fulfil this role.

The second section of the book is dedicated to case studies that highlight the complexities of epistemic rights in particular contexts. While discussing different countries and regions, the fundamental problems are shared in most parts of the globe: access, availability, participation and dialogicality, privacy, precarity, and veracity of knowledge. **Anita Gurumurthy** in Chap. 8, in her powerful account of what the platform economy may mean for women, illustrates the challenges with four stories from India. **Tendai Chari** in Chap. 10 highlights not only the global capitalist structures underlying the internet but also those of

national authoritarian power that may disrupt epistemic access. Similarly, **Marius Dragomir** and **Minna Aslama Horowitz** in Chap. 11 discuss how state and non-state actors become epistemic violators in Central and Eastern Europe when capturing legacy and online journalistic outlets. **Reeta Pöyhtäri**, **Riku Neuvonen**, **Marko Ala-Fossi**, **Jockum Hildén**, and **Katja Lehtisaari** in Chap. 12 explore challenges for epistemic rights in Nordic countries, where the developments regarding freedom of speech and dialogue have common roots but differing outcomes. **Fernando Oliveira Paulino** and **Luma Poletti Dutra** in Chap. 9 discuss approaches to guarantee a fundamental epistemic right—the right to information—in the information laws of Brazil and Mexico. Finally, **Yik Chan Chin** in Chap. 13 examines the academic debate on access to digital data in China and the Chinese state's policy, demonstrating the lack of consideration of epistemic rights in regulating access to digital data in China and the interplay of global tendencies and local particularities.

In the concluding section, **Lani Watson** and the editors in Chap. 14 discuss the implications of the insights in the previous chapters. They reflect on both further theoretical and empirical research needs in the field of communication and media research, and national and global policy agendas: What should be known about epistemic rights, and how should they be factored into human rights and communications policies?

One thing is certain: there is a growing consensus about the necessity of epistemic rights. These rights are not only about the right to know but also, in our digital era of abundance of information, the right to have a voice and be heard. As Nick Couldry (2010) has posited, having a voice—the ability to be heard as a valued contributor—is in today's society as important as economic advantages, determining one's social standing and opportunities. Moreover, Mathias Risse (2021) argues that we should understand epistemic rights as a new segment of human rights because democracy can only flourish if both individual citizens and groups and collectives are protected as those who know and as those who are known. In these chapters, we make visible some of the challenges and opportunities for both.

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References

Aslama Horowitz, M., Nieminen, H., & Schejter, A. M. (2020). Introduction: Communication rights in the digital age. *Journal of Information Policy, 10*(2020), 299–303. https://doi.org/10.5325/jinfopoli.10.2020.0299

Couldry, N. (2010). *Why voice matters: Culture and politics after neoliberalism.* SAGE.

Dahlgren, P. (2018). Media, knowledge and trust: The deepening epistemic crisis of democracy. *Javnost—The Public, 25*(1–2), 20–27. https://doi.org/10.1080/13183222.2018.1418819

Fisher, E. (2022). Epistemic media and critical knowledge about the self: Thinking about algorithms with Habermas. *Critical Sociology, 48*(7–8), 1309–1324. https://doi.org/10.1177/08969205211044193

Just Net Coalition & IT for Change. (2020). *A digital new deal: Visions of justice in a post-COVID world.* https://projects.itforchange.net/digital-new-deal/

Padovani, C., & Calabrese, A. (Eds.). (2014). *Communication rights and social justice: Historical accounts of transnational mobilizations.* Palgrave Macmillan.

Risse, M. (2021). The fourth generation of human rights: Epistemic rights in digital lifeworlds. *Moral Philosophy and Politics, 8*(2), 351–378. https://doi.org/10.1515/mopp-2020-0039

Watson, L. (2018). Systematic epistemic rights violations in the media: A Brexit case study. *Social Epistemology, 32*(2), 88–102. https://doi.org/10.1080/02691728.2018.1440022

Watson, L. (2021). *The right to know: Epistemic rights and why we need them.* Routledge.

Zuboff, S. (2019). *The age of surveillance capitalism: The fight for a human future at the new frontier of power.* Public Affairs.

Why We Need Epistemic Rights

Hannu Nieminen

Why We Need Epistemic Rights

This chapter proposes that to save democracy we need to radically enhance citizens' knowledge and that to understand the challenges that the global community is currently facing, as well as the opportunities, we have to respond to them. The starting point is the deepening divisions within our societies, which derive from both external and internal forces. As democracy is, by definition, the rule of the people, its basic requirement is equality in the act of ruling: in order to have equality in decision-making, people should share the same information and knowledge and understand the value and significance of this knowledge. In this chapter, I introduce the concept of epistemic rights, which refers to this requirement, understood in the sense that society should guarantee that all its citizens will be given truthful information and knowledge and the competence to use these for their own benefit and that of society as a whole. To illuminate the historical background of the concept, the chapter then

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gives a short historical review of the communication rights movement, which can be seen as paving the way for epistemic rights. Third, some reflections based on this review are offered. In conclusion, the chapter articulates the need for the further investigation of epistemic institutions and their role in democracy.

Epistemic Rights: The Concept

The common conclusion of many reports, applying different indicators, is that democracy is in decline in Europe and globally. Even in countries with a long history of democratic development, neo-authoritarian tendencies have increased (see V-Dem Institute, 2021; Freedom House, 2022). This observation has been made in several countries worldwide where governments exert control over the media, restrict the movement of people, and even interfere with the autonomy of the independent judiciary. These characteristics are seen in autocracies on all continents, but political forces that support and promote similar goals have gained increasing support even in countries not governed by an authoritarian regime. Their influence has led other parties to emulate their policies, as can be particularly seen in hardened negative attitudes to immigration around Europe.

The symptoms of this right-wing protest should not be confused with its sources. Anti-elitism and decreased trust in authorities are symptoms of much deeper social problems, not sources of populist protest. The use of social media to spread hate speech and disinformation is also a symptom, rather than a source, of racism and intolerance against minorities, although it obviously exacerbates the problem. Lessons drawn from around the world, not least from the United States under the Trump administration, have taught us that the fundamental basis of distrust and populist mobilisation is people's deep sense of social injustice resulting from their experience of increasing inequality and deepening class divisions.

Modern neo-authoritarianism appears to be the result of two opposing forces. On the one hand, it is a product of right-wing populist movements that use liberal democracy to challenge the rule of the political, economic, and cultural elites, whom they see as their enemies. On the other hand, it is also the product of political and economic elites who see the populist challenge as threatening the systemic balance that works in their favour. Instead of addressing this problem, the elites attempt to contain populist protests. Even in the liberal democratic Nordic countries in Europe,

known as social welfare states, the elites do this by complying with some of the populist parties' demands, such as introducing anti-immigration policies (Denmark), blocking populists' path to power, often by forging coalitions against populist parties (Sweden), and restricting their public appearances, thereby minimising their media presence (Sweden) (Milne, 2015; Berman, 2021; Peker, 2021).

There is widespread concern about the state of democracy today. Various analyses and proposals have approached this issue differently (e.g., Merke, 2014; Przeworski, 2019; Fitzi et al., 2020; Crouch, 2020; Kriesi, 2020; Anderson & Rainie, 2020). When thinking of potential solutions to the malaise of democracy, it is helpful to remember that liberal democracy as a political system is always based on a paradox. In elections, people are free to award a majority to parties which promote illiberal and anti-democratic policies. We must ask ourselves what is wrong with the European model of liberal democracy today. One possible answer lies in epistemic inequality, which concerns the widening gap in information, knowledge, and understanding between the elites and the majority of the population. This gap has produced two opposing regimes of information, knowledge, and truth: one that is owned and interpreted by the elites and the other that is labelled mis- and disinformation, fake news, and alternative truths, owned by disgruntled and disenfranchised members of society.

In contrast to the early optimism attached to the 'digital revolution', which appeared to promise virtual democracy and open access to information and knowledge (e.g., Negroponte, 1995; Dertouzos & Gates, 1998), epistemic inequalities appear to be growing in more digitalised societies (Norris, 2001; McChesney, 2013; van Dijk, 2020). There are more information channels than ever (including an assortment of television and radio channels and a growing number of social media platforms). Still, there is less control over the truthfulness and honesty of their offerings than there was over pre-digital media. With the advance of social media platforms comes ever less accountability for the content which is freely available on them. Despite the vast amount of information available through various media sources, the number of central information gatekeepers has decreased due to media and communication ownership concentration. The power of bottleneck controllers, who regulate our supply of daily information, knowledge, and truths, is greater than ever. For example, when Elon Musk bought Twitter in autumn 2022, he started immediately to change its terms of use to follow his free speech absolutism, that is, removing restrictions on disinformation and hate speech (Frenkel &

Conger, 2022; Glozer et al., 2022). The CEO and biggest shareholder of Meta (previously Facebook), Mark Zuckerberg, has been charged numerous times over breaches of Facebook users' privacy (see Rushe & Milmo, 2022; Dataconomy, 2022). More examples of digital platforms' misuse of their power and clearly illegal activities are easy to find.

What is required to be an informed and active member of society today is different from what was needed 20 or even 10 years ago. Through digitalisation and globalisation, our everyday environment has changed profoundly. With mounting global problems—climate change, terrorism, political tensions between big countries, etc.—our lives have become more complex and unpredictable in many ways. The role of experts and specialists in interpreting and translating the world around us has increased enormously (Nguyen, 2020; Hardwig, 1985; Kutrovátz, 2010). When making choices that affect our lives and the lives of other members of society, we must trust specialists on issues such as climate change, national and global economies, and domestic and international security. We usually do so without judging the truthfulness of their information and knowledge and the full consequences of our choices.

It thus follows that for democracy to adhere to its normative principles, citizens must have fundamental epistemic rights related to knowledge and understanding. These include:

- Equality in access to and availability of all relevant and truthful information that concerns issues of will formation and decision-making,
- Equality in obtaining competence in critically assessing and applying knowledge for citizens' own good as well as for the public good,
- Equality in public deliberation about will formation and decision-making in matters of public interest,
- Equal freedom from external influence and pressure when making choices.

As a concept, epistemic rights are not new. Social philosophers have traditionally applied them in relation to the justification of beliefs (see Dretske, 2000; Wenar, 2003; Watson, 2018, pp. 89–91). More recently, Zuboff (2019) adopted the concept of people's right to privacy and personal information, and Risse proposed the concept of epistemic actorhood in the datafied society, which can only be realised through epistemic rights (Risse, 2021). In this chapter, epistemic rights are understood more

widely, following the definition given by Watson (2018, p. 91; see also 2021, pp. 47–64):

> As well as the right to an informed medical diagnosis, you have rights to information about the food you eat, the products you buy, your child's education, the conditions of your employment, your mortgage, your taxes, and so on. You have a right to know how much interest you are being charged on your credit card. You have a right to understand the details of any legal contract that you sign. You have the right not to incriminate yourself in a court of law and the right to remain silent. Talk of epistemic rights, while not in general talked of as epistemic rights, is commonplace.

Thus, epistemic rights are about knowledge—not only about being informed, but also about being informed truthfully, understanding the relevance of information, and acting on its basis for the benefit of oneself and society as a whole. The role of epistemic institutions is crucial: we have a right to assume that the primary providers of societal information—the media, the education system, public authorities—work for the public good and serve us with truthful information and knowledge. Although institutions and practices of media and communication are not the only parts of our 'epistemic ecosystem', they are one of its most visible and significant parts. However, they must not hinder us from looking for the deep structures that create, sustain, and reproduce everything we understand as 'the Truth'—everything that makes our social and cultural being.

The notion of epistemic rights, as developed here, is indebted to Jürgen Habermas' (2006, 2009) work on deliberation and his discussion on its epistemic dimension, which is fundamental to democracy. In this respect, the notion is also broader: it covers more areas of social action than the more commonly adopted concept of communication rights, which often focuses narrowly on media and communication functions. I will discuss communication rights in the following section.

From Communication Rights to Epistemic Rights

The legitimacy of (liberal) democracy as a political system rests on the promise of its citizens being equal in their will formation and decision-making, including equality in the availability of information and knowledge. However, this premise is not enough in today's increasingly complex world. There must also be equality in understanding the real consequences

of our choices, which, in practice, means asking questions such as the following: Were American voters conscious of the potential consequences of voting for Trump in 2016? Were voters in the United Kingdom fully aware of the possible implications of Brexit in 2016? Did the Hungarian electorate understand the consequences of their actions when they voted for increased isolation from the rest of Europe in 2022?

It is important to note that although the role of the media in society is crucial, they do not comprise the only institution that provides us with knowledge, information, understanding, and truth. The primary sources for these are family, formal education and other forms of socialisation, and learning to cope in society and culture (Dehghan, 2011; Wiseman et al., 2011; Karpov, 2016). The role of the media is to update us daily about the outside world, providing information, orientation, entertainment, social connections, and a platform for self-expression. Media can do this only when we have a valid reference basis offered by education and overall socialisation, which is necessary to understand any media content.

Traditionally, the requirements for epistemic rights in relation to the media, in particular, have been debated and campaigned for under banners such as the freedom of the press, communication rights, media education and media literacy, and cultural rights. These issues and campaigns are more or less directly based on the Universal Declaration of Human Rights (UDHR) of the United Nations XE "United Nations" (1948) and the numerous international agreements which followed from it. (For further elaboration, see also Communication Rights in Information Society (CRIS) Campaign (2005, pp. 41–43).)

As mentioned above, several campaigns and movements have pursued similar goals that we call epistemic rights. One of the most influential is the campaign for communication rights, which has been ongoing for more than 50 years. In the following sections, I will discuss its trajectory and reflect on it from the viewpoint of epistemic rights developed above.

Three Phases of the Communication Rights Movement

The history of the communication rights campaign has three phases: 1970s–1980s, in connection with UNESCO's New World Information and Communication Order (NWICO); 1990s–2000s, in connection with the World Summit on Information Society (WSIS); and 2010–present, a

period marked by regulatory challenges concerning the internet and global media platforms.

The New World Information and Communication Order

The contemporary academic discussion of communication rights started in the 1970s. At that time, the discourse was closely connected to the rise of the global anti-colonial movement, as several countries, mainly African and Asian, fought for their independence. An influential body in this campaign was a group of non-aligned countries organised under the Non-aligned Movement (NAM; Milan & Padovani, 2014; CRIS Campaign, 2005). Many academic scholars sided with the group's proposal to rectify the uneven distribution of global resources between the developed countries of the Global North and the developing countries of the Global South (Padovani & Nordenstreng, 2005). This asymmetry was felt strongly in the media and communication sector, which was dominated not only technically, but also culturally and professionally, by Western countries, particularly the United States. A significant milestone in this development was UNESCO's 1980 resolution on the New World Information and Communication Order (NWICO), which was based on extensive preparatory work in the form of the so-called MacBride Report commissioned by UNESCO in 1977 (Padovani, 2015).

Although the resolution was unanimously adopted by UNESCO, in the Cold War environment two major Western countries—the United States and the United Kingdom—strongly resisted the idea of the NWICO. They saw it as 'a potential threat to their cultural industries' global opportunities, and an attack on the doctrine of the free flow of information, their basic normative reference' (Padovani, 2015, p. 2).

Reflecting the realities of the Cold War era, the NWICO was adopted by the majority of UNESCO's member countries as an instrument in the ideological and political battle between the Cold War blocs—the United States and the Soviet Union and their respective allies—much to the detriment of the NAM countries. As Padovani (2015, p. 2) remarks, 'the USSR took advantage of the situation to promote state control over information flows and reduce the capacity of communication satellites to interfere with Soviet-bloc media control'. This historical context rendered the NWICO relatively short-lived as a political and intellectual movement, although it continued for some years in conferences and publications.

Considering the ideological and political atmosphere in the early 1980s, it might not be fair to say that one of the weaknesses of the NWICO was its limitation to the sphere of media and communication, leaving other aspects of epistemic rights to other areas. However, its fate illustrates the global power imbalance in media and communication even today, where only a few companies have a practical monopoly or semi-monopoly of the worldwide communication network.

Towards the World Summit on Information Society

During the 1980s and 1990s, the claim to communication rights found new ground, gaining impetus from grassroots movements rather than governments and international organisations. These movements originated from community media initiatives in several countries in both the Global South and North on behalf of groups and communities that were not otherwise heard through the mainstream media. A crucial connecting factor between these two fronts was the fight for gender equality in the media. Another common source of mobilisation was that these movements were a reaction to neoliberal policy and the deregulation of media and communication.

The culmination of this renewed communication rights movement was the World Summit on Information Society (WSIS) in Geneva in 2003 and Tunis in 2005, organised not by UNESCO but by the ITU, reflecting the diminished international status of UNESCO. In addition to the two traditional stakeholders, governments and the private sector, civil society organisations were invited to the WSIS as the third main stakeholder. Participants at the Tunis summit included 1500 delegates from international organisations, 6200 from civil society organisations, and 4800 from the private sector (UN General Assembly, 2006).

The first part of the WSIS, held in Geneva in 2003, focused on questions related to the implications of the digitalisation of information and communication. Unfortunately for the critical scholarly community, the event was hijacked by the combined forces of governments and the private sector, accentuated by the fact that several industry lobbying organisations secretly participated as civil society representatives and thus gained influence through two stakeholder platforms. The main issue discussed at the WSIS was internet governance. A compromise was achieved at the second WSIS conference in Tunis in 2005 in the Internet Governance Forum, which was formally established in 2006.

Scholars observed a noticeable gap between the academic and activist generations of the NWICO and WSIS. Referring to NWICO, Padovani and Nordenstreng (2005, pp. 264–265) stated that 'an awareness on [NWICO's] relevance to contemporary communication debates is restricted to a narrow sphere of academia and some non-governmental organizations', which led to the WSIS developing 'in the absence of any historical perspective'.

However, the high mobilisation of civil society movements before and during the WSIS did not last long. The central framework for coordinating civil society networks was a loose organisation called the Communication Rights in Information Society (CRIS). After publishing a highly relevant document titled *Assessing Communication Rights: A Handbook* (CRIS Campaign, 2005), CRIS rapidly lost its dynamism, and it vanished in just a few years. A central global organisation that still exists and carries on the traditions of both the NWICO and WSIS is the Centre for Communication Rights, established and managed by the World Association of Christian Communication (WACC). (See also Indymedia, 2021; Kidd, 2011.)

From the viewpoint of epistemic rights, the problem with WSIS was that it narrowed the campaign both thematically and organisationally to pre-given frameworks and included embedded institutional power relations which civil society networks were not able to resist fully. Thus, despite the CRIS campaign presenting a well-developed analysis and programme of action, which included many early elements paving the way for a conceptualisation of epistemic rights, the momentum was not yet there (see CRIS Campaign, 2005).

After the Geneva and Tunis Conferences

After the WSIS, the communication rights movement experienced a prolonged period of reflection. Activities were mainly restricted to local and regional campaigns and initiatives and academic reflections in the aftermath of WSIS. Around the same time, in the 2010s, the implications of the rapidly advancing digitalisation of media and communication started to gain wider international attention.

The changes brought about by digitalisation and the rise of the internet were already evident by 2010, when issues such as the right of access to computers, software, and networks, freedom of expression in online environments, and protection of privacy arose in public discussion (Electronic Frontier Foundation, 2021). However, although the increasing power

and influence of the global media and communication intermediaries (the telecom industry and social media platforms) were recognised and accounted for, the extent of the transformation that has taken place in the global media and communication environment and its full effects were impossible to predict or prepare for.

In the aftermath of the Global Financial Crisis of 2008 and 2009, the rapid expansion of digital intermediaries profoundly transformed the global media and communication environment and ecosystem. Both civil society organisations and policymakers have subsequently debated various aspects of this evolution (see, e.g., Ambrose & Ausloos, 2013; EC, 2019; BEREC, 2022). However, many crucial questions remain only partially addressed. These include the democratic global regulation of the internet, the control of the algorithmisation of our everyday media and communication environment, increasing digital surveillance of citizens and targeted political and commercial advertising,; the increasing filtering of citizens' voices through the software and platforms of the 'Big Five' tech companies (Google, Amazon, Facebook Apple, and Microsoft, or GAFAM), and the unchecked economic power of telecoms and platforms. Although often treated as separate political issues, these topics are central to the enactment of epistemic rights.

Digital Rights?

In response to the significant transformations discussed above, the demand for digital rights gained increasing attention in the mid-2010s (Karppinen & Puukko, 2020; Mathiesen, 2014; Maréchal, 2015; Soh et al., 2018; Finck & Moscon, 2019; Digital Freedom Fund, 2021). Some commentators view the digital rights movement as a continuation of previous generations of communication rights movements (Soh et al., 2018). Others see an entirely new category of rights, representing the fourth generation of human rights, because of the significant changes brought about by digitalisation (Karppinen & Puukko, 2020). However, many digital rights protagonists do not see their activities as having any relation to previous rights movements but see themselves instead as pioneers of a new digital frontier.

On the basis of the declarations and policy documents of a number of global movements and organisations, Karppinen and Puukko (2020) distinguished four different discourses on digital rights: (1) digital rights as the protection of negative liberties. This discourse covers issues from

privacy and state surveillance to traditional free expression anti-censorship activism; (2) positive rights and state obligations. In this discourse, digital media are perceived as a potential instrument for the realisation and promotion of human rights more generally, even to the point of asking if access to the internet should be seen as a human right in itself; (3) digital rights as a vehicle of 'informational justice'. In this discourse, rights are broadly conceived as a vehicle of informational justice. Digital media are seen 'as tools that enable the promotion of broader human rights-related goals' (Karppinen & Puukko, 2020, p. 317); and (4) rights and business: affordances provided by platforms. Digital rights are here seen as 'entitlements provided by platforms or digital intermediaries, such as Facebook or Google' (Karppinen & Puukko, 2020, p. 319).

On the basis of Karppinen and Puukko's analysis, discourses on digital rights appear to be characterised by technological determinism. Broader issues about power in societies are seen through a narrow vantage point of digital technology and its social and cultural potential. Connections to previous movements on communication rights and the epistemic dimensions that they offer are mostly missing.

Lessons Learned from Past Movements

Several lessons can be learned from the three generations of communication rights movements discussed above.

The first-generation movement for communication rights (NWICO) was shaped by two intertwining factors: the global power balance of the Cold War and the anti-colonial struggles of newly independent countries in the Global South. It was a state-centred movement formed under the umbrella of the UN and other intergovernmental organisations. It aimed to work and have influence within the established structures of communication and information policy and regulation. Although the fundamental ethos and critical analysis of the movement were valid at the time, it represented a top-down approach where the acting subjects were states and governments, not citizens and civil society actors. Its legacy faded when the Cold War ended and the Global South encountered new challenges, such as economic globalisation. However, in offering a global and theoretically developed platform for critically campaigning on issues related to epistemic rights, the NWICO was a vital predecessor of the epistemic rights campaign.

The second-generation movement (WSIS) consisted of smaller local movements and a more comprehensive global network of activists who saw communication rights as a part of a broader mobilisation for social justice and collective and communal control of media and communication. The movement's strength grew through grassroots civil society movements and their connecting networks that aimed to establish regional and global networks between local campaigns to raise the issues and claims of communication justice in political arenas. At the same time, the fragmented nature of the movement made it vulnerable, as the networks and local movements lacked solid institutional structures. Moreover, the WSIS made it apparent that the campaign, with its weak system, had become overwhelmed by the rapid development of new media powers—no longer states and governments, but global mono- and oligopolies (for a synthesis of these developments by the mid-2010s, see Padovani and Calabrese (2014)). However, from the viewpoint of epistemic rights, it seems that the whole legacy of the WSIS civil society movement has not been recognised, as the still very topical communication rights handbook issued by the CRIS Campaign (2005) exemplifies.

Developments since the WSIS make it challenging to discuss the communication rights movement as a single entity. Despite differences in emphasis between the first and second generations, the generations shared a common normative platform about the importance of democratic media policy and regulation and the state's role in guaranteeing communication rights to all. However, the new generation of digital rights does not have a common allegiance. Instead, it seems to be divided between different normative platforms; some share the democratic ethos of previous generations, while others promote individual and libertarian positions against all collectivist forms of organisation. For them, digital rights are individual rights, covering demands from open software to the freedom of cyberspace, where neither states nor private-sector intermediaries should have dominance (EDRi, 2021; Electronic Frontier Foundation, 2021; Internet Rights and Principles Coalition, 2021; for an analysis, see Milan & Padovani, 2014, p. 30).

Based on the analysis above, today's communication rights movement might be overly fragmented, making it unlikely that enough common ground can be found to mount a coordinated campaign. The different factions of the communication rights movement emphasise various issues, including:

- How do we define the core rights that need to be protected and their subjects or claimants? Are the rights only individual, or do they belong to groups and communities?
- To whom should the claims for rights be addressed: governments, international organisations, private companies, or civil society networks?
- How should media and communication be governed? What should be the relationship between law-based, self-regulatory, and co-regulatory instruments? What role should global, regional, and national bodies play in relation to one another?
- A common question: how do we define the sources and reasons for inequalities in information and communication, blocking the actualisation of communication rights? (For more, see Philip M. Napoli's Chap. 4 in this volume).

By linking the problems of information and communication to a wider societal context and to the present predicaments of other epistemic institutions (education, public services, cultural institutions, etc.), the concept of epistemic rights might offer the common ground we lack and help in overcoming the divisions.

Conclusion

In this chapter, I have advocated the concept of epistemic rights as a remedy for the condition of liberal democracy. I have argued that one of the main obstacles to democracy today is epistemic inequality. Citizens are not equally informed and do not share the same level of knowledge about the consequences of their choices. This fact can be seen in parliamentary or local elections. For example, during the Brexit referendum in the United Kingdom in 2016, so much mis- and disinformation was circulated that, for an average citizen, a fully informed choice was nearly impossible. The mainstream media played a large part in this campaign (Watson, 2018).

The question is whether we can develop social and cultural institutions in our everyday lives that support epistemic equality in today's circumstances. Considering the current neo-authoritarian and anti-democratic trends analysed above, doing so appears to be an uphill battle. However, if we are serious about defending democracy and willing to make an effort to do so, the concept of epistemic rights offers a platform that addresses the core of liberal democracy: citizens' equality in will formation and

decision-making. At its heart, democracy is about making choices between alternative ways of acting. Equality in will formation is possible only if citizens have equal availability of truthful information and knowledge and equal opportunity to understand why a choice is necessary and what the potential alternatives, conditions, and consequences are.

Having reviewed the three generations of communication rights movements, I concluded that it is not enough to speak about communication rights in today's increasingly complex world and concentrate only on the media as the leading institution that should right the wrongs. Instead, all epistemic institutions—institutions dealing with knowledge, information, understanding, and truth—must be brought into the analysis. These include education systems, libraries, different cultural institutions (e.g., museums and theatres), and public services, all of which form, disseminate, and reproduce our daily normality and represent social and cultural continuity and stability.

The media, undoubtedly, are among the significant 'influencers' in our everyday life, acting as an 'epistemic authority' (Watson, 2018, p. 99) by regularly updating our daily connection to the world. The crucial discrepancy is that the mainstream media (newspapers, television, radio) as a cultural and social form have historically been tied to a nation-forming and nation-serving framework, wanting to speak both to and for a single national audience (or audiences). However, the world is no longer organised in this manner. The more complex the global political, economic, and cultural environment becomes, the more strenuously the mainstream media attempt to ensure their epistemic authority based on a national symbolic framework. Naturally, the authority of the mainstream media can only be ensured as long as their traditional business model remains viable. The problem is, what will follow if or when the epistemic authority of the mainstream media finally fails? The signs of a possible outcome are already apparent and far from promising.

References

Ambrose, M. L., & Ausloos, J. (2013). The right to be forgotten across the pond. *Journal of Information Policy, 3*, 1–23.

Anderson, J., & Rainie, L. (2020, February 21). *Many tech experts say digital disruption will hurt democracy*. Pew Research Center. https://www.pewresearch.org/internet/2020/02/21/many-tech-experts-saydigital-disruption-will-hurt-democracy/

BEREC. (2022). *BEREC Report on the outcome of the public consultation on the draft BEREC Guidelines on the Implementation of the Open Internet Regulation* (BoR (22) 80). https://www.berec.europa.eu/en/document-categories/berec/reports/bor-22-80-berec-report-on-the-outcome-of-the-public-consultation-on-the-draft-berec-guidelines-on-the-implementation-of-the-open-internet-regulation

Berman, S. (2021, April 12). Dealing with the right-wing populist challenge. *Social Europe.* https://socialeurope.eu/dealing-with-the-right-wing-populist-challenge

CRIS Campaign. (2005). *Assessing communication rights: A handbook.* https://archive.ccrvoices.org/cdn.agilitycms.com/centre-for-communication-rights/Images/Articles/pdf/cris-manual-en.pdf

Crouch, C. (2020). *Post-democracy after the crisis.* Polity.

Dataconomy. (2022, October 11). *Facebook data breach 2022: Over 1M users affected.* https://dataconomy.com/2022/10/facebook-data-breach-2022/

Dehghan, H. (2011). A study of educational socialization: The prerequisite of knowledge production. *Sociological Review, 18*(38), 119–143.

Dertouzos, M. L., & Gates, B. (1998). *What will be: How the new world of information will change our lives.* HarperOne.

Digital Freedom Fund (DFF). (2021). *Digital freedom fund: Digital rights are human rights.* https://digitalfreedomfund.org/digital-rights-are-human-rights/

Dretske, F. (2000). Entitlement: Epistemic rights without epistemic duties? *Philosophy and Phenomenological Research, 60*(3), 591–606.

Electronic Frontier Foundation. (2021). *Electronic Frontier Foundation: A history of protecting freedom where law and technology collide.* https://www.eff.org/about/history

European Commission (EC). (2019). *Report from the Commission to the European Parliament and the Council on the implementation of the open internet access provisions of Regulation (EU) 2015/2120* (COM(2019)203 final). https://op.europa.eu/en/publication-detail/-/publication/f2a6853e-6b22-11e9-9f05-01aa75ed71a1

European Digital Rights (EDRi). (2021). *European digital rights.* https://edri.org/

Finck, M., & Moscon, V. (2019). Copyright law on blockchains: Between new forms of rights administration and digital rights management 2.0. *IIC—International Review of Intellectual Property and Competition Law, 50*(1), 77–108.

Fitzi, G., Mackert, J., & Turner, B. (Eds.). (2020). *Populism and the crisis of democracy* (Vols. 1–3). Routledge.

Freedom House. (2022). *The global expansion of authoritarian rule.* https://freedomhouse.org/sites/default/files/2022-02/FIW_2022_PDF_Booklet_Digital_Final_Web.pdf

Frenkel, S., & Conger, K. (2022, December 2). Hate speech's rise on Twitter is unprecedented, researchers find. *The New York Times*. https://www.nytimes.com/2022/12/02/technology/twitter-hate-speech.html

Glozer, S., Godwin, E. J., & Mota, R. (2022, November 7). Twitter and Elon Musk: Why free speech absolutism threatens human right. *The Conversation*. https://theconversation.com/twitter-and-elon-musk-why-free-speech-absolutism-threatens-human-rights-193877

Habermas, J. (2006). Political communication in media society: Does democracy still enjoy an epistemic dimension? The impact of normative theory on empirical research. *Communication Theory, 16*, 411–426.

Habermas, J. (2009). *Europe: The faltering project*. Polity.

Hardwig, J. (1985). Epistemic dependence. *The Journal of Philosophy, 82*(7), 335–349. https://doi.org/10.2307/2026523

Indymedia. (2021). *Global independent media centre network*. https://indymedia.org

Internet Rights and Principles Coalition (IRPC). (2021). *Dynamic coalition on internet rights and principles*. https://internetrightsandprinciples.org/

Karpov, A. O. (2016). Socialization for the knowledge society. *International Journal of Environmental & Science Education, 11*(10), 3487–3496. https://files.eric.ed.gov/fulltext/EJ1114688.pdf

Karppinen, K., & Puukko, O. (2020). Four discourses of digital rights: Promises and problems of rights-based politics. *Journal of Information Policy, 10*, 304–328.

Kidd, D. (2011). Indymedia (The Independent Media Center). In J. Downing (Ed.), *Encyclopedia of social movement media*. Sage. https://doi.org/10.4135/9781412979313.n114

Kriesi, H. (2020). Is there a crisis of democracy in Europe? *Polit Vierteljahresschr, 61*, 237–260. https://doi.org/10.1007/s11615-020-00231-9

Kutrovátz, G. (2010). Trust in experts: Contextual patterns of warranted epistemic dependence. *Balkan Journal of Philosophy, 2*(1), 57–68. https://doi.org/10.5840/bjp20102116

Maréchal, N. (2015). Ranking digital rights: Human rights, the internet and the fifth estate. *International Journal of Communication, 9*, 3440–3449.

Mathiesen, K. (2014). Human rights for the digital age. *Journal of Mass Media Ethics, 29*(1), 2–18.

McChesney, R. W. (2013). *Digital disconnect: How capitalism is turning the internet against democracy*. The Free Press.

Merke, W. (2014). Is there a crisis of democracy? *Democratic Theory, 1*(2), 11–25. https://doi.org/10.3167/dt.2014.010202. ISSN 2332-8894

Milan, S., & Padovani, C. (2014). Communication rights and media justice between political and discursive opportunities: An historical perspective. In

C. Padovani & A. Calabrese (Eds.), *Communication rights and social justice* (pp. 29–54). Macmillan.

Milne, R. (2015, June 16). Rightwing populists reshape Denmark's political landscape. *Financial Times.* https://www.ft.com/content/d9c90e48-1113-11e5-8413-00144feabdc0

Negroponte, N. (1995). *Being digital.* Knopf.

Nguyen, C. T. (2020). Cognitive islands and runaway echo chambers: Problems for epistemic dependence on experts. *Synthese, 197,* 2803–2821. https://doi.org/10.1007/s11229-018-1692-0

Norris, P. (2001). *Digital divide: Civic engagement, information poverty, and the internet worldwide.* CUP.

Padovani, C. (2015). New World Information and Communication Order (NWICO). In W. Donsbach (General ed.) (First published 2008) *The international encyclopedia of communication* (latest version, 23 July 2015) https://doi.org/10.1002/9781405186407.wbiecn013.pub2

Padovani, C., & Calabrese, A. (Eds.). (2014). *Communication rights and social justice: Historical accounts of transnational mobilizations.* Palgrave Macmillan.

Padovani, C., & Nordenstreng, K. (2005). From NWICO to WSIS: Another world information and communication order? Introduction. *Global Media and Communication, 1*(3), 264–272.

Peker, E. (2021). Right-wing populism and the securitisation of Laïcité narratives in French education policy. *Social Policy and Society, 20*(2), 326–339. https://doi.org/10.1017/S1474746420000652

Przeworski, A. (2019). *Crises of democracy.* CUP.

Risse, M. (2021). The fourth generation of human rights: Epistemic rights in digital lifeworlds. *Moral Philosophy and Politics, 8*(2), 351–378. https://doi.org/10.1515/mopp-2020-0039

Rushe, D., & Milmo, D. (2022, May 23). Zuckerberg sued by DC attorney general over Cambridge Analytica data scandal. *The Guardian.* https://www.theguardian.com/technology/2022/may/23/mark-zuckerberg-sued-dc-attorney-general-cambridge-analytica-data-scandal

Soh, C., Connolly, D., & Nam, S. (2018, March 1). Time for a fourth generation of human rights? *United Nations Research Institute for Social Development.* https://www.unrisd.org/TechAndHumanRights-Soh-et-al

UN General Assembly. (2006). *Report of the world summit on the information society.* https://undocs.org/A/60/687

United Nations. (1948). *Universal Declaration of Human Rights.* https://www.un.org/en/about-us/universal-declaration-of-human-rights

van Dijk, J. (2020). *The digital divide.* Polity.

V-Dem Institute. (2021). *Democracy report 2022: Autocratization changing nature?* https://v-dem.net/publications/democracy-reports/

Watson, L. (2018). Systematic epistemic rights violations in the media: A Brexit case study. *Social Epistemology, 32*(2), 88–102. https://doi.org/10.1080/02691728.2018.1440022

Watson, L. (2021). *The right to know: Epistemic rights and why we need them.* Routledge.

Wenar, L. (2003). Epistemic rights and legal rights. *Analysis, 63*(2), 142–146.

Wiseman, A. W., Fernanda Astiz, M., Fabrega, R., & Baker, D. P. (2011). Making citizens of the world: The political socialization of youth in formal mass education systems. *Compare: A Journal of Comparative and International Education, 41*(5), 561–577. https://doi.org/10.1080/03057925.2010.530764

Zuboff, S. (2019). *The age of surveillance capitalism: The fight for a human future at the new frontier of power.* Profile Books.

Concepts and Issues

On the Need to Revalue Old Radical Imaginaries to Assert Epistemic Media and Communication Rights Today

Bart Cammaerts

INTRODUCTION

From their inception, the production and the distribution of information and content through print, broadcasting, as well as communication infrastructures such as postal services, the telegraph, telecommunication networks, long-distance cables, satellites, and today the Internet have always been the target of pro-active as well as re-active and direct as well as indirect regulatory interventions due to their positive but also potentially harmful impacts on the economy, society, and democracy. While many of these interventions were accompanied and influenced by moral panics or in 'the national interest', they were also co-shaped by radical imaginaries of hope, the public interest, and democratic values (Calabrese & Burgelman, 1999).

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These radical imaginaries with regard to media and communications, while supported and embodied by civil society, required state actors to intervene, to own, to enable, and/or to design robust institutions capable of regulating specific sectors, to vote laws to protect social and cultural objectives, to enforce standards, etc. However, as implied above, many states appropriated these imaginaries not only with a view of serving the public good but also to control and enhance the state security apparatus as well as promote (certain) moral virtues.[1] When it came to media and communication sectors, state interventions also arguably led to a paternalistic overstretch in many countries, which in turn fed the neoliberal push-back against any form of public intervention. Over time, it has come to be seen near-impossible to properly regulate and forcefully intervene in the media and communication industries (partly also because of the highly influential lobbying power these industries have). In order to turn this around, there is an urgent need to rejuvenate older—pre-neoliberal—radical imaginaries, precisely because they still provide solid ethical justifications for emancipatory and democratic public interventions in media and communication industries.

First, the notion of a radical imaginary will be unpacked. Subsequently, these will be applied to some of the media and communication policies deployed in Western countries prior to the neoliberal hegemony. In the conclusion, a reflection will be offered on the implications of these old radical imaginaries for democratic and social regulatory interventions in a digital age.

Liberal and Socialist Radical Social Imaginaries

The idea and concept of a social imaginary emerged as a reaction against an overbearing centrality of rationalism and the rigid Marxist distinction between objective and false consciousness when it comes to articulating ideology. The idea of the imaginary also foregrounded the importance of collective cognitive processes, of meta-narratives, the role of human creativity, and the formative and constitutive nature of the imaginary (Taylor, 2003). Social imaginary significations, as Castoriadis (1987, p. 143) put it,

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[1] This is, however, not the focus of this chapter, which is more on justifications for emancipatory public interventions, rather than repressive and security concerns. It is, however, important to acknowledge that these reactionary imaginaries ran in parallel to the radical ones discussed in this chapter.

should be understood as 'the organizing patterns that are the conditions for the representability of everything that the society can give to itself'. They are an 'horizon [that] structures a field of intelligibility' (Laclau, 1990, p. 94).

The two main radical imaginaries that can be identified in the context of media and communication (but also beyond that) are a liberal and a socialist one.[2] They each have different premises, meta-narratives, and value systems, but as we will see, at times they colluded vis-à-vis certain types of public interventions. In what follows, the socialist and liberal radical imaginary will be historicised first, after which a set of public interventions inspired by both imaginaries will be analysed at the level of (1) ownership, (2) access, (3) media content, and (4) communication infrastructures.

The Liberal Radical Imaginary

From its very inception, liberalism was radical and revolutionary as it sought to curtail, erode, and ultimately overthrow the divine and 'old' power bases of both the clergy and nobility. Liberalism was, as Croce (1997, p. 28) ascertains, 'a perpetual motion, an increasing growth and progress' and thus inherently imperfect, always in flux. Liberalism's origin is, for instance, distinct when we compare a continental to an Anglo-Saxon version of liberalism. Whereas in the latter, the idea of natural liberty and *laissez-faire* economic freedoms were advocated, in the former civic rights and liberties as well as the importance of a social and constitutional contract were positioned more centrally. When it comes to printed media, the European civic republican conception, imbued with Enlightenment ideals and partly serving as inspiration for the French revolution of 1789, is as interesting to unpack as is the Adam Smith-inspired British tradition of procedural liberalism.

This is because, contrary to common belief, the individualism inherent to Anglo-Saxon economic liberalism was always counter-balanced by a narrative of societal—civic—duties, of social cohesion and above all guided by conceptions of social justice and ethical values, which were quintessential as they had to replace the divine justification of the absolute powers of

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[2] In doing so, I am aware that I am in fact re-ideologising the imaginary, but ideologically inspired imaginaries do shape policies and inform the justifications given for them.

king and church (Rosenblatt, 2018).[3] The general welfare of the community and civic participation was heralded as of primordial importance. Some twenty-five years before he published *The Wealth of Nations*, Adam Smith wrote that it is the duty of all citizens 'to promote, by every means in his power, the welfare of the whole society of his fellow-citizens' (Smith, 1759, pp. vi, ii 3.3).[4]

Liberality, as in 'acts of kindness to others' (Hutcheson, 1747, p. 94), has traditionally been a central aspect of the radical liberal imaginary. This idea became most pronounced within French-inspired American 'new' liberalism, which stood for 'liberality and generosity, especially of mind and character' (Dewey, 1940, 252ff). Interventions by the State were, however, not only justified through social goals, ethical concerns, generosity, or the public interest, but also by a 'making capitalism work' frame. This is an inherent tension within liberalism, as Adam Smith had a deep worry for the dangers of the concentration of wealth and rejected oligopolistic and anti-competitive behaviour (Boucoyannis, 2013).

In line with this, liberalism is also fundamentally pluralist. Rawls (1997, p. 52) argued that 'liberalism assumes that it is a characteristic feature of a free democratic culture that a plurality of conflicting and incommensurable conceptions of the good are affirmed by its citizens'. Central in this regard was an emphasis on tolerance, above all religious tolerance, and linked to this valuing minority positions and protecting against the tyranny of the majority (Mill, 1859). However, as Habermas (1989) highlighted in his account of the transformation of the public sphere, disagreement and debate regarding these conflicting conceptions had to be conducted in a rational and civilised manner, and with respect towards other persuasions and points of views.[5]

This was tied to a strong emphasis on freedom of speech and of the press within liberal thought. While obviously interlinked, these two are not commensurate. Whereas freedom of speech is very much tied to an individual civic right, enshrined in all liberal constitutions, freedom of the

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[3] Rosenblatt (2018) also exposes in exemplary fashion that besides a progressive side, liberalism also had a dark side, which was very sexist, racist, pro-colonisation, classist, and in favour of competitive elitism.

[4] Here too, it has to be clear that at that time ideas concerning full citizenship rights and the idea of representation and democracy were still very much the exclusive domain of landowning and tax-paying men.

[5] Views expressed and deemed to be situated outside of the rational 'marketplace of ideas' were, however, excluded from the liberal public sphere.

press aligns more with views regarding the functioning of liberal democracy itself and was also linked to the idea of the separation of powers, as foregrounded by John Locke and later also by Montesquieu. Democracy requires checks and balances, whereby the main role of the press was seen to be the watchdog of the powers that be (Christians et al., 2009, p. 51).

Finally, while a deep-seated (competitive) elitism and the related fear of the irrational masses was central to liberal thinking, so was an emphasis on self-realisation, on education and embetterment, on the Enlightenment ideals. Inspired by the ideas of Montesquieu and Locke regarding the diffusion of knowledge, Jefferson wrote in his *Bill for the More General Diffusion of Knowledge* (1779) that 'the most effectual means of preventing [tyranny] would be, to illuminate, as far as practicable, the minds of the people at large'.

The Socialist Radical Imaginary

The socialist radical imaginary also has many strands and factions. Here I will focus on a more centralist statist imaginary and an anarchist federalist imaginary. Just as within liberalism, one of the main points of contention within the socialist radical imaginary is also related to the role of the state, but within the socialist radical imaginary this translates to a top-down/hierarchical versus a bottom-up/horizontal disposition as shown in the conflict between Marx and Bakunin. At the same time, they are also not entirely juxtaposed to each other, as Marx's end-game, so to speak, was a communist society, making the state obsolete (Schonfeld, 1971).

In both socialist traditions though the liberal sacrosanct of private property is contested. The collectivisation of the means of production and public ownership of land, property, and resources by local communities and/or the state were seen as a central tool to realise a more equal, fairer, and equitable alternative to absolutist as well as bourgeois capitalist rule. Nationalisation became an important tool to achieve this radical imaginary (Fawcett, 1883), but also local and often small-scale cooperatives, operating on the principles of mutual aid were deemed important (Kropotkin, 1903). This can of course also be expanded to the idea of the commons or the various collective resources at the disposal of a community.

What centralists and autonomous socialists also agreed on is the need to expand social justice beyond 'acts of kindness' and the notion of 'fairness' in liberal articulations. While many Marxists were highly critical of Rawls' theory of justice and rejected the notion of justice and rights as bourgeois

ideology (Peffer, 1990, p. 368), ideas of social and moral justice were central to socialist politics within democracies and served to justify redistributive justice and the establishment of the welfare state (Esping-Andersen, 1990).

Given the long exclusion of working-class people from the liberal democratic process, it is unsurprising that the relationship between the socialist radical imaginary and liberal democracy is characterised by ambiguity. Marx and Engels saw 'the transition to proletariat government as taking place under the democratic rule of the petty bourgeoisie' (Schonfeld, 1971, p. 368), and especially universal suffrage and the right to organise were highlighted as strategic tools that could be turned against the bourgeoisie. Ultimately, some privileged a dictatorship, led by an enlightened vanguard, to the detriment of the deepening and entrenching of radical democratic values. This was very much lamented by Rosa Luxemburg (1922, p. 52), who kept holding onto the utopian ideals of socialist democracy, whereby socialist struggles had to be won with 'the active participation of the masses; it must be under their direct influence, subjected to the control of complete public activity; it must arise out of the growing political training of the mass of the people'. In line with Luxemburg's plea, the idea of the dictatorship of the proletariat should thus not be approached in terms of our contemporary understanding of dictatorship, but rather as a radical democratic project implying 'mass participation in the institutions that direct society' and 'an overwhelming democratization of the state apparatus', which would at the same time make the repressive state apparatus obsolete (Levine, 1988, p. 204).

In order to achieve this, self-emancipation from below was central to Marxism and socialism more broadly; 'the proletariat can and must emancipate itself', Marx and Engels ([1845] 2000, p. 149) wrote. From their perspective, this emancipation inevitably has a very strong material basis, but we can also discern a cultural dimension within the socialist radical imaginary. Working-class people had to be made conscience of their power and their own class interests; the masses had to be trained, as Luxemburg put it. Education, dialogue, and free communication were thus deemed central tools to achieve this 'conscientization' of the working classes and the broader subaltern (Freire, 1970, p. 128).

Public Interventions in Media and Communication Inspired by Radical Imaginaries

In this section, a series of public interventions relating to media as well as communication infrastructures which were inspired by the two radical imaginaries outlined above will be addressed in more detail. Four distinct, but also to some extent inter-related, areas of public intervention can be discerned: (1) ownership of media organisations as well as communication infrastructures; (2) access to services, infrastructures, information, and knowledge; (3) the production and regulation of media content; and (4) interventions specific to communication infrastructures.

Ownership

Whereas the socialist radical imaginary considered private ownership as inherently problematic and favoured public or community-based ownership models, the liberal radical imaginary tended to eschew public interventions as much as possible and especially at the level of private ownership. However, the liberal imaginary also acknowledged that market failure could occur and that this might, in certain circumstances, warrant the need for the state to intervene in one way or another.

If we take the example of postal and later on telecommunication infrastructures, they were initially only profitable within urban contexts and in terms of facilitating inter-city connections. Amongst others as a result of such market failures, postal and telecommunication services in many European countries were nationalised, very much in line with the radical socialist imaginary (Millward, 2005). State ownership made it possible to ensure that the necessary investments were made to roll these services out to all households, including in rural areas, and crucially at the same tariffs as in urban centres. The liberal radical imaginary also justified the regulation of natural monopolies in the public interest (Arnold, 2009).

Private ownership of media companies as well as communication infrastructures was, however, also heavily regulated and by no means *laissez-faire*. In this regard, we could refer to the limits in many countries on the maximum market share that one actor could own within one media and communication sector and strict rules were also put in place to minimise or ban altogether the cross-ownership across media and communication sectors (Baker, 2007). Concerns regarding the concentration of media ownership led to the Hutchins Commission (1947), emphasising the

social responsibility of the press. Besides this, antitrust regulation and competition law was used to legally enforce competition, for example, to break up the American Telephone and Telegraph Company (AT&T) in the U.S. (Teske, 1990).

In the context of broadcasting, the public service model emerged, especially in Europe (Harrison & Woods, 2001). Being publicly owned, Public Service Broadcasters (PBSs) were very much aligned with the socialist radical imaginary, but it also resonated with the radical liberal imaginary's emphasis on social responsibility, cohesion, and its support for quality 'watchdog' journalism.[6] The socialist radical imaginary—especially its more anarchist or federalist incarnation—also supported another not-for-profit form of media organisation besides PSB, namely, alternative, bottom-up, democratic media, owned by the community or by those that produce the media content through cooperatives (Bailey et al., 2008).

Access

As mentioned above, the liberal imaginary also justified public interventions to achieve similar outcomes than public ownership, but through market regulation of natural monopolies. In the U.S., privately owned telecommunication networks felt compelled to develop universal service provisions by cross-subsidising loss-making activities with profit-making ones, not only to increase access to communication infrastructures, but also to justify their private monopoly (Mueller, 1997).

Within the radical liberal imaginary, regulatory agencies were also implicated in setting tariffs for communication services (Sappington & Weisman, 2010), but at the same time there is also ample evidence of regulatory capture in this regard (Melody, 1997). Compared to the liberal radical imaginaries, interventions at the level of tariffs were more inspired by the socialist radical imaginary and in tune with social redistributive justice. This was achieved through public ownership and price caps; means-tested social tariffs were also introduced to reduce the costs even further for certain disadvantaged groups (Mitchell & Vogelsang, 1991).

Access is not only relevant in the context of infrastructures and services, but also with regard to knowledge and information as well as learning, which is deemed to be important in democratic terms for both the liberal

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[6] Although it has to be noted that certainly at their inception, journalists working for PSBs were not necessarily known for their critical attitude to the government, to put it mildly.

and the socialist radical imaginaries. The space and institution through which this was initially achieved was the public library (Black et al., 2009). These public institutions did not come out of nowhere, however, they were the result of public policies making sure that its presence and accessibility in all parts of a city and country was guaranteed and that the necessary funding was provided to realise this.

Another notion relevant to access to knowledge and information and straddling both the liberal and the socialist radical imaginary is the very concept of copyright, which in the first instance enabled the commodification of knowledge and information. This is juxtaposed to the commons where access to information and knowledge is free. Whereas from a radical liberal imaginary copyright legislation could be seen to protect (intellectual) property, at the same time from a more socialist radical imaginary copyright legislation could also be seen to protect the commons by a number of limitations and exceptions, the most important being fair use and the firm and irrevocable time limit on the commercial exploitation of copyrights (Meng, 2007).

Media Content

When it comes to media content, the main concern, especially from a liberal radical imaginary, has to do with media pluralism and diversity of content. These two are not necessarily the same; you can have a high degree of media pluralism, for example, without a diversity of content, values, and perspectives (Murdock, 1982, p. 120). In any case, the liberal radical imaginary of the public sphere justified specific public interventions such as the antitrust regulations mentioned above, but also liberal laws protecting freedom of organisation and of the press.

Media pluralism and the freedom of the press was also favoured by the socialist radical imaginary, as it implied the right of alternative and workers-led media to exist and operate legally, providing a counter-weight to the liberal and establishment press (Negt & Kluge, 1993). In some countries this also led to the development of specific programmes supporting a diversity of alternative media initiatives. In the 1970s and 1980s, the Arts Council of Great Britain and the Greater London Council funded various poster collectives (Baines, 2015) and in France and South-Belgium, part of the taxes on the advertising revenues of commercial radio stations were redistributed to community radio stations (Cammaerts, 2009). This is very much in line with the socialist radical imaginary, but the liberal radical

imaginary also justified support for less commercially viable content through PSBs, or financial support for investigative journalism projects, which were seen as democratically important from the normative perspective of the watchdog role (Christians et al., 2009).

Another prevalent rationale when it comes to public interventions at the level of media content was supporting and protecting local cultural content production capabilities. This was especially the case in European countries and at the EU level, using cultural and media policy to protect local artists and content producers against U.S. cultural imperialism and to mitigate the dominance of Hollywood (Murschetz et al., 2018). State support for the (co-)production of media content for television or cinema, either directly (through subsidies) or indirectly (via tax shelters), is a poignant example of this. Besides this, some countries also imposed quota, for example, for playing local artists on radio stations or broadcasting locally produced television content.

What is, however, more contentious are public interventions in the context of journalism and news production. There are distinct differences in this regard between broadcasting and the press. The press tends to self-regulate itself through deontological codes and professional bodies (e.g., the Independent Press Standards Organisation in the UK), whereas broadcasting in many countries is regulated by parastatal regulatory agencies (e.g., Ofcom in the UK). According to the liberal radical imaginary, journalists are supposed to be impartial, fair, and balanced in their reporting (Christians et al., 2009), but journalism has been regulated more when it comes to broadcasting compared to the written press.

In many countries, the media (press as well as broadcasting) are also subject to specific rules when it comes to the period of elections, ensuring fair and balanced coverage of the different parties and programmes, so that citizens can make an informed choice (Lange & Ward, 2004). This liberal idea of fairness and impartiality was also central to the so-called *fairness doctrine* in the U.S., requiring broadcasters to report on issues of public interest and to do so in a manner that presents opposing viewpoints and perspectives. It was revoked by the Federal Communications Commission (FCC) in 1987 during the Reagan administration (Pickard, 2014).

Communication Infrastructures

The final cluster of public interventions are linked to the regulation of communication infrastructures. This is a hugely complex and above all

often quite technical policy area, but also here we can discern yet again a set of normative principles and value systems that underpinned the various public interventions.

One of the most important public interventions when it comes to private communication infrastructures is the protection of privacy which stems from the idea that there should be a clear separation between the private and public sphere and linked to this a civic right to opacity. Both are central to the liberal radical imaginary (Squires, 1994). The *secrecy of correspondence* goes back to the emergence of the postal service and is enshrined in many liberal constitutions (Turner, 1918). In the U.S. it is derived from the 4th Amendment and a 1977 ruling from the Supreme Court asserting that '[n]o law of Congress can place in the hands of officials connected with the Postal Service any authority to invade the secrecy of letters'.[7] This was subsequently expanded to the protection of private conversations held on telecommunication infrastructures (Ruiz, 1997).

As implied above, the regulation of communication infrastructures also has a technical side to it. Historically speaking, technological innovation in the context of media and communication tended to produce closed systems whereby one actor controlled and exploited infrastructure, software as well as hardware and as a result made it very difficult for competitors to emerge or exist. One solution to deal with this 'winner take all' tendency was, as discussed above, state ownership, but if and when competition was favoured, competition needed to be 'manufactured' through antitrust regulation.

Interconnection and interoperability between different communication networks or operating systems also did not emerge naturally, it had to be enforced through regulation (Weiser, 2009). Likewise, when competition was introduced in the EU mobile telephone sector in the 1990s, number portability when switching from one operator to another was achieved through regulation (Buehler et al., 2006). This was all very much in tune with the liberal radical imaginary and a set of values that pertain to protecting consumer rights.

At a bit of a stretch, but still, the socialist radical imaginary definitely also has its place in the context of technical regulation of communication infrastructure. Values such as equality, non-discrimination, collectivism, as well as an anarchist-inspired anti-hierarchical disposition, formed the very basis of how the Internet was conceived, how it operated, but also how it was

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[7] See https://caselaw.findlaw.com/us-supreme-court/96/727.html#733

initially used, especially by countercultures (Flichy, 2001). One of the many ways this is exemplified is through the principle of net neutrality, which implies that every bit is (more or less[8]) equal on the Internet. This principle had to be fought for, especially in the U.S. where it was the target of tech lobbies for decades. They won the plight in 2017 when the FCC 'passed the Orwellian-sounding Restoring Internet Freedom Order, which eliminated core net neutrality protections' (Pickard & Berman, 2019, p. 40).

CONCLUSION

We find ourselves today at a crossroads whereby it is becoming more and more obvious to more and more people that public values and interests as well as democratic principles and rights in the context of media and communication need to be re-asserted more forcefully. At the same time, a variety of harms to these values, principles, and rights, such as digital divides, surveillance, the propagation of disinformation and populism, oligopolistic power, etc., need to be addressed urgently through new public interventions. As shown in the analysis above, both the liberal and the socialist radical imaginaries provide a wide range of historical precedents and rationales to justify and enact such interventions.

Reviving these imaginaries is thus a crucial and necessary first step in order to create a new horizon of the possible with regard to the nexus media, communication, democracy in a post neoliberal age. Both imaginaries inform and provide solid arguments for the acute debates we need to have as a democratic society about the concentration of media ownership, the lack of diversity in media content, the role and nature of public service in a digital post-broadcasting world, more stringent and effective privacy protections, the social responsibility of (social) media, as well as the equal and open access to information, knowledge, and communication infrastructures.

Of course, it is evident that the liberal and socialist radical imaginaries often contradict each other, but in the realm of media and communication they have also operated conjunctly and at times shared similar concerns. As argued elsewhere, which values, rationales, justifications should prevail—the radical liberal imaginary, the socialist radical imaginary, or indeed

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[8] Some degree of variation exists in this regard in view of crisis situations and due to 'reasonable' traffic management on the Internet (e.g., a streaming bit might get some degree of priority compared to an email bit).

as has often been the case historically a combination of both—should be the object of a radical democratic debate in society with regard to the normative roles media and communication infrastructures/services should play in a strong democracy (Cammaerts & Mansell, 2020). This debate is urgent and highly needed, as inaction is increasingly dangerous and problematic in terms of eroding democracy and democratic values.

References

Arnold, N. S. (2009). *Imposing values: An essay on liberalism and regulation.* Oxford University Press.

Bailey, O., Cammaerts, B., & Carpentier, N. (2008). *Understanding alternative media.* Open University Press/McGraw Hill.

Baines, J. (2015). Nurturing dissent? Community printshops in 1970s London. In J. Uldam & A. Vestergaard (Eds.), *Civic engagement and social media* (pp. 174–193). Palgrave Macmillan.

Baker, C. E. (2007). *Media concentration and democracy: Why ownership matters.* Cambridge University Press.

Black, A., Pepper, S., & Bagshaw, K. (2009). *Books, buildings and social engineering: Early public libraries in Britain from past to present.* Ashgate.

Boucoyannis, D. (2013). The equalizing hand: Why Adam Smith thought the market should produce wealth without steep inequality. *Perspectives on Politics, 11*(4), 1051–1070.

Buehler, S., Dewenter, R., & Haucap, J. (2006). Mobile number portability in Europe. *Telecommunications Policy, 30*(7), 385–399.

Calabrese, A., & Burgelman, J.-C. (Eds.). (1999). *Communication, citizenship and social policy: Rethinking the limits of the welfare state.* Rowman and Littlefield.

Cammaerts, B. (2009). Community radio in the West: A legacy of struggle for survival in a state & capitalist controlled media environment. *International Communication Gazette, 71*(8), 1–20.

Cammaerts, B., & Mansell, R. (2020). Digital platform policy and regulation: Towards a radical democratic turn. *International Journal of Communication, 14*, 135–154.

Castoriadis, C. (1987). *The imaginary institution of society.* MIT Press.

Christians, C. G., Glasser, T. L., McQuail, D., Nordenstreng, K., & White, R. A. (2009). *Normative theories of the media: Journalism in democratic societies.* University of Illinois Press.

Croce, B. (1997). Liberty and revolution. In S. E. Bronner (Ed.), *Twentieth century political theory* (pp. 27–29). Routledge.

Dewey, J. (1940). The meaning of the term 'liberalism'. In J. A. Boydston (Ed.), *The later works of John Dewey, 1925–1953, Vol. 14* (pp. 252–254). University of Southern Illinois Press.

Esping-Andersen, G. (1990). *The three worlds of welfare capitalism*. Polity Press.

Fawcett, H. (1883). *State socialism and the nationalisation of the land*. Macmillan & Co.

Flichy, P. (2001). *L'imaginaire d'Internet*. Éditions La Découverte.

Freire, P. (2005 [1970]). *Pedagogy of the oppressed*. Continuum.

Habermas, J. (1989). *The structural transformation of the public sphere: An inquiry into a category of Bourgeois society*. MIT Press.

Harrison, J., & Woods, L. M. (2001). Defining European public broadcasting. *European Journal of Communication, 16*(4), 477–504.

Hutcheson, F. (1747). *A short introduction to moral philosophy*. Robert Foulis.

Kropotkin, P. (1903). *Mutual aid: A factor of evolution*. McClure Phillips.

Laclau, E. (1990). *New reflections on the revolution of our time*. Verso.

Lange, B.-P., & Ward, D. (2004). *The media and elections: A handbook and comparative study*. Routledge.

Levine, A. (1988). *Arguing for socialism: Theoretical considerations*. Verso.

Luxemburg, R. (1922 [1940]). *The Russian Revolution*. Workers Age Publishers.

Marx, K., & Engels, F. (2000 [1845]). The holy family. In D. McLellan (Ed.), *Karl Marx: Selected writings* (2nd ed., pp. 145–170). Oxford University Press.

Melody, W. H. (1997). On the meaning and importance of 'independence' in telecom reform. *Telecommunications Policy, 21*(3), 195–199.

Meng, B. (2007). Property right or development strategy? Protection of foreign copyright in 19th century America and Contemporary China. *Media @LSE Working Paper Series, 11*, 1–23.

Mill, J. S. (1859). *On Liberty*. John W. Parker and Son.

Millward, R. (2005). *Public and private enterprise in Europe: Energy, telecommunications and transport*. Cambridge University Press.

Mitchell, B. M., & Vogelsang, I. (1991). *Telecommunications pricing: Theory and practice*. Cambridge University Press.

Mueller, M. L. (1997). *Universal service: Competition, interconnection and monopoly in the making of the American telephone system*. MIT/AEI Press.

Murdock, G. (1982). Large corporations and the control of the communications industries. In M. Gurevitch, T. Bennett, J. Curran, & J. Woollacott (Eds.), *Culture, society and the media* (pp. 118–150). Methuen.

Murschetz, P. C., Teichmann, R., & Karmasin, M. (2018). *Handbook of state aid for film*. Springer International Publishing.

Negt, O., & Kluge, A. (1993). *The public sphere and experience: Toward an analysis of the Bourgeois and Proletarian public sphere*. University of Minneapolis Press.

Peffer, R. G. (1990). *Marxism, morality, and social justice*. Princeton University Press.

Pickard, V. (2014). *America's battle for media democracy: The triumph of corporate libertarianism and the future of media reform*. Cambridge University Press.

Pickard, V., & Berman, D. E. (2019). *After net neutrality: A new deal for the digital age*. Yale University Press.

Rawls, J. (1997). Justice as fairness: Political not metaphysical. In S. E. Bronner (Ed.), *Twentieth century political theory* (pp. 37–58). Routledge.

Rosenblatt, H. (2018). *The lost history of liberalism: From ancient Rome to the twenty-first century*. Princeton University Press.

Ruiz, B. (1997). *Privacy in telecommunications, A European and American approach*. Kluwer Law International.

Sappington, D. E., & Weisman, D. L. (2010). Price cap regulation: What have we learned from 25 years of experience in the telecommunications industry? *Journal of Regulatory Economics, 38*(3), 227–257.

Schonfeld, W. R. (1971). The classical Marxist conception of liberal democracy. *The Review of Politics, 33*(3), 360–376.

Smith, A. (1759). *The theory of moral sentiments*. Alexander Kincaid & J. Bell.

Squires, J. (1994). Private lives, secluded places: Privacy as political possibility. *Environment and Planning D: Society and Space, 12*(4), 387–401.

Taylor, C. (2003). *Modern social imaginaries*. Duke University Press.

Teske, P. E. (1990). *After divestiture: The political economy of state telecommunications regulation*. State University of New York Press.

Turner, E. R. (1918). The secrecy of the post. *The English Historical Review, 33*(131), 320–327.

Weiser, P. J. (2009). Regulating interoperability: Lessons from AT&T, Microsoft, and beyond. *Antitrust Law Journal, 76*(1), 271–306.

CHAPTER 4

Epistemic Rights, Information Inequalities, and Public Policy

Philip M. Napoli

Introduction

As Hannu Nieminen's chapter 2 in this volume emphasises, epistemic rights are about knowledge. They are about being informed, understanding the relevance of information, and acting on this information in a way that benefits the individual and society. As with all rights, epistemic rights are fundamentally concerned with equality, with, in this case, equality related to the core inputs for being knowledgeable and informed decision-makers in the democratic process. However, as with so many aspects of economic and political life, the sphere of information is plagued by a wide range of structural inequalities, in which fundamental and established aspects of how the news and information ecosystem is structured and operates systematically undermine the position and opportunities for traditionally marginalised groups.

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Building upon this notion of structural inequalities, this chapter zeroes in on what I term here *information inequalities* (or, in the vocabulary of this volume, *epistemic divides*)—fundamental characteristics and dynamics of our news and information ecosystem that systematically disadvantage some categories of news and information seekers over others. This chapter seeks to provide an overview of the various categories of information inequalities and to consider how they sometimes intersect, reinforce, and exacerbate one another. This chapter explores this catalogue of information inequalities as sites for potential or ongoing policy intervention and so will also discuss attempted and potential policy interventions to address these information inequalities. In this regard, this chapter operates from the (certainly arguable) position that the acknowledged democratic threats inherent in government interventions into the structure and behaviour of the news and information ecosystem are, to some degree, now being approximated (or perhaps eclipsed) by the democratic threats inherent in government inaction. Many of the examples drawn upon in this chapter come from the U.S. context, though certainly have broader generalisability. That being said, in some specific contexts, international and global examples will be brought to bear as well.

The sections that follow seek to provide a brief overview of a wide range of core information inequalities. Some of the information inequalities discussed in this chapter are long-standing, such as disparities in media ownership, disparate valuations of different audience segments by advertisers (and thus media organisations), and the digital divide. Others are more recent developments, emerging from (or being dramatically exacerbated by) our rapidly evolving digital media ecosystem. These more recently developing information inequalities include the rise of journalism divides, in which some types of communities are provided with much more robust journalism than others; algorithmic bias, which tends to negatively affect some types of digital media users more than others; and the emerging disinformation divide, in which we see certain communities targeted more aggressively with disinformation than others. Of course, as the new information inequalities can compound the effects of the old, the news and information ecosystem becomes that much more incapacitated in terms of equitably serving the needs of the entirety of all people and contributing to the effective functioning of the democratic process.

Advertiser Valuations of Audiences

The fundamental economics of the media and information industries have long contributed to ingrained, inherently structural, information inequalities. We see this foremost in the extent to which the media and information sectors have relied heavily upon advertising revenues for their viability. The needs and interests of advertisers have, therefore, long served as a driving force in the provision of news and information. While the prominence of advertiser support has worked against more fundamental inequalities associated with disparate abilities to pay for news and information, it remains the case that inequalities also arise from the fact that advertisers have traditionally valued some audience segments more than others.

The *audience marketplace*, as I have written about elsewhere (Napoli, 2003), possesses a number of characteristics that distinguish it from other types of product markets. From the standpoint of information inequalities, the most significant of these is advertisers' tendency to assign different values to different audience segments. Traditionally, this has taken the form of differential valuations based on demographic characteristics (age, gender, race, etc.). However, as the audience marketplace has evolved, and as media have become more inherently interactive, differential valuations have been able to take form along various behavioural lines (e.g., with more 'engaged' audiences worth more; see Napoli, 2011). Certainly, there can be correlations between the demographic and the behavioural dimensions of media audiences. The key point here, however, is that these differential evaluations have ripple effects that impact the nature of the content that advertiser-supported media produce, which can lead to the kind of information inequalities that may merit policy intervention.

For instance, in the early 2000s, the U.S. Federal Communications Commission (FCC) investigated the possibility that certain radio audience segments (notably Black and Latino listeners) were being systematically undervalued by advertisers, due in part to the media and advertising industries operating under inaccurate stereotypes about these categories of listeners (Ofori, 2001). The ramifications of such undervaluation are that content that serves the needs and interests of Black and Hispanic listeners will then be underproduced, creating a fundamental information inequality, in that being a member of a minority community translates into having disproportionately less content produced that addresses your needs and interests or at least less investment in the quality of the content that addresses your needs and interests (Napoli, 2003).

In this case, some tangible policy actions were taken, with the FCC ultimately deciding in 2008 to prohibit broadcast licensees from entering into advertising contracts that included 'no urban' or 'no Hispanic' dictates—that is, contracts in which advertisers provide explicit direction that Black and/or Hispanic audiences be avoided (note: the term 'urban' is often used in the U.S. radio industry in relation to Black listeners, as 'Urban' is a recognised radio format label, and refers to programming that traditionally attracts Black listeners).

A more recent manifestation of information inequalities borne of differential advertising valuations can be found in the role that targeted advertising has come to play in the operation of social media platforms. The demographic and behavioural targeting facilitated by social media quickly led to outcomes that attracted the attention of policymakers. For instance, in 2019 Facebook was charged by the U.S. Department of Housing and Urban Development with restricting access to housing-related ads based on criteria such as national origin, familial status, gender, and disability, in violation of the Fair Housing Act (Paul & Rana, 2019). Facebook (since rebranded Meta) ultimately reached a settlement that included disabling certain aspects of its audience targeting functionality within the context of housing advertisements (Feiner, 2022).

In both of these examples, the information inequalities arise from the dynamics of advertiser demand for audiences that are to some extent grounded in persistent prejudice and, to some extent, grounded in the degree to which a correlation unfortunately persists in the U.S. between income and ethnicity. Ultimately, as Hamilton and Morgan (2018, p. 2833) note in their economic analysis of the factors that lead lower-income media audiences to have access to lower-quality news and information, 'Poor people get poor information, because income inequality generates information inequality. People with low incomes are less likely to be sought out by many advertisers […] This translates into less content meant to aid their decisions or tell their stories'.

Media Ownership

A key long-standing structural inequality in the news and information eco-system has been the distribution of the ownership of media outlets. Concerns about ownership concentration have long been a defining element of media policy (Napoli, 2001). Within the context of this chapter, the particular concern is the extent to which many traditionally

marginalised groups are not even close to proportionately represented within the ranks of owners of media outlets. This pattern can have ripple effects into areas such as content production and employee diversity (Napoli, 2001, 2011). As a recent report from a consortium of public interest organisations noted, 'People of color comprise roughly 40 percent of the U.S. population, yet remain acutely underrepresented in mainstream newsrooms that, consequently, often under-report or overlook issues of importance to their communities' (American Economic Liberties Project et al., 2022, p. 1). Such patterns are likely to persist when there is a lack of diversity in the ownership ranks.

Media ownership matters, in terms of providing economic opportunity and opportunities for self-expression, but also in terms of helping bring to bear a greater diversity of ideas and viewpoints, in pursuit of a robust marketplace of ideas (Baker, 2007; Napoli, 2001). From an information inequalities standpoint, those sectors of the population that are not adequately represented amongst the ranks of media owners are not only being disproportionately denied expressive opportunities, but also are less likely to be provided with news and information that addresses their particular needs and interests (Baker, 2007; Napoli, 2001). Moreover, through constrictions on media ownership, the entirety of the media audience is denied access to diverse ideas and viewpoints, creating blind spots that can perpetuate existing biases and help to maintain existing structural inequalities.

We are seeing increased recognition of how these patterns of exclusion in the media ownership realm have had long-term negative repercussions for traditionally marginalised groups. In the wake of the George Floyd murder and the broader conversation about race and structural inequality in the U.S. that emerged in its wake, the news media have initiated self-assessments, with some news outlets acknowledging their failures to serve their communities of colour, a failure that they attribute in part to woefully inadequate diversity in their ownership, management, and staffing ranks (Fannin, 2020; Lowery, 2022; 'Our Reckoning with Racism', 2020).

Such actions have been accompanied by calls for 'media reparations', which have included, among other proposals, plans for substantive federal investment in Black-owned and targeted media outlets. However, the pattern in the U.S. from a regulation and policy standpoint over the past few decades has been one of scaling back, rather than ramping up, efforts to enhance the diversity of ownership of media outlets. Even the FCC's (2022, p. 1) recently released strategic plan, which is situated within an explicit concern with gaining 'a deeper understanding of how the agency's

rules, policies, and programs may promote or inhibit advances in diversity, equity, inclusion, and accessibility', does not articulate diversification of media ownership as a strategic goal.

Digital Divides

Another category of information inequality arises from disparities across groups in terms of access to information technologies and, relatedly, in terms of the baseline training that different groups bring to the table when provided with access to these technologies. This brings us into the complex world of digital divides, a concept that began with a fairly simplistic conceptualisation (who does—and who does not—have access to the internet) and that has grown more nuanced over time.

The core notion of the digital divide is oriented around the concept of access—specifically, in regard to whether access to the internet (and, later, broadband internet access in particular) is a function of characteristics such as age, ethnicity, income, and geographic orientation (rural v. urban) (Greene, 2021). All of these criteria have been associated with the digital divide, and so, the connection with the notion of information inequalities becomes quite clear. As knowledge-seeking and effective participation in social, economic, and political life have become increasingly tied to the online realm, differential degrees of access across different population segments can have profound implications. This is why achieving equity in internet access has become a core concern amongst many nations around the globe, with the United Nations going so far in 2020 as to declare broadband access a fundamental human right (Salway, 2020).

However, the notion that technology access in and of itself can address the underlying inequities is, of course, a prime example of technological determinism. Moreover, there are nuances within the basic notion of access that can have significant ramifications. For instance, many developing countries (and funders and NGOs working in these countries) have pursued broadband deployment via mobile devices as their primary mechanism for addressing the digital divide. This is a strategy that invites the question—is someone with exclusively mobile device-based internet access on equal footing with someone who has PC or laptop-based access? I have argued in the past that the answer is no (Napoli & Obar, 2014). A mobile device—while certainly providing greater portability—also presents a number of relative constraints (in terms of screen size, keyboard size/ease of use, etc.) that have been found to restrict the range and depth of

activities that mobile users engage in relative to PC/laptop users. Such findings raise questions about the possible unintended consequences of policy approaches to addressing the technological aspect of the digital divide that rely on mobile internet access as a substitute for more traditional forms of internet access (Napoli & Obar, 2014).

All of this being said, it is also vital to recognise that any conceptualisation of the digital divide absolutely must extend beyond the degree of access and also take into consideration disparities in the experience and education that individuals bring to the online experience. A substantial body of research has demonstrated that once access is equalised, there remain inequalities in terms of the intensity and manner in which the internet is used across different demographic groups—a phenomenon researchers have termed the second-level digital divide (Hargittai, 2002). Further, researchers have articulated a third-level digital divide, which refers to disparities in the outcomes that arise across different demographic groups, even when controlling for differences in the intensity and manner of usage (van Deursen & Helsper, 2015).

The bottom line is that the same information tool put in the hands of people with different degrees of experience and training can certainly raise the overall baseline, but can also potentially contribute to the expansion of information inequalities, rather than the narrowing. From a public policy standpoint, this means that efforts to combat the technological dimension of the digital divide must be accompanied by educational efforts that can mitigate second- and third-order digital divides.

Journalism Divides

In the U.S. and many other countries, the topic of news deserts has been front and centre in discussions about the future of local journalism (Abernathy, 2020). The notion of news deserts refers to the growing phenomenon in which a community lacks a functioning source of news and information, as a result of the increasingly precarious economics of journalism. In the work that me and my colleagues have conducted on this topic, we employed the terminology *journalism divides* (borrowing from the digital divide concept discussed above) to more explicitly address the extent to which the robustness of local journalism is a function of the demographic and/or geographic characteristics of individual communities, similar to the patterns we see on the digital divide front (Napoli et al., 2018). So, for instance, our research found that the robustness of local

journalism declined as the Hispanic/Latino proportion of the population in a community increased. This is a finding that obviously connects with the audience valuation inequity discussed previously, as the lower advertiser valuations of Hispanic/Latino audiences most likely play a role in undermining the economic viability of local journalism in communities with larger Hispanic/Latino populations. We also found that as the distance to a large media market decreased, so too did the robustness of that community's local journalism (as it essentially gets strangled by the nearby large-market journalism) (Napoli et al., 2018). Subsequent research has provided further documentation of the extent to which the news desert phenomenon is distributed geographically in ways that raise concerns about information inequalities across categories such as age and income (with older and poorer communities more likely to become news deserts) (Abernathy, 2022). Here again, lower audience valuations in the advertising market likely play an important role in these patterns.

Research has documented a wide range of economic and political harms that befall a community as local news sources evaporate (Hayes & Lawless, 2021; Sullivan, 2020). In this way, the journalism divides category of information inequality can exacerbate other forms of inequality across different community types. And, of course, at the core of this particular information inequality is the extent to which the critical information needs that can often be distinctive to individual communities are being effectively met by local sources of news and information (Friedland et al., 2012).

It is also important to note that such journalism divides do not occur exclusively within the context of geographically defined communities. So, for instance, research has shown that Black Facebook users receive less exposure to accurate and reliable COVID-19-related news and information than other demographic groups (Faife & Kerr, 2021). The exact reasons for this inequity in the dissemination and subsequent exposure to accurate and reliable COVID-19 news and information remain unclear (Faife & Kerr, 2021). The key point here, however, is that the fundamental dynamics that characterise the journalism divides category of information inequality can extend beyond the geographical context of local journalism and also take shape within a context such as ethnic communities on large digital platforms.

From a democratic theory standpoint, accurate news and information is essential to the process of self-governance. The implication here, of course, is that some types of communities (and often those that are already

experiencing greater vulnerabilities) are becoming less equipped than others to effectively govern themselves (Usher, 2021).

Disinformation Divides

The digital divide terminology has been further appropriated to inform how we frame current information inequalities within the realm of disinformation. Disinformation has, in many ways, become the signature concern in relation to the contemporary news and information ecosystem (Bernstein, 2021; Wu, 2020). Disinformation has been widely recognised as a global problem (Kaye, 2019), and documenting the prevalence, impact, and digital platform responses to disinformation has become a point of continued focus for both scholars and journalists (Napoli, 2019, 2021).

Research on this front quickly identified an important information inequality—substantially more disinformation was being produced targeting conservative-leaning media users than was being produced targeting liberal-leaning media users, with research (much of it with a U.S. focus) also suggesting that conservative-leaning media users were significantly more susceptible to the intended effects of disinformation than liberal-leaning media users (for a review of this body of literature on ideological asymmetries in disinformation, see Freelon et al., 2020).

When efforts to misinform the population are disproportionately targeted at one sector of the population over the others, we once again find ourselves operating within the framework of an information inequality, particularly when we see that such targeting is leading to disproportional effects across different sectors of the political spectrum. To the extent that conservatives are greater targets of disinformation and more susceptible to disinformation's effects, as a group they become relatively less equipped to effectively pursue their best interests through the democratic process, operating more as manipulatable political pawns than as autonomous and informed political actors. And to the extent that conservative news and information sources more frequently engage in the dissemination of mis/disinformation than their liberal-leaning counterparts, such outlets are exploiting and exacerbating tendencies already inherent in their audience base.

However, recent research has begun to reveal how the disinformation divide operates along vectors other than the liberal–conservative continuum. Specifically, a growing body of evidence has come to light illustrating how

the dissemination, reach, and impact of disinformation are disproportionately affecting communities of colour (Tesi, 2022). Research has found, for instance, that Russia's Internet Research Agency (IRA) used troll accounts to disproportionately target Black Twitter (since rebranded X) users and that the IRA disinformation targeted at Black Twitter users generated levels of engagement on par with the engagement levels found within disinformation targeted at conservative Twitter users (Freelon et al., 2020).

Concerns about this racially oriented disinformation divide have spurred organised advocacy efforts (Changa, 2021; Lima, 2022), as well as Congressional hearings (*A Growing Threat*, 2022). Exactly what kind of (if any) policy interventions might materialise to address this disinformation divide remains to be seen. Given the extent to which the U.S.'s strong free speech tradition has extended into the realm of protecting disinformation (Goodyear, 2021), it seems unlikely that we will see meaningful policy responses on this front.

Extrapolating this phenomenon globally, recent reporting derived from the documentation provided by Facebook/Meta whistleblower Frances Haugen has revealed how the company has allocated its content moderation resources across the various countries in which it operates. These allocation patterns reveal enormous inequities that overwhelmingly prioritise and privilege Facebook users in some countries over others (see, e.g., Newton, 2021). For example, Facebook's own data revealed that company employees collectively spent over 3.2 million hours combating false and misleading information on the platform; however only 13 percent of this time was spent on countries other than the U.S. (Scheck et al., 2021). When we consider that the U.S. accounts for roughly 8 percent of global Facebook users, the fact that the U.S. is the focus of 87 percent of the company's misinformation mitigation resources provides a powerful sense of another important dimension of the disinformation divide.

Deeper dives into how Facebook has allocated its content moderation resources concluded that 'many of these markets are in economically disadvantaged parts of the world, afflicted by the kind of ethnic tensions and political violence that are often amplified by social media' (Simonite, 2021). The platform provides service in many countries in which neither its automated nor human-conducted content moderation systems operate in the countries' languages (Simonite, 2021).

The fact that platforms such as Facebook are able to launch in countries without having to demonstrate some baseline level of content moderation capacity is just one example of the harmful side effects that have arisen

from the absence of a genuinely global system of platform governance. It remains to be seen whether these troubling nation- and linguistic-level information inequalities related to the disinformation divide that were brought to light by Frances Haugen will be addressed by any systemic policy interventions.

Algorithmic Bias

Algorithmically driven automation has become a defining component of our news and information ecosystem (Crawford, 2021; Napoli, 2014). These algorithmic systems have been integrated into virtually every aspect of the production, distribution, and consumption of news and information (Diakopoulos, 2019; Napoli, 2019). However, an expansive and continually growing body of literature has identified a variety of ways in which these algorithmic systems contain ingrained biases that disadvantage certain communities (see, e.g., Benjamin, 2019; Hao, 2022). In many cases, these algorithmic biases are a function of inherently biased data that serve as the decision-making inputs for these algorithms. These biases have also been shown to be a function of inherent biases and blind spots within the coders who construct the algorithms, who very seldom reflect the diversity of the communities that these algorithmic systems serve (Benjamin, 2019; Noble, 2018). These systems can also, unfortunately, learn bias over time via the aggregated behaviours of system end-users.

Algorithmic bias likely plays a role in some of the examples discussed above, such as Black Facebook users receiving lower levels of exposure to authoritative and reliable COVID-19 information (Faife & Kerr, 2021) and various categories of Facebook users not being exposed to housing advertising (Paul & Rana, 2019). Indeed, the biases that can be inherent in the dynamics of audience valuation described above can subsequently find their way into the algorithmic systems that increasingly dictate the placement of online advertising (Blass, 2019). So, for instance, algorithmic bias has been identified as a causal factor in women receiving less exposure than men to STEM-related job opportunities (Lambrecht & Tucker, 2018).

Search engines such as Google have been shown to exhibit racial biases in their search returns; in some cases exhibiting patterns that reflect blatant racism (Noble, 2018). Specific and well-known examples include Google's image-identification algorithm classifying Black people as gorillas (Simonite, 2018); search returns involving Black and Asian girls

containing primarily hypersexualised and pornographic results; and search results for Black teens returning mugshots, with no mugshots amongst the results for a White teens search (Noble, 2018).

This form of information inequality not only affects the ability of historically marginalised groups to meet their information needs; it affects all search users, who are exposed to biased representations of historically marginalised groups. Such dynamics can, of course, further reinforce and exacerbate existing racial biases and prejudices.

Within the context of news and information, we have begun to see some limited regulatory intervention (such as in the housing discrimination context described above). However, more expansive proposals, such as Noble's (2018) call for the Federal Communications Commission and the Federal Trade Commission to more aggressively police algorithmic bias on search and social media platforms, or calls for more systematic auditing of algorithms to identify potential biases (Napoli, 2019) have yet to gain traction.

Conclusion

This chapter has sought to provide an overview of the various categories of information inequalities that need to be taken into consideration in pursuit of enhancing epistemic rights. This chapter has also sought to discuss each of these information inequalities in relation to policy interventions (or the lack thereof) that have been implemented on their behalf.

This chapter has only scratched the surface in relation to each of these information inequalities and the policy interventions that have been—or could be—implemented on their behalf. Further, this catalogue of information inequalities is not comprehensive; but hopefully it does adequately represent the broad range of information inequalities around which policy interventions can potentially be pursued. In this regard, this chapter can hopefully serve as a jumping off point for deeper and more expansive conversations about the various forms of information inequality that need to be factored into any policy efforts to enhance individual or collective epistemic rights.

References

A Growing Threat: The Impact of Disinformation Targeted at Communities of Color. (2022). https://cha.house.gov/committee-activity/hearings/growing-threat-impact-disinformation-targeted-communities-color

Abernathy, P. (2020). *The expanding news desert.* https://www.usnewsdeserts.com/reports/news-deserts-and-ghost-newspapers-will-local-news-survive/the-news-landscape-in-2020-transformed-and-diminished/vanishing-newspapers/

Abernathy, P. (2022). *The State of Local News.* Northwestern Local News Initiative. https://localnewsinitiative.northwestern.edu/research/state-of-local-news/report/

American Economic Liberties Project, Media Justice and News Media Alliance. (2022). *Minority-owned media and the digital duopolcy.* https://www.economicliberties.us/wp-content/uploads/2022/01/FINAL-FORMATTED-REPORT_MInority-Owned-Media-and-the-Digital-Duopoly-_1-24-22.pdf

Baker, C. E. (2007). *Media concentration and democracy: Why ownership matters.* Cambridge University Press.

Benjamin, R. (2019). *Race after technology: Abolitionist tools for the New Jim Code.* Polity.

Bernstein, J. (2021, August 9). Bad News: Selling the story of disinformation. *Harper's Magazine*, September 2021. https://harpers.org/archive/2021/09/bad-news-selling-the-story-of-disinformation/

Blass, J. (2019). Algorithmic advertising discrimination. *Northwestern University Law Review, 114*(2), 415–467.

Changa, A. (2021, December 8). Group demands congressional action in regulating racialized disinformation on online platforms. *NewsOne.* https://newsone.com/4257618/group-demands-congressional-action-in-regulating-racialized-disinformation-on-online-platforms/

Crawford, K. (2021). *Atlas of AI: Power, politics, and the planetary costs of artificial intelligence.* Yale University Press.

Diakopoulos, N. (2019). *Automating the news: How algorithms are rewriting the media.* Harvard University Press.

Faife, C., & Kerr, D. (2021, March 4). Official information about COVID-19 is reaching fewer black people on Facebook. *The Markup.* https://themarkup.org/citizen-browser/2021/03/04/official-information-about-covid-19-is-reaching-fewer-black-people-on-facebook

Fannin, M. (2020, December 20). The truth in black and white: An apology from The Kansas City Star. *The Kansas City Star.* https://www.kansascity.com/news/local/article247928045.html

Federal Communications Commission. (2022). *Strategic Plans Fiscal Years 2022–2026.* https://www.fcc.gov/about/strategic-plans-budget

Feiner, L. (2022, June 1). DOJ Settles Lawsuit with Facebook Over Allegedly Discriminatory Housing Advertising. *CNBC*. https://www.cnbc.com/2022/06/21/doj-settles-with-facebook-over-allegedly-discriminatory-housing-ads.html

Freelon, D., Bossetta, M., Wells, C., Lukito, J., Xia, Y., & Adams, K. (2020). Black trolls matter: Racial and ideological asymmetries in social media disinformation. *Social Science Computer Review, 40*(3), 560–578. https://doi.org/10.1177/0894439320914853

Friedland, L., Napoli, P. M., Ognayanova, K., Weil, C., & Wilson, E. J. (2012). *Review of the literature regarding critical information needs of the American public*. Federal Communications Commission. https://transition.fcc.gov/bureaus/ocbo/Final_Literature_Review.pdf

Goodyear, M. (2021). Priam's Folly: United States v. Alvarez and the Fake News Trojan Horse. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.3769351

Greene, D. (2021). *The promise of access: Technology, inequality, and the political economy of hope*. MIT Press.

Hamilton, J. T., & Morgan, F. (2018). Poor information: How economics affects the information lives of low-income individuals. *International Journal of Communication, 12*(0), 19.

Hao, K. (2022). Artificial intelligence is creating a new colonial world order. *MIT Technology Review*. https://www.technologyreview.com/2022/04/19/1049592/artificial-intelligence-colonialism/

Hargittai, E. (2002). Second-level digital divide: Differences in people's online skills. *First Monday, 7*(4). https://doi.org/10.5210/fm.v7i4.942

Hayes, D., & Lawless, J. (2021). *News Hole: The demise of local journalism and political engagement*. Cambridge University Press.

Kaye, D. (2019). *Speech Police: The global struggle to govern the internet*. Columbia Global Reports.

Lambrecht, A., & Tucker, C. E. (2018). *Algorithmic bias? An empirical study into apparent gender-based discrimination in the display of STEM career ads*. SSRN Scholarly Paper No. 2852260. https://doi.org/10.2139/ssrn.2852260

Lima, C. (2022, April 29). Hispanic caucus pushes YouTube chief for data on misinformation in Spanish. *Washington Post.*. https://www.washingtonpost.com/politics/2022/04/29/hispanic-caucus-pushes-youtube-chief-data-spanish-language-misinformation/

Lowery, W. (2022, February 15). Black City. White Paper. *Philadelphia Inquirer*. https://www.inquirer.com/news/inq2/philadelphia-inquirer-racism-equity-diversity-black-journalists-20220215.html

Napoli, P. M. (2001). *Foundations of communications policy: Principles and process in the regulation of electronic media*. Hampton Press.

Napoli, P. M. (2003). *Audience economics: Media institutions and the audience marketplace*. Columbia University Press.

Napoli, P. M. (2011). *Audience evolution: New technologies and the transformation of media audiences*. Columbia University Press.

Napoli, P. M. (2014). Automated media: An institutional theory perspective on algorithmic media production and consumption. *Communication Theory, 24*(3), 340–360. https://doi.org/10.1111/comt.12039

Napoli, P. M. (2019). *Social media and the public interest: Media regulation in the disinformation age*. Columbia University Press.

Napoli, P. M. (2021). The platform beat: Algorithmic watchdogs in the disinformation age. *European Journal of Communication, 36*(4), 376–390.

Napoli, P. M., & Obar, J. A. (2014). The emerging mobile internet underclass: A critique of mobile internet access. *The Information Society, 30*(5), 323–334. https://doi.org/10.1080/01972243.2014.944726

Napoli, P. M., Weber, M., Mccollough, K., & Wang, Q. (2018). *Assessing local journalism: News deserts, journalism divides, and the determinants of the robustness of local news*. News Measures Research Project White Paper, p. 26. DeWitt Wallace Center for Media & Democracy, Duke University.

Newton, C. (2021, October 25). *The tier list: How Facebook decides which countries need protection*. https://www.platformer.news/p/-the-tier-list-how-facebook-decides

Noble, S. U. (2018). *Algorithms of oppression: How search engines reinforce racism*. New York University Press.

Ofori, K. (2001). When Being No. 1 is not Enough: The Impact of Advertising Practices on Minority-Owned and Minority-Formatted Broadcast Stations. Civil Rights Forum on Communications Policy. *Available*: http://civilrights-docs.info/pdf/reports/Being-No-1-Is-Not-Enough-Ad-Study-Ofori.pdf

Our Reckoning with Racism. (2020, September 27). *Los Angeles Times*. https://www.latimes.com/opinion/story/2020-09-27/los-angeles-times-reckoning-with-racism

Paul, K., & Rana, A. (2019, March 28). U.S. charges Facebook with racial discrimination in targeted housing ads. *Reuters*. https://www.reuters.com/article/us-facebook-advertisers-idUSKCN1R91E8

Salway, D. (2020, March 6). United Nations: Broadband access is a basic human right. *Lifewire*. https://www.lifewire.com/united-nations-broadband-access-is-a-basic-human-right-436784

Scheck, J., Purnell, N., & Horwitz, J. (2021, September 16). Facebook employees flag drug cartels and human traffickers. The company's response is weak, documents show. *Wall Street Journal*. https://www.wsj.com/articles/facebook-drug-cartels-human-traffickers-response-is-weak-documents-11631812953

Simonite, T. (2018, January 11). When it comes to Gorillas, Google Photos remains blind. *Wired*. https://www.wired.com/story/when-it-comes-to-gorillas-google-photos-remains-blind/

Simonite, T. (2021, October 25). Facebook is everywhere; its moderation is nowhere close. *Wired*. https://www.wired.com/story/facebooks-global-reach-exceeds-linguistic-grasp/

Sullivan, M. (2020). *Ghosting the news: Local journalism and the crisis of American democracy*. Columbia Global Reports.

Tesi, W. (2022, February 5). When disinformation becomes "racialized." *ABC News*. https://abcnews.go.com/Technology/disinformation-racialized/story?id=82400863

Usher, N. (2021). *News for the rich, white, and blue: How place and power distort American journalism*. Columbia University Press.

van Deursen, A. J. A. M., & Helsper, E. J. (2015). The third-level digital divide: Who benefits most from being online? In *Communication and information technologies annual, Vol. 10* (pp. 29–52). Emerald Group Publishing Limited. https://doi.org/10.1108/S2050-206020150000010002

Wu, T. (2020). Disinformation in the marketplace of ideas symposium: Abrams at 100: A reassessment of Holmes's "Great Dissent": The marketplace of ideas and the search for truth. *Seton Hall Law Review, 51*(1), 169–174.

(Re-)casting Epistemic Rights as Human Rights: Conceptual Conundrums for the Council of Europe

Tarlach McGonagle

Introduction

The Council of Europe is a 46-member intergovernmental organisation dedicated to the protection and promotion of human rights, democracy, and rule of law. Its system for the protection of human rights contains strong safeguards for the right to freedom of expression and robust public debate. Those safeguards have been developed by the European Court of Human Rights in its case-law interpreting the European Convention on Human Rights, the organisation's flagship human rights treaty (CoE, 1950). The Court sees freedom of expression and public debate as pre-conditions for, and essential features of, democratic society. This is because

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freedom of expression and public debate are vectors for the free flow of information, ideas, and opinions which inform individual and public opinion-forming and deliberative processes.

Although the rights to freedom of expression and participation in public debate have clear epistemic underpinnings, the Court has yet to set out a comprehensive and coherent vision of this epistemic dimension. This chapter aims to identify selected epistemic values that help shape public debate and to explore the usefulness of re-casting them as human rights. In other words, the chapter examines whether the explication of epistemic rights in the context of human rights could enrich our understanding of the human rights that they already appear to inform.

The chapter's main premise and central argument is that epistemic rights could indeed be strengthened within this human rights framework, if they were to be given more explicit attention and emphasis. A clearer conceptualisation of epistemic rights could be a catalyst for the development of media and information literacy and education, equality of access to information and the media, deeper understanding of the workings of democracy, and better-informed citizen engagement in public debate.

The Council of Europe's System for Freedom of Expression

The Council of Europe's system for the protection of human rights comprises principles and rights, as enshrined in treaty law and developed in case-law; political and policymaking standards; and State reporting/monitoring mechanisms. Each of the instruments and mechanisms has its own objectives and emphases and/or mandates and working methods. Together they form a complex adaptive system of protection with overall 'unity of purpose and operation' (Emerson, 1970, p. 4). The system is complex due to its composition of instruments and actors and the interplay between them, and it is adaptive to ever-changing internal political priorities and external political and socio-cultural circumstances, at the national and international levels.

The European Convention on Human Rights (hereafter, 'ECHR' or 'the Convention') is the most important instrument in this system. Article 10 protects the right to freedom of expression. Its first paragraph sets out

the broad scope of the right, which comprises 'the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers'. Its second paragraph clarifies that the right is subject to certain limitations, which must be provided for by law, pursue a legitimate aim, and are necessary in democratic society. The permissible limitations are interpreted strictly by the European Court of Human Rights (hereafter, 'the Court').

Within the Council of Europe system, there is dynamic interplay between legally binding standards and political standard-setting texts. In this chapter, the main example of political standard-setting texts will be selected recommendations adopted by the Council of Europe's Committee of Ministers on freedom of expression issues. The Committee of Ministers is the organisation's statutory decision-making body. Its recommendations are addressed to the 46 Member States and they offer guidance on how to develop national laws, policies, and practice around their respective themes. Political and policymaking texts (hereafter 'standard-setting texts') ought to be grounded in the Convention and the Court's case-law, but they can also influence the development of that case-law.

As standard-setting texts tend to focus on particular (human rights) issues or (emerging) situations with democratic or human rights implications, they can serve to supplement existing treaty provisions and case-law. They can do so by providing a level of detail lacking in treaty provisions or by anticipating new issues not yet dealt with in treaty provisions or case-law. Whereas the Court must address the concrete facts as presented in specific cases, the Committee of Ministers has a mandate to engage in wider policymaking. It is noteworthy that the Court's judgements refer, for example, to the Committee of Ministers' standard-setting texts in an increasingly systematic and structured way.[1] These standard-setting texts can also facilitate the interpretation of existing treaties by applying general principles to concrete situations or interpreting principles in a way that is in tune with the times.

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[1] For example, Recommendation No. R (97)20 of the Committee of Ministers to Member States on 'hate speech', October 30, 1997, is cited in the European Court of Human Rights' judgements in *Gündüz v. Turkey*, no. 35071/97, § 22, ECtHR, 2003c-XI and *Féret v. Belgium*, no. 15615/07, § 44 and 72, July 16, 2009.

A Central Emphasis on Democracy and Participation in Public Debate

The main rationales for the protection of freedom of expression put forward in legal scholarship are numerous, rich, and varied (Barendt, 2005; Schauer, 1982). They could be summarised and essentialised as follows:

- self-fulfilment/individual autonomy;
- the advancement of knowledge/discovery of truth/avoidance of error;
- effective participation in democratic society; self-government;
- distrust of government/slippery slope arguments;
- societal stability and progress;
- tolerance and understanding/conflict prevention; and
- the enablement of other human rights.

These rationales co-exist, complement each other, and overlap in places. There is accordingly no need to choose between the various theories or to seek to ground freedom of expression in any single or 'unitary principle' (Schauer, 1983, p. 242). In fact, there are synergies between the different rationales and the totality of rationales is 'stronger than the sum of its parts' (Powe, 1991, p. 240).

The drafters of the European Convention on Human Rights were not wedded to any single or particular vision of freedom of expression. Nor is the Court: it frequently invokes the above rationales, with varying degrees of emphasis, across its jurisprudence. In the Court's first—and seminal—judgement dealing squarely with the right to freedom of expression, *Handyside v. the United Kingdom*, it held: 'Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man' (ECtHR, 1976, par. 49). The Court thus affirmed the importance of freedom of expression for democracy, while also invoking individual autonomy and societal progress as justifications for the right to freedom of expression. This shows the congruence of the different rationales in the Court's approach.

Although the Court embraces different rationales in its jurisprudence, it nevertheless gives pride of place to the argument from democracy. This argument is based on the importance of the free flow of information and ideas for the processes of opinion-forming and decision-making by the

public. Eric Barendt has sharpened this argument, re-shaping it into an argument 'from citizen participation in a democracy' (Barendt, 2005, pp. 18–21). In his refinement of the argument, Barendt doubles down on the agency of citizens. This version of the argument is consistent with the Court's approach, which gives paramountcy to effective participation in public debate on matters of interest to society.

This reading of the right to freedom of expression as instrumental to public debate can be illustrated by a selection of references to relevant case-law. In its 2022 *NIT S.R.L. v. Moldova* judgement, the Grand Chamber of the Court held that 'democracy thrives on freedom of expression' (ECtHR, 2022, par. 185). In *Bowman v. the United Kingdom*, the Court held that 'free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system' (ECtHR, 1998a, par. 42). In *Lingens v. Austria*, it underlined that 'freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention' (ECtHR, 1986, par. 42). The Court has consistently upheld and incrementally expanded this stance in its subsequent case-law. Political debate is nowadays generally taken to include debate on matters of public interest in a broader sense of the term (McGonagle, 2004).

Since its earliest judgements on the right to freedom of expression, the Court has progressively built a strong set of principles around participation in public debate. The Court sees the argument of participation in democratic society as a foundational value. States have a positive obligation to ensure a safe and favourable environment in which everyone can participate in public debate, including online, freely, and without fear, even when their opinions and ideas are contrary to those of State authorities or of significant sections of public opinion (ECtHR, 2010, par. 137; McGonagle, 2015). Within public debate, journalists, the media, and other actors enjoy specific freedoms that are necessary for them to fulfil their public watchdog role in democratic society. That role entails spreading information, ideas, and opinions widely; holding governmental authorities and other powerful actors in society to account; and providing shared fora or channels through which public debate can take place. The enjoyment of specific freedoms, such as editorial and presentational freedom, protection of confidential sources, etc., is subject to the proviso that the public watchdogs act in good faith, in accordance with (professional) ethics and that they seek to provide the public with information that is accurate and reliable.

The Epistemic Underpinnings of Participation in Public Debate

The participatory rights discussed in the previous sections have firm epistemological underpinnings. However, the Court, which 'generally eschews abstract theorising' (Mowbray, 2005, p. 61), has not yet articulated a coherent approach to the epistemic underpinnings of public debate. Its recognition of epistemic rights is best described as 'incidental'. This section will re-cast the identified epistemic rights implicated in participation in public debate as human rights. The added value of this approach is to clarify the epistemic value of the rights in question and to further theorise the Court's vision of participation in public debate.

The range of participatory rights under discussion here are also strongly discursive/communicative in nature. They are premised on a commitment to communication and rational democratic debate.

Onora O'Neill has identified three 'generic technical requirements' for communication to succeed (O'Neill, 2022, 3ff *et seq.*). Her three 'presuppositions of communication' are accessibility, intelligibility, and assessability. The accessibility of communicative content (i.e., the ability of all parties to a communicative activity to access each other's messages) can be gauged in physical and technical terms. Intelligibility (i.e., the ability to understand a message due to a shared language, code, or frame of reference) and assessability (i.e., the ability to check or challenge the content, origin, or motivation of a message) have an epistemic character.

As public debate is essentially about the communication of information and ideas in a shared public context, O'Neill's 'presuppositions of communication' can also be seen as 'presuppositions' of public debate. As such, they also underpin the shared understanding of epistemic rights in this volume. As Hannu Nieminen posits in his chapter in this volume, in any democratic society, 'citizens must have fundamental epistemic rights related to knowledge and understanding', including:

- 'equality in access to and availability of all relevant and truthful information that concerns issues under will formation and decision-making,
- equality in obtaining competence in critically assessing and applying knowledge for their good as well as for the public good,

- equality in public deliberation about will formation and decision-making in matters of public interest,
- equal freedom from external influence and pressure when making choices'.

Nieminen's framing of these rights in terms of equality is a pertinent reminder that access to public debate, information, and knowledge are strongly shaped by the wider dynamics of power relations in society (Curry Jansen, 1991).

Having recalled the contours of epistemic rights, the analysis will next provide an overview of the Court's incidental appreciation of epistemic rights, before considering each of the specific epistemic rights in the context of the Court's case-law.

THE COURT'S INCIDENTAL APPRECIATION OF EPISTEMIC RIGHTS

The Court is not so much concerned with abstract notions of the Truth, as such. It is loathe to take on the role of the Arbiter of Truth or the Guardian of Knowledge. Instead, it has developed a pragmatic approach to a number of epistemic issues that are important for public debate in democratic society. Those issues include an informed public, facts, value judgements, historical facts, and the duties and responsibilities that govern the exercise of the right to freedom of expression, which include a commitment to providing accurate and reliable information.

An Informed Public

The Court's articulation of epistemic rights peaked early. In 1979, in its second major judgement on freedom of expression issues, *Sunday Times v. the United Kingdom (no. 1)*, the Court found that the public has the right to be 'properly informed' (ECtHR, 1979a, par. 66). Ever since, this finding has been prominent in the Court's canon of freedom of expression principles. However, the adverb 'properly' has—by accident or design—fallen by the wayside. The Court has only used the adverb on a few occasions since, leaving the staple principle as the right to be informed *tout court* (McGonagle, 2021).

Despite pulling back from the initial formulation, the Court has teased out and consolidated the principle. Its essence is that the public has the

right to receive information and ideas and thus to be informed about matters of public interest and journalists and the media have the task of imparting such information and ideas (ECtHR, 1979a, par. 66). The public interest extends to issues which may give rise to considerable controversy, but it cannot be reduced to the public's thirst for information about the private life of others or to an audience's wish for sensationalism or voyeurism (ECtHR, 2017, par. 171). Politics, current affairs, human rights, justice, social welfare, health matters, religion, culture, history, climate and environmental issues are thus all examples of topics of public interest, whereas individuals' strictly private relationships or family affairs are not.

States parties to the Convention have a positive obligation to guarantee pluralism in the audiovisual media sector, which logically implies that the public has a right to a pluralistic media offer (ECtHR, 1993). In the same vein, the Court has referred to the public's right to 'balanced and unbiased coverage of matters of public interest in news programmes' (ECtHR, 2020, par. 39; 2022, par. 174).

These principles, individually and collectively, constitute important safeguards or stimuli for qualitative aspects of public debate, which the Committee of Ministers has developed further in its Recommendations on media pluralism and transparency of media ownership and promoting a favourable environment for quality journalism in the digital age (CoE, 2018, 2022).

Facts and Value Judgements

Starting in its *Lingens v. Austria* judgement, the Court has sought to make a careful distinction between facts and opinions, holding that the requirement that the defendant prove the truth of an allegedly defamatory opinion infringes their right to impart ideas as well as the public's right to receive ideas, under Article 10 of the Convention (ECtHR, 1986). Whereas the existence of facts can be demonstrated, it is not possible to prove the truth of opinions or value judgements. A value judgement should, however, have adequate factual basis, as even a value judgement without any factual basis to support it may be excessive (ECtHR, 1995, par. 37). The adequacy of the factual basis for the value judgement is therefore an important consideration for the Court when assessing the necessity and proportionality of a measure interfering with the right to freedom of expression.

Despite the Court's best efforts to distinguish between them, there is not always a bright shining line separating facts and value judgements in practice. This calls for constant vigilance by the Court.

Historical Facts

Historical facts have acquired a particular significance in the Court's case-law. The Court has consistently held, as in *Chauvy & Others v. France*, for instance, that: '[…] it is an integral part of freedom of expression to seek historical truth and it is not the Court's role to arbitrate the underlying historical issue, which is part of a continuing debate between historians that shapes opinion as to the events which took place and their interpretation' (ECtHR, 2004, par. 69).

The case required the balancing of two competing interests, *viz.*, the public interest in being informed of the circumstances in which Jean Moulin, a leading figure in the French Resistance against the Nazi occupation in the Second World War, was arrested and the need to protect the reputation of Mr. and Mrs. Aubrac, two other important members of the Resistance. It had been suggested in a book that the latter had been in some way responsible for the arrest, suffering, and death of Moulin. The public interest in this ongoing debate about historical facts was clear and thus clearly within the scope of the protection afforded by the right to freedom of expression.

By way of contrast, the Court consistently takes a strict line concerning 'the category of clearly established historical facts—such as the Holocaust' (ECtHR, 2004, par. 69). This very specific and tightly delineated category of facts is not up for discussion or contestation. The negation or revision of those facts removes expression from the protection of Article 10; the expression then falls under Article 17—prohibition of abuse of rights. Article 17 is essentially a safety-valve designed to prevent anyone from trying to invoke human rights in a way that goes against the letter or spirit of the Convention. This is a normative reflection to Hannah Arendt's cautionary reminder that 'freedom of opinion is a farce unless factual information is guaranteed and the facts themselves are not in dispute' (cited in Post, 2012, p. 29).

There is a strong epistemic component in the Court's elucidation of the rationales governing its approach to Holocaust denial in the *Garaudy v. France* judgement (ECtHR, 2003b):

There can be no doubt that denying the reality of clearly established histori-
cal facts, such as the Holocaust, as the applicant does in his book, does not
constitute historical research akin to a quest for the truth. The aim and the
result of that approach are completely different, the real purpose being to
rehabilitate the National-Socialist regime and, as a consequence, accuse the
victims themselves of falsifying history. Denying crimes against humanity is
therefore one of the most serious forms of racial defamation of Jews and of
incitement to hatred of them. The denial or rewriting of this type of histori-
cal fact undermines the values on which the fight against racism and anti-
Semitism are based and constitutes a serious threat to public order. Such acts
are incompatible with democracy and human rights because they infringe
the rights of others. Its proponents indisputably have designs that fall into
the category of aims prohibited by Article 17 of the Convention.

The strictness of the Court's approach can be traced to and explained
by the drafting history of the Convention and of Article 17 in particular.
The drafters were resolved to ensure that the atrocities of the Second
World War would not be repeated; an approach captured by popular slo-
gans such as 'never again' and 'no liberty for the enemies of liberty'.

Duties and Responsibilities

Everyone who exercises the right to freedom of expression has certain
duties and responsibilities, the scope of which varies in different contexts
and depending on who is exercising the right and whether they have a
particular function or role (e.g., a journalist, a politician, or a teacher) and
on the technology they use (e.g., some media have wider reach and impact
than others). Journalists and the media must not cross certain lines, in
particular in respect of the reputation and rights of others. In principle,
they must abide by the law and they are expected to act in good faith in
order to provide accurate and reliable information to the public in accor-
dance with the ethics of journalism (ECtHR, 1999a, 1999b). This is
another example of the Court underscoring the importance of quality
information being provided to the public, without setting itself up as the
Arbiter of Truth.

On a number of occasions, the Court has played down the significance
of inaccuracies in media reporting when there has been an overriding pub-
lic interest in the bigger story. In such cases, the essential information
being brought to light by a public watchdog can take precedence over the
need for complete accuracy in all details (e.g., ECtHR, 1992, 2005a).

In its *Salov v. Ukraine* judgement, the Court found that false information is not a reason of itself to exclude the information from protection under Article 10, but it also hinted that there is an underlying assumption of commitment to rational public debate in order to avail protection (ECtHR, 2005b). The Court has also held that it is important that minority opinions are aired when they relate to a sphere in which there is a lack of certainty, even if the minority opinion 'may appear to be devoid of merit' (ECtHR, 1998b, par. 50). These tensions are very good illustrations of the underexplored and underarticulated importance of the epistemic underpinnings of public debate.

Specific Epistemic Rights as Human Rights?

As a tentative first step towards identifying and explicating specific epistemic rights in the context of the Court's case-law, each of the four epistemic rights elaborated by Hannu Nieminen and recalled above will now be explored in turn.

Equality in Access to and Availability of All Relevant and Truthful Information That Concerns Issues Under Will Formation and Decision-Making

The scope of this epistemic right largely mirrors how the Court has approached rights of access to the *content* of public debate in its case-law. If everyone is able to exercise their right to receive information effectively, then they will necessarily also enjoy equal access to available information and ideas on matters of interest to the public.

The reference to the availability of 'all relevant information' is premised at least in part on States honouring their positive obligation to ensure pluralism in the audiovisual sector. But pluralism only in the audiovisual sector is not enough in today's multi-media ecosystem. True or effective pluralism today entails a pluralistic offer of information, ideas, and opinions via a wide range of media. Such content must moreover be available, findable, and accessible. Within such a pluralistic offer there must also be due differentiation between the functionalities of different types of media: some media may be better suited for accessing particular types of content than others, which in turn influences users' ability to find and access relevant content (ECtHR, 2008). This is true for various groups in society who may have particular informational needs and/or interests, such as children or minority groups.

The reference to 'truthful information' is covered broadly by the Court's consistent emphasis on the importance of factual information, factual grounding for opinions, the duties and responsibilities of journalists and other media actors to carry out their public watchdog role in good faith and in accordance with the ethics of the profession, including by striving to provide information that is accurate and reliable. Such emphases concern the right of the public to be informed in the context of public debate. The public also has a right of access to official or State-held information. The Court has generally been somewhat circumspect when tracing the contours of this right. Although States do not have a hard, general, positive obligation to pro-actively inform the public under Article 10, whenever they do inform the public, especially in circumstances where they are obliged to do so, they must ensure that the information provided is accurate/reliable (ECtHR, 2016, 2021). The Court has held that the right of access to information would be rendered hollow if the information provided by competent state authorities were to be insincere, inexact, or even insufficient (ECtHR, 2021, par. 108). Moreover, governments and state authorities should in any event refrain from engaging in the production, dissemination, amplification, or endorsement of disinformation (Pentney, 2022).

Equality in Obtaining Competence in Critically Assessing and Applying Knowledge for Their Good as well as for the Public Good

Following O'Neill, (the content of) communication must be both accessible and intelligible before it can be assessable. The same is true of knowledge. Both depend on the accessibility of the forum or channel through which they are communicated or made available and on the intelligibility offered by a shared or understandable language within an (at least implicitly) agreed or understood societal frame of reference.

Prior levels of knowledge or information can also influence the ability to critically assess or apply new knowledge or information. In its *Jersild v. Denmark* judgement, the Court attached weight to the assumption that the target audience of the broadcast at the centre of the case was 'well-informed' (ECtHR, 1994, par. 34). The impugned broadcast included racist and xenophobic remarks by interviewees; the interviewer and his

editor were convicted by the Danish courts for aiding and abetting in the dissemination of racist expression. In the broadcast, Mr. Jersild did not give explicit/strong pushback against the racist remarks. The Court in Strasbourg took into account that the journalist sought to contribute to public debate and that the audience of this serious news programme was 'well-informed'. The Court did not spell out what it meant with this finding, but it seems to suggest that a 'well-informed' audience could be expected to exercise discernment and not to be susceptible to the racist views of the interviewees. Similarly, in *Hertel v. Switzerland*, the Court took into account the 'specific' nature of the readership of the journal in which controversial opinions about the health risks of using microwave ovens were published (ECtHR, 1998b, par. 49). While the Court's consideration of discrete audiences may have made sense in those specific cases, the fragmented and de-contextualised nature of today's online environment raises questions about the ability to pinpoint specific audiences and the continued relevance of the underlying logic of such an approach.

In an increasingly digitised information and communications environment, it is clear that new challenges and 'information inequalities' have emerged, as discussed in detail in Philip M. Napoli's chapter in this volume. Concerns about intelligibility and assessability stem from low levels of digital, media, and information literacy (hereafter 'MIL'), as well as within (some sections of) society. The Court has yet to engage frontally with these issues, but the Committee of Ministers has begun to grapple with them. In its Recommendation CM/Rec(2018)1 to Member States on media pluralism and transparency of media ownership, it has explained:

> In light of the increased range of media and content, it is very important for individuals to develop the cognitive, technical and social skills and capacities that enable them to effectively access and critically analyse media content; to make informed decisions about which media they use and how to use them; to understand the ethical implications of media and new technologies, and to communicate effectively, including by creating content. (CoE, 2018)

MIL is thus essential for individuals to be able to participate effectively in public debate in the digital age. On such reasoning, it is only a small step to argue that the promotion of MIL falls squarely within States' positive obligation to foster a favourable environment for participation in public debate by everyone (ECtHR, 2010; McGonagle, 2015).

Equality in Public Deliberation About Will Formation and Decision-Making in Matters of Public Interest

A guiding principle of the European Court of Human Rights is that the ECHR seeks to 'guarantee not rights that are theoretical or illusory but rights that are practical and effective' (ECtHR, 1979b, par. 24). Access can be a crucial factor in rendering the human right to freedom of expression effective in practice. If an individual does not have access to a forum or channel in or via which they can receive and impart information and ideas, then their expressive opportunities are curtailed and, consequently, their right to freedom of expression clearly is not effective in practice. Viewed from this perspective, access to the media is of great instrumental importance for the realisation of the right to freedom of expression in practice. The same is true—and increasingly so—of access to the internet (ECtHR, 2012).

Fora and channels for public debate can be physical spaces or places or the technical infrastructure on which different media depend for their operation. The right to freedom of expression, as protected by Article 10 ECHR, does not (yet) guarantee individuals a right to freedom of forum, such as mandatory airtime on a particular broadcasting service, access to a privately owned shopping mall to petition for a cause, or an account on a specific social media platform. If, however, the denial of access to private property 'has the effect of preventing any effective exercise of freedom of expression or it can be said that the essence of the right has been destroyed', a State's positive obligation to ensure the effective exercise of the right to freedom of expression may be triggered (ECtHR, 2003a, par. 47). Whether or not this is the case will depend on whether viable alternative fora/media are available. Such a scenario would require some proportionate form of intervention by the State.

The Court has repeatedly underscored the need for public debate to be open to everyone and to be inclusive; there should be equality of opportunity to participate. Its firm reasoning is: 'there exists a strong public interest in enabling […] groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest' (ECtHR, 2005a, par. 89).

Equal Freedom from External Influence and Pressure When Making Choices

The ability to hold opinions, as guaranteed by Article 10 ECHR, presupposes the ability to form opinions; to seek and gather information, ideas, and opinions and to reflect freely on them, in order to develop one's own ideas and opinions. These freedoms rest on the principle of individual autonomy, which includes the ability to select information and opinions in the seeking and gathering processes. In increasingly digitised societies, where online platforms and algorithmic recommender systems increasingly determine the availability and prominence of content, probing questions need to be asked about whether our use of content is truly free and uninhibited.

CONCLUSION

The analysis in this chapter has been deliberately exploratory in nature. It has provided an initial, indicative sense of the swirl of epistemic issues touched on by the Court in its case-law dealing with freedom of expression and participation in public debate. The Court has recognised the importance for democratic society of a public that is informed by factual information, factually grounded opinions, and a pluralistic offer of information that is accurate and reliable. These epistemic values and rights are key features of a favourable environment for participation in public debate, which Council of Europe Member States are obliged to ensure.

The next step in the process of re-conceptualising these epistemic values and rights as human rights will be to categorise them more clearly and comprehensively. A closer examination of the Committee of Ministers' more structured engagement with epistemic issues than was possible within the confines of this short introduction could also prove instructive. A more explicit recognition of, and a deeper understanding of, the relationship between epistemic and human rights would likely strengthen the Council of Europe's system of protection against the surge of threats to healthy public debate in the present 'inforuptive times' (McGonagle, 2022). Interference with public opinion-forming processes in the run-up to elections and referenda, denialism of historically or scientifically proven

facts, and war-mongering disinformation and propaganda all threaten epistemic norms and public debate, but they can be offset by renewed and re-invigorated normative commitment to factual, accurate, and reliable information and other safeguards of public debate. It is hoped that the groundwork in this chapter will prove useful for that exercise.

REFERENCES

COUNCIL OF EUROPE (CoE)

CoE. (1950). Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR), ETS No. 5, 4 November 1950 (entry into force: 3 September 1953).

CoE. (1997). Recommendation No. R (97)20 of the Committee of Ministers to member states on 'hate speech', 30 October 1997.

CoE. (2018). Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership, 7 March 2018.

CoE. (2022). Recommendation CM/Rec(2022)4 of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age, 17 March 2022.

EUROPEAN COURT OF HUMAN RIGHTS (ECtHR):

ECtHR. (1976). *Handyside v. the United Kingdom*, 7 December 1976, Series A no. 24.

ECtHR. (1979a). The Sunday Times *v. the United Kingdom (no. 1)*, 26 April 1979, Series A no. 30.

ECtHR. (1979b). *Airey v. Ireland*, 9 October 1979, Series A no. 32.

ECtHR. (1986). *Lingens v. Austria*, 8 July 1986, Series A no. 103.

ECtHR. (1992). *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, Series A no. 239.

ECtHR. (1993). *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Series A no. 276.

ECtHR. (1994). *Jersild v. Denmark*, 23 September 1994, Series A no. 298.

ECtHR. (1995). *Prager and Oberschlick v. Austria*, 26 April 1995, Series A no. 313.

ECtHR. (1998a). *Bowman v. the United Kingdom*, 19 February 1998, *Reports of Judgments and Decisions* 1998-I.

ECtHR. (1998b). *Hertel v. Switzerland*, 25 August 1998, Reports of Judgments and Decisions 1998-VI.

ECtHR. (1999a). *Fressoz and Roire v. France* [GC], no. 29183/95, ECHR 1999-I.

ECtHR. (1999b). Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, ECHR 1999-III.

ECtHR. (2003a). *Appleby and Others v. the United Kingdom*, no. 44306/98, ECHR 2003-VI.

ECtHR. (2003b). *Garaudy v. France* (dec.), no. 65831/01, 24 June 2003.

ECtHR. (2003c). *Gündüz v. Turkey*, no. 35071/97, ECHR 2003-XI.

ECtHR. (2004). *Chauvy and Others v. France*, no. 64915/01, ECHR 2004-VI.

ECtHR. (2005a). *Steel and Morris v. the United Kingdom*, no. 68416/01, ECHR 2005-II.

ECtHR. (2005b). *Salov v. Ukraine*, no. 65518/01, ECHR 2005-VIII (extracts).

ECtHR. (2008). *Khurshid Mustafa and Tarzibachi v. Sweden*, no. 23883/06, 16 December 2008.

ECtHR. (2009). *Féret v. Belgium*, no. 15615/07, 16 July 2009.

ECtHR. (2010). *Dink v. Turkey*, nos. 2668/07 and 4 others, 14 September 2010.

ECtHR. (2012). *Ahmet Yıldırım v. Turkey*, no. 3111/10, ECHR 2012.

ECtHR. (2016). *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, 8 November 2016.

ECtHR. (2017). *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, 27 June 2017.

ECtHR. (2020). *ATV Zrt v. Hungary*, no. 61178/14, 28 April 2020.

ECtHR. (2021). *Association Burestop 55 and Others v. France*, nos. 56176/18 and 5 others, 1 July 2021.

ECtHR. (2022). *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, 5 April 2022.

PRIMARY SOURCES

Barendt, E. (2005). *Freedom of speech* (2nd ed.). Oxford University Press.

Curry Jansen, S. (1991). *Censorship: The knot that binds power and knowledge.* Oxford University Press.

Emerson, T. I. (1970). *The system of freedom of expression.* Random House.

McGonagle, T. (2004). Workshop report: The changing hues of political expression in the media. In S. Nikoltchev (Ed.), *IRIS special: Political debate and the role of the media—The fragility of free speech.* European Audiovisual Observatory.

McGonagle, T. (2015). Positive obligations concerning freedom of expression: Mere potential or real power? In O. Andreotti (Ed.), *Journalism at risk: Threats, challenges and perspectives* (pp. 9–35). Council of Europe Publishing. https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680706afe

McGonagle, T. (2021, August 30). Akdeniz v. Turkey (ECtHR, no. 41139/15)—Academics get the short end of the stick in news reporting judgment. *European Human Rights Cases Updates.* https://www.ehrc-updates.nl/commentaar/211626

McGonagle, T. (2022). *Free speech in inoruptive times: Revitalizing values and rescuing rights.* Inaugural Lecture, Leiden University, the Netherlands, 9 May 2022.

Mowbray, M. (2005). The creativity of the European Court of human rights. *Human Rights Law Review, 5*(1), 57–79. https://doi.org/10.1093/hrl-rev/ngi003

O'Neill, O. (2022). *A philosopher looks at digital communication.* Cambridge University Press.

Pentney, K. (2022). Tinker, Tailor, Twitter, lie: Government disinformation and freedom of expression in a post-truth era. *Human Rights Law Review, 22*(2). https://doi.org/10.1093/hrlr/ngac009

Post, R. C. (2012). *Democracy, expertise, academic freedom: A first amendment jurisprudence for the modern state.* Yale University Press.

Powe, L. A., Jr. (1991). *The fourth estate and the constitution: Freedom of the press in America.* University of California Press.

Schauer, F. (1982). *Free speech: A philosophical enquiry.* Cambridge University Press.

Schauer, F. (1983). Free speech and the argument from democracy. In J. R. Pennock & J. W. Chapman (Eds.), *Liberal democracy: Nomos XXV* (pp. 241–256). New York University Press.

Epistemic Rights and Digital Communications Policies: Collective Rights and Digital Citizenship

Terry Flew

Introduction: Communication and Citizenship Revisited

The mass popularisation of the internet in the 1990s coincided with the heyday of civil society discourses, and the proposition that the internet is the product of the activity of heroic individuals, and exists primarily to empower civil society, remains a dominant *leitmotif* of digital technology politics. The focus of internet governance debates has frequently been about how best to minimise the power of the state and maximise the capacity of non-government organisations to engage in different forms of multi-stakeholder governance (Scholte 2017). The rise of the global internet was seen by authors such as Joseph Nye as strengthening the soft

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power resources of countries 'whose dominant culture and ideas are closer to prevailing global norms (which now emphasise liberalism, pluralism, and autonomy)', meaning that

> the larger long-term trends are in America's favour. To the extent that official policies at home and abroad are consistent with democracy, human rights, openness, and respect for the opinions of others, the United States will benefit from the trends of this global information age. (Nye, 2002, pp. 70, 73)

More recently, the decentralising promise of Blockchain technologies—and a Web3 movement that claims back the internet from the global digital platform giants—also points in the direction of reviving the civic potential of digital technologies of the 'bottom up' empowerment of citizens in the face of corporate and state power (Siddarth et al., 2022).

It is important to note that this is only one way of thinking about the relationship between communications technologies and citizenship. A quite different tradition identifies the role of state organisations as being critical in promoting citizenship discourses and civil society in the face of monopolising forces in commercial media. Historically, as Krishan Kumar has observed, civil society was seen as synonymous with the state and 'political society', generating the institutions that enable 'civility' and the engagement of citizens with public life, and it is only from the late eighteenth century that it begins to be conceived of as a realm that is necessarily autonomous of the state (Kumar, 1993). Political theorists who were strongly associated with the revival of civil society as a new animating political principle, such as John Keane, nonetheless saw the relationship between civil society and the state as mutually reinforcing, observing that 'without the protective, redistributive and conflict-mediating functions of the state, struggles to transform civil society will become ghettoized, divided and stagnant, or will spawn their own, new forms of inequality and unfreedom' (Keane, 1988, p. 15). Arguing the importance of the role played by the nation-state in the production and circulation of culture, Tony Bennett concluded that 'public spheres [...] are brought into being not merely outside of and in opposition to the bureaucratic apparatuses of the state but also within those apparatuses or in varying degrees of quasi-autonomous relations to state bureaucracies' (Bennett, 1992, p. 235).

Developing the concept of media citizenship, Peter Golding and Graham Murdock drew upon T. H. Marshall's three-fold typology of civil,

political, and social citizenship to propose an agenda for communications policies that foregrounded citizenship rights (Murdock & Golding, 1989). Golding and Murdock argued for an expansive conception of communication rights that included the following: (1) maximising access for individuals to information, advice, and analysis concerning their rights; (2) providing all sections of the community with access to the broadest range of sources of information, interpretation, and debate on issues that affect them; and (3) enabling people from all sections of society to recognise themselves in the representations offered in communications media and to be able to contribute to the development and shaping of these representations. The necessary conditions for communications and information systems to achieve these communication rights were maximum possible diversity of provision, mechanisms for user feedback and participation, and universal access to services regardless of income, place of residence, or other sources of social inequality.

This is a different conception of rights to that which prevails in the early years of internet discourse. The dominant discourse of this era was one where rights were understood primarily in terms of what Zittrain and Bowers have referred to as 'the "Rights" era of internet governance, a period […] during which public and regulatory conversations focused almost exclusively on protecting a maturing sphere of internet discourse from external coercion, whether corporate or governmental' (Bowers & Zittrain, 2020, p. 2). Underpinning such discourses was a distinction between two types of speech: that associated with traditional media (publishers) that had moved into the online domain, and which would continue to be subject to laws associated with media and communications policy, and that which was associated with what was termed user-generated content (UGC). The latter was seen either as having direct constitutional protections—as with the First Amendment speech rights of the United States Constitution—or as having implied human rights protections, as with Article 19 of the Universal Declaration of Human Rights and the UN International Covenant on Civil and Political Rights (Kaye, 2019).[1]

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[1] Article 19 of the Universal Declaration of Human Rights guarantees: '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.' Underpinning the UDHR, the United Nations International Covenant on Civil and Political Rights states, in Article 19, that: 'A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and enjoyment of other […] rights'.

This version of online rights discourse and legislative protections which followed from it, such as Section 230 and related 'safe harbour' provisions, arose from what can be termed a pre-platform age of the internet, where the space of UGC in the overall media landscape was relatively circumscribed. However, with the platformised internet and 'the rise of a handful of dominant internet platforms that indexed and pointed to everything else online, the line between UGC and content from traditional publishers blurred' (Bowers & Zittrain, 2020, p. 3). While much ensuing discussion has been about content moderation and balancing speech rights and potential online harms, this conversation can be extended to consideration of epistemic rights. As Hannu Nieminen observes in his chapter in this volume, the idea that citizens need to be equally capable of making informed choices about matters of societal importance is by necessity accompanied by the requirement of epistemic rights, that 'citizens have equal access to all relevant information and knowledge necessary for informed will formation'. We thus find contemporary debates around digital rights and citizenship turning to questions of the public sphere and the institutions that underpin it, which now include digital platforms alongside media institutions, and cultural and governmental institutions.

THE 'DOUBLE MOVEMENT' OF PLATFORMS AND POWER

It is a commonplace to observe that digital platforms, and the companies that own and operate them, are powerful. The U.S. Congress identified the 'Big Four' tech companies—Google (Alphabet), Apple, Facebook (Meta), and Amazon—as having gatekeeper power in the digital economy, which enables them to control access to markets, accrue competitive advantage, and cut off competitive threats and potential rivalries (U.S. House of Representatives, 2020). I have observed elsewhere that this economic power, which can have upstream and downstream consequences at odds with the public interest, intersects with political power, or the capacity to shape public policy and civic discourse, and communications power, or the capacity to act as 'powerful gatekeepers of online speech and implicitly as regulators of digital communication' (Flew, 2021, p. 201; c.f. Flew & Gillett, 2021).

At the same time, the observation that large companies possess power is not new and is certainly not new with regards to media and communications. John Thompson (Thompson, 1995) identified four forms of power: political, economic, coercive, and cultural or symbolic. A fundamental

assumption of the political economy of the media approach, and indeed of all traditions of media economics that focus upon economies of scale and market concentration, is that

> [l]arge-scale economic actors in the media field—the Hollywood majors, the large telecommunications companies, television networks, cable companies, the emerging leviathans of search and online services—exercise great power over what is produced, how it is produced, and possibly also, in some of the cruder versions, how it is received. This is *economic* power—the ability to control processes of production, distribution, prices in markets, and accumulation. (Cunningham et al., 2015, p. 54)

Is it right, then, to be focusing upon platform power as something new, rather than as an extension of forms of media power recognisable in a lineage that runs from Randolph Hearts and Lord Beaverbrook through to Rupert Murdoch and Silvio Berlusconi? Have we been, as Dwayne Winseck has suggested (Winseck, 2020, 2022), overly focused upon digital dominance and the power of 'Big Tech' companies and neglected the continued and substantive economic, political, and cultural power associated with traditional media and telecommunications companies?

Cioffi et al. (2022) provide important insights to these questions by bringing the arguments of Karl Polanyi to bear upon the question of platform power. As Polanyi identified with the Industrial Revolution, Cioffi et al. observe that the digital revolution has involved more than the rise of large companies with a degree of monopoly power: it has entailed the rise of a new institutional form (platforms) whose societal influence is now pervasive, whose impact on social and economic life is profound and transformational, and where the largely unchecked private market power associated with its rise has triggered social and political mobilisation to challenge such power, or what has come to be known as the 'techlash'. Drawing upon Polanyi, they argue:

> Contemporary society is at one of those rare historical inflection points in the constitution (or re-constitution) of socio-economic relations. At such moments, societies experience a 'double movement' dynamic in which the reorganizational power and prerogatives of private interests and organisations imposing a utopian ideal of the self-regulating market (the first movement) drive a reassertion of political authority and thus broader societal interests (the second movement). This engenders a struggle within which social forces attempt to create regulatory and governance mechanisms to

constrain and potentially redirect political economic and social development in new ways and often along unexpected developmental trajectories. (Cioffi et al., 2022, p. 2)

There are many dimensions to platform power and to the 'double movement' dynamic as identified in this analysis. A key point is the extent to which platforms, and platform companies, have become core digital infrastructure (Plantin et al., 2018; Plantin & de Seta, 2019). From the direct provision of wireless and broadband infrastructure to cloud hosting and e-mail to referrals and login services, the largest platform companies are providers of infrastructure without which the digital economy would cease to operate. Apple and Google are providers of maps that are used by millions of businesses around the globe; digital apps are almost exclusively distributed through Apple and Google; Google accounts for 90% of online search worldwide; Amazon, Microsoft, and Google account for 65% of global cloud infrastructure market share (Richter, 2022); and so on. The extent to which not only businesses but civil society organisations are exposed to the decision-making of the biggest digital platform companies became apparent in Australia in February 2021, when Facebook's decision to cut off Australian news providers from its global news feed in response to the government's proposed Mandatory News Media and Digital Platforms Bargaining Code adversely impacted upon hundreds of arts, community, and non-profit organisations that would not be considered to be 'news providers' (Bossio et al., 2022).

The second key element to platform power is the extent to which it has framed a way of thinking about socio-economic challenges that has wider implications beyond the tech sector. In particular, it has consolidated around what Elisabetta Ferrari has termed 'technocratic populism' (Ferrari, 2020), evolving from earlier discourses such as the 'Californian ideology' of 'free minds and free markets' (Barbrook & Cameron, 1996; Rossetto, 1996; Turner, 2006). Ferrari identifies the discourse of technocratic populism as having three elements: (1) it 'portrays digital technologies as inherently free, democratic and supportive of personal autonomy' (Ferrari, 2020, p. 121); (2) it identifies digital technologies as the primary means of addressing social problems, rather than policy changes; and (3) it proposes that technologies and markets better represent popular will than nation-states and political institutions. As Fred Turner, the historian of Silicon Valley cyberculture, has observed:

One of the myths that the tech world has hoisted on us is that the state is, itself, evil ad that it doesn't represent the people. Instead, only the tech world represents the people because they are busy collating the people's voices with search engines and social media. (Lusoli & Turner, 2021, p. 238)

This bring us to the third dimension of platform power influence, which is over public policy. It is well documented that the major digital platform companies invest heavily in corporate lobbying of governments and seek to influence both policies that directly impact upon them (e.g., copyright laws, payments to publishers) and those with a more indirect impact (e.g., immigration policies, education, and skills) (Popiel, 2018, 2020; Teachout, 2020; Tech Transparency Project, 2020; Zuboff, 2019). The wider influence is around the capacity to offer appealing visions of the future and a capacity to solve problems for governments, and to do so more quickly and effectively than government agencies or bureaucracies can. Examples such as Facebook setting up a quasi-legal infrastructure to adjudicate on its content decisions through the Operating Board, or Microsoft CEO Satya Nadella declaring that the COVID-19 global pandemic meant that 'the challenges we face demand an unprecedented alliance between business and government' (Nadella, 2020), draw attention to the power of digital platforms to offer problem-solving capabilities to policymakers. More generally, the rise of global digital platform companies is associated with the turn towards governance solutions that adopt multistakeholder models that focus on 'soft law' and the inclusion of nongovernment organisations, as distinct from traditional 'top-down' public policy instruments associated with media and communications regulation (Flew, 2022b).

Technocracy and Populism in Tech Policy

There is currently a degree of political contestation around the world towards platform power and social limits to its exercise. As Cioffi et al. observe 'the current efforts to regulate the platform economy reveal a renewed contestation of the balance and, more fundamentally, the nature of the relationship between public and private power' (Cioffi et al., 2022, p. 2). In different jurisdictions around the world, and in liberal democracies as well as authoritarian and one-party states, there are new laws and regulations being proposed to address the underlying causes as well as consequences of platform power, across areas such as competition and

market dominance, content regulations and laws governing online speech, and user rights with regards to privacy, data use, and ethical standards in the tech sector (Flew, 2022b; Flew & Gillett, 2021; Flew & Su, 2022; Kretschmer et al., 2021). Importantly, while previous forms of political action were often couched through the language and the institutions of global internet governance—particularly around the rights of NGOs and civil society to shape digital platform conduct internationally—the current actions have been framed far more at the level of nation-states. The Canadian communications theorist Blayne Haggart has argued that 'democratic accountability is (or should be) the source of legitimacy in global economic governance. Given a pluralist international society and the absence of a global polity, this accountability is lodged firmly within the nation state' (Haggart, 2020, p. 334). While this does leave open the risk that regulators will govern too much, and potentially chill innovation and diverse speech, there remains the question of what ultimately constitutes legitimate authority, since 'someone, at the end of the day, must exert structural power over these platforms' (Haggart, 2020, p. 332), and democratically elected governments—whatever the flaws in practice of their political systems—possess an overarching legitimacy which is not held by platform companies themselves.

In thinking about the political landscape in which proposals to regulate digital platform companies have emerged, it is useful to reflect on the work of the French economist Thomas Piketty. In *Capital in the Twenty-First Century* (Piketty, 2014), Piketty argued that capitalism has an inherent tendency to increase inequalities in the absence of countervailing measures on the part of governments to redistribute income and wealth. He also argued that, on the basis of extensive worldwide evidence of global economic inequalities increasing from the 1980s onwards, there had been a turn away from redistributive economic policies on the part of governments and that the political process had seen both an increase in economic inequality and the rise of political forces that sought to both justify and facilitate such a transfer of wealth from the working and middle classes to the rich. Similar arguments have been developed by a number of critical theorists, including Branko Milanovic (Milanovic, 2019) and Wolfgang Streeck (Streeck, 2017).

The 'Piketty paradox' is the question of why this worsening economic situation for much of the world's population has not, at least in the liberal democracies, led to a decisive swing in political sentiment towards parties of the left and policies of economic redistribution? In particular, while the

aftermath of the Global Financial Crisis of 2008 saw left-wing governments come to power in some countries, such as Greece and Portugal, a more electorally significant outcome has been the rise of populist movements, parties, and leaders (Moffitt, 2020; Norris & Ingelhart, 2019). One factor behind this, which is explored at length in Piketty's (2020) book *Capital and Ideology* (Piketty, 2020), is the degree to which parties of the centre-left increasingly became the parties of the most highly educated. While this did not necessarily mean that parties of the right became parties of the less well-educated, it did point towards an increasingly fragile 'Upstairs Downstairs' coalition among parties of the centre-left, where they sought to represent both traditional working-class constituencies, those with more cosmopolitan cultural values, and what Piketty terms the 'winners of globalisation' (Piketty, 2020, p. 816)—highly educated and well-paid cognitive elites located in major global cities and information technology hubs. This formation has been open to attack from an anti-elitist populism, associating globalisation and technological change with rising economic insecurity and the weakening of nation-states and national cultures (Eatwell & Goodwin, 2018; Freiden, 2018; Goodhart, 2017).

Addressing the power of digital platform companies would be consistent with a broadly redistributive and egalitarian political programme that Piketty describes as participatory socialism (Piketty, 2020, ch. 17). But the policies on offer need to navigate a tension between technocracy and populism. Technocratic approaches have tended to focus primarily upon the dangers presented by government intervention, drawing upon international human rights laws to propose overarching frameworks that can supersede the interventions of national governments: examples include digital constitutionalism, social media councils, and multi-stakeholder councils overseen by companies themselves (Celeste, 2018; Docquir, 2019; Kaye, 2019; Suzor, 2018). By contrast, populist measures to rein in 'Big Tech' can be motivated by democratic ideals (Klobuchar, 2021; Teachout, 2020), but can also be driven by anti-democratic principles, such as populist leaders wanting to extend speech controls into the digital realm or indeed to overturn restrictions developed by platform companies themselves. We have seen such measures undertaken by U.S. Republican governors in states such as Texas and Florida, where attempts have been made to use the courts to overturn content moderation decisions made by social media companies on the grounds that they 'censor conservative voices' (Associated Press, 2022). Philip M. Napoli has argued that the Trump Administration's threats to 'Big Tech' with adverse legislation

were primarily symbolic in nature, appealing to the suspicion of Silicon Valley liberalism among his supporter base while leveraging better terms from such tech companies in instances where Trump or other Republicans were operating in ways at odds with the ostensible rules of the platforms (Napoli, 2021).

Epistemic Rights and the Return of the Collective

Epistemic rights provide an important vantage point from which to address the challenge of developing policies that address the challenges of platform power. In doing so, there is the challenge of avoiding a purely administrative approach that fails to address underlying power relations and a populist reflex that pursues short-term political advantage rather than longer-term structural change. A variety of policy measures are now being enacted or are under substantive consideration, ranging from antitrust and behavioural regulation to new offences around illegal and harmful content, issue-specific rules (e.g., rules around online advertising content during elections), binding ethical codes and rules, and privacy and data security measures (Tambini & Moore, 2022). The European Union has been at the forefront of such changes with a range of initiatives, including:

- *Digital Services Act*, which aims to secure fundamental rights online, balancing safeguards for freedom of information and expression with targeted measures to restrict illegal content online, ensure greater algorithmic transparency and accountability, strengthen regulations of online advertising, and provide special 'duty of care' obligations for Very Large Online Platforms (VLOPs) with over 45 million monthly users in the EU.
- *Digital Markets Act*, which aims to promote competition in online markets, by setting limits to the power of the largest digital platforms to exercise 'gatekeeper' power through controls over re-use of personal data, in order to enable new competitors to enter key digital markets.
- *Media Freedom Act*, which aims to promote competition in European media markets so as to secure media pluralism, as well as measures to safeguard news quality and enhance protection of journalists.

Policy responses will always have a technocratic element due to the complexities associated with the operation of digital platforms. In doing

so, a recurring challenge for policymakers is going to be the extent to which they are reliant upon information held within the companies—what Frank Pasquale refers to as the 'black box' (Pasquale, 2015)—in order to regulate their conduct. For this reason, among others, digital platform regulation is also going to need a 'populist' element so as to establish what policy theorists refer to as the 'issue salience' of a topic or the extent to which concerns about digital platforms are a priority for voter-citizens, particularly given other, more immediate priorities and the nature of the electoral cycle (Moniz & Wleizen, 2020). The importance of addressing platform power needs to reach beyond those who have been typically the most engaged with digital technologies, to build a wide constituency of support for measures to redress the undue exercise of platform power. This is often more difficult than would first be apparent, and more challenging than with regards to other industries with a history of market concentration and economic and political power. It is very common for measures by nation-states to regulate digital platforms to meet criticism from NGOs that accuse them of over-reach and the suppression of free speech, even when those NGOs are themselves calling for greater regulation of private communications power as well as expressing concerns about state censorship. This can sound like a modern version of the plea of Saint Augustine when faced with temptations, 'Lord make me chaste, but not yet'. The modern equivalent may be 'Let there be more Big Tech regulations, but not those ones' (Flew, 2022a, p. 301).

Daniel Joyce has observed that these are not bad faith arguments, but rather are reflective of an optimistic vision both towards the transformative capabilities of digital technologies and about the capacity of online speech to build a more informed public (Joyce, 2022). An exemplary example from the early history of the internet would be Electronic Frontiers Foundation co-founder Mike Godwin's observation: 'Give people a modem and a computer and access to the Net, and its far more likely that they'll do good than otherwise' (Godwin, 1998, p. 23). Joyce notes that there has been a shift in discourse over time towards greater recognition of the potential for risk and harms arising from largely unregulated, or self-regulating, digital platforms having significant power over the circulation of online speech as seen, for example, in the work of Jonathon Zittrain (Bowers & Zittrain, 2020; Zittrain, 2008). But the underlying sense that nation-states lack both the legitimacy and competence to effectively regulate digital platforms without doing more harm than good or generating a

'slippery slope' that threatens personal privacy and other online freedoms is not hard to find among digital activists, academics, and NGOs.

It is in this respect that advocates for epistemic rights and other measures that aim to rein in or achieve greater social responsibility with platform power may need some populist appeal. While populism is most commonly associated with right-wing nationalists, 'strong men', and would-be authoritarians—think Trump, Orban, or Putin, for instance—a number of authors have made the point that there are left-wing as well as right-wing populisms (Judis, 2016; McKnight, 2018; Mouffe, 2018). Invoking some version of 'the people' is a common strategy when seeking to build a cross-class alliance for substantive reforms, particularly when they face the prospect of resistance from powerful corporate and other vested interests. Benjamin Moffitt observes that there is considerable conceptual and historical affinity between populism and socialism, as left-wing politics frequently appeals to 'the people' and unaccountable or undemocratic 'elites' (Moffitt, 2020).[2] In order for measures to regulate digital platforms to not simply result in various forms of regulatory capture, it is highly likely that technocratic solutions will not be sufficient. In order to achieve ongoing political and policy mobilisation, there will be a need to engage with those who may not be as engaged in an ongoing way with digital technologies as self-defined thought leaders in the field, in pursuit of a more inclusive vision of digital citizenship.

REFERENCES

Associated Press. (2022, September 16). Court rules in favor of Texas law allowing lawsuits against social media companies. *NPR News*. https://www.npr.org/2022/09/16/1123620521/fifth-circuit-texas-social-media-ruling

Barbrook, R., & Cameron, A. (1996). The Californian ideology. *Science as Culture*, *6*(1), 44–72.

Bennett, T. (1992). *Outside literature*. Routledge.

[2] One notable critic of 'left populism' is in fact Thomas Piketty, who argues that '"populism" […] mixes everything up in one indigestible stew' (Piketty, 2020, p. 962). He critiques left-populists (e.g., Mouffe, 2018) for prioritising anti-elitist rhetoric over the development of programmatic strategies for social change. In terms of the discussion in this chapter, this would entail an anti-'Big Tech' rhetoric that lacks policy content, similar to the critique that Napoli makes of the U.S. Republicans' approach to tech companies during and since the Trump Presidency (Napoli, 2021).

Bossio, D., Meese, J., Flew, T., Leaver, T., & Barnet, B. (2022). Australia's News Media Bargaining Code and the global turn toward platform regulation. *Policy and Internet, 14*(1), 136–150.

Bowers, J., & Zittrain, J. (2020). Answering impossible questions: Content governance in an age of disinformation. *Harvard Kennedy School Misinformation Review, 1*(1), 1–8.

Celeste, E. (2018). *Digital constitutionalism: Mapping the constitutional response to digital technology's challenges.* https://papers.ssrn.com/abstract=3219905

Cioffi, J. W., Kenney, M. F., & Zysman, J. (2022). Platform power and regulatory politics: Polanyi for the twenty-first century. *New Political Economy*, Online First, 1–17. https://doi.org/10.1080/13563467.2022.2027355

Cunningham, S., Flew, T., & Swift, A. (2015). *Media economics.* Palgrave.

Docquir, P. F. (2019). The social media council: Bringing human rights standards to content moderation on social media. In *Models for platform governance* (pp. 9–14). Centre for International Governance Innovation.

Eatwell, R., & Goodwin, M. J. (2018). *National populism: The revolt against liberal democracy.* Penguin.

Ferrari, E. (2020). technocracy meets populism: The dominant technological imaginary of Silicon Valley. *Communication, Culture & Critique, 13*(1), 121–124.

Flew, T. (2021). *Regulating platforms.* Polity Press.

Flew, T. (2022a). Beyond the paradox of trust and digital platforms: Populism and the reshaping of internet regulations. In T. Flew & F. R. Martin (Eds.), *Digital platform regulation: Global perspectives on internet governance* (pp. 281–309). Springer.

Flew, T. (2022b). Policy futures for digital platforms. In T. Flew, J. Holt, & J. Thomas (Eds.), *the sage handbook of the digital media economy* (pp. 545–570). SAGE.

Flew, T., & Gillett, R. (2021). Platform policy: Evaluating different reponses to the challenges of platform power. *Journal of Digital Media & Policy, 12*(2), 231–246.

Flew, T., & Su, C. (2022). *Mapping international enquiries into the power of digital platforms* (No. 2022/2; CREATe Working Papers). UK Copyright and Creative Economy Centre.

Freiden, J. (2018, January 6). *The politics of the globalization backlash: Sources and implications.* Annual Meeting of the American Economics Association, Philadelphia, PA. https://scholar.harvard.edu/files/jfrieden/files/the_politics_of_the_globalization_backlash.pdf

Godwin, M. (1998). *Cyber rights: Defending free speech in the digital age.* Random House.

Goodhart, D. (2017). *The Road to Somewhere: The populist revolt and the future of politics.* Hurst & Co. Publishers.

Haggart, B. (2020). Global platform governance and the internet-governance impossibility theorem. *Journal of Digital Media & Policy, 11*(3), 321–339. https://doi.org/10.1386/jdmp_00028_1

Joyce, D. (2022). *Informed publics, media and international law*. Bloomsbury.

Judis, J. (2016). *The populist explosion: How the Great Recession transformed American and European politics*. Columbia Global Reports.

Kaye, D. (2019). *Speech police: The global struggle to govern the internet*. Columbia Global Reports.

Keane, J. (1988). *Democracy and civil society*. Verso.

Klobuchar, A. (2021). *Antitrust: Taking on monopoly power from the Gilded Age to the Digital Age*. Knopf.

Kretschmer, M., Furgal, U., & Schlesinger, P. (2021). *The emergence of platform regulation in the UK: An empirical-legal study* (CREATe Working Paper 2021/6). AHRC Creative Industries Policy & Evidence Centre/University of Glasgow.

Kumar, K. (1993). Civil Society: An inquiry into the usefulness of a historical term. *British Journal of Sociology, 44*(3), 375–395.

Lusoli, A., & Turner, F. (2021). "It's an ongoing bromance": Counterculture and cyberculture in Silicon Valley—An interview with Fred Turner. *Journal of Management Inquiry, 30*(2), 235–242.

McKnight, D. (2018). *Populism now! The case for progressive populism*. New South Press.

Milanovic, B. (2019). *Capitalism, alone*. Harvard University Press.

Moffitt, B. (2020). *Populism*. Polity.

Moniz, P., & Wleizen, C. (2020). Issue salience and political decisions. In *Oxford research encyclopedia of politics*. Oxford University Press. https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-1361

Mouffe, C. (2018). *For a left populism*. Verso.

Murdock, G., & Golding, P. (1989). Information poverty and political inequality: Citizenship in the age of privatized communication. *Journal of Communication, 39*(3), 180–195.

Nadella, S. (2020, April 30). Satya Nadella: Crisis requires co-ordinated digital response. *Financial Times*. https://www.ft.com/content/b645d2f8-89f9-11ea-a109-483c62d17528

Napoli, P. M. (2021). The symbolic uses of platforms: The politics of platform governance in the U.S. *Journal of Digital Media & Policy, 13*(1), 215–230.

Norris, P., & Ingelhart, R. (2019). *Cultural backlash: Trump, Brexit, and authoritarian populism*. Cambridge University Press.

Nye, J. (2002). The information revolution and American soft power. *Asia Pacific Review, 9*(1), 60–76. https://doi.org/10.1080/13439000220141596

Pasquale, F. (2015). *The black box society*. Harvard University Press.

Piketty, T. (2014). *Capital in the twenty-first century*. Harvard University Press.

Piketty, T. (2020). *Capital and ideology*. Harvard University Press.

Plantin, J.-C., & de Seta, G. (2019). WeChat as infrastructure: The techno-nationalist shaping of Chinese digital platforms. *Chinese Journal of Communication: The Platformization of Chinese Society, 12*(3), 257–273. https://doi.org/10.1080/17544750.2019.1572633

Plantin, J.-C., Lagoze, C., Edwards, P. N., & Sandvig, C. (2018). Infrastructure studies meet platform studies in the age of Google and Facebook. *New Media & Society, 20*(1), 293–310. https://doi.org/10.1177/1461444816661553

Popiel, P. (2018). The tech lobby: Tracing the contours of New Media Elite lobbying power. *Communication, Culture & Critique, 11*(4), 566–585.

Popiel, P. (2020). Addressing platform power: The politics of competition policy. *Journal of Digital Media & Policy, 11*(3), 341–360. https://doi.org/10.1386/jdmp_00029_1

Richter, F. (2022, August 2). Amazon leads $200-billion cloud market. *Statista*. https://www.statista.com/chart/18819/worldwide-market-share-of-leading-cloud-infrastructure-service-providers/

Rossetto, L. (1996). To: Mutoids [Re: The Californian Ideology]. *Mute, 1*(4). https://www.metamute.org/editorial/articles/to-mutoids-re-californian-ideology

Scholte, J. A. (2017). Polycentrism and democracy in internet governance. In *The net and the nation state: Multidisciplinary perspectives on internet governance* (pp. 165–184). Oxford University Press.

Siddarth, D., Allen, D., & Weyl, G. (2022, May 12). The Web3 decentralization debate is focused on the wrong question. *Wired*. https://www.wired.com/story/web3-blockchain-decentralization-governance/

Streeck, W. (2017). *How will capitalism end? Essays on a failing system*. Verso.

Suzor, N. (2018). Digital constitutionalism: Using the rule of law to evaluate the legitimacy of governance by platforms. *Social Media + Society, 4*(3), 1–9.

Tambini, D., & Moore, M. (2022). Introduction. In *Regulating Big Tech: Policy responses to digital dominance* (pp. 1–14). Oxford University Press.

Teachout, Z. (2020). *Break 'em up: Recovering our freedom from Big Ag, Big Tech, and Big Money*. All Points Books.

Tech Transparency Project. (2020). Tech transparency project. *Data*. https://www.techtransparencyproject.org/data

Thompson, J. B. (1995). *The media and modernity*. Polity Press.

Turner, F. (2006). *From counterculture to cyberculture: Stewart Brand, the Whole Earth Network, and the rise of digital utopianism*. University of Chicago Press.

U.S. House of Representatives. (2020). *Investigation of competition in digital markets: Majority staff report and recommendations* [Subcommittee on Antitrust, Commercial and Administrative Law of the Committee of the Judiciary]. U.S. House of Representatives.

Winseck, D. (2020). Vampire squids, 'the broken internet' and platform regulation. *Journal of Digital Media & Policy, 11*(3), 241–282. https://doi.org/10.1386/jdmp_00025_1

Winseck, D. (2022). The broken internet and platform regulation: Promises and perils. In *Digital platform regulation: Global perspectives on internet governance* (pp. 229–258). Springer.

Zittrain, J. (2008). *The future of the internet (and how to stop it)*. Yale University Press.

Zuboff, S. (2019). *The age of surveillance capitalism: The fight for a human future at the new frontier of power*. Public Affairs.

Public Service Media: From Epistemic Rights to Epistemic Justice

Maria Michalis and Alessandro D'Arma

Introduction

Misinformation, online hate speech, mishandling of personal data, and other societal problems associated with the rise of digital communications and social media have led in recent years to growing concerns over threats to epistemic rights and the very foundations of democratic societies. These social harms stem, either directly or indirectly, from the operations of commercially run, for-profit internet companies that have grown massively in the last two decades accumulating unprecedented communication and economic power.

It is against this backdrop that we are witnessing a 'turn to regulation in digital communication' (Flew & Wilding, 2021, p. 48) and a plethora of policy initiatives in many nations around the world aiming to curb the power of the largest digital platforms and offer regulatory remedies to the

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social harms they have created and amplified. Alongside these regulatory initiatives, there has also been a re-assertion of the continuing need for robust and adequately funded Public Service Media (PSM), a major institutional form of policy intervention in broadcasting and media markets.

This chapter considers the role of PSM in safeguarding epistemic rights and promoting epistemic justice. As publicly funded, not-for profit organisations institutionally mandated to provide all members of society access on equal terms to trustworthy information and knowledge, PSM are normatively configured to counter the social harms that have emerged in today's platform-dominated communication environment and to harness new communication technologies to promote socially beneficial outcomes. In their actual practice, of course, PSM organisations only imperfectly adhere to their normative ideal. At worst, in countries where they are captured by political and economic interests, PSM are part of the problem rather than part of the solution (Dragomir & Aslama Horowitz, 2021). And yet, the starting point of this chapter is that PSM—both as a philosophy and in its practical realisation, however imperfectly, in countries where PSM organisations are to some degree insulated from political pressures—are an essential element of today's digital media environment that needs preserving and strengthening in order that a healthy informational space flourishes.

In this chapter, then, we consider the role that PSM are ideally called to play in supporting epistemic rights *and* epistemic justice, as well as the actual conditions required for PSM to be able to fulfil this role. We consider PSM's normative role from an epistemic rights perspective following on the footsteps of an earlier assessment of PSM performance from the related but narrower angle of communication rights (Aslama Horowitz & Nieminen, 2016). After a review of the traditional concept of PSM, its values, and principles, we focus on the role that PSM (needs to) play to support epistemic rights in today's digital media ecology. We then discuss the implications for PSM governance, if PSM are to fulfil this role. The chapter ends with a summary of the main points.

What Are PSM For?

What we refer to now increasingly as Public Service Media (PSM) has a long history and builds on the concept of public service *broadcasting* (PSB). PSB is often associated with, and talked about, in terms of the specific institutions entrusted with its delivery, such as the BBC in Britain,

RAI in Italy, the ABC in Australia, and so on. In its institutional embodiment, PSB has been predominantly a national project, even though nationally based PSM organisations share a common philosophy and many of the challenges they face nowadays originate from technological and market forces whose repercussions are felt globally.

The origins of PSB go back to the 1920s. PSB's birth was in response to the broader conditions of that time: the time when radio broadcasting started. The three-word declaration attributed to John Reith, the first Director General of the BBC, that the aim of PSB is to 'teach, inform, and entertain' and, typically speaking, in this sequence, captures the prevalent conception of PSB. It was actually the pioneer of American radio and television, David Sarnoff, who in 1922 first came up with the Inform, Educate, and Entertain triptych to describe the core elements of broadcasting, but he used them in the exact opposite order. For Sarnoff (commercial) broadcasting was about 'entertainment, information, and education, with the emphasis on the first feature—entertainment' (Sarnoff, 1968, p. 41). Conversely, for Reith, the BBC's responsibility was to prioritise education and information over entertainment (Briggs, 1995), thus delineating the core difference in the priorities of commercial and public service broadcasting. Burton Paulu's observation is pertinent here: '[I]n Europe, broadcasting [has been] regarded as public service whereas in the USA it has been an industry' (1967, p. 238).

Of course, PSB performs best when it combines all three functions—education, information, and entertainment—at once. It is remarkable that this triptych is still at the centre of the PSB definition in 2020, a century on since its initial formulation. For instance, for the regulator Ofcom, PSBs in Britain 'must deliver high quality UK content, which *informs, educates and entertains*, as well as reflecting the wide ranging culture of the UK' (Ofcom, 2020, para. 2.1, emphasis added). Similarly, in its Recommendation 1641 (2004), the Parliamentary Assembly of the Council of Europe describes the PSB remit as providing 'the whole of society with information, culture, education and entertainment' in order to enhance social, political, and cultural citizenship (Council of Europe, 2004). Although PSB has taken diverse institutional forms in different national contexts, there is striking similarity in how the remit of PSB organisations is formulated.

In its early days, the idea of PSB was also linked to the broader acceptance of public service utilities in the aftermath of World War I and, more broadly, the acceptance of a more interventionist role for national

governments, which World War II strengthened further (Curran & Seaton, 2018, p. 199). PSB was a core part of the economic, political, social, and cultural rebuilding of liberal democracies in Western Europe in particular, a central feature of the post-war Keynesian welfare order, where the state assumed a direct role in the production and supply of goods and services (Michalis, 2007, p. 58).

Since these early days, the world and societies have changed, and with them PSBs have evolved. Yet, the ultimate aim of PSB has not changed over the years. PSB stands for citizenship—in the sociological sense that includes legally defined citizens but also residents in a country—for better-informed and tolerant societies (e.g., Born, 2018; Donders, 2021; Murdock, 2005). In short, PSB stands for democracy.

PSB then has been bestowed a profoundly democratic mission. For UNESCO

> [public service broadcasting] speaks to everyone as a citizen. Public broadcasters encourage access to and participation in public life. They develop knowledge, broaden horizons and enable people to better understand themselves by better understanding the world and others. Public broadcasting is defined as a meeting place where all citizens are welcome and considered equals. It is an information and education tool, accessible to all and meant for all, whatever their social or economic status. (Banerjee & Seneviratne, 2005, p. 4)

Challenges to PSM are not new, but in recent years new challenges have been gathering pace: the ascendancy of neoliberalism since the 1980s has weakened public services and epistemic organisations, including PSM; trust in public institutions and authorities is in decline; for-profit social media platforms threaten epistemic rights (not least through the commercial exploitation of data) and often facilitate the spread of mis- and disinformation by amplifying it and making it credible. Epistemic rights in this volume are understood as a necessary, though not sufficient, prerequisite of democracy, in the sense that they enable but cannot guarantee active citizenship. As discussed further in the next section, PSM have a crucial role to play in upholding epistemic rights and democracy, and, we argue, in promoting epistemic justice.

PSM: From Epistemic Rights to Epistemic Justice

In this section, we outline four conditions that will enable PSM to support epistemic rights, broadly understood, following Watson (2021), as the right to know. In doing so, we introduce Fricker's (2007) concept of epistemic justice as key to understanding the role of PSM in today's digital media ecosystem. We argue that by promoting epistemic justice—that is, by challenging existing hierarchies of knowledge, by giving voice to vulnerable and under- or misrepresented communities—PSM can help to remedy many of the injustices that the seemingly plural media environment still exhibits and often amplifies. We now turn to discuss the four conditions.

First, the role of PSM has always been fundamental in enabling the function of liberal democracies. This role is not outdated in the age of digital and social media. On the contrary, at a time when the popularity of for-profit commercial digital communication and social media platforms has been increasing and is associated with the rise of mis- and disinformation, hate speech, the misuse of personal data, and other societal problems, the relevance and significance of PSM increases. Yet, the challenges that make PSM imperative are the same that challenge PSM.

The existence of PSM requires strong political commitment. This political commitment has been weakening, even in Western liberal democracies, the traditional stronghold of PSM (see Połońska-Kimunguyi & Beckett, 2019). In recent years, right-wing populist parties have gained ground in several European countries (and beyond). They have been vocally critical of PSM, accusing them of left-wing political bias and of constituting improper use of taxpayers' money (Sehl et al., 2022; Holtz-Bacha, 2021). It is imperative that civil society, academia, and international organisations—like the Council of Europe and UNESCO—renew calls for the protection of epistemic rights in advocacy and policy, and (continue to) make the case for PSM strong.

Second, PSM need to modernise and evolve with times. Modernisation and evolution in this context refer to new transmission means, platforms, and content. Such efforts, for instance, have seen PSM use social media platforms to reach younger audiences (see, e.g., Lowe & Maijanen, 2019; Stollfuß, 2019). The interactive affordances of digital technologies can be leveraged by PSM to promote user participation, co-creation, and foster meaningful dialogue (see, e.g., Enli, 2008; Moe, 2008; Ramsey, 2013; Debrett, 2014; Vanhaeght, 2019). PSM can also use new technologies to

better connect with different segments of the public through personalisation (Van den Bulck & Moe, 2018; Hildén, 2021). At the same time, these efforts require substantial financial investment, hence the need for PSM to be adequately funded and supported (see below). PSM also need to ensure that their encounters with digital platforms are not in tension with their public service mandate. PSM's digital strategies should first and foremost be guided by normative considerations, as discussed above.

Third, PSM are there not simply to support epistemic rights but also, importantly, to promote epistemic *justice*. This role relates to diversity and plurality of content. Although this has been a traditional aim of PSM, empirical studies have shown that PSM have often found it challenging to represent all sections of the societies they are called upon to serve, with some (ethnic, religious, regional, linguistic, etc.) communities being under- or misrepresented. Especially in the early days of PSB, paternalistic tendencies alongside portraying a single national identity of an imagined community (Anderson, 1983) contributed to insufficiently plural content.

The point here is that PSM, as one prominent epistemic institution, need to support epistemic rights in the sense of conveying truthful information and advancing knowledge around all aspects of life in a given society and indeed the world (e.g., political, economic, societal, environmental) for the benefit of all (see Hannu Nieminen's chapter in this volume; Watson, 2018). Truthful information provides the foundation of knowledge. 'Truthful' refers to 'factual evidence and reasoned analysis' and is juxtaposed against post-truth, an emerging epistemic regime on the ascendancy since 2016 that prioritises emotional response (Dahlgren, 2018, p. 25). PSM supporting epistemic rights goes at the heart of what PSM stand for, as explained above: PSM are a crucial prerequisite for active citizenship; they aim to inform and engage society, help create a public space for debates, and ultimately decisions on, shared issues; they nurture a sense of common purpose and build understanding across segments of society and the wider world (Michalis, 2024). The BBC's public purposes as laid out in its Charter aptly capture the role of PSM in support of epistemic rights: 'to reflect, represent and serve the diverse communities of all of [the country's] nations and regions; […] to provide impartial news and information to help understand and engage with the world around them.'[1]

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[1] This is not a complete list of the BBC's public purposes. Two out of five are singled out as representing best the link between PSM and epistemic rights as discussed here. See: https://www.bbc.com/aboutthebbc/governance/mission.

Alongside the role of PSM and epistemic rights, however, we need to consider the concept of epistemic (in)justice. Miranda Fricker (2007) explains that epistemic injustice is a distinct type of injustice that relates to knowledge. She recognises the link between structural injustices and distributive unfairness in relation to information, education, and other epistemic goods. At issue here is whether everyone is getting a fair share of a good. This type of injustice is often referred to as epistemic inequality. Hannu Nieminen explains in his chapter in this volume that epistemic equality, a fundamental premise of democracy, presupposes equal access to knowledge and information to ensure informed will formation, but in practice we have epistemic inequality as the gap in information and knowledge between the elites and the majority of the population is deepening. This has resulted, Nieminen contends, in two regimes of knowledge and truth, one that is controlled by the elites and one—variously characterised as mis/disinformation, fake news, or alternative truths—that is owned by the disenfranchised members of society. As put by former head of BBC Television News Roger Mosey, '[T]he fight for truth is difficult enough in liberal democracies, but it is tougher still when states intervene to wilfully distort the facts and to censor news they find inconvenient' (Mosey, 2022, p. 2).

Important though such epistemic inequality is, Fricker uses the concept 'epistemic injustice' to address deeper injustices embedded in systems of knowledge. She distinguishes two forms of distinctively epistemic injustices: testimonial injustice and hermeneutical injustice. For Fricker (2007, p. 1), testimonial injustice 'occurs when prejudice causes a hearer to give deflated level of credibility to a speaker's word'; hermeneutical injustice 'occurs at a prior stage, when a gap in collective interpretive resources puts someone at an unfair disadvantage when it comes to making sense of their social experiences'. In other words, testimonial injustice 'is caused by prejudice in the economy of credibility; and [...] hermeneutical injustice is caused by structural prejudice in the economy of collective hermeneutical resources' (Fricker, 2007, p. 1). An example of the former is when the views of a person are discredited or scorned just on the basis of their ethnicity or gender. An example of the latter 'might be when you suffer sexual harassment in a culture that lacks that critical concept' (Fricker, 2007, p. 1).

Fricker's epistemic justice goes beyond distributive justice; it aims to challenge existing knowledge mechanisms and associated power relations. Epistemic justice resembles one of the discourses of digital rights that Karppinen and Puukko (2020) identify: rights as a vehicle of 'information

justice'. We can also link it to Walter Mignolo's 'epistemic disobedience' calling for the decolonialisation of knowledge as a necessary step 'for imagining and building democratic, just, and nonimperial/colonial societies' (Mignolo, 2009).

The concept of epistemic justice is useful to our discussion. It calls upon PSM to strive to act accordingly, representing often marginalised and vulnerable communities, rather than presenting and strengthening mainstream (hegemonic) interpretations. This is not to challenge the fundamental premise that information should be accurate, evidence-based, fair, trustworthy, and impartial. Epistemic justice, as discussed here, aims to increase representation and plurality of content, facilitate debate, and enhance understanding across communities. It is about giving 'voice' (Couldry, 2010) to more people and making media (news) content more relevant, more relatable, and thus more valuable. Epistemic justice encourages the reinvigoration of traditional PSB and at the same time invites new PSM initiatives to contribute to plurality of content.

Finally, *fourth*, PSM can support epistemic rights by working together with educational and cultural epistemic institutions, like schools and universities, theatres, museums, and libraries. An example here comes from the BBC which partners with a variety of other epistemic organisations to enhance its offer and deliver public service content, such as the Royal Shakespeare Company and the Science Museum (BBC, 2021, p. 22). This is what Murdock calls a digital commons, 'a linked space defined by its shared refusal of commercial enclosure and its commitment to free and universal access, reciprocity, and collaborative activity' (Murdock, 2005, p. 227). In Murdock's vision, PSM would act as the 'principal node' in a new network of public and civil institutions. Similarly, Nieminen uses the term 'epistemic commons' to refer to 'areas of shared knowledge and information that are open to all […] the reservoir of our shared social imaginaries' (Nieminen, 2014, p. 56).

The four main ways, just discussed, in which PSM can promote epistemic rights and advance epistemic justice presuppose an enabling governance framework. The European Broadcasting Union (EBU, 2015, p. 3) defines good governance based on four principles: independence, that is, PSM have first and foremost to be able to function free from direct political and commercial interference; accountability to supervisory bodies but also the public they serve; transparency and responsiveness; and sustainability, in that PSM should be allowed to, and be capable of adapting to, serve the evolving needs of society (for a discussion see Michalis, 2024).

An issue that is crucial to good governance as just explained is the funding of PSM. Many PSM organisations have experienced real reductions in their funding in recent years (see Schweizer & Puppis, 2018; Puppis et al., 2020). In addition, various countries in Europe have decided to replace the traditional licence fee mechanism with other mechanisms.[2] Finland has introduced the so-called YLE tax; Germany a household levy; whereas Norway, Denmark, and Romania have moved to direct funding from the state budget. Especially in Romania, a country with a weak tradition of democracy, but also in Denmark the move to state budget has been perceived as an attempt to undermine the independence of PSM and their ability to hold political and economic power to account (Barnley & Hartmann, 2022, p. 3). In short, the crucial role that PSM can, and need to, play to promote epistemic rights and combat epistemic injustices presupposes a supportive and enabling governance framework.

Conclusion

PSM is a philosophy. Its core mission is to enable substantive citizenship on the basis of epistemic rights (the right to know), and ultimately support the democratic functioning of societies. We proposed four main conditions for this and we introduced Fricker's concept of epistemic justice as key to understanding the role of PSM. The first condition is that PSM are premised upon strong political commitment. At a time when this political commitment is dwindling, it is imperative that civil society, academia, and international organisations renew efforts and calls for the protection of epistemic rights in advocacy and policy, and (continue to) make the case for PSM strong. PSM pretty much everywhere are on the defensive, seen as part of the problem. The opposite is true. PSM are a key part of the solution to the threats to epistemic rights and the foundations of democratic societies. Second, we argued that PSM need to evolve with the times and be allowed to use new transmission means, build new platforms, and come up with new content types and formats. PSM need to operate in a legal framework that permits this and they also need to have the necessary resources to do so. Third, we argued that PSM have to move beyond supporting epistemic rights, as they have traditionally been bestowed, and

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[2] For an overview of different PSM funding models, the website of the Public Media Alliance (PMA) offers a useful resource: https://www.publicmediaalliance.org/resources/psm-funding-models/

contribute to epistemic justice, by challenging the existing power structures of knowledge. Promoting epistemic justice means truly representing all segments of society, including groups of society at the margins, whilst respecting accuracy, evidence, and fairness. This move towards epistemic justice will increase the accountability of PSM to the public at large and strengthen their legitimacy. Finally, fourth, PSM need to work together with other educational and cultural epistemic institutions towards the creation of a digital or epistemic commons, combating the commercialisation and privatisation of communitive spaces and knowledge, and striving to make information and knowledge accessible to all.

In terms of governance, PSM need to be explicitly regulated to support epistemic rights and promote epistemic justice. For PSM to act as trustworthy sources of information, support epistemic rights, and promote epistemic justice, PSM have first and foremost to be able to function free from direct political and commercial pressure, be accountable to supervisory bodies and the public at large, be transparent and responsive, and be sustainable legally as well as financially so that they can evolve and survive. PSM, as a fundamental epistemic institution, are critical to enabling citizenship and supporting democracy, and can help remedy many of the injustices that today's seemingly plural media environment exhibits and often amplifies.

References

Anderson, B. R. O. (1983). *Imagined communities: Reflections on the origin and spread of nationalism* ([2nd ed.]). Verso.

Aslama Horowitz, M., & Nieminen, H. (2016). European public service media and communication rights. In G. F. Lowe & N. Yamamoto (Eds.), *Crossing borders and boundaries in public service media RIPE@2015* (pp. 95–106). Nordicom.

Banerjee, I., & Seneviratne, K. (2005). *Public service broadcasting: A best practice sourcebook*. UNESCO. https://unesdoc.unesco.org/ark:/48223/pf0000141584

Barnley, R., & Hartmann, F. (2022). *House of Lords Communications and Digital Committee inquiry into BBC future funding*. Written evidence BFF0060, April 5. https://committees.parliament.uk/writtenevidence/107327/pdf/

BBC. (2021). *BBC Group Annual Report and Accounts 2020/21*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1000946/BBC_Annual_Report_and_Accounts_2020-21.pdf

Born, G. (2018). Principles of public service for the 21st century. In D. Freedman & V. Goblot (Eds.), *A future for public service television* (pp. 130–140). Goldsmiths Press.

Briggs, A. (1995). *The history of broadcasting in the United Kingdom: Volume I: The birth of broadcasting.* Oxford University Press.

Couldry, N. (2010). *Why voice matters: Culture and politics after neoliberalism.* Sage.

Council of Europe. (2004). *Public Service Broadcasting.* Text adopted by the Parliamentary Assembly on 27 January 2004 (3rd Sitting). https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17177

Curran, J., & Seaton, J. (2018). *Power without responsibility: Press, broadcasting and the Internet in Britain* (8th ed.). Routledge.

Dahlgren, P. (2018). Media, knowledge and trust: The deepening epistemic crisis of democracy. *Javnost—The Public, 25*(1–2), 20–27. https://doi.org/10.1080/13183222.2018.1418819

Debrett, M. (2014). "Tools for citizenship?" Public service media as a site for civic engagement: An Australian case study. *Television & New Media, 16*(6), 557–575.

Donders, K. (2021). *Public service media in Europe. Law, theory and practice.* Routledge.

Dragomir, M., & Aslama Horowitz, M. (2021). Media capture and its contexts: Developing a comparative framework for public service media. In M. Túñez-López, F. Campos-Freire, & M. Rodríguez-Castro (Eds.), *The values of Public Service Media in the Internet society* (pp. 217–246). Palgrave Macmillan.

EBU (European Broadcasting Union). (2015). *Governance principles for public service media.* Legal Focus Report written by M. Wagner and A. C. Berg, Geneva: EBU. https://www.ebu.ch/files/live/sites/ebu/files/Publications/EBU-Legal-Focus-Gov-Prin_EN.pdf

Enli, G. A. (2008). Redefining public service broadcasting multi-platform participation. *Convergence: The International Journal of Research into New Media Technologies, 14*(1), 105–120.

Flew, T., & Wilding, D. (2021). The turn to regulation in digital communication: The ACCC's digital platforms inquiry and Australian media policy. *Media Culture & Society, 43*(1), 48–65.

Fricker, M. (2007). *Epistemic injustice: Power and the ethics of knowing.* Oxford University Press.

Hildén, J. (2021). The public service approach to recommender systems: Filtering to cultivate. *Television & New Media, 23*(7), 777–796. https://doi.org/10.1177/15274764211020106

Holtz-Bacha, C. (2021). The kiss of death: Public service media under right-wing populist attack. *European Journal of Communication, 36*(3), 221–237.

Karppinen, K., & Puukko, O. (2020). Four discourses of digital rights: Promises and problems of rights-based politics. *Journal of Information Policy, 10*, 304–328.

Lowe, G. F., & Maijanen, P. (2019). Making sense of the public service mission in media: Youth audiences, competition and strategic management. *Journal of Media Business Studies, 16*(1), 1–18.

Michalis, M. (2007). *Governing European communications*. Lexington.

Michalis, M. (2024). Whither public service media: Looking back, looking ahead. In C. Padovani, A. Hintz, G. Goggin, P. Iosifidis, & V. Wavre (Eds.), *Global communication governance at the crossroads*. Palgrave Macmillan.

Mignolo, W. D. (2009). Epistemic disobedience, independent thought and decolonial freedom. *Theory, Culture & Society, 26*(7–8), 159–181.

Moe, H. (2008). Dissemination and dialogue in the public sphere: A case for public service media online. *Media, Culture & Society, 30*(3), 319–336.

Mosey, R. (2022). *20 Things that would make the news better*. Biteback Publishing.

Murdock, G. (2005). Building the digital commons. Public broadcasting in the age of the Internet. In G. F. Lowe & P. Jauert (Eds.), *Cultural dilemmas in public service broadcasting—RIPE@2005* (pp. 213–230).

Nieminen, H. (2014). A short history of the epistemic commons: Critical intellectuals, Europe and the small nations. *Javnost—The Public, 21*(3), 55–76. https://doi.org/10.1080/13183222.2014.11073413

Ofcom. (2020). *Small screen debate: Big debate consultation—The future of public service media*. https://www.smallscreenbigdebate.co.uk/__data/assets/pdf_file/0032/208769/consultation-future-of-public-service-media.pdf

Paulu, B. (1967). *Radio and television broadcasting on the European continent*. University of Minnesota Press.

Połońska-Kimunguyi, E., & Beckett, C. (Eds.). (2019). *Public service broadcasting and media systems in troubled European democracies*. Palgrave Macmillan.

Puppis, M., Van den Bulck, H., & Bürdel, E. (2020). Frozen 2: Communication Rights and the Thaw of Public Funding in Small Media Systems. *Journal of Information Policy, 10*, 388–438. https://doi.org/10.5325/jinfopoli.10.2020.0388

Ramsey, P. (2013). The search for a civic commons online: An assessment of existing BBC Online. *Media, Culture & Society, 35*(7), 864–879.

Sarnoff, D. (1968). *Looking ahead: The papers of David Sarnoff*. McGraw Hill.

Schweizer, C., & Puppis, M. (2018). Public service media in the "network" era: A comparison of remits, funding, and debate in 17 Countries. In G. F. Lowe, H. Van den Bulck, & K. Donders (Eds.), *Public service media in the networked society RIPE@2017* (pp. 109–124). Nordicom.

Sehl, A., Simon, F. M., & Schroeder, R. (2022). The populist campaigns against European public service media: Hot air or existential threat? *International Communication Gazette, 84*(1), 3–23.

Stollfuß, S. (2019). Is this social TV 3.0? On Funk and social media policy in German public post-television content production. *Television & New Media, 20*(5), 509–524.

Van den Bulck, H., & Moe, H. (2018). Public service media, universality and personalisation through algorithms: Mapping strategies and exploring dilemmas. *Media, Culture & Society, 40*(6), 875–892.

Vanhaeght, A.-S. (2019). Audience participation in public service media: From a media-centric to a society-centric approach: The Monitor as a best practice of the Dutch public broadcaster NPO. *VIEW Journal of European Television History and Culture, 8*(16), 1–4.

Watson, L. (2018). Systematic epistemic rights violations in the media: A Brexit case study. *Social Epistemology, 32*(2), 88–102. https://doi.org/10.1080/02691728.2018.1440022

Watson, L. (2021). *The right to know: Epistemic rights and why we need them.* Routledge.

National and Regional Cases

Towards Feminist Futures in the Platform Economy: Four Stories from India

Anita Gurumurthy

Introduction: Gender Narratives in the Platform Economy

The increasingly significant role of algorithmic management has a direct impact on epistemic rights of workers in platformised work arrangements. We recognise today's algorithmic ecosystems as platforms that are transforming global value chains and restructuring labour markets. As artefacts of social power, platforms not only restructure work but also refashion the space of life. They challenge and chip away at the political consensus over social norms—displacing old rules and establishing new ones. This is the platform economy that knows more, knows better, and knows deeper on an ever-expanding time-space configuration built on data and digital intelligence. The dominant platform economy rooted in a neoliberal and neo-colonial logic reproduces ideologies of social power, optimising knowledge to maximise profit. Knowledge based on other premises is not admissible.

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The epistemic standpoint of workers and their ways of knowing and being are thus invalidated and misrecognised, with little opportunity for participatory and collective knowledge modalities.

Women's contribution to and experiences in the world of work have historically been minimised. In the developing world, up to 95% of the women work in the informal sector, beyond the pale of legislative guarantees (UN Women, 2015). The advent of digital labour platforms and e-commerce supply chains has been seen in policy discussions as presenting a never-before opportunity for women in the informal sector with the role of platformisation often held up as a new pathway for decent work that 'formalises the informal' by circumventing traditional feudal patriarchies in the economic sphere (OECD, 2018).

Yet, there is little evidence that platformised work destabilises the status quo. On the contrary, platformisation has meant precarious employment sans any labour protection. Poor women in developing countries are among the most vulnerable, as gender pay gaps and segregation persist in platform work and platform algorithms continue to reproduce or even exacerbate existing structural biases (Rani et al., 2022).

Digital labour platforms perform the crucial task of matching or connecting workers to customers, relying on several data points. This optimisation exercise is a highly layered algorithmic process. This is also true for e-commerce platforms that match consumers to sellers. The algorithm creates the veneer of neutrality through which platforms sustain their image as intermediaries who simply connect prospective service providers to clients or consumers. However, in reality, the algorithmic ecosystem intervenes at several stages of a worker's journey through the platform, starting from registering on the platform to how transactions materialise, and rewards and punishments are experienced (Waldkirch et al., 2021). In the following sub-sections, I share four stories highlighting how gender impacts digital labourers in diverse conditions.

Damini and the Urban Company

Damini is a migrant from the rural northeast of the country, living in Bengaluru, the Silicon Valley of India. Damini works for the location-based platform—Urban Company, which provides home-based services ranging from cleaning, home installations, repairs, and carpentry to salon services and massages. Urban Company describes the workers providing

these services as 'service professionals'. Its application works by linking these workers to customer leads. Workers need a minimum level of credits to respond to customer leads, and conversely, responding to leads and successfully rendering the service earns workers credit points. A percentage of credits is taken as commission. Damini provides beauty and wellness services through Urban Company. During the COVID-19 lockdown, she returned to her village, but economic necessity compelled her to move back to Bengaluru and resume work.

This is what Damini says about her work:

> We do not know how the price is fixed for each customer. This information stays in the app.
>
> We also do not know how the company decides job allocation for different workers and why someone gets more tasks. We just accept what the app sends.
>
> We cannot see customer reviews other workers have given. If we could, we won't provide services to customers with poor reviews.

So how does Urban Company's algorithmified workplace function? Workers register by sharing personal details on a web form and wait for a response from Urban Company. There does not seem to be a guarantee of a reply. The online profile of the worker is created by the platform's management team members and not necessarily by the workers themselves.

Customer leads are allocated to workers by the algorithm, with no transparency. Criteria for the number of gigs per worker are not known. Workers are only told the service they are to perform and the customer's address. The commission is operationalised through a system of credit balances. The platform sets the commission rate at a particular number of credits for each gig request, and the worker can accept a client request only upon paying the credit balance upfront. The calculations are not known to workers.

Urban Company offers discounts to customers during festivals, and the reduction in prices of services at this time is squeezed from the worker's earnings. While market capture through discounts enables the platform to expand its footprint, this happens at the expense of workers.

Workers and customers rate each other, but only workers' ratings are visible to customers and not the other way around. No online rating or other reporting mechanism exists for workers to create a record that their peers can also view. Lower ratings automatically trigger a re-training

process irrespective of whether such ratings are justified. A post-facto complaints mechanism for reporting harassment at the workplace does exist, and the platform blocks customers after investigation.

Sushila, Yamuna, and Uber

Yamuna and Sushila both work for Uber. Sushila was running her own business—a clothing boutique—but after the rise of online e-commerce decimated her business, she decided to change careers. Now, Sushila works for Uber and Ola—an Indian ride-hailing platform that connects drivers and passengers, similar to Uber. In India, while some drivers may drive exclusively for one platform, others like Sushila drive for several simultaneously, taking advantage of the purported flexibility offered by these platforms. The excerpts below are from the interviews of Sushila and Yamuna:

> We take up considerable risk to do our duty. Women drivers need safety. There should be CCTV in cars and an emergency call centre that women drivers can reach when they drive at night.
>
> Sometimes, for 13 km, instead of 150 INR, the app shows our earnings as only 100 INR. We raise a complaint and ask why we have been credited less money. They say this may be because of a 'network problem', and since the route was not fully recorded on the GIS, the company received less from the passenger. Most of the time, they give us arbitrary reasons and don't pay us the (balance) money.

So how does Uber's algorithmified workplace function? Workers go to the Uber office with their identification, driving licence, and vehicle documents. After verification, the company onboards them. There is no clarity on how workers' personal data will be used. The algorithm automatically matches drivers to customers, but there is no transparency regarding its workings. Drivers speculate that the factors may include ratings or the acceptance/rejection rate.

Drivers do not get to choose their destinations, as it remains unknown until they accept the ride, or their route, determined by the algorithm and GPS. The commission rate is fixed and not sensitive to real economic changes. Over time, as the company was able to corner a decent market share, there was also a reduction/roll-back of driver incentive programs.

Customers can rate drivers based on several factors, which are not disclosed to the driver. The drivers can see their ratings but are not told how

their ratings impact other decisions in the algorithm. Drivers can also rate customers but cannot view a customer's rating before deciding to accept/reject a ride. Such opacity can become a problem in the event of a dispute. Drivers' accounts can be suspended or deactivated by the algorithm.

Jayashree and Amazon Mechanical Turk

Amazon Mechanical Turk (AMT) is a crowdsourcing website for businesses to hire remotely located 'crowdworkers' to perform discrete on-demand tasks that computers are currently unable to do. It is operated under Amazon Web Services and is owned by Amazon. Requesters can post tasks for crowdworkers, known as 'Turkers', to complete for a small fee. These tasks typically take the form of surveys, image labelling, question answering, and others that don't require specialised skills for humans but are difficult or impossible for computers. Workers have to register on AMT.

Jayashree is a computer science graduate working on AMT for three years. Despite multiple attempts, she has not been able to procure an account of her own. She uses her cousin's account and transfers half her monthly earnings to the cousin as 'rent'. She is constrained by the need to care for her elderly mother, so she can only work from home.

Jayashree narrates a situation of extreme economic distress since the COVID-19 lockdown, observing that the higher-paying tasks have entirely dried up since the pandemic, thereby affecting her income. In 2019, she was making around 20,000 INR per month. Since the pandemic, however, she has earned less than 10,000 INR per month. Jayashree lives in the hope that she can get her own account on AMT. However, she has received no information on why her account has been repeatedly rejected and on what criteria it may be approved:

> A lot of people have told me that they give jobs to US workers first and only then come to us. Indians get less work; only 20% of the available work is for Indians.
>
> With AMT's Masters Qualification, you get better work, I was told. But I don't know on what basis AMT awards this.
>
> This has happened to a lot of people—their work will be rejected, there will be no response, their account will be suspended, and there will be no response to emails.

For AMT, workers register with their name, address, gender, age, and nationality and wait for account approval. Reasons for acceptance/rejection are not clear. There is a grey market in worker accounts, with registered workers renting their accounts for a share in earnings or a hefty one-time price.

The algorithm automatically displays a certain list of tasks for workers. Far from being an open marketplace, the kind of tasks that are available for workers to choose are already predetermined by the AI. Workers have little agency over the performance of a task and strictly follow instructions from requesters, as any slight error can lead to the work being rejected, with consequent non-payment.

AMT charges clients a commission estimated to be about 20%; workers are charged transaction fees of about 3–4% per transaction. At one point of time, Amazon workers in India were paid in the form of gift cards instead of direct bank transfers.

Worker nationality affects the chances of landing work. Indian workers cannot bid for all tasks. Ratings and reviews are also crucial. Workers are given an 'approval rate' based on the percentage of tasks that are accepted/rejected by the requester they perform work for. Reasons behind the rejections can be found only by contacting requesters, who may or may not respond. Eligibility criteria for 'Masters Qualification' (a rank/score from AMT that enhances workers' chances of landing a gig) are unclear to workers. Workers live under a constant threat of suspension, with little option to challenge the algorithm's decision.

Sakhi, Diya, and the Self-Employed Women's Association

The Self-Employed Women's Association (SEWA) is a women's trade union with a membership of 1.5 million self-employed women workers engaged in India's informal economy. SEWA's health team formed a health cooperative—The Lok Swasthya Mandli—that produces and markets herbal (Ayurvedic) medicines. SEWA was approached by Amazon to onboard its cooperatives onto a nationwide program that Amazon runs, called Saheli. This initiative aims to promote locally made products by women entrepreneurs in India. It advertises itself as an enabler of women entrepreneurs, helping them become successful sellers on Amazon. Purported benefits, as per the website, include reduced referral fee, personalised training, account management support, imaging and cataloguing support, increased customer visibility, and marketing support.

The experiences of SEWA with Saheli, as narrated by Sakshi and Diya, demonstrate how little of this promise has materialised:

> Products listed on Saheli are not searchable on the Amazon main page. This is a big disadvantage because customers will never go to the Saheli platform to search; they will only search directly on Amazon.
>
> The Amazon team had told us that data analytics such as SEO support and data for marketing would be available as part of the 'package of services'. But this has not happened.
>
> There is a premium charge for showcasing your products, whereby more people will be able to look at them. Those who avail of highly-priced service packages get priority in product search. We did not. So, if you search, our product appears on the bottom-most line of the shopfront page.

The figures that Diya and Sakshi reported about the sales on Amazon are startling. The cooperative sold no product in the last six months and merely one in the preceding year. The Saheli web platform does not give online sellers control over how their business is presented on the Saheli storefront.

Decoupling product searches on Amazon Saheli from the main Amazon platform means that microenterprises are not competing on an equal footing. The algorithm automatically determines how and where (priority) stores are displayed on the marketplace. More visibility requires an extra charge—so the algorithm can be purchased to work in your favour. Still, there is no guarantee of whether it will increase visibility and whether there is a link between visibility and sales.

DISCUSSION: THE SOCIAL POWER OF PLATFORMS—A FEMINIST ANALYSIS

Algorithmic management can be described as the deployment of 'a diverse set of technological tools and techniques that structure the conditions of work, enabling the remote management of workforces' (Mateescu & Nguyen, 2019). In machine learning environments, algorithmic management is neither bounded nor predictable. The platform economy optimises value extraction not only through endogenous processes that structure the conditions of work in the platform ecosystem but also through exogenous ones in which post-platform relationalities with prevailing economic, political, and cultural domains play a vital role.

Algorithms thus derive from and reshape the realms of life tied to work. They wield agency to remake society. Using modalities of signification (meaning-making) and legitimation (rule-setting) platforms deploy algorithms to gain near-totalising social power.

The above narratives of women platform workers demonstrate the material conditions of work obtained through the opaque and exploitative algorithmic apparatus. Platforms normalise such opacity through the myths they build about flexibility and independence. To find work on the platform is to trade off the right to know. In none of the platforms surveyed were workers able to access information about the customer, their ratings, and past reviews, or get full information about the nature of the task. While worker data flows freely to the platform and is made available in limited ways to the customer, nothing is accessible to the worker.

Platforms argue that their workers are free to log in and log out as they please, accept or reject tasks that come their way, and have the freedom to go on leave whenever they so desire. While the formal flexibility offered by platforms is a significant motivator for many platform workers, they typically end up with little real choice of when and where to work (Wood et al., 2019). Workers fear cancellations or rejections of tasks, as the algorithm may penalise them with a lower rating. The opacity of algorithmic workings precludes the ability of workers to seek redressal and prevents them from challenging algorithmic decisions. To protect their job and income security, workers must simply resign themselves to the algorithm's omnipotence, implying a punishing cost to agency.

The exacting control over workers in the endogenous operations of the algorithm thus erases the ability of workers to navigate relationships on the platform, entrenching a punitive regime that leaves them perpetually guessing about potential actions that can undercut their economic bottom lines. In a brutal paradox, the algorithm uses the worker's own 'labouring data', as the very means of disciplinarity, squeezing labour surplus to gain market share. While labouring data fuels the platform's intelligence rent, work itself mutates into an extractive social paradigm that individualises and disciplines labour power, accumulating the invaluable knowledge about differential social locations that then can be exploited differentially.

Algorithmic work life also needs to be situated in relation to the exogenous structures of choice, autonomy, and power that connect worker experiences of the algorithm to society's wider social and political aspects. Many Indian states have signed partnership agreements with Amazon, to feature products of women producer organisations, under the Saheli

banner. Amplifying statist discourses of women's empowerment and corporate propaganda on social responsibility, such collaborations of convenience instrumentalise women workers and their economic initiatives. They divert the conversation from the necessary public investments for women's economic participation and the much-needed governance of mainstream platform marketplaces. Camouflaging the damning invisibility of women's businesses in the gamified environments of efficiency-optimising platforms, they instead co-opt society's economic peripheries into the infinite offerings of corporate data services. The narrative of 'e-commerce for women' is Amazon's easy ticket to future profits. Cloud majors like Amazon Web Services are desperately wooing Indian government officials to corner India's public sector cloud market (Nishant, 2022).

Women microworkers who work for AMT face a Hobson's choice. Eager to alleviate the household's economic insecurity, these women dutifully enter the virtualised workspace of AMT each night—after a long day of household work. Hidden in the grey zone of non-regulation, they navigate an exploitative algorithmic regime, glad for the 'opportunity' to be able to 'respectably' support their family, and almost entirely unaware of the oppressive geo-economic and geo-political factors that legitimise such exploitation. For these women, the idea of self and autonomy starts from a relative position of subordination in the patriarchal household, one that makes AMT an attractive work-from-home proposition. In the case of the female drivers of Uber, we see households in economic distress mobilise women's labour through a tryst with modernity that is held up by statist and corporatist epistemic frames celebrating them as empowered entrepreneurs who have broken into the all-male bastion of ride hailing.

Whether it be feminised microwork encouraging women's seclusion or participation in the man's world of driving that endorses their mobility, the algorithmic ecosystem derives legitimacy from the many exogenous shades of patriarchal social organisation. It enables platform companies to appropriate the labour of migrant women in on-demand work or educated home-bound women in cross-border labour chains. It allows states to spawn unregulated economies on the backs of undervalued women.

Perhaps, not so surprisingly, gender-based occupational segregation is rife in the platform economy; care work, beauty services, and domestic work are overwhelmingly performed by women, while other, more 'masculine' tasks such as driving are dominated by men. Sushila observed that out of 50,000 Uber drivers in Bengaluru, only 100 are women. It is possible to argue that the algorithms only reflect reality. But it is equally true

that the algorithm becomes the new structure in which is imprinted the gender division of work that pushes women to undervalued and low-paying tasks.

In the dominant platform economy, algorithmic pursuit propels a global labour arbitrage founded on a collusion of patriarchies characterising nation-states, societies, and businesses—that find legitimacy through global policy. This bears similarities to how women's cheap labour in South and East Asia spurred the growth of global value chains in apparel and electronics, lifting economically beleaguered nations out of the woods—all the while reinforcing global inequality and corporate impunity. Despite historical similarities, the current trajectories of our algorithmic world are also different, given the changing nature of work itself and the frightening prospect of a new polarised global job market. The digital context will not only leave most women out of the high-skilled, high-end, elite job segments, but also usher in an unprecedented precarity.

This thesis—it needs to be clarified—does not at all assume a passivity on the part of women who are indeed leading social change. Rather, the intention here is to point to how gendered locations place extreme constraints on women's choices and, therefore, to the fact that the exogenous conditions of algorithmic life and the endogenous ones on platform-mediated work must be dismantled and rebuilt towards a paradigm of equality founded on meaningful choices.

Conclusion

Across jurisdictions, platforms have pursued a strategy of 'regulatory entrepreneurship' (Pollman & Barry, 2017) to lobby for maintaining the status quo that has permitted their exponential growth. A key tactic in this regard is the misclassification of workers, denying them an employment relationship that can form the basis of formal social and labour protection. Perpetuating the myth of the self-employed platform worker has allowed platform companies to proliferate while accepting no responsibility for the welfare of workers. The stories of women we discussed in this chapter point to a near-unbridgeable skew of power between the platform and its workers. They also point to how the platform economy emboldens social structures of oppression that reproduce racialised gender hierarchies by exploiting women, especially from the Global South.

Platforms not only subject women to exploitative conditions of work. By normalising the flexibilisation and individuation of work, the platform

economy appropriates women's labour in its entirety, for its perpetuation. Female wage labour is central to its logic of accumulation, but so is the unpaid care work that women perform. The precarisation of work that marks platform labour built entirely through algorithmified gaming raises a vital question—how can we move out of platform models built on extractivist algorithmic optimisation?

A new algorithmic radicalism needs to inform the principles, norms, policies, and practices of the platform economy, one that is just and inclusive. Firstly, opening up algorithms for political scrutiny is crucial. This can reconfigure endogenous operations of the algorithm, keeping the platform marketplace trained on values and norms continuously monitored for real-world impacts. Two crucial dimensions to realign the platform ecosystem comprise workers' data rights, including the right to algorithmic accountability and the right to explanation, and gender-responsive algorithmic design to ensure affirmative action on platform workplaces.

Data rights as epistemic rights extend from data collection, use, storage, and sharing processes, to accessibility for workers to port or transfer their work experience with other job providers, to check the veracity of their data, or even collectively to set up alternative businesses. Design can be transformative. As women drivers we spoke to reflected, Uber could easily enable a positive gender bias in algorithmic matching. This could be potentially useful when women drivers are out at work late at night. A positive measure reported to us was how clients found to have harassed or abused workers are deplatformed by Urban Company.

Secondly, given that algorithms are intertwined with social structures unless the digital paradigm is extricated from its current colonising trajectory, endogenous restructuring will not go far. Algorithms must be directed towards new social relationalities, thus nurturing the exogenous conditions for radical change. From provisioning of public marketplace, compulsory quotas for women producers on e-commerce platforms, to legislation for social security nets and workplace health and safety guarantees in platform workplaces, socio-political nudges towards a resignification of algorithmic spaces can transform ideas of labour and value.

But a transformative agenda will need contemplating platform labour along alternative economic logics where efficiency on scale may need to be sacrificed for other gains. New platform marketplace architectures that redistribute value—such as women-owned and -managed models that are locally embedded and socially, environmentally, and economically sustainable—will need to be explored and legitimated. Public investments to

nurture such business models and appropriate governance to rein in Big Tech-based market capture are vital. Policy interventions are also needed to socialise care. Algorithmic serendipity can contribute to the realisation of post-market, collectively organised, platform-based care arrangements on a societal scale, if policy encouragement is provided to such models.

What we are talking about is a paradigmatic shift from the current paradigm and its regressive institutional and technological structures to a new one. Supported by institutional transformation and new algorithmic practices and regimes, such a shift would lead to an alternative epistemic paradigm—one that expands women's agency and choice in the economy and society.

Transforming the algorithmic paradigm needs institutional transformation. The pivotal role of 'intelligent algorithms' necessitates the recognition of precarity and impoverishment in the digital economy through political structures of law and policy. Countries are showing a willingness to recognise this. Many governments and courts have taken steps to address platform workers' rights, including epistemic rights (Aloisi, 2022; European Commission, 2019; ILO, 2021; Gurumurthy et al., 2018; Wood, 2021). There is increasing consensus that algorithmic transparency in ratings and other mechanisms is non-negotiable, as is the access that workers must have to their data on the platform (Wood et al., 2019; Rani & Singh, 2019; Singh & Vipra, 2019; Rani & Furrer, 2021). The ILO is applying itself urgently to new ideas of universal labour rights (ILO, 2022).

A global churn is however necessary to redirect the purpose of value creation so that it is tied to a meaningful life for all that scrambling for a data-rich planet may not bestow. Stories about the human condition in algorithmified platforms narrated by women tell us that we need to strive towards a new subjecthood for the most marginalised, reconstituting computational pursuit as a political activity guided by a new institutional ethics.

REFERENCES

Aloisi, A. (2022). Platform work in Europe: Lessons learned, legal developments and challenges ahead. *European Labour Law Journal, 13*(1), 4–29. https://doi.org/10.1177/20319525211062557

European Commission. (2019). *Digital Single Market: EU negotiators agree to set up new European rules to improve fairness of online platforms' trading practices.* https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1168

Gurumurthy, A., Bharthur, D., & Chami, N. (2018). Policies for the platform economy: Current trends and future directions. *IT For Change.* https://doi.org/10.13140/RG.2.2.30219.72480

ILO. (2021). *Digital platforms and the world of work in G20 countries: Status and Policy Action.* https://www.ilo.org/wcmsp5/groups/public/%2D%2D-dgreports/%2D%2D-ddg_p/documents/publication/wcms_829963.pdf

ILO. (2022). *ILO declaration on fundamental principles and rights at work.* https://www.ilo.org/wcmsp5/groups/public/%2D%2D-ed_norm/%2D%2D-declaration/documents/normativeinstrument/wcms_716594.pdf

Mateescu, A., & Nguyen, A. (2019). Explainer: Algorithmic management in the workplace. *Data & Society.* https://datasociety.net/wp-content/uploads/2019/02/DS_Algorithmic_Management_Explainer.pdf

Nishant. (2022, January 11). Why Amazon wants the Indian government by its side to win the Cloud war. *Outlook.* https://www.outlookindia.com/website/story/business-news-why-amazon-wants-the-indian-government-by-its-side-to-win-the-cloud-war/409046

OECD. (2018). *Bridging the digital gender divide: Include, upskill, innovate.* https://www.oecd.org/digital/bridging-the-digital-gender-divide.pdf

Pollman, E., & Barry, J. (2017). Regulatory entrepreneurship. *Southern California Law Review, 90*(3), 383–448. https://doi.org/10.2139/ssrn.2741987

Rani, M., Gobel, N., & Kumar, R. (2022). Experiences of women on online labour platforms: Insights from global surveys. In O. Blanchard, C. Lopes, & P. Devaney (Eds.), *Global perspectives on women, work, and digital labour platforms* (pp. 13–23). Digital Future Society. https://digitalfuturesociety.com/app/uploads/2022/07/Global_Perspectives_on_Women_Work_and_Digital_Labour_Platforms_eng.pdf

Rani, U., & Furrer, M. (2021). Digital labour platforms and new forms of flexible work in developing countries: Algorithmic management of work and workers. *Competition and Change, 25*(2), 212–236. https://doi.org/10.1177/1024529420905187

Rani, U., & Singh, P. J. (2019). Digital platforms, data, and development: Implications for workers in developing economies. *Comparative Labor Law & Policy Journal, 41*(1), 263–288.

Singh, P. J., & Vipra, J. (2019). Economic rights over data: A framework for community data ownership. *Development (Society for International Development), 62*(1–4), 53–57. https://doi.org/10.1057/s41301-019-00212-5

UN Women. (2015). *Progress of the world's women 2015–2016: Transforming economies, realizing rights.* https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2015/POWW-2015-2016-en.pdf

Waldkirch, M., Bucher, E., Schou, P. K., & Grünwald, E. (2021). Controlled by the algorithm, coached by the crowd—How HRM activities take shape on digital work platforms in the gig economy. *The International Journal of Human Resource Management, 32*(12), 2643–2682. https://doi.org/10.1080/09585192.2021.1914129

Wood, A. J. (2021). *Algorithmic management: Consequences for work organisation and working conditions.* European Commission. https://joint-research-centre. ec.europa.eu/system/files/2021-05/jrc124874.pdf

Wood, A. J., Graham, M., Lehdonvirta, V., & Hjorth, I. (2019). Good gig, bad gig: Autonomy and algorithmic control in the global gig economy. *Work, Employment and Society, 33*(1), 56–75. https://doi.org/10.1177/ 0950017018785616

CHAPTER 9

Epistemic Rights and Right to Information in Brazil and Mexico

Fernando Oliveira Paulino and Luma Poletti Dutra

INTRODUCTION

In this article, the authors analyse the right to access to information as an aspect of the broad concept of epistemic rights by focusing on the development of legal frameworks in two Latin American countries: Brazil and Mexico. Both countries have similarities in their colonisation processes which bequeathed a public administration marked by patrimonialism and states that were born closed and distant from the population.

Chronologically, the right to access to information was constitutionally consolidated in similar periods in both countries: in Mexico in 1977 and in Brazil in 1988. However, such constitutional guarantees lacked regulation. Thus, in 2002, Mexico's first Access to Information (ATI) law was passed nine years earlier than the Brazilian law, serving as a parameter (along with other international experiences) for the latter's elaboration. The Mexican law is considered an international reference (Michener &

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Bersch, 2011) for, among other reasons, creating an autonomous body that acts as an appeal and supervisory body of the application of the rule and other issues related to public transparency and protection of personal data. This autonomous body in Mexico is known as the *Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales* (INAI).

Civil society organisations strongly participated in the process of passing the Mexican ATI law. This mobilisation also served as a reference for Brazilian groups that defended the creation of an ATI law. Finally, it is worth noting that Brazil and Mexico were part of the group of countries that started the Open Government Partnership (OGP) in 2011.[1]

In this introduction section, some important historical events that contributed to the consolidation of the right to access to information in the region are listed. The first event was the approval of the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly in September 1948. Among the 30 articles listed, Article 19 states that:

> 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. (UN, 1948)

This does not mean that the right to access to information arose only at this time. Centuries earlier, in 1766, Sweden passed a law guaranteeing freedom of access to public information on the initiative of the Lutheran clergyman and congressman Anders Chydenius, who was inspired by the Chinese doctrine (Lamble, 2002). In 1794, in the wake of the French Revolution, the Law 7 de Messidor guaranteed French citizens access to all public documents. In Latin America, Colombia was the pioneer country in this regard. Colombia enacted the Code of Political and Municipal Organisation of 1888, which established the right to citizens to receive information from government agencies. Thus, although the UDHR is

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[1] In addition to Brazil and Mexico, the co-founders of OGP were Indonesia, Norway, Philippines, the United States, the United Kingdom, and South Africa. The purpose of the OGP is to establish commitments for national and subnational governments to fulfil a series of goals to implement transparency in their administrative spheres. See https://www.opengovpartnership.org/.

used as a historical normative framework at the international level, previous experiences of different countries are not disregarded.

After the adoption of the UDHR, countries began to regulate the right by enacting laws concerning access to public information: Finland (1951), the United States (1966), and Denmark (1970). During this period, many Latin American countries lived under dictatorial regimes, in which freedom of information was restricted. The 1980s and 1990s were marked by processes of democratic transition in countries in the region, such as Argentina in 1983, Brazil and Uruguay in 1985, Paraguay in 1989, and Chile in 1990, periods that coincided with the development of information and communication technologies that provided opportunities for individuals to seek more information.

Thus, driven by changes in political dynamics, technological advances, and financial issues in the face of an increasingly globalised economy, the process of passing ATI laws began to gain strength in the region in the 2000s. This includes the ATI laws of Mexico and Peru (2002), Ecuador and Uruguay (2004), Chile (2008), El Salvador (2010), Brazil (2011), Guyana (2013), Colombia and Paraguay (2014), and Argentina (2016). There are still countries in the region that do not have access laws, such as Venezuela and Cuba.

Mendel (2009), after analysing the legislations of 11 countries in the region, verifies that the norms generally have a comprehensive scope and include basic information to be made available and updated by public agencies in a proactive manner. Developing countries adopt a different approach when dealing with the regulation of the right to information, which they see as a human rights issue, not a governance issue as in developed countries (Mendel & Dutra, 2020).

Michener (2015) highlights other innovations that characterise access laws in Latin American countries, such as the prohibition on restricting access to information about fundamental rights or investigations related to human rights violations. Thus, the right to access to information has risen to the category of a fundamental right and has been regulated through laws with a greater or lesser degree of opacity. The cases of Mexico and Brazil are analysed below.

Key Historical Events in the Introduction of the Right to Access to Information: A Comparative View Between Mexico and Brazil

Mexico's first ATI law was passed in 2002 as a result of civil society mobilisation and a change in the government coalition after more than 70 years of hegemony of a single party, the PRI (Luna Pla, 2009). The civil society that mobilised consisted mainly of academics and journalists, who specifically aimed to advocate for the approval of an ATI law, such as the Oaxaca group created in 2001. The alliance between journalists and academics guaranteed visibility of the group's agenda. They devised a discursive strategy to disassociate the idea of access to information as something related to legislation aimed at media outlets. The goal was to avoid associating information with journalistic information but rather with government information.

According to Issa Luna Pla (2009), during the campaign for the approval of the law, the expression 'right to know' was used because of its easy understanding by the public and quick insertion in the content of the engaged printed newspapers. The message suffered some adaptations depending on the audience for which it was intended. It could take on a more administrative discourse (with arguments focused on accountability, anti-corruption agenda, and transparency) or focus on a democratic government axis, with greater citizen participation; human rights; and finally, media benefits.

After the negotiations between government and activists, the text was approved by the House of Representatives on April 24, 2002, and passed by the Senate a week later. Thus, the Federal Law of Transparency and Access to Public Government Information was sanctioned on June 10 by Vicente Fox. One of the most important points of the law was the creation of the Federal Institute of Access to Information (IFAI), which acts as a supervisory body and an appeals court within the federal executive branch and promotes training for public servants to act in accordance with the precepts of the new rule as well as the enforcement of the rule. After the passage, the law underwent reforms. In 2015, it was replaced by the General Law of Transparency and Access to Public Information, which increased the amount of information that must be compulsorily published through active transparency by all public bodies in the country, including political parties and unions. Finally, the IFAI was transformed into the

INAI, and its powers were expanded to include all three branches of government.

Brazil passed its ATI law in 2011, in a process that took longer to negotiate and move in the National Congress than in Mexico. The right to access to information is guaranteed by the Federal Constitution, enacted in 1988. The first bill aiming to regulate the topic was presented in 2003. However, before that, other norms related to access to information were approved, such as the Habeas Data Law and the Fiscal Responsibility Law. In addition, the creation of the Office of the Comptroller General and of the Council for Public Transparency and Combating Corruption, which played an active role in the debates that preceded the creation of a proposed law for access to information, is noteworthy.

The mobilisation of civil society was led by the organisations that formed the Forum on the right to Access to Public Information in 2003, inspired by the experience of the Oaxaca group (Costa et al., 2021). Unlike the Oaxaca group, the Forum on the right to Access to Public Information did not draft a bill but worked on monitoring the texts that were being processed in Congress and advocacy actions with the presidential candidates in the 2006 election and other government representatives. An example of this was the organisation of the International Seminar on the right to Access to Public Information in 2009. On that occasion, the then Minister of the Civil House Dilma Rousseff committed to send in the following weeks an ATI bill to the Congress, which in fact occurred (Dutra, 2021). To move the bill forward, a group of organisations that made up the Forum for the right to Access to Public Information adopted a discursive strategy focused on the rights to memory and truth. While the initiative was in the Senate, Brazil was condemned by the Inter-American Court of Human Rights in the Gomes Lund case, known as Guerrilha do Araguaia,[2] which gave more impetus to the discursive strategy. Not coincidentally, Brazil's ATI law was sanctioned by President Dilma Rousseff on the same day that the National Truth Commission was created, and its members appointed.

[2] The lawsuit was filed by relatives of political disappeared members of the Guerrilha do Araguaia, an armed movement led by the Communist Party of Brazil in the Araguaia region (a border between the states of Pará, Maranhão, and Goiás—today Tocantins), with the objective of challenging the military regime. Between 1972 and 1975, the Armed Forces carried out repressive operations resulting in the disappearance of 70 people, among them PCdoB militants and residents of the region.

These events show the participation of civil society groups, to a greater or lesser extent, in the defence of the approval of a legal framework that would ensure the right to access to information. The Mexican experience inspired the mobilisation in Brazil, mainly uniting representatives of the press, academics, and organisations focused on social control in the case of Brazil. In terms of the discursive strategy adopted by these groups to defend the passage of the law, the Mexican experience adapted the narrative according to the interests of the target audience, seeking to detach the norm as something that would exclusively benefit press professionals. In the case of Brazil, there was a link with the rights to memory and truth based on the unknown information about the practices of public agents during the military dictatorship. Common to the two experiences was the support of media professionals who sought to keep the topic on the public agenda.

Challenges in the Right to Access to Information in Mexico and Brazil

Even though Mexico has a two-decade history of regulating the right to access to information, some challenges persist. This work focuses on two challenges: popularisation and political obstacles.

According to the 2019 National Survey on Access to Public Information and Personal Data Protection (ENAID, acronym in Spanish), 77.8% of individuals who have no experience in filing a request said that they had no interest in doing so, while 21.1% expressed interest. The numbers reflect this insight: it is not only a matter of clarifying or simplifying the process of requesting public information but of raising awareness about the objective of giving people access to public information, a much more challenging task.

Regarding the profile of the requesters, according to INAI's 2019 activity report, users are mostly young (those under 18 years old corresponded to 18% of the requesters, followed by the age group 25–29 years old with 14%, and 35–39 years old with 13.7%) and males (63.4%). As for education, 51.5% received higher education, and 31.2% have a postgraduate degree. Finally, in relation to occupation, most work in the academic field, followed by private companies, public administration, and in fourth place, the media. This means that the argumentative strategy used during the mobilisation for the approval of the ATI law was successful not only

because the law was passed, but because journalists are not the main users of this mechanism. The ATI law did not only benefit journalists.

As to responses, when analysing more than one million requests for access to information filed between 2004 and 2015, Berliner et al. (2022) verified that the quality of the response received varies according to the language used in the request. As of 2008, an increase in requests with formal, specialised language and legal references was observed. These requests took less time to be answered, which was not the case before. This scenario shows the growing importance of mastering knowledge about state bureaucracy and specific terms of the legislation to enforce the right to access to public information.

In addition, the phenomenon of discrimination in answering information requests according to the identification of the requester is also observed in the country (as well as in Brazil), especially when it comes to journalists (Fox & Haight, 2011).

The second challenge is political in nature and influences the maintenance of the country's access to information structures and, consequently, the guarantee of this right. Elected in 2018, Andrés Manuel López Obrador from the Morena party has already questioned the effectiveness of the INAI in several press conferences. 'It costs a billion pesos to maintain this body. It was created, but what has it contributed to reducing corruption? On the contrary, corruption has grown like never before at the same time this body was created' (Redacción AN / GV, 2018), he said in December 2018. Two years later, in December 2020, he restated the argument in another press conference: 'What are these bodies for? They are decorative' (Caña, 2020). In addition, the number of appeals questioning denials of access to information that have reached INAI has increased considerably since the beginning of the new president's administration (Langner, 2020).

The increase of corruption scandals is precisely due to the fact that effective access to information increases the chances of bringing irregularities into light. For example, journalistic investigations used transparency tools that revealed the scandal known as La Casa Blanca[3] in 2014 under

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[3] The scandal known as 'La Casa Blanca' was revealed in 2014 by the team of journalist Carmen Aristegui. It is about the acquisition of a mansion for $7 million by former Mexican President Enrique Peña Nieto, who bought the property from a contractor with business dealings with the government. See https://aristeguinoticias.com/0911/mexico/la-casa-blanca-de-enrique-pena-nieto/.

President Enrique Peña Nieto. Another example is the discovery of thousands of clandestine cesspools around the country,[4] resulting from the policy of war against drug trafficking between 2006 and 2016.

As an effect of this political context, INAI's budget faced reductions, a consequence of the government's perspective on the importance of access to public information policies (Table below 9.1).

The numbers represent the challenge of preventing setbacks in guaranteeing the right to access to information even after 20 years of regulation and with a trajectory strongly marked by the actions of civil society. In addition, they show the importance of spreading the mechanisms of access to information provided by the law, so that different audiences can appropriate the tools and value and defend its maintenance.

The challenges faced in Brazil resemble those of Mexico, as they also go through popularisation and political obstacles. Before going into the details, it is necessary to say that there is an assessment by journalists who dedicate themselves to write about topics related to the period of military dictatorship in the country (Dutra, 2015) that the law represented little progress in clarifying historical facts. In other words, the discursive strategy based on the rights to memory and truth was successful in boosting the approval of the norm, but it had little practical effect in revealing new information.

Table 9.1 Evolution of INAI's budget between 2017 and 2020

Year	Budget—INAI
2017	$896.931.201,11
2018	$1.041.623.750,75
2019	$164.715.547,60
2020	$135.847.505,55

Values in Mexican pesos. Source: INAI database, 2020

See https://micrositios.inai.org.mx/planeacion/

[4] In a report published in 2018, journalists revealed the discovery of almost two thousand pits, where victims of criminals were buried between 2006 and 2016. The publication yielded several international journalistic awards. See https://adondevanlosdesaparecidos.org/2018/11/12/2-mil-fosas-en-mexico/.

Furthermore, a fundamental challenge is to ensure that the Access Law is regulated at the municipal level. A survey conducted by the Forum on the Right to Access to Public Information based on data from the CGU found that 86% of the country's municipalities have not yet regulated the law, which generates several limitations on its application. The diffusion of the tools for access to information can only occur after the public administration has fully adapted to the norms established by the legislation.

Regarding the popularisation of the norm, data from the Access Law Panel[5] allow for profile tracing of LAI users in the federal government: men between 31 and 40 years old, employed in the private sector and living in the Southeast region. Thus, the challenge is to diversify the profile of users and democratise the tools for access to public information.

Among the political obstacles are the attempts by the Executive to change the norm. In January 2019, the first month of Jair Bolsonaro's government, the vice president, General Hamilton Mourão, issued a decree that increased the number of servers with the power to classify public information in the highest degree of secrecy. The text was overturned in a first vote in the Chamber of Deputies and then revoked by the government. In March 2020, almost two weeks after the World Health Organisation declared the new COVID-19 pandemic, the federal government issued a Provisional Measure[6] which suspended the deadlines for requests made via the ATI law. The measure was suspended by the Federal Supreme Court.

The restrictions on access to public information during Jair Bolsonaro's government were also identified in a report by NGO Transparência Brasil, released in August 2020. A survey based on data made available by e-SIC between January 2016 and June 2020, covering the end of Dilma Rousseff's government and the entire term of Michel Temer, revealed that Bolsonaro's administration used the most controversial justifications to reject requests for access to information (Dantas, 2020).

During the COVID-19 pandemic, several episodes of opacity were recorded in the disclosure of public information essential to adopt individual or collective prevention measures (Dutra, 2020). This opacity caused civil society organisations to file a complaint on July 15 with the Inter-American Commission on Human Rights. In the document, the

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[5] See http://paineis.cgu.gov.br/lai/index.htm.
[6] See Provisional Measure 928/2020 at: https://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=602&pagina=1&data=23/03/2020.

organisations accused Jair Bolsonaro's administration for 'repeated violations of the rights of access to information and freedom of expression', which has 'severely damaged the actions to combat COVID-19' (Berti, 2020).

Conclusion

Given this scenario, it is necessary to be cautious to attempts to restrict access to public information and to defend the legislation that regulates this constitutional right.

In the case of Mexico, there was an effort to detach the theme from the journalistic sphere with the goal of showing its importance to different audiences. In Brazil, there was a link to the rights to memory and truth. In both countries, the difficulties that arise concern the protection of the norm and its enforcement bodies in the face of different political scenarios.

Years after the approval of the laws, it is essential to permanently monitor the rules and procedures derived from the access laws in these countries. In addition, there has been an understanding of the need for more research on the use of the law, public policies arising from the norms, and informational and communication literacy actions so that an even more diversified public, especially composed of vulnerable people, educators, children, and adolescents, can request and receive information to gather better conditions to participate in decisions that affect society.

References

Berliner, D., Palmer-Rubin, B., Reyes, J. E. T., Bagozzi, B., & Erlich, A. (2022). *Big data y acceso a la información en México*. OSF Preprints.

Berti, B. (2020, July 15). Governo federal é denunciado à CIDH por violações ao acesso a informação e transparência na crise da Covid-19. *Transparência Brasil*. https://blog.transparencia.org.br/governo-federal-e-denunciado-a-cidh-por-violacoes-ao-acesso-a-informacao-e-transparencia-na-crise-da-covid-19/

Caña, P. V. y. (2020, December 7). Organismos de transparencia, como el INAI, son floreros: AMLO. *El Universal*. https://www.eluniversal.com.mx/nacion/organismos-de-transparencia-como-el-inai-son-floreros-amlo

Costa, A. B. L., Dutra, L. P., & Paulino, F. O. (2021). Derecho de acceso a la información en Brasil y México: entre cabestros, jefes y sociedad civil. *Millcayac – Revista Digital De Ciencias Sociales, 15*(8), 117–142.

Dantas, M. (2020, August 3). Uso de justificativas controversas para negar informações aumenta sob Bolsonaro. *Transparência Brasil*. https://blog.transparencia.org.br/uso-de-justificativas-controversas-para-negar-informacoes-aumenta-sob-bolsonaro/

Dutra, L. P. (2015). *Direito à informação em pauta: os usos da Lei de Acesso por jornalistas*. Master's thesis, Faculdade de Comunicação, Universidade de Brasília.

Dutra, L. P. (2020). *Accountability e saúde: desafios do direito de acesso à informação na pandemia de Covid-19*. 18° Encontro Nacional de Pesquisadores em Jornalismo.

Dutra, L. P. (2021). *Acesso à informação e comunicação pública: uma análise das Supremas Cortes do Brasil e do México*. Doctoral dissertation, Faculdade de Comunicação, Universidade de Brasília.

Fox, J., & Haight, L. (2011). Mexico's transparency reforms: Theory and practice. *Government Secrecy, 19*, 353–379.

Lamble, S. (2002). Freedom of information, a Finnish clergyman's gift to democracy. *Freedom of Information Review, 97*, 2–8.

Langner, A. (2020, January 22). Aumentan declaraciones de inexistencia de información: Inai. *La Jornada*. https://www.jornada.com.mx/ultimas/politica/2020/01/22/aumentan-declaraciones-de-inexistencia-de-informacion-inai-3551.html

Luna Pla, I. (2009). *Movimiento social del derecho de acceso a la información en México*. Universidad Nacional Autónoma de México.

Mendel, T. (2009). *El Derecho a la Información en América Latina Comparación Jurídica*. UNESCO.

Mendel, T., & Dutra, L. P. (2020). Você não tem liberdade de expressão, de fato, a menos que também tenha acesso à informação. *Intercom: Revista Brasileira de Ciências da Comunicação, 43*(2), 227–233.

Michener, G. (2015). Assessing freedom of information in Latin America a decade later: Illuminating a transparency causal mechanism. *Latin American Politics and Society, 57*(3), 77–99.

Michener, G., & Bersch, K. (2011). *Conceptualizing the quality of transparency*. 1st Global Conference on Transparency, Rutgers University.

Redacción AN / GV. (2018, December 7). AMLO critica sueldos del Inai; "corrupción creció a la par" de que se creó este organismo, dijo. *Aristegui Noticias*. https://aristeguinoticias.com/0712/mexico/amlo-critica-sueldos-del-inai-corrupcion-crecio-a-la-par-de-que-se-creo-este-organismo-dijo/

United Nations. (1948). *Universal declaration of human rights*. https://www.un.org/en/about-us/universal-declaration-of-human-rights

Digital Authoritarianism and Epistemic Rights in the Global South: Unpacking Internet Shutdowns in Zimbabwe

Tendai Chari

Introduction

Internet shutdowns have become a common tool through which undemocratic states manage information flows globally, not least in Africa (Freyburg & Garbe, 2018; Ayalew, 2019; Marchant & Stremlau, 2020; CIPESA, 2013, 2017). This happens at a time when the number of internet users on the African continent has increased exponentially, reaching about 601 million (Internet World Statistics, 2022). The continent recorded an increase in the number of internet shutdowns (Access Now, 2021) with Chad and Cameroon taking the lead for the longest shutdowns in the world (Marchant & Stremlau, 2020). However, Access Now

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(2021) reported that twelve countries cut the internet nineteen times in 2021, three more than the previous year.

While it is now generally known that authoritarian governments use internet shutdowns to curtail citizens' political engagement, very little scholarship, if any, has been devoted to understanding their impacts on citizens, particularly from a Global South perspective. As a result, there is a knowledge gap with regard to how states that implement internet shutdowns play havoc with citizens' epistemic rights and their ability to know how they are governed. Grounded on the concept of digital rights, this chapter qualitatively explores how internet shutdowns impact citizens in a semi-authoritarian state. How citizens interpret the motives of the shutdowns, their consequences on citizen political engagement, and collateral effects are questions pertinent to this exploration.

Zimbabwe is aptly suited for a study of this nature, given historical antecedence whereby the country has previously employed wider censorship practices to suppress the mainstream media. In addition, there has been a clampdown on the internet, the latest such move being in 2019 when the country imposed a three-day shutdown on the internet following citizen protests against spiralling prices of fuel (Access Now, 2019). The government's resolve to clamp down on internet communication and crime was given a boost when Parliament of Zimbabwe passed the Cyber Security and Data Protection Act in September 2021 (Murwira, 2021). Given the less-than-transparent manner in which internet shutdowns have been implemented and the country's notorious history of media repression, there are fears that internet shutdowns which have affected the whole country may become a permanent feature of the government's strategies to deal with citizen dissent. There is no doubt that the influence of the internet on citizens is set to grow in a context where the number of internet users is over 8.4 million, which is more than half of the population (and still growing) (Internet World Statistics, 2022).

Since the goal of this study is to broaden insights into the impact of internet shutdowns on citizen rights, data for the study was collected through interviews with twenty-three purposively selected Zimbabwean citizens who had experienced internet shutdowns. The interviews were partly conducted through an open-ended electronic questionnaire emailed to the participants or via Zoom or Skype. The interviews were conducted between July and September 2020. Due to the ravaging COVID-19 pandemic at the time, it was not possible to conduct face-to-face interviews. Participants were identified through the author's offline and online links,

using the referral system, thus making the sampling strategy quasi-snowball (Berg, 2001). Among the participants were journalists (6), computer experts (1), representatives of civil society organisations (5), and ordinary citizens (9) who had competence in answering some of the questions, given the specialised nature of the subject. Given the political bifurcation of Zimbabwean society, it was also necessary to balance views by making an effort to include participants from different age groups, geographical regions, and political affiliations. On the latter aspect, an attempt was made to include participants from either side of the political spectrum, who were known by the author to have extreme political views. To protect the identity of the participants in light of the political sensitivity of the topic, code names, P1, P2, P3, etc., were used. Data were transcribed, thematically coded, and reported in narrative form.

The rest of the chapter proceeds as follows: after this introduction, the next section discusses the concept of digital rights, and a brief discussion is provided on the link between epistemic rights and other human rights. This is followed by a presentation of study findings and lastly the concluding remarks wherein I critically reflect on study findings.

Digital Rights as Epistemic Rights

One way of trying to understand the impact of internet shutdowns on citizens is the concept of digital rights (Mathiesen, 2014). As illustrated in subsequent sections of this chapter, citizens use digital media to expand their knowledge because the internet widens their information sources and provides information alternatives to state propaganda. Citizens are able to monitor the misdemeanours of public office bearers, deliberate among themselves, mobilise for political purposes, and exercise their right to vote electronically. Thus, the internet enhances both epistemic and non-epistemic rights. Any action that disrupts the functioning of the internet is a violation of citizens' digital rights. Mathiesen (2014, 4) argues that all rights have an ethical dimension because they oblige states to 'act so as to fulfil those rights'. This means that digital rights should have the same status as all other human rights binding on all members of a moral community. Denying citizens their right to access information becomes an immoral act (Mathiesen, 2014). The 'human dignity' aspect of human rights means that people ought to 'live minimally good lives' and must be given 'ample opportunities to exercise agency' by 'being able to exercise important human capabilities' (Mathiesen, 2014, 4).

Because internet shutdowns violate the fundamental ethical tenets of 'living minimally good lives', they are a transgression against human dignity. When the quality of information consumed by citizens is compromised, their ability to make informed choices is diminished and the essence of citizenship is threatened. The notion of digital rights here covers both positive rights whereby digital media are viewed as 'infrastructure for the realisation and promotion of human rights' (Karppinen & Puukko, 2020, 314) and digital rights as vehicles of information justice wherein digital media are seen as a 'means to protect vulnerable groups online' (Karppinen & Puukko, 2020, 317). Mathiesen's (2014) conception of digital rights implies that citizens must enjoy access to the internet without interference; the state must protect citizens' right to access the internet the same way it protects civil and political liberties. The state is compelled to put in place institutional arrangements to ensure citizens have technologies requisite for internet access. This idea resonates with the notion of human rights promoted by the United Nations, which emphasises human dignity, the ability of citizens to communicate with each other, the right to deliberate, and the right to seek knowledge and information, all of which are realisable through access to the internet (Mathiesen, 2014). A report of the Special Rapporteur on Promotion and Protection of the Right to Freedom of Opinion issued on May 16, 2011, states that 'the Internet has become an indispensable tool for realising a range of human rights, combating inequality, and accelerating development and human progress, ensuring universal access to the Internet should be a priority for all states' (cited in Pollicino, 2019, 265).

The characterisation of digital rights outlined above demonstrates that digital rights have a natural affinity with epistemic rights; being rights pertaining to 'epistemic goods such as information, knowledge, understanding, and truth' (Watson, 2018, 89). Thus, epistemic rights 'afford their bearer a complex set of entitlements that provide justification for the performance and prohibition of certain actions regarding epistemic goods. […] The right to information, the right to know, the right to true and justified beliefs, the right to understand, the right to truth—these are all epistemic rights' (Watson, 2018, 89). Watson argues that 'it seems plausible that many epistemic rights are, or should, be considered human rights' (Watson, 2018, 91). While digital rights are derivative from moral rights, their inclusion in the Universal Declaration of Human Rights and the International Bill of Human Rights shows that they are not trivial or peripheral but substantive rights which need to be protected by the state.

The broadened conception of epistemic rights advanced by Watson is best suited to explain how digital rights and the right to access the internet in particular should be considered a human right. Citizens will need to be liberated (Diamond, 2010) from the clutches of elitist and hegemonic media-prone misinformation, disinformation, and accredited 'putative experts' pundits and talking heads with an inclination to foster ignorance among the citizenry through misrepresentation of complex issues (Habgood-Coote, 2022, 426). Digital technologies can help ameliorate 'intellectual vulnerabilities' among citizens by undercutting hegemonic epistemic institutions upon which citizens are forced to depend due to a lack of alternative sources of information.

As societies become more wired and people's lives become intricately interwoven with digital technologies, the internet has become a crucial vehicle for delivering 'epistemic goods' (Watson, 2021). Any attempts to interrupt the smooth functioning of the internet will jeopardise both epistemic and human rights as the two become enmeshed. Narratives by Zimbabwean citizens discussed below demonstrate this as much.

Political Weaponisation

One of the objectives of this study was to gain deeper insights into the motives of the internet shutdowns in Zimbabwe. The dominant view was that internet shutdowns were a political tool to suppress citizens' civil and political liberties. Participants pointed out how the government had issued directives to 'network providers to act accordingly' (P19). A university lecturer blamed the government for the shutdown, pointing out that internet shutdowns were politically motivated because they were meant to prevent citizens from organising and mobilising through social media. He explained thus:

> The government wanted to prevent people from communicating and organising themselves against fuel price increases. […] This is a clear testimony that the shutdowns will not be due to technical challenges but politically motivated and served the interests of the status quo. (P12)

The above quotation indicates the belief that the government deliberately orchestrates internet shutdowns to prevent citizens from exercising their epistemic and civil and political rights. That citizens use the internet and social media to communicate shows how epistemic rights intersect with

broader human rights. The fact that the state orders shutdowns shows the crude way in which they are implemented in Zimbabwe. This links up with Mare's (2020) observation that state-ordered internet shutdowns have become part and parcel of the 'ever-expanding authoritarian toolkit' of authoritarian governments (Mare, 2020, 4227).

Political weaponisation of internet shutdowns is further demonstrated when they are described by one ordinary citizen as 'purposefully imposed so as to disrupt political activities' and 'timely executed on days of […] political demonstrations by the opposition party' (P9). This is corroborated by an advocacy officer in an information rights NGO:

> The demonstrations that happened in January 2019 when people were demonstrating over fuel price increases and the resultant mass beatings, rape, and torture of people by suspected state agents. The curtailing of the free flow of information is a way to manage political tensions in the country. Internet shutdowns are synonymous with the clampdown of civil and political liberties in the country. (P1)

The fact that internet shutdowns coincide with citizen engagements such as demonstrations is a testament to the fact that internet shutdowns are orchestrated by the state for political capital. Thus, internet shutdowns become part of the state's censorship strategies (Marchant & Stremlau, 2020, 4327) to 'harvest fear' among the citizenry (Zamchiya, 2013, 955). Fear has anti-democratic consequences because it discourages citizens from participating in democratic processes and from looking for information on how they are being governed. The psychological impacts of internet shutdowns on the citizen illustrate internet shutdowns are an antithesis of epistemic rights and human rights. This is because citizens use the internet for free expression and a shutdown impinges on this. Ayalew (2019, 224) argues that free speech is the 'foundational stone of democratisation' because it embraces other rights such as the right to seek, receive, and impart information using any medium, including the internet.

Human Rights Violations

The link between epistemic rights and other human rights is illustrated through the sentiments of some participants who reported that internet shutdowns were used as an alibi to camouflage human rights violations, allegedly perpetrated by the state during citizen protests. Participants

talked about their inability to receive or share information about human rights violations among themselves and the outside world. This shows that internet shutdowns are not just a threat to epistemic rights, but also a cloak to hide human rights violations.

Participants mentioned how internet shutdowns were followed by 'abductions' and 'harassment' of opposition activists, journalists, and ordinary citizens. As one state-owned media journalist opined, shutdowns were instituted 'because the platform provides an avenue through which people can air out any issues they have against the authorities' (P3). According to the journalist, shutdowns provided the state an opportunity to unleash violence against citizens.

The prevalence of human rights violations is corroborated by the following statements by the state media journalist, a civil society organisation officer, a freelance journalist, and an ordinary citizen, respectively:

> What immediately comes to mind when someone mentions internet shutdown in Zimbabwe is the unleashing of violence by the state against citizens because the abuses cannot be beamed to the outside world. (P3)

> […] the shutdown is effected to give time to state actors to do heinous crimes without being noticed. (P1)

> The internet shutdown of January 2019 also allowed for violations of human rights that are reported to include: 1803 cases of human violations, 17 extrajudicial killings and 17 cases of rape and sexual violence. (P7)

> The most worrying thing is that the blackouts are accompanied by acts of brutality and abductions, you never know what's happening and your safety is compromised. (P10)

The common refrain in these quotations is that shutdowns were meant to cover up human rights violations. This demonstrates how 'digital darkness' (SFLC, 2018) creates havens for human rights abuses. Internet blackouts prevent citizens from knowing what is happening around them, which in turn puts their right to life in danger. This means a threat to epistemic rights inevitably leads to a threat to social and economic rights.

The state media journalist narrated how the internet shutdown adversely affected him and his family, thus:

The government had already arrested an opposition leader who was behind the planned protests and a journalist who exposed some corrupt activities in the Ministry of Health on the procurement of COVID-19 materials. On July 31, I personally could not use my home Wi-Fi as I was working from home as part of the decongestion of workplaces to prevent the spread of the coronavirus. My four children, one in high school and three in primary school, could not write their end of year online examinations. I had to call the school authorities to inform them of the connectivity challenges we were facing, and the children were allowed to submit late the written examinations. (P3)

The close connection between epistemic rights and broader rights has been noted by Rydzak et al. (2020, 4271):

When authorities claim an existential threat to the government, rank-and-file security units or militias are deployed as protectors and enforcers of the status quo. This goal often takes precedence over facilitating citizens' rights, as in the massacre of peaceful protesters by militias from the Rapid Support Forces in Sudan in June 2019. In this way, shutdowns often act as invisibility cloaks for abuses by street-level security forces.

Given the political motives behind internet shutdowns and their opaqueness, it is easy to understand why citizens 'fear being tracked, monitored, or assumed bullying' online (P4). This shows that apart from being denied the right to know, they also face threats to their safety. Internet blackouts fertilise the ground for violation of political, economic, and social rights. This was bolstered by a statement made by the director of an NGO in Zimbabwe who indicated that internet shutdowns 'precluded citizens from enjoying their rights to free expression, rights of access to information, freedom of association', and also 'compromised financial independence and basic economic and social rights as citizens have been stripped of access to mobile money services, which are key to transacting in Zimbabwe' (P15). This shows that the internet is not only critical for fulfilling epistemic rights but also central in protecting other rights, such as the right to life.

While the main target of internet shutdowns could be epistemic rights, other human rights suffered collateral damage. SFLC (2018, 66) points out that during internet shutdowns, citizens are 'cut off from emergency services and health information, mobile banking and e-commerce, transportation, school classes, voting and election monitoring'. That the

internet enables citizens to expose human rights violations and other political misdemeanours such as electoral fraud is indicative of its importance in protecting human rights (Freyburg & Garbe, 2018).

Semi-authoritarian governments that combine elements of liberal democracy and authoritarianism employ rhetorical tropes to gain acceptance by the global community, but expeditiously and surreptitiously use blunt instruments of coercion such as internet shutdowns to hide human rights violations (Ottaway, 2003). This fosters mistrust among the citizens when they realise the gap between authoritarian tendencies such as internet shutdowns and their democratic rhetoric.

Erosion of Public Trust

The 'curious' timing of internet shutdowns, lack of transparency in their implementation, and the questionable justification proffered by the government have resulted in mutual suspicion between the government and the citizens. Consequently, citizens cast aspersions over the legality and legitimacy of shutdowns, particularly given the fact that they always 'coincide' with demonstrations and protests (Wagner, 2018). A freelance journalist noted how the shutdown 'coincided' with a call for protests by the Zimbabwe Congress of Trade Unions (ZCTU), adding that one could infer that it 'was meant to deprive citizens of both digital rights and the right to demonstrate' (P7). A media advocacy expert with a local NGO opined that there had never been 'a justification for the shutdown of internet services in Zimbabwe'. He pointed out how an application to interdict the shutdown at the high court by the Zimbabwe Human Rights Lawyers (ZHRL) and the Media Institute of Southern Africa (MISA) argued that the shutdown was a 'deliberate intention to limit citizens' rights to engage in discourse'. The participant felt that the measure 'was drastic and far-reaching and has a far-reaching impact on citizens' daily interaction' (P20). Her sentiments signal the breakdown of the social contract between citizens and governors, which is vocalised in counterarguments claiming that shutdowns were justified on grounds of what some scholars refer to as the 'national security' narrative (Howard et al., 2011; Wagner, 2018). The following quotations from a state media journalist, university lecturer, and ordinary citizen, respectively, are illustrative:

> The government justifies the shutdowns citing security reasons although as alluded above in some of the instances it will just be a ploy to muzzle people from freely expressing themselves. (P3)

> In most cases, there is no specific reason provided by the government apart from the SMS that subscribers get from the network providers apologising for loss of communication 'due to government orders'. This is a clear testimony that the shutdown will not be due to the technical challenges but politically motivated and serving the interests of the status quo. (P12)

> Justification such as system upgrades have been given but it appears they are politically motivated. (P14)

Phrases and words such as 'ploy', 'no specific reason', 'not due to technical challenges', 'interests of the status quo', and 'politically motivated' signify that citizens feel powerless and the original idea of democracy where true power is vested in the people becomes an aberration. Since there is a natural association between public trust and democracy, internet shutdowns widen the epistemic gap because citizens are forced to depend on one-sided information churned out by government outlets or become predisposed to misinformation, disinformation, and fake news. This is illustrated by an ordinary citizen who experienced the January 2019 shutdown:

> There was a great deal of information being circulated that highlighted the various incidents taking place like looting of shops and the stoning of a Chitungwiza police station. Some of the incidents that were being reported were false. (P17)

That citizens become exposed to fake news is worrisome because fake news undermines citizens' right to know the truth and their ability to make informed decisions related to their safety during a time of upheavals. Unreliable news and information also expose citizens to harm. Scholars argue that fake news, misinformation, and propaganda are human rights issues because lack of access to accurate information undermines citizens' ability to make accurate voting decisions, as much as health information from quarks poses a risk to their right to life (Latham, 2020).

The contested nature of the concept of fake news has been exploited by the Zimbabwean government to justify the interruption of the internet (Mugari, 2020). Some participants in this study demonstrate the problematic nature of fake news by foregrounding the importance of context.

The examples below from a freelance journalist, a privately owned media journalist, and an ordinary citizen, respectively, are illuminating:

> […] the government says [internet shutdowns] are a way of maintaining order in the country by disrupting communication among protest organisers. This of course sounds reasonable, but the effects are always costly. (P18)

> No hard feelings on government because every nation has its own beliefs when it comes to security issues and threats. […] Government considered national security and public order […] a tool being used by the West to spread propaganda to communicate in a bid to remove the ruling party from power. The justification varies according to their line of thinking […] every household runs his family in a manner fit […] that might be different from every home depending on background levels. (P19)

> It is plausible considering that protests witnessed in Zimbabwe, particularly August 1, 2018, have left a precedence of vandalism on private property. Therefore, deploying the internet shutdown controls the magnitude of violence which has been left by protests of this kind. (P13)

> Therefore, any cause which consolidates mass action against ZANU PF creates paranoia considering the current government's image management after the fatalities of August 1. The memory of August 1 is still fresh in the mind of the state's preservation agenda. (P13)

These statements foreground the supremacy of public order and national security at the expense of citizen rights. Human rights are understood as contextual rather than universal. This view is supported by Mugari (2020, 1):

> […] social media platforms have been used to instigate violent protests, to issue subversive statements and to spread fake news, causing fear and despondency amongst citizens. Social media platforms have also been used to facilitate other crimes such as human trafficking and distribution of pornographic material.

This argument invites a sober reflection on the role of the internet on human rights and democracy. The 'interpretive flexibility' approach adopted by social constructivists (Klein & Kleinman, 2002, 29) to illustrate that the design of technology is an open process that can 'produce

different outcomes depending on the social circumstances' is useful in this regard. Questions relating to why, where, how, and when should internet shutdowns be implemented as well as, who benefits from them require a more careful reflection, given the fact that digital technologies can either be a boon or bane. Watson (2018, 91) alludes to the contextual nature of rights when she states that epistemic rights 'arise within and are bound by epistemic communities, comprised of individuals'. Tellingly, she posits that 'one's epistemic rights are inextricably tied to the social world that one inhabits as a knower, believer etc.' (Watson, 2018, 91).

Conclusion

This chapter has employed the concept of digital rights as a conceptual lens to illuminate how internet shutdowns impact on citizens' everyday lives in Zimbabwe. The goal was to broaden understanding of the way in which epistemic rights are intricately interwoven with broader human rights in a semi-authoritarian state in the Global South. How citizens interpret the motives of the internet shutdowns, their impact on political engagement, as well as their collateral effects are questions at the core of this exploration. The study revealed that citizens view internet shutdowns as political weapons of the state to curtail freedom of expression and civil and political liberties of citizens. The study has pointed out that citizens view internet shutdowns as an alibi by the state to perpetrate and cover up human rights violations as well as insulate itself from the global community spotlight. The heavy-handed manner in which they are instituted, their opaqueness, political instrumentalisation, and the 'questionable' justifications proffered by the government have elicited public scepticism, resulting in waning citizen trust in the governance system, thereby leaving democracy in the intensive care unit.

The chapter argues that there is a link between epistemic rights and broader human rights in the sense that the internet provides citizens with a platform to access information and knowledge alternative to that provided by the state, as well as space to deliberate, mobilise, and organise for political purposes. The internet also enables citizens to monitor human rights abuses perpetrated by the state. The imposition of an internet shutdown blocks citizens from knowing what is happening around them and also takes away their right to force the state to account for human rights violations. Intellectual vulnerabilities (Watson, 2021) of citizens increase as they are forced to rely on unverified information in the rumour mill,

thereby falling prey to fake news, misinformation, and disinformation which are human rights issues because lack of access to accurate information may undermine citizens' ability to exercise informed political choices, the same way unreliable information threatens one's right to life (Latham, 2020).

The study's conclusions regarding the impact of internet shutdowns on citizens, however, need more nuanced scrutiny. The sample was small and largely drawn from metropolitan areas. In-depth face-to-face interviews could not be conducted due to the COVID-19 pandemic. In order not to run the risk of a utopian vision of the internet (Mou et al., 2011), conclusions regarding its role in promoting human rights and democracy need to be tampered as well, particularly given the ambiguous nature of the internet. The views of some of the participants in this study reflect a lack of consensus on the role of the internet, human rights, and democracy and the necessity of foregrounding context. The dystopian view of the internet is sceptical about the internet's potential to foster a public sphere in the Habermasian sense, arguing, instead, that the medium has not increased but lowered civic engagement due to the displacement of public affairs content with trivia (Mou et al., 2011, 341).

Whether the internet had increased the level of civic engagement among citizens could not be determined as this was outside the scope of the study. Future studies could work with bigger samples drawn from more diverse groups and employing mixed methods research design to create a holistic picture of how internet shutdowns impact political engagement.

References

Access Now. (2019, January 15). *Zimbabwe orders a three-day country-wide Internet shutdown.* https://www.accessnow.org/zimbabwe-orders-a-three-day-country-wide-internet-shutdown/

Access Now. (2021). *The return of digital authoritarianism: Internet shutdowns in 2021.* https://www.accessnow.org/cms/assets/uploads/2022/05/2021-KIO-Report-May-24-2022.pdf

Ayalew, Y. E. (2019). The Internet shutdowns muzzle(s) freedom of expression in Ethiopia: Competing narratives. *Information & Communications Technology Law, 28*(2), 208–224. https://doi.org/10.1080/13600834.2019.1619906

Berg, L. B. (2001). *Qualitative research methods for the social sciences.* Allyn and Bacon.

CIPESA. (2013). *Despots and disruptions: Five dimensions of Internet shutdowns in Africa*. https://cipesa.org/2019/03/despots-and-disruptions-five-dimensions-of-internet-shutdowns-in-africa/

CIPESA. (2017). *A framework for calculating the economic impact of Internet disruptions in Sub-Saharan Africa*. https://cipesa.org/?wpfb_dl=252

Diamond, L. J. (2010). Liberation technology. *Journal of Democracy, 21*(3), 69–83. https://doi.org/10.1353/jod.0.0190

Freyburg, T., & Garbe, L. (2018). Blocking the bottleneck: Internet shutdowns and ownership at election times in Sub-Saharan Africa. *International Journal of Communication, 12*, 3896–3916.

Habgood-Coote, J. (2022). The right to know: Epistemic rights, and why we need them. *Australasian Journal of Philosophy, 100*(2), 426–427. https://doi.org/10.1080/00048402.2021.2010105

Howard, P. N., Agarwal, S. D., & Hussain, M. M. (2011). When do states disconnect their digital networks? Regime responses to the political use of social media. *The Communication Review, 14*(3), 216–232. https://doi.org/10.1080/10714421.2011.597254

Internet World Statistics. (2022). *The Internet big picture: World Internet users and 2022 population statistics*. https://www.internetworldstats.com/stats.htm

Karppinen, K., & Puukko, O. (2020). Four discourses of digital rights: Promises and problems of rights based politics. *Journal of Information Policy, 10*, 304–328. https://doi.org/10.5325/jinfopoli.10.2020.0304

Klein, K. H., & Kleinman, D. L. (2002). The Social Construction of Technology: Structural Considerations. *Science, Technology and Human Values, 27*(1), 28–52.

Latham, H. (2020, December 14). Fake news and its implications for human rights. *Human Rights Pulse*. https://www.humanrightspulse.com/mastercontentblog/fake-news-and-its-implications-for-human-rights

Marchant, E., & Stremlau, N. (2020). A spectrum of shutdowns: Reframing Internet shutdowns from Africa. *International Journal of Communication, 14*, 4327–4342.

Mare, A. (2020). State-ordered Internet shutdowns and the digital authoritarianism in Zimbabwe. *International Journal of Communication, 14*, 4244–4263.

Mathiesen, K. (2014). Human rights for the digital age. *Journal of Mass Media Ethics, 29*(1), 2–18. https://doi.org/10.1080/08900523.2014.863124

Mou, Y., Atkin, D., & Fu, H. (2011). Predicting political discussion in a censored virtual environment. *Political Communication, 28*(3), 341–356. https://doi.org/10.1080/10584609.2011.572466

Mugari, I. (2020). The dark side of social media in Zimbabwe: Unpacking the legal framework conundrum. *Cogent Social Science, 6*(1), 1–15. https://doi.org/10.1080/23311886.2020.1825058

Murwira, Z. (2021, September 3). Milestone cyber security bill sails through parly. *The Herald*. https://www.herald.co.zw/milestone-cyber-security-bill-sails-through-parly/

Ottaway, M. (2003). *Democracy challenged: The rise of semi-authoritarianism*. Carnegie Endowment for International Peace.

Pollicino, O. (2019). The right to Internet access: Quid iuris. In A. von Arnauld, K. von der Decken, & M. Susi (Eds.), *The Cambridge handbook of new human rights* (pp. 263–275). Cambridge University Press.

Rydzak, J., Karanja, M., & Opiyo, N. (2020). Dissent does not die in darkness: Network shutdowns and collective action on African countries. *International Journal of Communication, 14*, 4264–4287.

SFLC. (2018). *Living in digital darkness: A handbook on Internet shutdowns in India*. SFLC.in.

Wagner, B. (2018). Understanding Internet shutdowns: A case study of Pakistan. *International Journal of Communication, 12*, 3917–3938.

Watson, L. (2018). Systematic epistemic rights violations in the media: A Brexit case study. *Social Epistemology, 32*(2), 88–102. https://doi.org/10.1080/02691728.2018.1440022

Watson, L. (2021). *The right to know: Epistemic rights and why we need them*. Routledge.

Zamchiya, P. (2013). The MDC-T's (un)seeing eye in Zimbabwe's 2013 harmonised elections: A technical knockout. *Journal of Southern African Studies, 39*(4), 955–962. https://doi.org/10.1080/03057070.2013.858546

Epistemic Violators: Disinformation in Central and Eastern Europe

Marius Dragomir and Minna Aslama Horowitz

Introduction

The conditions of journalism in Central and Eastern Europe (CEE) are currently challenged on multiple fronts. The democratisation of those countries, including their media systems, has been a complex and contradictory process (e.g., Bozoki, 2008; Dobek-Ostrowska & Głowacki, 2015). The region is by no means a monolith. Still, many CEE countries show worrying signs in the form of the deterioration of democratic media: conditions in Hungary, Poland, Serbia, and Slovenia are cause for growing concern about media freedom in Europe (e.g., Baczynska, 2021).

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The capture of public media is one reason to worry (e.g., Dragomir & Aslama Horowitz, 2021; Milosavljević & Poler, 2018). In many CEE countries, former state media have not succeeded in becoming autonomous, nor can they exercise their primary public function of informing people. Instead, they serve other vested interests (e.g., Mungiu-Pippidi, 2013; Schiffrin, 2017). In addition, in some cases, interest groups and powerful businesses have united forces to capture private media (Higgins, 2022). Another confounding factor is the rise of professional disinformation disguised as journalism. The result is that, instead of functioning as key providers and supporters of people's epistemic rights, many leading players in legacy journalism are deliberately promoting false content to their audiences. In a perversion of their original intent, laws against false information are used to silence critical voices in various CEE locales (e.g., Sandford, 2020).

This chapter begins with the premise that journalism can still function as a cornerstone of democratic societies and a primary guarantor of epistemic rights. Disinformation, defined here as deliberately composed and distributed falsehoods that pose as journalism, is a significant obstacle to the realisation of the right to information and knowledge. In the current media environment, it has become increasingly difficult for audiences to distinguish between real journalism and deliberate disinformation cloaked as journalism. Many bad actors engage in acts that can be called violations of epistemic rights, that is, hampering an individual's legal and moral rights to knowledge (e.g., Watson, 2021, 13–15). Such epistemic violations are particularly prominent in contexts in which there is not an enduring tradition of independent, trustworthy legacy media.

Another premise we adopt is that, to support epistemic rights via journalism, it is vital to understand the creators and distributors of disinformation in specific national and regional contexts. A fair amount of research on the typology of false information exists (e.g., Möller et al., n.d.; Wardle & Derakhshan, 2017), including research on the characteristics of so-called fake news (Celliers & Hattingh, 2020). Additionally, the perceptions, reception, and impacts of misinformation (e.g., Hameleers et al., 2021; Knuutila et al., 2022) and the impact of 'surveillance capitalism' on the viral spread of disinformation (Zuboff, 2019) have been focused on, including in case studies of various platforms and campaigns in various countries. Still, we know relatively little about the variety of actors involved in spreading disinformation. Such knowledge is urgently needed, especially in countries with political, geopolitical, and economic vulnerabilities.

Many CEE countries are fertile ground in this regard, allowing many kinds of purveyors of misinformation to co-exist and amplify related harms.

While disinformation can be distributed by individuals and in closed groups, the focus here is the systematic, organised, and professional misuse of journalism-like contexts and content. We identify and elaborate on three types of central disinformation disseminators: state media and captured public service media; commercial media, which are usually in the hands of oligarchs or other interest groups; and new platforms specifically established to spread conspiracy theories and similar unfounded claims.

In the following, we discuss the multidimensional role of journalism as the guardian of epistemic rights. We then outline the key features of these three types of disinformation actors and illustrate them using cases from CEE. For our empirical examples, we draw on two mapping projects created by the Centre for Media, Data and Society at Central European University (CMDC), namely the Media Influence Matrix (2017–ongoing), the Business of Misinformation (2019–2020) and the State of State Media (2021–ongoing), and argue for the need for such typologies in combatting violators of epistemic rights.

Focus: Epistemic Rights and Their Violation by Journalism

Traditionally, news and journalism have served a central function in democratic societies. As aptly outlined in the global Media for Democracy Monitor project (Trappel & Tomaz, 2021), several roles on the part of journalism support the core dimensions of democracy. In its monitorial role, journalism acts as a watchdog and holds the powers that be accountable. In its facilitative role, journalism supports citizenship and a deliberative democratic public sphere by promoting discussions and participation regarding common issues. The radical role of journalism refers to the understanding that journalism should resist any hegemonic truths and offer a diversity of views. Finally, journalism's collaborative role refers to its ability to help authorities by disseminating essential information in times of crisis.

These four roles foster three dimensions of journalism that are central to democracy: journalism that provides free and unbiased information that supports freedoms; journalism that mediates between different interests and promotes equality; and watchdog journalism that informs its

audiences about abuses of power (Trappel & Tomaz, 2021). These journalistic functions are also crucial when assessed in the light of epistemic rights, here understood as the production, dissemination, and application of knowledge, information, understanding, and truth (see Hannu Nieminen's chapter in this volume). Journalistic content is an 'epistemic good' (Watson, 2021, 15) that, ideally, supports these rights.

The informational role of journalism is self-evidently linked to epistemic rights, as it enables access to knowledge. It is no wonder, then, that freedom of the press is widely understood as a human rights matter and codified in human rights instruments (Cruft, 2021). Article 19 of the United Nations Universal Declaration of Human Rights addresses epistemic rights in a broad sense. The right pertains not only to freedom of expression but also to a person's right to seek, receive, and share information (Watson, 2021, 36). Thus, the monitorial, radical, and facilitative roles of journalism can be viewed as particularly central to epistemic rights in democratic societies: a democracy must keep everyone informed regarding the essentials during crises.

These functions and their democratic dimensions form an ideal ethos for journalism. No journalistic activity can perform them all or perform them all the time, but what happens if journalism-like content is used to violate epistemic rights deliberately? Violations of epistemic rights include the propagation of falsehoods, omissions, and the abuse of authority (Watson, 2021, 48–58). Unfortunately, the current global media ecosystem hosts organised and even institutionalised actors engaged in disinformation. They engage in a combination of these violations and not only spread false information but also intentionally omit dissenting views while using their authority as a formal media organisation or a news-like website to increase their impact.

Context: CEE, Media Capture, and Epistemic Erosion

Institutionalised disseminators of disinformation in many CEE countries are a symptom of a specific trend regarding national media structures. The phenomenon that best describes these structural problems is media capture. Captured media environments are characterised by the domination of the media sphere by political interest groups and influential businesses (Schiffrin, 2017). Not only do these forces control media regulators, public media institutions, and mechanisms for the disbursement of state funds to the media, but they also gain substantial control of the private media

sector by buying media outlets through various businesses that are, in many cases, oligarchic structures. One consequence of media capture is that these groups achieve control of the editorial narrative on public media through their influence over the internal decision-making process, which leads to undue influence on the work of journalists. If this goal is unachievable, public media face waves of purges of critical journalists, and these outlets ultimately become state propaganda channels.

The first instances of media capture, particularly the growing role of the government in the media market, could be observed in CEE in the late 2000s. The CEE region consists of a group of countries that largely share a common historical legacy anchored in a common communist past that was dominated for decades, until 1990, by the influence of the now-defunct Soviet Union. Most of these nations struggled with similar challenges during their transition to democracy in the 1990s, including convoluted processes of development for regulatory institutions, reforms of centralised state economies into free market economies, the institutionalisation of free electoral processes, and the creation of free media systems that would allow for private ownership and ensure the independence of public media. Although most of these countries faced common threats and risks during the democratisation process, they differed in some respects. For example, countries in the Visegrad group[1] experienced fast economic growth due to their early efforts to privatise their industries and rapid integration into pan-European structures. With endemic corruption and a strong presence on the part of former communist elites in their governments and economies, Bulgaria and Romania have lagged economically, a factor that delayed their democratisation efforts. In the Balkans, the wars that erupted in the 1990s had a devastating effect on the development of these nations, including Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia, delaying their integration into EU political structures and affecting their democratisation.

The region began to experience undue influence on the part of government bodies and businesses for two main reasons. The first was the economic crisis, which battered advertising markets across the region and triggered massive declines in media income; this deepened an already painful crisis for many independent media outlets. The other was the unprecedented speed of technological development, which paved the way for a handful of tech platforms to amass unprecedented market power,

[1] Hungary, Slovakia, Czech Republic, and Poland.

including ad spending. In such a context, many media outlets in the region became easy prey for powerful governments and oligarchs, who began to purchase them (Dragomir, 2018). As a part of this process, hordes of foreign investors, many of whom had a history of operation in CEE since the early 1990s, left these markets (Dragomir, 2019).

While a captured media environment does not automatically mean that captured outlets will disseminate disinformation, in practice, it contributes to the erosion of epistemic rights, often in more ways than one. At the minimum, the rationale behind capture is often one of not only market-driven ownership concentration but also the control of messaging and the crowding out of independent, diverse voices and opinions. This alone is an epistemic violation (Watson, 2021). Moreover, a captured context is fertile ground for players who purposely seek to promote false information and misuse their authority. Unfortunately, the CEE countries offer several examples of different types of epistemic violators.

Actors: Typology of Violators of Epistemic Rights

The rapid spread of disinformation has intensified in the past decade due to the glut of opportunities to communicate and share content that emerged with the rise of digital platforms and social networks. Recent comparative analyses of disinformation actors[2] have helped to identify three main categories: state or captured public media, captured private media, and journalism-like outlets of disinformation.

Gauging the overall impact of each type of violator and understanding which is the most damaging to media freedom are problematic, as each violator must be analysed within the local context. Some causalities and correlations, however, can be detected. In countries where the government tightly controls the public media, such as Hungary and Poland, the impact of captured commercial media outlets used to churn out propagandistic content favouring the authorities is much higher than in places where public media institutions maintain their editorial autonomy, such as the Czech Republic. In many CEE countries, novel online portals that mostly exist to peddle disinformation appear less frequently than in other parts of the world, for example, Western Europe or the US, because the

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[2] For the Media Influence Matrix, see: https://cmds.ceu.edu/media-influence-matrix-whats-it-all-about. For the Business of Misinformation project, see: https://cmds.ceu.edu/business-misinformation.

propaganda market in the region is already filled by mainstream media. Such disinformation websites, unless they have links with large media outlets, are at a significant disadvantage when competing with lavishly financed mainstream outlets, especially public media that draw on government funds.

Generally, outlets in all three categories have equally damaging effects on epistemic rights. State-controlled and privately owned media typically command large audiences, thanks to their significant outreach, access to capital and solid infrastructure. Alternative news sources may not always have the reach of mainstream media; however, they are popular among audiences who either look for alternative sources of information or simply do not question the source of the information they receive.

State-Controlled and Captured Public Media

With a few exceptions, across CEE, public service media are a major channel for disinformation, propaganda, and biased content. Most of them, in fact, never managed to shed the legacy of state-controlled media from before 1989, when they were operated as propaganda channels in the service of the authoritarian communist regimes that ruled the region.

According to the State of State Media study of 2022 (Dragomir & Söderström, 2022), of the 31 state-administered broadcasters, news agencies, and portals in CEE,[3] only one-third are editorially independent. In some places, state-administered news agencies, such as the Bulgarian News Agency (BTA), Czech News Agency (CTK), and the News Agency of the Slovak Republic (TASR), enjoy more editorial freedom than in other countries in the region, such as Slovenia or Croatia, arguably because they exert less of an influence on audiences than broadcast outlets do. Thus, they are considered less significant by the government.

The impact of government control on public media is most visible in the content of these media outlets, which has a strong political and pro-government bias; this is the main problem public service broadcasting has in the region (Milosavljević & Poler, 2018). In Poland, for example, a series of legal changes adopted in 2015 and 2016 cemented government

[3] The CEE region in the cited study includes 17 countries, as follows: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Montenegro, North Macedonia, Poland, Romania, Serbia, Slovakia, and Slovenia.

control of the public broadcaster TVP.[4] Most independent journalists were fired shortly after the 2015 legal amendments were adopted (Klimkiewicz, 2016). The broadcaster instead hired journalists supportive of the Law and Justice Party (PiS), the right-wing populist party then in power in Poland. As a result, the news coverage on TVP has changed, becoming more in favour of the government; the Law and Justice Party has argued that all prior governments exploited public media as well (Tilles, 2020).

For instance, in Serbia, as its management board is staffed with government loyalists (Meadow, 2022), the public broadcaster RTS is constantly under pressure from party officials to produce content that blatantly favours the Serbian Progressive Party (SNS), which has been in power since 2012.[5] Finally, Hungary is the most prominent case of a government-controlled public media system. After winning an election in 2010, the right-wing nationalist party Fidesz, which has since ruled without interruption, adopted a law that merged all public media into a new institution, the Media Services and Support Trust Fund (MTVA). The Hungarian News Agency (MTI) was given the 'exclusive right' to produce content for Hungarian radio and television broadcasters.[6] During the past decade, evidence of editorial pressures on MTVA has abounded. Bans on topics considered controversial by the government, such as human rights, and government officials feeding 'lists of sensitive topics' to editors, along with instructions regarding how to cover them, have both become normal (Bayer, 2020).

Politicisation has had negative consequences for the audience share of many public service media in the region. Most have experienced massive declines in audience figures since 1990, largely due to the liberalisation of the broadcast market, which allowed commercially run broadcast companies to establish operations. Despite this decline, public media still play an important role in the lives of their audiences. In most parts of the region, they are the only broadcasters that provide full coverage of the national territory. Moreover, they are often perceived as trusted sources of

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[4] See Telewizja Polska (TVP) in the State Media Monitor at https://statemediamonitor.com/2022/06/telewizja-polska-tvp/.

[5] See Radio Television of Serbia (RTS) in the State Media Monitor at https://statemediamonitor.com/2022/05/radio-television-of-serbia-rts/.

[6] See MTVA in the State Media Monitor at https://statemediamonitor.com/2022/06/mtva/.

information and achieve significant viewership during the exclusive events and programmes they have the right to air.

Privately Owned, Oligarch-Controlled Media

Many privately owned media across CEE are also responsible for spreading disinformation. Most of these actors are commercially funded through advertising, but many do not achieve profitability. Their losses are usually covered through revenues from state advertising, a form of funding used extensively by governments in the region to control private media outlets. Hungary is one example of a country where public resources are used for this purpose. Before 2010, when the Socialist Party was in power, the distribution of state ad spending was more-or-less balanced. However, in 2010, when Fidesz won elections, state ad funding was blatantly shifted toward media outlets that were supportive of Fidesz. Most of the beneficiaries were the businessmen who owned these media outlets and were known for their pro-Fidesz stance (Bátorfy & Urbán, 2020).

All in all, the control of private media by loyalist businesses has dramatically increased in the region during the past decade. The countries that have experienced this most acutely are Hungary, Serbia, and Poland. In Hungary, hundreds of such outlets are in the hands of government-friendly oligarchs. Fidesz, to centralise its control over these outlets, established a foundation named KESMA in 2018, to which oligarchs close to Prime Minister Orban donated all media outlets acquired over the previous five years. An Orban loyalist was appointed to head the foundation, which shelters over 470 media entities.[7] In recent years, the danger of oligarchic control has also been felt in the form of censorship and self-censorship in other CEE countries, including the Czech Republic, Slovakia, and Slovenia.

With public media under tight governmental control, the editorial coverage of captured privately owned media changed immediately after their ownership was transferred to suit the interests of the state and associated interest groups. The impact of commercially run media captured by businesses close to the government is considered significant, as many of these outlets are part of the mainstream media, including television and radio

[7] See KESMA in the State Media Monitor at https://statemediamonitor. com/2022/06/kesma/.

channels, print media with nationwide or regional coverage, and popular online portals.

OTHER SOURCES OF DISINFORMATION

The presence of newly established domestic disinformation websites is smaller in CEE than in other parts of the world, although the region is highly exposed to disinformation, especially political propaganda emanating from Russia, for which the region has key strategic importance (Kréko, 2020). News outlets financed by the Russian government, such as Sputnik News, have expanded across the CEE region and opened local-language portals in several CEE countries. Many other pro-Russian websites have appeared in the region, all disguised as independent sources of information. For example, the website RuBaltic.Ru, established in 2013, claims to be run by a group of 'scientists from Kaliningrad and Moscow'. The portal is visibly a pro-Kremlin site that attacks Russia's enemies while praising the political leadership in the Kremlin.[8] However, locally grown disinformation portals are less prominent in CEE than elsewhere. Again, this may be partially due to widespread government control over the vast majority of the mainstream media. For example, in Serbia, 'small websites cannot compete with "misinformation giants" like the tabloid newspaper Blic' (Szakacs, 2020).

Foreign governments interested in spreading propaganda sometimes channel their efforts into support for political parties and NGO diplomacy (Kréko, 2020), as friendly politicians already control mainstream media in the CEE region. After Russia launched its war on Ukraine in February 2022, state-controlled media in Hungary engaged in a massive pro-Russia propaganda campaign sanctioned by the Hungarian government, which has economic and intelligence-related interests in Russia (Makszimov, 2022). Similarly, most of the media outlets in Serbia promote Russia as a protector of Serbian interests (Kisic, 2022).

With such large players dominating the disinformation provision in the region, local disinformation websites focus on topics that generate revenue. In Hungary, for example, although various websites focus on content inspired by conspiracy theories and do not seek monetisation, there is a large group of similar websites for which the main goal is to make money,

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[8] Since 2020, CMDS has been running a project aimed at collecting data about these groups.

and these choose only content that attracts an audience (Szakacs, 2019). Advertising appears to be the principal source of revenue for most of the disinformation websites that were identified by the Business of Misinformation project.[9] Some of these portals are so popular with advertisers that they are sometimes difficult to navigate due to an 'overabundance of ads' (Szakacs, 2020).

The damaging impact of alternative, homegrown disinformation platforms has been recognised by various actors, including NGOs and private businesses. Thus far, the initial reactions against them have come from the private sector. Some businesses have avoided placing ads on such websites out of fear that an association with these platforms would hurt them financially. However, due to their reach and proliferation, these platforms have a disproportionately negative impact on the infosphere, chiefly because they feed into the extreme polarisation confronting societies in CEE.

Conclusion

An overview of the key actors disseminating disinformation in CEE (see Table 11.1) shows that violations of epistemic rights are often homegrown. In CEE countries, domestic legacy organisations and journalism-like websites effectively dismantle the role of journalism as a trustworthy source of information while simultaneously reaching wide audiences.

Central and Eastern Europe, as a region, is not a special case. Indeed, independent journalism is in trouble globally. Various rankings indicate that freedom of the press declined in the late 2010s and early 2020s (e.g., RSF, 2022). Similarly, each year has seen the online and offline safety of journalists threatened more openly and viciously than the year before (e.g., CPJ, n.d.). The global study of state media (Dragomir & Söderström, 2021, 2022) documents that independent media are vanishing worldwide. COVID-19 and the war in Ukraine, two local-global crises, have fundamentally challenged media systems with 'infodemics' and war-related propaganda.

In this precarious situation, violations can cause a variety of epistemic harms (Watson, 2021). They can result in epistemic injuries by disadvantaging those whose rights have been violated via either the communication of incorrect health information or hateful content regarding one's

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[9] See more at The Business of Misinformation at https://cmds.ceu.edu/business-misinformation.

Table 11.1 Summary of the types of violators of epistemic rights

Type of violator	Actors	Forms of violations	In CEE countries
State/public media	Governments	Public funding guarantees the control by the ruling party and allows dissemination of dominant political interests	Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Montenegro, North Macedonia, Poland, Romania, Serbia, Slovakia, Slovenia
Commercial media	Oligarchs with governments or other political actors	Ruling party and dominant political interests are promoted; state advertising functions as a form of control	Hungary, Poland, Serbia
Journalism-like entities	Foreign interference	Non-national actors support friendly politics	Czech Republic, Hungary, Montenegro, Serbia, Slovakia

ethnicity. These harms often lead to dysfunction within the epistemic system or, as Wardle and Derakhshan (2017) have posited, a societal information disorder. Even if violations do not disadvantage a specific person or group, disinformation is still an epistemic insult, a violation of rights. Epistemic offenses have a ripple effect and cause secondary harms, such as a loss of trust in a source; knowledge institutions or, in the worst case, societal institutions and structures (Watson, 2021, 71–79). Diminishing societal and institutional trust has been one of the major concerns in public and academic debates worldwide (e.g., Edelman, 2022; Newman et al., 2022).

Following Watson (2021, 91), we must understand these developments from the perspective of epistemic rights so that we can identify harms that have gone unnoticed or not been taken seriously before, including the significant disseminators of disinformation that seek to benefit from violating epistemic rights. We need to know more about each country's and region's good and bad actors–promoters and violators of epistemic rights–and their methods. This is not a unique problem, as has been demonstrated by the case of epistemic rights the UK and Brexit (Watson, 2018). Still, typologies like the one discussed in this chapter point to regional similarities and may assist in analysing other countries. Only with empirical

knowledge can we effectively tackle violations and support media systems. After all, independent, robust, and diverse national media systems are among the best remedies for the effects of disinformation.

References

Baczynska, G. (2021). EU singles out Poland, Hungary, Slovenia over sliding media freedom. *Reuters*. https://www.reuters.com/article/eu-democracy-media/eu-singles-out-poland-hungary-slovenia-over-sliding-media-freedom-idUSL8N2L853K

Bátorfy, A., & Urbán, A. (2020). State advertising as an instrument of transformation of the media market in Hungary. *East European Politics, 36*(1), 44–65. https://doi.org/10.1080/21599165.2019.1662398

Bayer, L. (2020). Human rights and Greta on Hungarian state media watch list. *Politico*. https://www.politico.eu/article/hungarian-state-media-not-free-to-report-on-greta-thunberg-human-rights/

Bozoki, A. (2008). Democratization in Central Europe. *Taiwan Journal of Democracy, 4*(2), 1–27.

Celliers, M., & Hattingh, M. (2020). A systematic review on fake news themes reported in literature. *Lecture Notes in Computer Science*, 223–234. https://doi.org/10.1007/978-3-030-45002-1_19

CPJ. (n.d.). Explore CPJ's database of attacks on the press. *Committee to Protect Journalists – Defending Journalists Worldwide*. https://cpj.org/data/

Cruft, R. (2021). Journalism and press freedom as human rights. *Journal of Applied Philosophy*. https://doi.org/10.1111/japp.12566

Dobek-Ostrowska, B., & Głowacki, M. (Eds.). (2015). *Democracy and media in Central and Eastern Europe 25 years on*. Peter Lang.

Dragomir, M. (2018). Control the money, control the media: How government uses funding to keep the media in line. *Journalism, 19*(8), 1131–1148.

Dragomir, M. (2019). Media capture in Europe. *Media Development Investment Fund*. https://www.mdif.org/wp-content/uploads/2019/07/MDIF-Report-Media-Capture-in-Europe.pdf

Dragomir, M., & Aslama Horowitz, M. (2021). Media capture and its contexts: Developing a comparative framework for public service media. In M. Túñez-López, F. Campos-Freire, & M. Rodríguez-Castro (Eds.), *The values of public service media in the Internet society* (pp. 217–246). Palgrave Macmillan.

Dragomir, M., & Söderström, A. (2021). *The state of state media. A global analysis of the editorial independence of state media and an introduction of a new state media typology*. Central European University Democracy Institute. https://cmds.ceu.edu/sites/cmcs.ceu.hu/files/attachment/article/2091/thestateofstatemedia.pdf

Dragomir, M., & Söderström, A. (2022). *The state of state media. A global analysis of editorial independence of state media based on the State Media Matrix.* Media and Journalism Research Center. https://f1836a.n3cdn1.secureserver.net/wp-content/uploads/2022/10/State-Media-2022.pdf

Edelman. (2022). *2022 Edelman trust barometer.* https://www.edelman.com/trust/2022-trust-barometer

Hameleers, M., Brosius, A., Marquart, F., Goldberg, A. C., van Elsas, E., & de Vreese, C. H. (2021). Mistake or manipulation? Conceptualizing perceived mis- and disinformation among news consumers in 10 European countries. *Communication Research.* https://doi.org/10.1177/0093650221997719

Higgins, A. (2022). Eastern Europe tests new forms of media censorship. *The New York Times.* https://www.nytimes.com/2022/01/17/world/europe/serbia-media-censorship.html

Kisic, I. (2022). The pro-Russian media campaign in Serbia. *Atlantic Initiative.* https://atlanticinitiative.org/the-pro-russian-media-campaign-in-serbia/

Klimkiewicz, B. (2016). Poland: The public, the government, and the media. Media LSE Blog. *London School of Economics.* https://blogs.lse.ac.uk/medialse/2016/02/08/poland-the-public-the-government-and-the-media/

Knuutila, A., Neudert, L.-M., & Howard, P. N. (2022). Who is afraid of fake news? Modeling risk perceptions of misinformation in 142 countries. *Harvard Kennedy School (HKS) Misinformation Review.* https://doi.org/10.37016/mr-2020-97

Kréko, P. (2020). Policy brief: Drivers of disinformation in Central and Eastern Europe and their utilization during the pandemic. *Globsec.* https://www.globsec.org/wp-content/uploads/2020/06/Drivers-of-disinformation-in-Central-and-Eastern-Europe.pdf

Makszimov, V. (2022). Civil society turns to EU executive over Hungarian state-sponsored Russian propaganda. *Euractiv.* https://www.euractiv.com/section/politics/short_news/civil-society-turns-to-eu-executive-over-hungarian-state-sponsored-russian-propaganda/

Meadow, E. (2022). Media censorship in Serbia under President Vucic. *Democratic Erosion.* https://www.democratic-erosion.com/2022/02/25/media-censorship-in-serbia-under-president-vucic/

Milosavljević, M., & Poler, M. (2018). Balkanization and pauperization: Analysis of media capture of public service broadcasters in the Western Balkans. *Journalism, 19*(8), 1149–1164. https://doi.org/10.1177/1464884917724629

Möller, J., Hameleers, M., & Ferreau, F. (n.d.). Types of disinformation and misinformation: Various types of disinformation and their dissemination from a communication science and legal perspective. *Die Medienanstalten.* https://www.die-medienanstalten.de/fileadmin/user_upload/die_medienanstalten/Publikationen/Weitere_Veroeffentlichungen/GVK_Summary_EN_final_web.pdf

Mungiu-Pippidi, A. (2013). Freedom without impartiality. The vicious circle of media capture. In K. Jakubowicz & P. Gross (Eds.), *Media transformations in the post-Communist world* (pp. 33–47). Lexington Books.

Newman, N., Fletcher, R., Robertson, C., Eddy, K., & Nielsen, R. K. (2022). *Reuters Institute digital news report 2022.* The Reuters Institute for the Study of Journalism. https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2022

RSF. (2022). *Reporter without Borders Index.* https://rsf.org/en/index

Sandford, A. (2020). Hungary: "critics silenced" in social media arrests as EU mulls powers. *Euronews.* https://www.euronews.com/my-europe/2020/05/14/hungary-critics-silenced-in-social-media-arrests-as-eu-debates-orban-s-powers

Schiffrin, A. (2017). Introduction to special issue on media capture. *Journalism, 19*(8), 1033–1042. https://doi.org/10.1177/1464884917725167

Szakacs, J. (2019). The business of misinformation: Hungary; Pushing politics, picking pockets. *Center for Media Data & Society, Central European University.* https://cmds.ceu.edu/sites/cmcs.ceu.hu/files/attachment/basicpage/1676/businessofmisinformationhungaryfinal.pdf

Szakacs, J. (2020). Trends in the business of misinformation in six Eastern European countries: An overview. *Center for Media Data & Society, Central European University.* https://cmds.ceu.edu/sites/cmcs.ceu.hu/files/attachment/basicpage/1830/bomfinalreport_0.pdf

Tilles, D. (2020). Polish ruling party grants more funds to state media described as "propaganda mouthpieces". *Notes from Poland.* https://notesfrompoland.com/2020/02/15/polish-ruling-party-grants-more-funds-to-state-media-described-as-propaganda-mouthpieces/

Trappel, J., & Tomaz, T. (2021). Democratic performance of news media: Dimensions and indicators for comparative studies. In J. Trappel & T. Tomaz (Eds.), *The media for democracy monitor 2021: How leading news media survive digital transformation* (Vol. 1, pp. 11–53). University of Gothenburg. https://doi.org/10.48335/9789188855404-1

Wardle, C., & Derakhshan, H. (2017). Information disorder: Toward an interdisciplinary framework for research and policy making. https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-researc/168076277c

Watson, L. (2018). Systematic epistemic rights violations in the media: A Brexit case study. *Social Epistemology, 32*(2), 88–102. https://doi.org/10.1080/02691728.2018.1440022

Watson, L. (2021). *The right to know: Epistemic rights and why we need them.* Routledge.

Zuboff, S. (2019). *The age of surveillance capitalism: The fight for a human future at the new frontier of power.* Public Affairs.

Nordic Illusion and Challenges for Epistemic Rights in the Era of Digital Media

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INTRODUCTION

Traditionally, the Nordic countries have demonstrated a specifically Nordic model of media and communications policies and communication rights. However, in the last decades, these countries' related developments have started to differ and they have displayed varying practices not only in responses to digital challenges but also in other media policy areas.

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In addition, the Nordic freedom of speech regulations differ also historically which leads in differences in legislations and their implementation, while at the same time the Nordic countries share similar goals and cooperate.

This chapter contributes to the study of epistemic rights by addressing how the Nordic countries support freedom of speech and dialogical rights during the digital era through regulation and other media policy measures. Also considering their historical backgrounds, we examine the differences and persistent similarities in the Nordic countries' practices through three example cases. First, we examine the regulation of online audiovisual media, demonstrating national path dependencies in content moderation legislation. Second, we explore disputes between public service and private media related to media content and subsidies, which are both essential in supporting the public's rights to varied information and social dialogue. Third, we discuss national policy responses to online hate speech that challenge both freedom of expression and dialogue.

Finally, we suggest a critical reassessment of the Nordic media model to ensure continued support of epistemic rights in the digital media age, as neither the model nor the epistemic rights should be taken for granted.

The Nordic Media Model

The Nordic countries (Finland, Denmark, Norway, Sweden, and Iceland) have been described as *media welfare states* (Syvertsen et al., 2014), which are characterised by both a democratic, corporatist media system (Hallin & Mancini, 2004) and social-democratic, welfare-state ideology (Esping-Andersen, 1990). This Nordic 'media welfare model' includes strong state support for universally available and accessible communication systems, along with subsidies for both public service and private media, institutionalised editorial freedom and the self-regulation of media. Public service media have been used especially as a policy tool to serve various groups' information and democratic needs (Syvertsen et al., 2014). This approach has aimed to support an inclusive and diverse sphere of public communication (Jakobsson et al., 2021), enabling both freedom of speech and dialogue.

However, especially in the present era of digital media and global influences, whether the Nordic media model still correlates with Nordic media realities is a relevant question (see also Ala-Fossi, 2020; Nordic Journal of

Media Studies, 2020). The Nordic countries' media policies and regulations are increasingly influenced by political decisions and legislation that stem from international commitments. Their implementation, however, still depends on historical factors, such as national constitutions and economic conditions that reflect both similarities and vast differences, leading to path-dependent variations.

In the following section, we present some main historical developments and how they affect the Nordic countries' current media model. Then, we explain our analytical framework related to the media policy differences that we have observed, as well as our three case studies. Finally, we summarise our findings in the context of epistemic rights and the digital era vis-à-vis the Nordic media model, freedom of speech and dialogue.

A Long-Shared History

The Nordic countries are often considered similar and uniform. However, at least 11 wars have been waged between Sweden and Denmark. During the nineteenth century's wave of nationalism, significant cultural and language strife occurred in Norway between Norwegians and Swedes. In Finland, similar conflicts arose between Finnish-speaking and Swedish-speaking people. Norway was ruled by both Denmark and Sweden for centuries, and Finland was part of Sweden for over 600 years.

From Enmity to Cooperation

Cooperation between the Nordic countries is common. A long-lasting effort in this regard is the Nordic Council, the official body for formal inter-parliamentary cooperation among the Nordic countries, which was formed in 1952. During the Cold War, Denmark, Norway, and Iceland joined the North Atlantic Treaty Organization (NATO), while Sweden and Finland remained neutral until the spring of 2022. Currently, Sweden, Denmark, and Finland are members of the European Union (EU), but Norway and Iceland cooperate only through the European Economic Area (EEA).

This historical path dependency is also evident in each country's constitutional framework and identity. A constitutional framework is essential for analysing how rights are guaranteed both theoretically and in practice. While Nordic constitutions are similar, almost all Western constitutions

are alike. A closer look reveals that all such similarities are based not on a shared Nordicness but, rather, on European and even international constitutional trends.

Nordic Constitutions and Freedom of Speech

All the 'old' Nordic countries are kingdoms, and their first step in creating a constitution was transferring monarchical power to public institutions (Suksi, 2018). In Nordic countries, the Reformation altered power relations between the state and the church. Some arrangements by the Swedish Instrument of Government in 1634 remain, in one form or another, present in the Swedish and Finnish constitutions (Tamm, 2005). Since the early twentieth century, all the Nordic countries have been parliamentary democracies.

The Nordic countries' current geographical area has evolved from comprising two states to five. The Nordic constitutions are divided into Western (Denmark) and Eastern (Sweden) traditions (Tuori, 2002). This division is mainly reflected in institutional elements—for example, the separation of executive and legislative powers. However, constitutional traditions and identities affect doctrines on fundamental and human rights, such as freedom of speech. One main difference is the judicial review of laws on a constitutional basis. In the Western tradition, courts—and especially supreme courts—have the right to review laws' constitutionality. In the Eastern tradition, the Swedish parliament is the authority on constitutional review, and the Finnish parliament's Constitutional Law Committee rarely conducts judicial reviews.

The Nordic constitutions have included catalogues on fundamental and human rights for a remarkably long time. The Swedish *Freedom of the Press Act* of 1766 was a constitution. However, a new constitution by King Gustav III abolished all previous constitutions six years later. In Denmark-Norway, a declaration on the free press was issued in 1770. Today, the most notable exceptions in the Nordic countries are the Swedish freedom of speech laws; the *Instrument of Government* guarantees freedom of speech as a fundamental right, but the *Freedom of the Press Act* regulates print media, and the *Fundamental Law on Freedom of Expression* regulates broadcasting and other electronic media.

All current Nordic constitutions align with international human rights treaties. The Nordic constitutions have been regularly reformed, and because of these reforms, the status of fundamental rights has become

more significant. One of the most recent reforms has occurred in Iceland, which crowd-sourced the drafting of its constitution. However, this process has ground to a halt. Today, overall, the Nordic countries share the same European values and a Nordic ideology based on the public sphere, access to information, and freedom of speech.

Analysing the Transition of Media Welfare States

The history of the Nordic countries is a useful backdrop to understand the similarities and dissimilarities in these welfare states' development. Two complementary approaches of new institutionalism, *discursive institutionalism* and *historical institutionalism*, reveal how political solutions develop by focusing on how ideas and discourses shape and promote policy changes (Schmidt, 2008).

In the Nordic countries, the discourse on a 'welfare state' is as powerful a policy tool as the actual operational policies that characterise what one could call a 'Nordic welfare state'. While the Danish declaration on the free press and the Swedish *Freedom of the Press Act* were implemented before welfare policies, the latter can however be regarded mostly as a counterrevolutionary policy by the Swedish monarchy. Freedom of expression and access to information have since developed into important elements of the Nordic model. The historical context, including periods of censorship, has become less important compared to the ideological discourse on freedom.

Nevertheless, critical points in the Nordic countries' history help explain Nordic media policies' more recent developments. These 'critical junctures' (Pierson, 2000) have set policies on a specific path. Changing political or economic realities, new technologies and shifting social norms can alter policies' paths (Mahoney, 2000, p. 517; Pierson, 2000, p. 263)—sometimes incrementally, rather than acutely (Thelen, 2009).

Although we can outline the development of Nordic countries' shared history and how their media systems' roots reflect historical, ideological, and practical similarities, the contradiction between the idealised Nordic model and reality has increased. The idea of a media welfare state should, therefore, be regarded as dynamic and in need of periodic re-examination (Syvertsen et al., 2014). Especially in the era of digital media and global influences, the question of whether the Nordic media model still correlates with Nordic media realities is relevant. The factors that influence

current media policies and regulations are historical, legal, political, economic, and technological.

The Roles of National Path Dependence and Supranational Decision-Making

While the regulation of media content has been regarded fundamentally as a national affair, in some instances, the ambition to create a single market in the EU has altered this aspect of national sovereignty. However, EU acts are always incorporated into existing national regulatory structures. Directives must be formally transposed into national legislation, a process which undoubtedly results in national variations. Although they are directly enforceable, regulations most often allow for national exceptions according to member-state law.

All Nordic countries are also members of the Council of Europe and signatories of the European Convention on Human Rights (ECHR). The reception of supranational regulation varies between countries: Sweden's idiosyncratic freedom of speech regulation has side-lined supranational regulation, while Finland, Iceland, and Norway have reformed their constitutions and legislation to meet European standards. Without underestimating the importance of supranational decision-making, considering how national path dependence influences supranational policies' incorporation into national media regulations is equally necessary.

The Transition from Welfare States to Competition States

The transition from welfare states to competition states has been ongoing since the 1970s, and Nordic social democracy is especially undergoing a deep crisis. None of the Nordic countries present a perfect example of the suggested Nordic media model, and alongside their similarities, the media systems also reflect many market- and policy-based differences (Engelstad et al., 2017; Hilson, 2008; Nord, 2008).

Finland's shift from a welfare state into a liberal competition state has been argued to be more rapid than the corresponding shifts in the other Nordic countries, especially due to two severe recessions in the 1990s and late 2000 (Ala-Fossi, 2020). These developments have also reflected in the Nordic countries' media policies, of which direct and indirect press subsidies present a good example (Ots et al., 2016).

The Digital Era and Epistemic Rights in the Nordic Countries

The digital era has brought new challenges for epistemic rights in Nordic countries. Since plenty of media players now operate through many channels and platforms, the role and importance of a national public sphere and the state's role as a media actor are under political debate (Enli et al., 2018).

Freedom of speech is just words on paper if regulations' de facto functioning and the atmosphere in which freedom of speech and public dialogue take place are not considered. All Nordic states have specific media laws and penal laws to regulate freedom of speech, and these laws also attempt to support dialogical rights to public deliberation and participation. In Sweden, websites and blogs with a journalistic focus and editors can apply for certifications verifying that their online media are within the scope of the *Fundamental Law on Freedom of Expression*. Without certification or an editor, ordinary laws apply as well—as they do with discussion forums—because content can be changed by people other than editorial staff. In Denmark, journalists who work for internet media that are not registered with the Danish Press Council do not enjoy some rights and privileges of the *Media Liability Act* (Sandfeld Jacobsen & Schaumburg-Müller, 2011). In comparison, the Finnish media law and its Norwegian equivalent are technology-neutral.

Despite strong legislative guarantees of freedom of expression, issues related to the multiplicity of online content and the quality of public dialogue—especially on social media platforms—cannot be solved by legislation alone because the platforms have become significant third parties in regulation practices. Problems arise in that much of the user-generated online content published on such platforms is harmful yet not illegal, containing hate speech, misinformation, and harassment that hinder freedom of expression and free dialogue. Nordic policies have recently attempted to address these problems with measures other than law.

Three Illustrative Cases

In the previous section, we presented some of the changes or critical points that we believe have affected the Nordic media model's development in recent years. In the current subsection, we use case studies to demonstrate nationally-varying responses, within the Nordic media model, to issues concerning freedom of speech and dialogical rights. For this purpose, we

used qualitative document analysis to identify some current solutions in the Nordic countries' media regulations and policies. We drew on a variety of sources, ranging from formal documents on different legislative processes to policy papers, as well as previous scholarship.

Case 1: Path Dependence and Supranational Decision-Making, the Regulation of Online Audiovisual Media

The regulation of online media is conspicuously national, although policymaking has increasingly taken the form of EU acts that are adapted into national contexts in a path-dependent manner. While other Nordic countries' ways of transposing EU regulation tend to be duly considered when designing national regulation, the solutions have been more oriented towards national needs and regulations. A recent example is the ongoing transposition of the updated *Audiovisual Media Services Directive* (AVMSD, 2018/1808). The directive includes additional content moderation requirements for video-sharing platforms. While the directive's key definitions and initiative to regulate video-sharing platforms stemmed from the EU institutions, the national regulatory proposals that transpose the relevant provisions are structured according to how media have been regulated nationally.

The Finnish and Swedish proposals require video-sharing platforms to protect audiences from specific crimes identified in criminal codes. While these provisions are similar, notably, the crimes themselves differ slightly in their national definitions, and unlike the Finnish proposal, the proposed law in Sweden also requires platforms to take reasonable measures against unlawful threats (Prop., 2019/20:168, 27). Conversely, the Danish proposal authorises the Minister of Culture to introduce new rules for video-sharing platforms regarding relevant criminal offences (Kulturministeriet, 2019, p. 4). All three proposals transpose the responsibilities defined in Article 28b of the updated AVMSD; nevertheless, the national criminal codes reflect national path dependencies—in terms of both who can define necessary governance measures in the respective countries and the criminalisation of specific activities.

In online media, the commonalities between the Nordic countries stem less from the countries' shared histories and more from their EU or EEA membership.

Case 2: The Public's Dialogical Rights Versus the Press's Private Interests

In the Nordic countries, print media have a dual nature as publicly supported instruments of a free and inclusive public sphere, enabling the public's dialogical rights, and as private businesses. Traditionally, Nordic print media have been publicly subsidised in two ways: with direct subsidies to ensure diversity and with tax subsidies to ensure viability. However, unlike its Western neighbours, Finland decided in the 1990s to cut public spending by abandoning direct press subsidies. This decision may have accelerated the confrontation between, especially, the Finnish press industry and the public service media Yleisradio since the internet has become an increasingly relevant form of content distribution for both parties.

The commercial press in Finland continues to enjoy relatively generous indirect tax subsidies because of its importance to freedom of speech, social dialogue, and democracy. However, its criticism against Yleisradio—which is publicly funded for the same reasons—has increased at almost the same pace as the decrease in income from print subscriptions and advertising over the past two decades. Commercial media have constantly criticised both the remit and funding of public service media in other Nordic countries as well. However, Finnish commercial media alone have succeeded in also restricting public service media through a complaint to the European Commission. As a result, the Danish Media Association and Swedish Media Publishers' Association are considering types of complaints like those by the federation of Finnish private media, Finnmedia, made in 2017. Additionally, two more related complaints to the Commission are in process: a complaint about Yleisradio's online learning services and video-on-demand services filed by Sanoma Corporation in Finland and a complaint about Estonian Public Broadcasting online news by the Estonian Association of Media Enterprises.

The dispute over public service media's internet operations has deep roots in Finland. Twenty years ago, Yleisradio had an early advantage in developing new online services—partly because private Finnish publishing companies dismissed, at first, the internet as a serious platform. However, private media companies started demanding Yleisradio's exclusion from the internet in 2004. Overall, Yleisradio faced a financial crisis since its income from television licencing fees collapsed after television's digital switchover in 2007. A parliamentary committee issued a proposal for Yleisradio's new funding system in 2009, but it never proceeded into

parliament since Finnmedia organised a campaign against the proposal, considering Yleisradio to be too well-funded (Laakso, 2012.) As this tension further increased with the economic crisis and the Finnish commercial media's decreasing income, Yleisradio funding reforms had to wait until the next general elections in 2011. Parliament accepted an updated proposal for an income-linked Yleisradio tax in December 2011. Three other Nordic countries (Norway, Denmark, and Sweden) implemented funding reforms for public service media after Finland.

In Finland, the public criticism of Yleisradio funding, as well as the limits of its remit, continued in the press and peaked on private television just before the general elections of 2015. The new government of the National Coalition Party, Centre Party, and Finns Party appointed a working group to study the development of Yleisradio, which reached a consensus only in June 2016. The committee made a few concessions to the private sector, but no drastic cuts to Yleisradio funding took place. So, despite the relative success of its domestic media campaign, Finnmedia failed again to achieve its political objectives (Karppinen & Ala-Fossi, 2017).

At this point, Finnmedia decided to change tactics by taking the domestic dispute to the European level using legal arguments. In 2017, it filed a complaint with the EU Commission, arguing that Yleisradio's online content in text format violated EU state aid rules since text content was not mentioned in Yleisradio's legal remit. After non-public discussions with the Commission's Directorate-General for Competition, the Finnish government proposed an amendment to the *Act of Yleisradio*, which required the text-based journalistic content on the Yleisradio website to be linked to audio and video content with only a few exceptions. Despite criticism from academic researchers, as well as a citizens' initiative that proposed an alternative solution, the Parliament of Finland endorsed this amendment in March 2022.

Case 3: Hate Speech as a Threat to Free Expression and Dialogue and Policy Solutions

Hate speech has greatly concerned both the Council of Europe and the EU. It is seen to endanger the cohesion of democratic societies, the protection of human rights and the rule of law while increasing the risk of social unrest and violence.[1] Furthermore, the hate speech issue has been

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[1] See: https://www.coe.int/en/web/freedom-expression/hate-speech.

addressed under the Nordic cooperation of the Nordic Council and the Nordic Council of Ministers.[2] This Nordic cooperation has addressed, for example, gender-based online hatred and harassment in recent years (e.g., Bladini, 2017; Mogensen & Helding Rand, 2020).

In the Nordic countries, legislation does not define 'hate speech'. However, all the Nordic countries criminalise specific speech acts which can be categorised as 'hate speech'. Such acts include, for example, defamation, illegal threats, persecution, and incitement to hatred. For incitement to hatred, the protected characteristics that could be attacked include race, skin colour, ethnicity, religion, nationality, and sexual orientation. Gender, in general, is not a protected characteristic; however, the legislations are due to change. Moreover, all crimes can be investigated and convicted as hate crimes if a hate-based motive can be demonstrated (see, e.g., Bladini, 2017).

In line with the Nordic media model's strong focus on media policy, all Nordic countries have recently published hate-speech–related policies, seeking solutions to this growing problem. For Case 3, key Nordic policy documents dating from 2016 to 2021 ($N = 11$)[3] were analysed, and we mapped similarities and differences in problem definitions and suggested solutions.

Nordic policies regard hate speech as especially threatening to society's basic values, including democracy, freedom of expression and opinion, free public debate, human rights, and equality. A shared view across the Nordic countries' respective policies suggests that public debate should be open to all opinions, that freedom of expression receives strong support, and that great variety of speech is allowed, yet with respect to others in the debate. Such open dialogue is presently regarded as endangered by hate speech, threats, disinformation, and propaganda. Instead of focusing only on hate speech directed at individuals or minority groups, based on their named and legally protected characteristics, the hate speech policies also focus on the harassment of people in public positions and people who participate in public debate. The harassment of these public actors is seen

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[2] See: https://www.norden.org/en/political_areas.

[3] These policy papers were found through an online search of the Nordic countries' government websites (Denmark, $n = 3$, regeringen.dk; Norway, $n = 2$, regjeringen.no; Sweden, $n = 3$, regeringen.se; and Finland, $n = 3$, various ministries' website). This search was conducted from November 2020 to January 2021. The policy papers were checked again between April and August 2022. Due to space limitations, we do not provide the related references in full here.

as the most harmful aspect of hate speech for society's democratic functions.

The current hate speech problem manifests especially on online platforms. The internet and social media have not only provided people with new means of self-expression and participation but also created multiple problems. Platforms are identified in the policies as the third party that currently controls public debate and its values, and this is seen as a threat to democracy. Additionally, the analysed policies identify that hate speech derives from various societal processes, such as growing differences in shared basic values, polarisation, segregation, the rise of populism and nationalism, the changing media landscape, and professional journalism's economic problems. Hate speech involves and affects multiple actors across society in various ways.

The suggested policy solutions to hate speech involve governance, officials, legislation, education, social policies, perpetrators, victims, users of online services, the media, and, finally, online platforms. The policies call for joint action at all levels of the welfare state, including continued support for the fundaments of media welfare states such as subsidies for professional media to ensure universal access to and the diversity of content, guarantees for editorial freedom and media self-regulation, as well as civil society's actions and consultations. The state is responsible for guaranteeing a functioning democracy and freedom of expression, but according to the policies, individuals are responsible for their online behaviour. Individuals are to be supported, for example, through media literacy education.

Hate speech is pushing Nordic countries towards shared solutions: instead of developing country-specific legal measures on hate speech, these countries all expect Europe-wide and international processes to produce new regulations that will help control the platforms, which have been reluctant to seriously address hate speech. National legislation that would regulate these giants or, for example, give them editorial responsibilities has not gained support. National criminal laws facilitating more efficient punishment of online harassment have, however, been adjusted in Denmark and in Finland. These laws will also be relevant for the enforcement of the EU's Digital Services Act, which places specific requirements on very large online platforms.

Conclusion

The Nordic media welfare state model still forms the basis for media policies and regulation, especially given the ideal of media subsidies paired with media freedom, including strong legislative support for freedom of expression and dialogue. However, we argue that the Nordic countries' implementations increasingly differ. Historically grounded constitutional and legal differences have led to national path dependence in these implementations. Paradoxically, these differences are becoming increasingly visible in today's supranational regulatory environment.

In the regulation of online media, commonalities have been observed in the high regard for freedom of speech, but concrete regulatory frameworks differ. Online media policies' most similar aspects stem not from Nordic cooperation but from the underlying EU framework. The actual implementation of EU legislation has varied among the Nordic countries, as the regulation of audiovisual online content has demonstrated. Also, despite similar principles and goals for public service and commercial media, national solutions have varied and sparked different disputes in the respective Nordic countries. Current online challenges, such as hate speech, are pushing the Nordic countries towards accepting new international and shared legal solutions, while some solutions can be found in national policies and renewed support for the media welfare model's principles such as diverse and open public sphere and sustainable professional media.

The three cases that we have presented in this chapter demonstrate the increasing difficulty of arguing that the Nordic countries presents a unified example of the Nordic media model. While these nations' common histories can be reasonably recognised, the Nordic media model must now be reassessed in view of their differences. Such a reassessment also requires the critical observation of the Nordic countries' ability to support citizens' epistemic rights in the age of digital platforms and disruption. While the principles of freedom of expression and dialogue are highly valued in legislation, they are not upheld in practice unless also other conditions for a viable, free, and diverse public sphere are guaranteed. Continued support for epistemic rights and the media welfare model demands constant re-evaluation and political will in the changing digital media environment. Neither the support nor the imagined perfection of the media welfare-state model should be taken for granted.

References

Ala-Fossi, M. (2020). Finland: Media welfare state in the digital era? *Journal of Digital Media & Policy, 11*(2), 133–150. https://doi.org/10.1386/jdmp_00020_1

Bladini, M. (2017). *Hat och hot på nätet. En kartläggning av den rättsliga regleringen i Norden från ett jämställdhetsperspektiv.* NIKK, Nordisk information för kunskap om kön, på uppdrag av Nordiska ministerrådet. https://www.nikk.no/wp-content/uploads/Hat-och-hot-p%C3%A5-n%C3%A4tet_170627.pdf

Engelstad, F., Larsen, H., Rogstad, J., & Steen-Johnsen, K. (Eds.). (2017). *Institutional change in the public sphere. Views on the Nordic model.* De Gruyter Open Ltd.

Enli, G., Syvertsen, T., & Mjøs, O. J. (2018). The welfare state and the media system. *Scandinavian Journal of History, 43*(5), 601–623. https://doi.org/10.1080/03468755.2018.1474023

Esping-Andersen, G. (1990). *The three worlds of welfare capitalism.* Princeton University Press.

Hallin, D., & Mancini, P. (2004). *Comparing media systems: Three models of media and politics.* Cambridge University Press.

Hilson, M. (2008). *The Nordic model. Scandinavia since 1945.* Reaktion Books.

Jakobsson, P., Lindell, J., & Stiernstedt, F. (2021). A neoliberal media welfare state? The Swedish media system in transformation. *Javnost – The Public, 28*(4), 375–390. https://doi.org/10.1080/13183222.2021.1969506

Karppinen, K., & Ala-Fossi, M. (2017). Finland: Maintaining the fragile consensus. In C. Herzog, H. Hilker, L. Novy, & O. Torun (Eds.), *Transparency and funding of public service media – Die deutsche Debatte im internationalen Kontext* (pp. 107–117). Springer VS. https://doi.org/10.1007/978-3-658-17997-7_9

Kulturministeriet. (2019). *Forslag til lov om ændring af lov om radio- og fjernsynsvirksomhed og lov om film.* https://prodstoragehoeringspo.blob.core.windows.net/242bc25c-d414-4a2e-959c-48242cbf46ae/Lovudkast.pdf

Laakso, A. (2012). *"Pakkoavioliittoa" vastustamassa. Suomalainen lehdistö ja mediamaksu 2009–2010.* Master's thesis, University of Tampere.

Mahoney, J. (2000). Path dependence in historical sociology. *Theory and Society, 29*(4), 507–548.

Mogensen, C., & Helding Rand, S. (2020). *The angry internet. A threat to gender equality, democracy and well-being.* Centre for Digital Youth Care. https://cfdp.dk/wp-content/uploads/2020/11/CFDP_the_angry_internet_ISSUE.pdf

Nord, L. (2008). Comparing Nordic media systems: North between West and East? *Central European Journal of Communication, 1*(1), 95–110.

Nordic Journal of Media Studies. (2020). Special Issue 2(1).

Ots, M., Krumsvik, A. H., Ala-Fossi, M., & Rendahl, P. (2016). The shifting role of Value-Added Tax (VAT) as a media policy tool: A three-country comparison

of political justifications. *Javnost – The Public, 23*(2), 170–187. https://doi.org/10.1080/13183222.2016.1162988

Pierson, P. (2000). Increasing returns, path dependence, and the study of politics. *American Political Science Review, 94*(2), 251–267. https://doi.org/10.2307/2586011

Prop. 2019/20:168. En moderniserad radio- och tv-lag. https://www.regeringen.se/4a6620/contentassets/978a310426b64fd4b74f86bd9cbf7b0e/en-moderniserad-radio%2D%2Doch-tv-lag-prop.-201920168.pdf

Sandfeld Jacobsen, S., & Schaumburg-Müller, S. (2011). *Media law in Denmark.* Kluwer Law International.

Schmidt, V. A. (2008). Discursive institutionalism: The explanatory power of ideas and discourse. *Annual Review of Political Science, 11*(1), 303–326.

Suksi, M. (2018). Common roots of Nordic constitutional law? Some observations on legal-historical development and relations between the constitutional systems of five Nordic countries. In H. Krunke & B. Thorarensen (Eds.), *The Nordic constitutions – A comparative and contextual study* (pp. 9–42). Hart Publishing.

Syvertsen, T., Enli, G., Mjøs, O. J., & Moe, H. (2014). *The media welfare state. Nordic media in the digital era.* University of Michigan Press.

Tamm, D. (2005). How Nordic are the old Nordic Laws? In D. Tamm & H. Vogt (Eds.), *How Nordic are the Nordic Medieval Laws?* (pp. 6–22). University of Copenhagen Press.

Thelen, K. (2009). Institutional change in advanced political economies. *British Journal of Industrial Relations, 47*(3), 471–498. https://doi.org/10.1111/j.1467-8543.2009.00746.x

Tuori, K. (2002). *Critical legal positivism.* Ashgate.

Right to Data Access in the Digital Era: The Case of China

Yik Chan Chin

INTRODUCTION

China has the second-largest internet market in the world. With the rapid creation and adaptation of digital platforms and e-commerce, the access to, collection and dissemination of data have become the focus of academic debate and policymaking. Three factors contributed to these developments: (1) the internet and data are perceived in China as an important driving force for economic development and an important manifestation of social vitality; (2) with the rapid development of the platform economy, the mass production of data has raised governance problems in relation to the storage, transmission and use of data; and (3) the role of digital social media platforms in data access and dissemination has strengthened the public demand for the government to protect the right to information in China. It is within this context that the question on the right to access to

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data in academic research, policy and regulation becomes the research focus of this chapter.

The primary data used for the analysis include policy documents and regulations produced by the Chinese government concerning data access, the right to information and data protection. The secondary data include academic literature, policy research and news media reports.

Epistemic Rights and Right to Data Access

According to the definition given by Lani Watson (2021), epistemic rights are closely linked to the creation and dissemination of knowledge—relating not only to being informed but also to being informed truthfully, understanding the relevance of information and acting on its basis to benefit themselves and society as a whole. Hannu Nieminen's chapter in this volume also highlights the equality nature of epistemic rights, such as equality in the access to and availability of information and knowledge, and equality in obtaining critical literacy in information and communication.

While often thought of as pure information, data is a form of knowledge. As argued by Gitelman and Jackson (2013, p. 4), 'raw data is an oxymoron' and 'data does not just exist' (Manovich, 2001, p. 224). The three concepts of data, information and knowledge are interrelated, but the nature of the relations among them as well as their meanings are debatable. Many scholars claim that data is the raw material for information and that information is the raw material for knowledge (Zins, 2007, p. 479). In this chapter, data is defined as a set of symbols representing a perception of raw factors. Information is organised data that has been processed into a form that is meaningful to the recipient; knowledge is understood information (Davis & Olson, 1985; Debons et al., 1988; Zins, 2007), and digital data is a set of symbols made up of units of binary code that are intended to be stored, processed and transmitted by digital computers (Zins 2007, p. 482). Personal data refers to any information that is related to an identified or identifiable natural person (Art. 4 (1), GDPR, 2016). Public data refers to the information collected, produced, or paid for by the public or government bodies. Enterprise data refers to the data collected and processed by market entities in production and business activities that do not involve personal information. Commercial data refers to proprietary data commercialised by a company and sold by professional data providers with commercial support. It needs to be imagined as data

to exist and function, and the imagination of data involves interpretation. Therefore, data, as a form of knowledge, is created through social processes; its creation and definition therefore involve human agency and interpretation (Berger & Luckmann, 1967, p. 10; Haggart, 2019). As such, Chinese academic and policy debates on access to digital data and its regulation inevitably become a social construction process, involving different agencies and interpretations.

Underpinned by the normative criteria of epistemic rights discussed in this volume, this chapter examines the academic debate on access to digital data in China and its national policy. More precisely, this chapter discusses the conceptualisation of the right to access data in China and the related regulatory framework. It also considers the legitimacy of those rules in relation to the public's epistemic right to data.

RIGHT TO ACCESS DATA

In this chapter, the right to access data is defined as consisting of two elements: (1) a right to access public information (recognised as an individual human right by many jurisdictions and human rights bodies, see Riegner, 2017); and (2) an inclusive right for all members of society to benefit from the availability of data.

Viktor Mayer-Schonberger and Thomas Ramge (2022) define data as a non-rivalrous informational good, as opposed to a physical good, and a public good for accelerating innovation for the benefit of all. Access to data must align with the fundamental principles of free enterprise and open information flows. They argue that through control of access to data and monopoly of data as raw material, major technology companies could undermine the capacity for innovation, as they have less incentive to be disruptive. To address this problem, economic policy must focus on the structural issues of data access and drastically broaden access to data. In addition, data cannot legally be owned like physical property; affording an exclusive ownership right, such as the property right to data, is impractical due to the difficulties in restricting the use of data to a specific purpose or specific users, and trading data in the market is inefficient because the market cannot adequately perform its role as an allocation mechanism. A compulsory opening of the dataset is proposed by Mayer-Schonberger and Ramge (2022) to promote innovation capacity and crack down on the information-based domination derived from exclusive access to data. Thus, a competitive advantage will rely on extracting insights from data,

not from access to data. The access mandate provides that non-confidential data should be open access, and that the direct exchange of data between the data holder and requester should be facilitated by an open system of data access.

Purtova (2015) argued that data is not a public good but a rivalrous resource. Without policy action to assign property rights, including no access and non-disclosure in personal data to the data subject, it will effectively make the individual defenceless in the face of corporate power, eroding the autonomy, privacy and right to informational self-determination of the individual.

In Europe, the EU Commission has adopted data access for all strategies, that is, data is to be available for access to all—whether public or private, big or small, start-up or giant. 'Big commercial digital players must accept their responsibility, including by letting Europeans access the data they collect. Europe's digital transition is not about the profits of the few but the insights and opportunities of the many' (von der Leyen, 2020, p. 2). The 2022 Data Governance Act allows the creation of common European data spaces in certain key areas: health, environment, energy, agriculture, mobility, finance, manufacturing, public administration, and skills. Data marketplaces, that is, online platforms where users can buy or sell data, will help new intermediaries to be recognised as trustworthy data organisers. Companies, individuals and public organisations can also share personal data for the benefit of society, i.e., data altruism (European Parliament, 2022). Meanwhile, it is suggested that the EU needs to establish a framework for business-to-government (B2G) data access and explore the creation of a cross-EU regulatory framework (European Commission, 2020).

In comparison to the European approach, in 2022, the World Economic Forum proposed that Data Marketplace Service Providers (or DMSPs) operate and manage data exchanges. These are defined as platforms where information, or the right to access certain information under certain conditions, can be traded in an open, efficient and accountable way and where participants in data exchanges would trade information collected in a wide range of fields, from healthcare to manufacturing (WEF, 2022).

Academic Debate on the Right to Access Digital Data in China

The right to access data has not been treated as an independent right for deliberation in China but has been considered as part of the debates on the right to information and data property rights.

Regarding the former, where the data are owned by the government, the right to access data is interpreted as part of the personal right to public information (Zhang, 2022). There are two views on ownership. According to one view, these data should be owned by the public because the source of the original data comes from the daily work of the government, the collection of data is publicly financed and the data is ultimately used in people's daily lives, so it is a public good and its ownership belongs to the people (Huang et al., 2018). Others argue that the data belong to the state, as 'the ownership of collective data is rooted in state ownership' (Song & Qiu, 2022).

For non-public data, the legal basis of the right to personal information is argued as the right to self-determination of information: any data controller or processor needs to obtain the 'expressed consent' of individuals before collecting, obtaining, and processing data, and data commercialisation that ignores the personal dignity of individuals attached to data should not be accepted. If data protection is not in place, it will damage the rights and interests of individuals and organisations and even cause social and economic risks. If overprotected, big data analytics will become impossible (Huang, 2023a). However, the right to access personal data is not explicitly discussed, and the equality nature of the epistemic right, such as equality to access and availability of information and knowledge, has drawn little attention among Chinese academics.

As mentioned, the right to access data is also treated as part of discussions on data's property rights. In other words, in contrast with the EU's GDPR approach, which does not define the ownership of data but regulates the access of data, the Chinese academic debate has revolved around data ownership. This is partly because data are largely not seen as a public good shared by consumers or companies. All activities of data collection, analysis and processing are aimed at unlocking the potential commercial value of data, providing personal information and protecting national security (Zhang, 2021). Therefore, pragmatically, the priority is to formulate a data trading system supported by the right to data ownership so that data can be traded to generate economic value. This is also partly triggered

by the government's policy objective of using big data. Thus, the Chinese academic debate is heavily policy-driven.

Some scholars advocate the establishment of a dual-right structure in which the data subjects own the data, and the data processor owns the data's usufruct or operational rights (Shen, 2020; Long, 2017). It is also argued that data property rights should be assigned to data companies that collect and process data and that the rights of 'sensitive personal data' should be assigned to data subjects (Xu, 2018). Xiaodong Ding (2019) argued against the allocation of data ownership rights to individuals, as this would incur extremely high transaction and communication costs and overtake some of the data rights enjoyed by platforms, making it impossible for platforms to carry out certain normal business activities.

Mei Xiaying (2022), among very few other scholars, supports the public good nature of data and argues that data sharing should be the default position and that control of access to data requires justification because data is a natural public good. The construction of a data control system should be based on the premise of data sharing.

Notably, the most recent debate has re-oriented the focus from data ownership to the structural separation of data property rights into three separate rights—data holding rights, data process and use rights, and data product management rights. Meanwhile, data sharing is no longer about the sharing of original data but the sharing of data products. In other words, it is not the original data but the access to data to perform the calculation that is shared (Huang, 2022, 2023a, 2023b). A researcher at the State Council's development research centre has conceded that the current data trading model is difficult to sustain from the perspectives of actual needs and government policy (People's Posts and Telecommunications News, 2022). In practice, it is unclear whether individuals have data ownership rights or how they can exercise this right, and it is therefore impossible to talk about data trading rights and data revenue distribution (Zhou et al., 2022). The idea is to use technology such as privacy encryption to separate data ownership from data use rights so that data can be used but not shared and data usage can be controlled and measured. Government policy should focus on the development of data services to release data value under the premise of ensuring privacy and security (People's Posts and Telecommunications News, 2022).

Rules Governing Access to Digital Data in China

According to incomplete statistics, (draft) regulations on 'data' have sprung up all over the country. By the end of 2021, nearly 225 local legislations (including 67 local regulations and 158 local departmental rules) had been adopted (Bai & Li, 2022). The most important element of China's data strategy policy is that data is officially defined as a new factor of production besides land, labour, capital and entrepreneurship, and it builds the foundation for the country's digitalisation, connectivity and AI. To qualify as a factor of production, according to a Chinese economist who participated in the government's data strategy policy drafting, 'it must be a must-have basic resource in the production of goods and services; data can only qualify as factor of production if it is used in production and business activities and generate significant value' (Huang, 2023b).

First, for the collection of and access to personal data, China's Personal Information Protection Law (PPL) stipulates that the data collector can collect personal information only if it obtains the consent of the individual, if the collection is necessary for the conclusion and performance of a contract, for the performance of statutory duties or obligations, to respond to public health emergencies or for conducting news reporting and other acts in the public interest. If the collector wants to provide personal information collected about third parties, it shall inform the individual and obtain their consent. Additionally, the individual has the right to know, decide, rectify, restrict and refuse the process, and to delete, be forgotten and obtain an explanation and copy of the data.

Also, Article 47 establishes an obligation for data collectors to actively delete personal information if the purpose for collecting the data has been achieved, cannot be achieved or is no longer necessary, or if the collector stops providing products or services, if the storage period has expired when the individual withdraws consent. Against this legal backdrop, on December 12, 2022, after the State Council announced seizure of the use of health code apps, including both the communication travel card and health code, three mobile operators (China Telecom, China Mobile and China Unicom), the main data collectors of communication travel cards, announced that they would delete data related to users synchronously to ensure the security of personal information in accordance with the law. Personal information collected by them after de-identification and anonymisation will be provided to relevant government departments in a

targeted manner through the joint prevention and control mechanism of the State Council. According to Article 4 of the PPL, if the personal information received by the government is anonymised, the government agency may independently use such information (Zhang, 2022).

Second, data circulation in China is driven by the state's policies. Between 2015 and 2022, the Party, the State Council and its ministries announced a series of policies on the access and trading of data. The policies define data as a new factor of production that should be traded according to market mechanisms, i.e., to maximise benefits and optimise efficiency based on market rules, prices and competition, to facilitate the country's economic development (Table 13.1).

In 2022, China adopted the most important data policy to date: 'Building a Data Base System for Better Use of Data as Factor of Production'. The goal of this policy is to facilitate the compliance and efficient circulation and use of data, to empower the economy and to enable sharing among all people of the benefits created by the digital economy. It is estimated that the scale of China's data trading market is nearly one trillion RMB, and no one can ignore such an untapped market (Fuxi Institution, 2022). The policy creates an authorised data access and trading system based on three different types of data: public, enterprise and personal data. Different access policies are formulated for and applied to each type of data (see Table 13.2). The property right of data is separated into three rights: the right to hold data resources, the right to process and use data and the right to manage data products. Ownership of data is no longer discussed in policy formulation. The government will guide and regulate the data revenue distribution system to ensure both efficiency and fairness (Xinhua News Agency, 2022).

The policy also supports different methods to circulate data and establish data exchange market systems at national, regional and industrial sector levels. However, the policy has not adequately addressed how the system can benefit individual data subjects. While personal privacy, data security and the right to data portability are protected in the policy, how individual data subjects can share the benefits deriving from data remains unclear.

Table 13.1 Major data policies in China

Year	Department	Policy title	Policy aims
2015	State Council	Action Plan for Big Data Development (促进大数据发展行动纲要)	First national policy document proposed the concept of data trading and provided guidance on data trading market.
2016	Ministry of Industry and Information Technology	Big Data Industry Development Plan (2016–2020) (大数据产业发展规划 (2016-2020年))	Proposed pilot scheme of third-party data trading platforms and formulated data circulation and transaction rules.
2019	CPC Central Committee	Decision on Several Major Issues Concerning Adhering to and Improving the Socialist System with Chinese Characteristics and Promoting the Modernisation of the National Governance System and Governance Capabilities (关于坚持和完善中国特色社会主义制度 推进国家治理体系和治理能力现代化若干重大问题的决定)	Defined data as a new factor in production, proposed a mechanism in which the market determines rewards based on contributions.
2020	CPC Central Committee & State Council	Opinions on Building a Better Market-Allocation System and Mechanism for Factors of Production (中共中央 国务院关于构建更加完善的要素市场化配置体制机制的意见)	Guidance for building a data trading market.
2021	State Council General Office	Overall Plan for Comprehensive Reform Pilot Program of Market-Based Allocation of Factors of Production (要素市场化配置综合改革试点总体方案)	Improving public data sharing mechanisms, encouraging enterprises to participate in building trading platforms and exploring various forms of data trading models.
2022	CPC Central Committee & State Council	Building a Database System for Better Use of Data as Factor of Production (构建数据基础制度更好发挥数据要素作用的意见)	Defining data property rights consisting of three rights and accelerating the construction of data infrastructure systems.

Source: State Council (2015); Ministry of Industry and Information Technology (2016); CPC Central Committee (2019); State Council General Office (2021); CPC Central Committee and State Council (2022)

Table 13.2   Access policy on three types of data

Type of data	Definition	Access policy
Public Data	Data generated by party and government agencies, enterprises and institutions in performing their duties or in providing public services	Strengthens data aggregation and sharing, authorised access and management and interconnectivity; Conditional free access to public data on public interest grounds; Conditional paid access to public data for the reasons of industrial development; Public data must be provided in the form of models, products or services but not in original datasets.
Personal Data	Data bearing personal information	Data processors can collect, hold, host and use data with valid authorisation. Anonymisation of personal data is required to ensure information security and personal privacy. Protects the rights of data subjects to obtain or copy and transfer the data generated by them.
Enterprise Data	Data collected and processed by market entities in production and business activities that do not involve personal information or public interest	Recognises and protects the enterprise's right to process and use data obtained in accordance with legal provisions or contractual agreements. Protects the rights of data collectors to use data and obtain benefits. Protects the right to use data or process data in commercial operations. Regulates the authorisation of data collectors for third parties to access their data and data-related products to encourage the circulation and reuse of data. Original data are not shared or released, but access to data to extract analysis is shared. Government agencies can obtain enterprise and institutional data in accordance with laws and regulations to perform their duties, but they must obtain an agreement and strictly abide by the restriction requirements.

Source: http://www.gov.cn/zhengce/2022-12/19/content_5732695.htm

Conclusion

Access to data as an aspect of epistemic rights has different but similar interpretations in Chinese and global contexts. First, epistemic rights in Western academic literature stress the sociological nature of the creation and dissemination of information and knowledge. Rights are underpinned by the normative criteria of equal access to and availability of information

and knowledge and used for the benefit of individuals and society as a whole. Therefore, data as a form of knowledge is often defined as a non-rivalrous informational good for the benefit of all, and open access to and sharing of non-confident data is proposed. In the Chinese context, epistemic rights have not drawn the attention of Chinese academics, and the closely related concept of the right to information is often approached from a legal perspective, stressing consumer rights to obtain public information and digital platforms' data rights. Data are defined as one kind of factor of production for national economic development.

Notably, in China, the implications of the public good nature of data have not been considered in either mainstream academic publications or in the government's data policies, even though it is agreed that data has non-rivalrous and non-exhaustive characteristics and that, given information asymmetry, data cannot be circulated in the market like land, labour and capital. As a result, the public good and equal access dimensions of data are largely ignored in policymaking. Under the premise of protection of national security and personal privacy, data collection, analysis and processing are aimed at unlocking the potential commercial value of data, especially enterprise data. Therefore, defining the different types of property rights of data has been the main point of contestation in academic and policy debates.

Second, like what has been proposed by Viktor Mayer-Schonberger and Thomas Ramge (2022), the recent data access policy in China has shifted from the sharing of original data to the sharing of data products, from the trading of ownership rights to the trading of holding, processing, use and management rights of data. The establishment of a three-level data trading system in the national, regional, and industrial sectors will be the next step for academic research and policymaking. The government will also guide and regulate such developments to promote market efficiency and fairness in the distribution of the benefits of data trading. The public good nature of data and data altruism might not be on either the academic research or policymaking agenda, but the open nature of public data and sharing mechanisms are endorsed and encouraged in government policy.

Finally, while the rights and interests of data enterprises are the main subject of protection in China's latest data policy, the power imbalance between the individual and corporations (Purtova, 2015) and the sharing of benefits derived from data with individual users or data subjects have not been addressed.

References

Bai, M., & Li, Q. (2022). The current situation and prospect of local data legislation. *People's Congress Studying, 4*, 40–47. (白牧蓉 李其贺. 地方数据立法的现状与进路 [J]. 人大研究,2022,4:40–47.).

Berger, P. L., & Luckmann, T. (1967). *The social construction of reality: A treatise in the sociology of knowledge*. The Penguin Press.

CPC Central Committee. (2019). *Decision on several major issues concerning adhering to and improving the socialist system with Chinese characteristics and promoting the modernization of the national governance system and governance capabilities*. http://www.gov.cn/zhengce/2019-11/05/content_5449023.htm (中国共产党. 中共中央关于坚持和完善中国特色社会主义制度 推进国家治理体系和治理能力现代化若干重大问题的决定. 2019).

CPC Central Committee & State Council. (2022). *Building a data base system for better use of data as factor of production*. http://www.gov.cn/zhengce/2022-%2012/19/content_5732695.htm (中共中央 国务院. 关于构建数据基础制度更好发挥数据要素作用的意见. 2022).

Davis, G.B., & Olson, M.H. (1985). Management information systems. New York: McGraw Hill.

Debons, A., Horne, E., & Cronenweth, S. (1988). *Information science: An integrated view*. New York: G.K. Hall.

Ding, X. (2019). Who really owns the data? Platform Data Ownership and Data Protection based on Web Crawlers. *ECUPL Journal, 22*(5), 69–83. (丁晓东. 数据到底属于谁?——从网络爬虫看平台数据权属与数据保护[J].华东政法大学学报,2019,22(05):69-83.)

European Commission. (2020). *Experts say privately held data available in the European Union should be used better and more*. https://digital-strategy.ec.europa.eu/en/news/experts-say-privately-held-data-available-european-union-should-be-used-better-and-more

European Parliament. (2022, April 6). Data governance: Why is the EU data sharing law important? *European Parliament News*. https://www.europarl.europa.eu/news/en/headlines/society/20220331STO26411/data-governance-why-is-the-eu-data-sharing-law-important

Fujian Provincial Government. (2016). *Measures for the management of government data in Fujian province*. http://fgw.fujian.gov.cn/ztzl/szfjzt/zcfg_35780/201610/t20161018_823328.htm

Fuxi Institution. (2022). *Is the data exchange a good business? Review of Fuxi Institution*. https://mp.weixin.qq.com/s/PPhKa59TcDEjql_kAiKlAw

GDPR (General Data Protection Regulation) (2016). Available at: https://gdpr-info.eu/ (Accessed: 30 January 2023).

Gitelman, L., & Jackson, V. (2013). Introduction. In L. Gitelman (Ed.), *"Raw Data" is an oxymoron*. MIT Press.

Haggart, B. (2019). Taking knowledge seriously: Towards an international political economy theory of knowledge governance. In B. Haggart, K. Henne, & N. Tusikov (Eds.), *Information, technology and control in a changing world: Understanding power structures in the 21st century*. Palgrave Macmillan.

Huang, Y. (2022, August 2). How to share big data? *Economic View*. https://jw.jwview.com/jwview/content.jsp?id=496648&classify=zw

Huang, Y. (2023a). Development and governance of the digital economy. *IPolicyLaw*. https://mp.weixin.qq.com/s/SOXuYFSnUdXwDG8cSwzmmw (黄益平. 在十三届全国人大常委会专题讲座第三十一讲:数字经济的发展与治理, IPolicyLaw, 2023)

Huang, L. (2023b). *The exploration of inner logics of data as factor of production market*. Internal presentation delivered on 4 Jan 2023, Beijing, China.

Huang, R., Wen, F., & Huang, W. (2018). Policy system construction of open government data in China. *Library and Information Service, 62*(9), 5–13. https://doi.org/10.13266/j.issn.0252-3116.2018.09.001 (黄如花,温芳芳, 黄雯. 我国政府数据开放共享政策体系构建[J].图书情报工作,2018,62(09):5–13.DOI:10.13266/j.issn.0252-3116.2018.09.001.)

Long, W. (2017). On the construction of new data property and its system structure. *Tribune of Political Science and Law*, 35(4), 63–77. (龙卫球.数据新型财产权构建及其体系研究[J].政法论坛,2017,35(04):63–77.)

Manovich, L. (2001). *The language of new media*. MIT Press.

Mayer-Schönberger, V., & Ramge, T. (2022). *Access rules: Freeing data from big tech for a better future*. University of California Press.

Mei, X. (2022). The definition of the legal scope of data trading and the path for realization. *Journal of Comparative Law*, 1–18. (梅夏英.数据交易的法律范畴界定与实现路径[J/OL].比较法研究:1–18[2022-11-30]. http://kns.cnki.net/kcms/detail/11.3171.d.20221107.1116.002.html)

Ministry of Industry and Information Technology. (2016). *Big data industry development plan (2016–2020)*. https://www.ndrc.gov.cn/fggz/fzzlgh/gjj-zxgh/201706/t20170622_1196822.html?code=&state=123 (工业和信息化部. 大数据产业发展规划(2016-2020年), 2016)

People's Posts and Telecommunications News. (2022, August 30). What are the data exchange models? What are the important factors that restrict data exchange? Interview with Gao Taishan of the Development Research Center of the State Council. *People's Posts and Telecommunications News*. http://www.china-cer.com.cn/guwen/2022083020903.html

Purtova, N. (2015). The illusion of personal data as no one's property. *Law, Innovation and Technology, 7*(1), 83–111

Riegner, M. (2017). Access to information as a human right and constitutional guarantee. A comparative perspective. *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America, 50*(4), 332–366.

Shen, W. (2020). On data usufruct. *Social Sciences in China, 11*, 110–131 + 207. (申卫星.论数据用益权[J].中国社会科学,2020(11):110-131+ 207

Song, F., & Qiu, Z. (2022). The Rule of Law in the Data Element Market Governance: Subject, Ownership and Path. *Shanghai Journal of Economics*, 4, 13–22. https://doi.org/10.19626/j.cnki.cn31-1163/f.2022.04.010 (宋方青,邱子键.数据要素市场治理法治化:主体、权属与路径[J].上海经济研究,2022(04):13-22.DOI:10.19626/j.cnki.cn31-1163/f.2022.04.010.)

State Council. (2015). Action plan for big data development. http://www.gov.cn/zhengce/content/2015-09/05/content_10137.htm?trs=1 (国务院. 关于印发促进大数据发展行动纲要的通知. 2015)

State Council General Office. (2021). *Overall plan for comprehensive reform pilot program of market-based allocation of factors of production.* http://www.gov.cn/zhengce/content/2022-01/06/content_5666681.htm (国务院办公厅. 要素市场化配置综合改革试点总体方案. 2023)

von der Leyen, U. (2020, February 19). Shaping Europe's digital future: Op-ed by Ursula von der Leyen, President of the European Commission. *European Commission – Announcement..* https://ec.europa.eu/commission/press-corner/detail/es/ac_20_260

Watson, L. (2021). *The right to know: Epistemic rights and why we need them.* Routledge.

WEF. (2022, January 19). The world is drowning in data. Why don't we trade it like on a stock exchange? *World Economic Forum – DATA SCIENCE.* https://www.weforum.org/agenda/2022/01/data-trading-stock-exchange/

Xinhua News Agency. (2022, June 22). President Xi Jingping Hosts the 26th Meeting of the Central Reform Commission for Deepening Overall Reform. *Central People's Government of the People's Republic of China.* http://www.gov.cn/xinwen/2022-06/22/content_5697155.htm

Xu, K. (2018). Ownership of data: From the dual perspective of economics and law. *Electronics Intellectual Property, 11*, 23–30. (许可.数据权属:经济学与法学的双重视角[J].电子知识产权,2018(11):23–30.)

Zhang, X. (2021). Connotation classification and ownership judgement of data rights and interests. *Shanghai Legal Studies, 3*(1), 338–351. (张翔.数据权益之内涵划分及归属判断[J].上海法学研究,2020,3(01):338–351.)

Zhang, S. (2022). The Path of Information Law to the Protection of Rights to Information. *Oriental Law, 4*, 50–62. doi: 10.19404/j.cnki.dffx.2022.04.019 [张守文.信息权保护的信息法路径[J].东方法学,2022(04):50-62. DOI:10.19404/j.cnki.dffx.2022.04.019.]

Zhou, D., Wang, S., Zhang, E., Rao, Q., & Peng, T. (2022). Exploration and research on fintech security legislation. *Research report of the Institute of Financial Science and Technology, Tsinghua University, 109*(5), 1–40. (周道许 王兆峰 张恩权 饶倩 彭天择. 关于金融科技安全立法的探索与研究. 清华大学 金融科技研究院研究报告，2022年第5期 总第109期:1–40.)

Zins, C. (2007). Conceptual Approaches for Defining Data, Information, and Knowledge. *Journal of the American Society for Information Science and Technology, 58*(4), 479–493.

Implications

Conclusion: Ubiquitous Need for Epistemic Rights and the Way Forward

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FUNDAMENTAL ISSUES

Equal rights to trustworthy information and knowledge are basic to democracy theories and critical media analyses but also many communications policies. Still, while the era of digital disruption has brought us all access to a potentially limitless flow of content, it has simultaneously

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brought questions concerning the nature, promotion, and protection of epistemic rights to the fore. We need to justify these rights, point to the responsibilities of the key institutions that can support the realisation of these rights, and reconsider the societal role of the media in light of these rights.

Why Epistemic Rights Now?

We have always had the concept of epistemic rights—rights to epistemic goods such as knowledge and information—and in some sense, this concept has always been available and operating. Today, we need this concept to protect against a range of harms caused by the digital era.

All through history and in all corners of the world, people have attempted and often succeeded in controlling the flow of information and knowledge, in other words, the flow of epistemic goods. This has been done to influence what other people believe and how they act based on those beliefs. Still, we need epistemic rights now, arguably more than ever, because we live in a world that is increasingly dominated by the fast-paced flow of enormous amounts of information. The scale of that flow, the global connectivity of the information channels, and the nature of the channels themselves would have been unimaginable to most people 100 or even 50 years ago. As before, there are undoubtedly still people and organisations, such as global platforms and governments, who are

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attempting to and succeeding in controlling the flow of information and epistemic goods in their quest for political or economic power. But today, due to digitalisation, that control is more powerful and many-sided than ever.

This book, in its limited way, is intended to showcase the extent of the mediatisation of our societies and its impact on our access to and use of knowledge. In addition to epistemic rights, the chapters address related concepts such as epistemic commons, epistemic dimensions, equality and inequality, epistemic institutions, epistemic justice and values, and epistemic violators. Despite differences in focus and approach (conceptual or empirical), the authors share concerns regarding the possibility of an epistemic crisis of democracy (e.g., Dahlgren, 2018) by addressing the various ways in which our epistemic rights are challenged today.

The book also embraces the idea of the plurality and expansion of rights. Several authors in this volume—for example, Hannu Nieminen in his chapter 'Why We Need Epistemic Rights', or Tarlach McGonagle when discussing '(Re-)casting Epistemic Rights as Human Rights: Conceptual Conundrums for the Council of Europe'—speak to the notion of epistemic rights as an extension or a broadening of other rights—communication rights and digital rights in particular.

There is a place for all these concepts and rights. The notion of epistemic rights is significant in its plurality because it offers a broad conceptual territory in which to locate types of rights and their histories and identify connections and intersections between them to tackle the highly complex information-centric challenges we currently face. Today, the call for epistemic rights is about the recognition that we need to establish a clear legal and moral basis on which to prevent an array of harms.

The book also underscores the role of policy in support of epistemic rights and various so-called policy-making vacuums (e.g., Freedman, 2008) in the era of digital disruption, whether internet shutdowns, addressed in Tendai Chari's chapter on 'Digital Authoritarianism and Epistemic Rights in the Global South: Unpacking Internet Shutdowns in Zimbabwe', or journalistic organisations that are posing as legitimate but providing disinformation, as documented by Marius Dragomir and Minna Aslama Horowitz in the chapter 'Epistemic Violators: Disinformation in Central and Eastern Europe', or whether the question is about the access or use of our data, as discussed by Yik Chan Chin in her chapter 'Right to Data Access in the Digital Era: The Case of China'.

Epistemic rights are an urgent issue right now for two main reasons. First, many, if not most, of our critical epistemic institutions are today in danger of being undermined. These include public education, public media, many cultural institutions, and even many public services that have epistemic dimensions, including public healthcare and many other social services. Second, digitalisation has opened wholly new opportunities to extend people's epistemic rights, increasing equal access to and the availability of relevant knowledge and information. The downside, however, is that our societies have not yet found democratic means to deal with all the challenges brought by digitalisation, such as how to effectively regulate social media platforms, how to protect the privacy of users of digital services, and how to deal with ethical dilemmas posed by artificial intelligence.

Key Institutions

If we want to make sure that the notion and the language of epistemic rights gain recognition within academic discourse and that claim rights are realisable, implementable, and effective, it is essential to recognise the central institutions that are supported to—or in the language used by Lani Watson (2021), have duties to—promote, enforce, and protect epistemic rights.

There is a wide range of institutions—we might also call them stakeholders or actors—that play an essential role in advocating, promoting, and safeguarding epistemic rights. Some of these institutions operate transnationally, others within national systems and jurisdictions. For the realisation of epistemic rights, we must be able to specify the role and relations between the major institutions in the present historical epistemic constellation. Although the media at large are obviously a key player, they are not the only and perhaps not even the most essential epistemic institution.

The media, in their different forms, constitute a central epistemic institution. However, the role of the media is traditionally to offer us daily updates on the state of the world and to connect us to our everyday epistemic environment. In this way, the media form the surface level of our epistemic environment. Its more profound and more stable structures are the product, foremost, of our education, both family and school education, but also of all other public institutions, not only cultural in a narrow sense—libraries, museums, theatres—but together with the political system, judicial institutions, public administration, and all kinds of public

services. Obviously, we must add here other institutions that operate in the public domain, including private (commercial/economic) and semi-private (civil society) institutions fulfilling public functions. All these can be said to possess epistemic dimensions.

From the perspective of this book, one of the advantages of looking at contemporary media policy issues through the lens of epistemic rights is arguably that it equips us to better understand the role of the media in connection with other institutions. On the one hand, it enables us to see how the media sometimes work to reinforce epistemic inequalities that are generated within other institutions or how existing media policies fail to address those inequalities in society as they play out in the media. In a more forward-looking manner, an epistemic rights approach to media policy also enables us to envisage ways the media can work with other epistemic institutions to promote epistemic rights.

The Role of the Media

Although more often framed through the prism of communication rights and freedoms, the role of the media in providing a central forum for the provision of epistemic goods has long been recognised. As discussed in several chapters in this book, in thinking about the role of the media as an epistemic institution, it is valid, first, to identify its various forms or components, each of which arguably has a distinct position with respect to epistemic rights. It is also helpful to adopt a dual perspective. The first perspective considers the media as a positive force—and an enabler of epistemic rights; the second one, by contrast, considers ways in which the media, in their structure and behaviour, fall short of societal expectations and are culpable of exacerbating epistemic inequalities.

There is, of course, great variety within what we call the media—so much so that talking or thinking of media at large as a single institution is less than helpful, all the more so in today's highly diverse digital media environment. At the most basic level, it is helpful to distinguish between mainstream media—what were once known as mass media and nowadays are more often described as legacy media—and digital media. The former include newspapers and other print media, radio, and television. The latter, whose societal influence has grown exponentially in the last 15 years, comprise a realm that is currently dominated by large for-profit social media and other digital platforms.

These two components of our media system have very different histories and professional and cultural norms. They arguably differ even in their primary communication functions (dialogical versus dissemination). Perhaps most importantly, from an epistemic rights perspective is the differential level of regulatory oversight. While legacy mass media, even privately owned and commercially run media operations, are bound to sector-specific regulations as set out within each national jurisdiction, digital platforms, as discussed by Terry Flew in his chapter 'Epistemic Rights and Digital Communications Policies: Collective Rights and Digital Citizenship', have historically operated in a regulatory vacuum, and efforts in recent years to introduce statutory rules to counter the social harms they have created (disinformation, online hate speech, etc.) are proving an uphill battle for a variety of reasons, both political/ideological and having to do with technological attributes of the internet.

At the same time, the category of mainstream media includes different kinds of outlets, and their interest in and capacity to promote epistemic rights can differ significantly. A case in point is public service broadcasting and its digital-era reiteration, public service media. Not bound solely by commercial imperatives, their traditional mandate has been, and continues to be, the promotion of access, citizenship, democracy, diversity, societal inclusion, and participation. As Maria Michalis and Alessandro D'Arma powerfully argue in their chapter 'Public Service Media: From Epistemic Rights to Epistemic Justice', these organisations are currently central to securing rights. Even so, they need to go beyond and become advocates of epistemic justice by challenging existing power structures of knowledge and collaborating with other actors to envision a more just epistemic commons for all.

Currently, whether public or commercial, legacy media operate with professional norms, ethical codes, and regulatory frameworks remarkably different from those of digital media and digital platforms as intermediaries for sharing information. This division between legacy and digital media is coupled with profound changes in how people access and consume information. In particular, the central role of platforms forces us to consider how information about ourselves is collected and managed. For example, the chapter 'Towards Feminist Futures in the Platform Economy: Four Stories From India' by Anita Gurumurthy highlights less discussed but crucial questions about how technology companies are supporting or undermining epistemic rights. The platforms tell us myths about the flexibility and independence of workers, for example, but, as Anita

Gurumurthy's chapter shows, the reality is very different. The chapter also points to the fact that access to information is today very much tied to these platform companies, and yet, ironically, people who work for these platform companies might not have full access to their own employment information.

The chapter 'Epistemic Rights and Right to Information in Brazil and Mexico' by Fernando Oliveira Paulino and Luma Poletti Dutra illustrates well how right-to-information laws are not only for journalists seeking to investigate stories. They are also needed so ordinary people can get informed and involved as citizens. The manner in which the media can promote epistemic rights is similar to that guaranteed by these laws. The media need to make knowledge available and accessible to us all.

Human Rights and Global Dimensions

Access to knowledge is arguably a universal prerequisite for citizenship. Similarly, digital disruption can be seen as a vast and entirely global development. Challenges to epistemic rights pertain both to legacy media and digital communication around the world. That is why national contexts—the histories and developments of media systems as well as economic, political, and cultural factors—are sometimes overlooked when considering epistemic rights in the digital era. The current media environment requires us to share normative ideas and understandings, even governance and rules, about epistemic rights worldwide. Yet, local, national, and regional histories and contexts continue to matter. Just as with human rights, the question of epistemic rights entails understanding the interplay between the local and the global, the specific and the shared.

Similarities and Differences Around the Globe

This book features cases that seem different—for example, the internet shutdowns that Tendai Chari describes are not familiar in Nordic countries. This means that national context matters, and we have the possibility of learning from case studies. Reeta Pöyhtäri and colleagues describe in their chapter 'Nordic Illusion and Challenges for Epistemic Rights in the Era of Digital Media' how different compositions of public service media and private media in society support the public's rights to varied information and dialogue in different ways. For example, even though the Nordic countries have a long-shared history, they are now following slightly

different paths. Similarities yet partly differing developments in a region are also described in the chapter on the right to information in Brazil and Mexico and the chapter discussing disinformation sources in Central and Eastern Europe.

At the same time, there are shared experiences and challenges that digital disruption has brought about—including old and new inequalities, as Philip M. Napoli outlines in his chapter 'Epistemic Rights, Information Inequalities, and Public Policy'. Once we look at case studies and compare them, we can learn a lot about patterns and structures regarding epistemic rights, even if they may take different forms in various national or regional contexts. For example, the chapter on India reveals the opaqueness of platform companies from the viewpoint of workers. These kinds of case studies show how things are in practice, which can be distant from the level of legislation and regulation.

Epistemic Rights as Human Rights

The country case studies in this book may describe a variety of contexts and challenges, but they all point to the necessity of a shared understanding of epistemic needs and rights in our digital era. This book suggests implicitly, and in some cases explicitly, as Tarlach McGonagle does in his chapter, that at least some epistemic rights should be considered universal human rights. The underlying proposition is that defining certain epistemic rights in this way would add clarity and cohesion to discussions about human rights that have an epistemic dimension. All the chapters in this book highlight that these discussions are increasingly prominent in our information-centric digital era. Rights concerning freedom of expression are a case in point: there exists a fundamental tension between the freedom of expression of views on online platforms and the curtailment of views in these arenas based on different types of harms they cause. Bringing epistemic underpinnings into the light is going to help clarify the language and conceptual territory we need in order to implement and enforce the protection and promotion of epistemic rights.

Even if we argue that certain epistemic rights should be part of the canon of human rights, we must simultaneously recognise that they are also everyday rights. They are, for instance, consumer rights, workers' rights, and linguistic rights that impact how we can operate as free, flourishing, autonomous human beings. In the world in which we live, these rights do not have to be classified as human rights for them to be

important. But in many cases, rights turn out to be epistemic in nature. This is documented in Lani Watson's (2021) account of false marketing by the pharmaceutical company Purdue Pharma. Its misleading and untruthful information about the drug Oxycontin has led to an opioid crisis that affects, directly and indirectly, the lives of millions of people. This shows that epistemic rights should be defined as human rights but should also be understood more widely as an overarching category of rights that can take different forms and interpretations.

In this context, it is essential to note that epistemic rights are not about knowledge and information understood narrowly. They do not concern only the rational and cognitive dimensions of our lives, in contrast to non-rational and emotional ones. We must think about our epistemic environment as a whole as it also includes a cultural dimension with various values, norms, and beliefs. These form the basis for what we consider a good and just society and the criteria for true and 'normal'. From this vantage point, we can even claim that epistemic rights and the competencies that they provide for members of society can be seen as prerequisites to other human rights.

That said, epistemic rights are central to fundamental human rights: equality, freedom of expression, and the right to education, to mention some key principles of the Universal Declaration of Human Rights. As Philip M. Napoli argues in his chapter, new epistemic inequalities mimic and reinforce old inequalities. His examples point to how economic inequalities manifest as news deserts in less affluent areas in the U.S. or how economic and racial inequalities are reinforced by algorithmic decision-making simply because the data fed to algorithms is itself biased. He also makes the important connection between access to information and communications technology and the competencies needed to realise epistemic rights in the digital era. Navigating and critically evaluating, for instance, the variety of tools and platforms, their use of personal data, the rapidly changing and multiplying forms of disinformation, and the increasing role of artificial intelligence in our daily lives requires ever more knowledge and skills—and education promoting these capabilities is not equally accessible to all.

It is not surprising, then, that this book argues that we cannot think about epistemic rights without, at minimum, reflecting on their potential impact as universal human rights. Thinking about rights related to communication, information, and knowledge has always evolved when the impact of communication infrastructures, structures, means, and forms on

our lives has shifted in some way, as aptly chronicled in Hannu Nieminen's chapter in relation to the activities within the United Nations framework. When the United Nations Sustainable Development Goals for the year 2030 were negotiated, communication and epistemic rights were not included in the array of key issue areas. If we had those debates today, some ten years later, the result might be different. Media and communication technologies and knowledge rights would most likely be among the main goals because, due in part to the COVID-19 pandemic and the war in Ukraine, we have witnessed many significant problems with our current global communication infrastructures and mechanisms. And with innovations in artificial intelligence, we have woken up to the need to define related ethics and rights.

Recognition of the need for the ubiquity of epistemic rights is expanding from academic musings and civil society declarations to policy-making circles. Most notably, the European Union (EU) in 2022 signed the European Declaration on Digital Rights and Principles for the Digital Decade (European Commission, 2022). The declaration includes but goes beyond calls for data rights or the right to access. Instead, it notes the necessity for a human-centric approach to digital transformation that includes, among other things, freedom of choice for individuals in terms of products and services, and it highlights the sustainability and empowering qualities of these. The declaration calls for technology that aims at uniting, not dividing, people; it aims at complementing existing rights, including data protection, privacy, and, ultimately, the EU Charter of Fundamental Rights (2012). This kind of policy language takes rights aiming to address digital disruption in the EU close to those of more established human rights.

FUTURE PROSPECTS

The central theme in this book is the role of what we call epistemic rights in defending liberal democracy in the midst of challenges posed both by the many crises we face today (ecological, financial, military, and others) and by digital innovations and the different disruptions they produce in our everyday environment. In what follows, we first discuss the role of epistemic rights in imagining a way out of our present troubles; we then ask how we should see our role as academics in promoting epistemic rights.

Need for New Foci

The future of epistemic rights depends significantly on how we tackle the problem of inequality at both global and European levels. The whole idea of democracy is about equality, and what we see today is quite a reverse development, that of an increase in inequality on a large scale. Without a clear strategy and a plan to increase democracy in all areas of life—society, politics, economy, culture—epistemic rights are left without the material base their realisation requires.

There is a good basis for implementing epistemic rights in several international agreements and resolutions, including the UN Universal Declaration of Human Rights (1948), the UNESCO Universal Declaration of Cultural Diversity (2001), the EU Charter of Fundamental Rights, and the European Convention on Human Rights (ECHR; Council of Europe, 1950), among others. Tarlach McGonagle shows convincingly in his chapter how the European Court of Human Rights has materialised epistemic rights when interpreting the norms set by the ECHR.

But it is not enough to think that problems are solved by the mere implementation of existing agreements and resolutions; if that were so, we would not need this book. What we are desperately missing are new radical imaginaries that offer us positive alternatives to the present situation—not utopias in the sense of unrealistic fantasies but ideals that are based on resources and competencies already within our reach, waiting to be exploited for a better future. Bart Cammaerts writes in his chapter 'On the Need to Revalue Old Radical Imaginaries to Assert Epistemic Media and Communication Rights Today' about the imaginaries that we apply in thinking about how to govern our societies and the ways we share knowledge and think about our rights. He discusses two radical imaginaries of the 1990s, liberal and socialist imaginaries, both of which crucially influence our societies today. However, we must go beyond them, as conditions have been radically changed by digitalisation and digital disruption.

In building imaginaries for the future, we need to pay attention to the positive affordances that digitalisation in its different guises has already brought us: new avenues for participation, unprecedented access to knowledge and information,; new means for cultural creativity, etc. This is also important in order to balance our assessments of all the adverse effects linked with digitalisation. The problem is that in concentrating too much on the 'bad' things, we inevitably turn our attention back to the old

imaginaries that do not answer today's questions, which leads us too often to a defensive posture and to fighting battles that are already lost.

In building a new radical imaginary, we believe epistemic rights already offer essential elements. From this viewpoint, then, what conditions are currently preventing, for instance, the media from contributing positively to their realisation? In his chapter, Philip M. Napoli provides an analytical mapping of the main systemic or structural inequalities, which is most helpful when thinking about how to operationalise the struggle for epistemic rights. It is essential that the discussion always remains context-sensitive and considers the historical and spatial factors—patterns of developments, similarities, differences—currently preventing the media in their different national and institutional settings from contributing to epistemic rights. Otherwise, there is the danger of leaving the critique at a general normative level, making overly large generalisations without offering concrete ways forward. In this respect, more empirical research is urgently needed for us to be able to follow up on developments.

This is directly related to what was discussed above about the necessity to think of the positive dimension of digitalisation—not only about the threats to and violation of rights but also the protection of rights and the use of technology to enhance our epistemic capacities. This is an invitation to be more creative and reflective in harnessing technology to access accurate and reliable information.

The Role of Research

This book is motivated by an academic need to learn more about epistemic rights and to find a way to articulate the language to discuss them. The book can be considered a call to think about the epistemic approach and apply it to additional case studies in different social and cultural contexts. Indeed, as researchers, we are interested in following up on developments regarding the case studies presented in this book.

This leads us to discuss the relationship between our academic research and the outside world. Once we have gained all this information and knowledge, it will be necessary to be more involved with people and activities outside universities and to both keep ourselves informed about developments and inform others based on the theoretical insights and knowledge we have acquired.

An excellent example of this approach is presented in the chapter on public service media by Maria Michalis and Alessandro D'Arma. We know

that European public service media companies are struggling with many challenges, not just because of the growing popularity of other platforms but also because of budget cuts and political pressure. To be competitive and improve their performance, these companies are experimenting with new digital technologies. In this context, researchers can contribute, for example, to normative thinking regarding how the adoption of new technologies is aligned, or not aligned, with the values of these media and with their universalistic goal of promoting democratic citizenship.

A significant challenge for academic research is how to escape disciplinary and administrative silos. As an institution, the university has developed historically into disciplinary units that are kept separate not only for academic-scientific reasons but also increasingly for financial and administrative purposes. The disciplines—organised into faculties and departments—fight each other, and individual researchers, especially in social sciences and humanities, compete for ever-diminishing research funding. This book showcases how scholars from different fields, media and communications, law, philosophy, sociology, and political science, can transgress their siloes and come together around overarching policy-related themes of epistemic rights and the role of the media.

One thing we learned while producing this book is the need to avoid the temptation of abstract theorising and overgeneralisation. Although theory building is necessary in academic research for conceptual clarity and the accumulation of knowledge, it is extremely important to connect with actual real-world cases and examples to understand at a practical level the concepts and language that open the wide areas of issues that concern epistemic rights. We urgently need this connection to enable people to understand the significance of epistemic rights. We must learn to use examples, tell stories, and create narratives, which can come from many different contexts. Some direction for this can be found, for example, in the chapter on internet shutdowns or the chapter featuring disinformation actors in Central and Eastern Europe.

A central term that needs further thinking is 'epistemic advocacy', understood in this context as a means of translating and communicating the nature, extent, and significance of epistemic rights to broader society. This should play a significant role within the academy. We may not find this role to suit all of us naturally but it is essential that academics from different disciplines and traditions, who are involved in conversations about epistemic rights, engage in forms of epistemic advocacy in different ways and at diverse levels. This includes, among other things, more

traditional academic roles, such as sitting on expert panels and in commissions and giving advice, but also at a more everyday level by supporting the work of people who are protecting our academic rights and autonomy. An example might be supporting and donating to Wikipedia and other collective voluntary epistemic initiatives, as primary forms of epistemic advocacy. We can also think of other professional settings and people working at the front lines to protect our epistemic rights; for example, in the case of the COVID-19 pandemic, teachers, doctors, and journalists can be thought of as implementing our epistemic rights by disseminating critical factual information.

There are increasing pressures on academic research from several fronts. From politicians, who require more politically relevant results with less and less money; from the corporate world, who expect academic research to benefit them materially; and more recently, from critical civil society actors (as well as academic critics), who question the epistemic premises of modern science as being inherently colonising and racist.

In many respects, these pressures have led social sciences and humanities to retreat into a defensive and introverted stance. An example of this is the weak reaction (or even silence) of social scientists in the face of the crisis of liberal democracy around the globe, including in Europe—as can be witnessed in many countries in the form of worsening public health and social services, the decline in public education, problems in public communications infrastructure, etc. Not less urgent is the complacency of the academic community in the face of the major war in Europe; voices urging an immediate stop to senseless killing in Ukraine are rare and isolated. What is urgently needed are new beginnings and initiatives. We need new radical social imaginaries, following Bart Cammaerts' bold invitation. The quest for epistemic rights is central to such initiatives.

References

Council of Europe. (1950). Convention on the protection of human rights and fundamental freedoms (ECHR), ETS No. 5, 4 November 1950.

Dahlgren, P. (2018). Media, knowledge and trust: The deepening epistemic crisis of democracy. *Javnost – The Public, 25*(1–2), 20–27. https://doi.org/10.1080/13183222.2018.1418819

European Commission. (2022). *European declaration on digital rights and principles for the digital decade.* https://digital-strategy.ec.europa.eu/en/library/european-declaration-digital-rights-and-principles

European Union. (2012). Charter of Fundamental Rights of the European Union. 2012/C 326/02. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT

Freedman, D. (2008). *Politics of media policy*. Polity.

UNESCO. (2001/n.d.). Universal declaration of cultural diversity. https://en.unesco.org/about-us/legal-affairs/unesco-universal-declaration-cultural-diversity

United Nations. (1948/n.d.). Universal declaration of human rights. https://www.un.org/en/about-us/universal-declaration-of-human-rights

Watson, L. (2021). *The right to know: Epistemic rights and why we need them*. Routledge.

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