

Regarding Adequately Acknowledging Disparate Audiences & Divergent Epistemologies

A short submission regarding the *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023*.

by Dr James Moylan.¹

This submission: has been produced in accord with an advertised request for submissions regarding ‘New ACMA powers to combat misinformation and disinformation’.

The author: Dr Moylan has just completed a five-year doctoral research project (SCU, Lismore) which was focussed on adequately acknowledging evident cultural and epistemic diversities when undertaking instances of textual or legal analysis.²

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¹ BA (Cul), LLB (Hon.), Dr Phil - Law (Graduand, SCU, Aus).

² See, Editors, *researchportal.scu.edu.au*, ‘James Moylan, *A Semiotic Interrogation of Law and Economics* [Southern Cross University]’ (web page, 2/07/2023) <<https://doi.org/10.25918/thesis.263>>.

Introduction

The parliament is proposing to legislate to suppress the dissemination of ‘misinformation’ and ‘disinformation’ within the Australian social discourse. This discussion paper seeks to augment the conversation regarding this proposal by highlighting a number of potential difficulties that are associated with the drafting of legislation that is both adequate and effective, and also providing suggestions on how these potential difficulties might be overcome.

Discussion

A Single Coherent & Universally Entertained Subjectivity?³

Every reader of text in our society recognises lots of different groups with diverse opinions. In any newspaper a reader is likely to be confronted with references to half a dozen different sorts of Christians, different right-wing and left-wing groups, climate activist campaigners, climate action sceptics, unions, business groups, furries, bikers, libertarians, socialists, Ministers, Greens, etcetera. Which is to say, we have a society where we all recognise a host of sub and countercultures. Where a widely diverse population are all interacting, in a wide variety of distinctive ways, concerning a host of different topics, in lots of different arenas of discourse.

These comments might be regarded as being just a statement of the obvious. But this is not the way that society is generally appreciated in either law or textual analysis. Nor are these propositions uniformly compatible with many commonplace ideologies.

We live in a social discourse in which there is no uniform or even uncontentious definition attaching to terms such as ‘audience’ or ‘society’. Furthermore, the commonplace presumptions that attach to a legal analysis serve to suppress the acknowledgment of particular epistemic or cultural distinctions and in process adhere to the (entirely laudable) legal fiction that we live in a culturally and epistemically homogenous society.

Additionally, in our common parlance, concepts such as epistemic and cultural diversity are often refuted by commonplace linguistic, narrative, and even pseudo-academic tropes. To illustrate what is meant by this observation, consider the Dunning-Kruger hypothesis. This hypothesis has come to be well-known in recent decades as it is a proposition that has been frequently canvassed in the media. This hypothesis suggests that those who are ignorant of their own ignorance regarding a topic are unable to recognise that they are entertaining an insufficient or partial understanding of that topic.⁴

Dunning proposes

that people’s ignorance is often invisible to them - that they suffer, for lack of a better term, a meta-ignorance, remaining ignorant of the multitude of ways they demonstrate gaps in

³ This section paraphrases and sometimes quotes parts of Moylan, *ibid*, 84-5.

⁴ ‘3.1 Definition. Specifically, for any given skill, some people have more expertise, and some have less, some a good deal less. What about those people with low levels of expertise? Do they recognize it? According to the argument presented here, people with substantial deficits in their knowledge or expertise should not be able to recognize those deficits. Despite potentially making error after error, they should tend to think they are doing just fine. In short, those who are incompetent, for lack of a better term, should have little insight into their incompetence—an assertion that has come to be known as the Dunning-Kruger effect.’ David Dunning, ‘The Dunning-Kruger effect: On being ignorant of one’s own ignorance’ (2011) 44 *Advances in experimental social psychology* (Academic Press) 247.

knowledge. To be sure, people are often successful in identifying a few areas where their expertise is lacking, or topics they wish they knew more about - but I would assert that any individual's mental catalogue of their areas of ignorance is likely to be very incomplete.⁵

This hypothesis is of interest because, from a phenomenologically and anthropologically informed perspective, these assertions are flawed to the degree that they suggest that there is a single, uniform, cohesive and preferred 'informed perspective' regarding *any* topic of social contention. So, even though this concept is seemingly 'commonsensical', most readers will also (at one and the same time) also readily acknowledge that ignorance comes in a variety of flavours; that 'ignorance', like 'beauty', is largely a subjective (ie, idiosyncratically ordered) distinction. So, it is appreciable that relative to any given topic that is socially contentious there are generally at least several identifiable and often competing propositions inscribed in the social discourse regarding what might constitute 'an informed perspective.'

This is illustrative that while the idea that society might contain an aggregate of people with a range of quite different, distinctive, and often incompatible opinions might seem to be an entirely uncontentious proposition, it is not a proposition that is at all uniformly acknowledged in textual or legal analysis, or in everyday conversation. It is also a proposition that is incompatible with many political and religious ideologies. Consequently, it is not a proposition that is at all uniformly acknowledged or addressed in either the common social discourse or in our joint linguistic facility.

Additionally, the concept that all of society constitutes a single relatively homogenous 'audience' promotes a concept of 'reading' that is belied by lived experience and commonplace habit. When we pass through society (as when we are reading a newspaper), most citizens deliberately and wilfully endeavouring to remain ignorant of most commonplace arguments and ways of arguing. This is necessary as, otherwise, we would all be swamped by text. So, in practice, most readers, most of the time (in general terms), are actively endeavouring to remain ignorant regarding most arguments and most ways of arguing, by choosing to consider texts that advertise arguments that they credit with being either correct or agreeable. This is not a value judgement but rather a simple acknowledgment that nobody can or does read anywhere near everything. Yet even though this is the case, many commonplace definitions and stories, including most of those current in academia, infer a differently ordered tale; a 'Dunning-Kruger Effect' tale.

The assumptive bedrock underpinning the Dunning-Kruger hypothesis is the supposition that every reader is engaged in a similar and comparable process of rationally assessing an equivalent range of predicates in accord with identical criteria of explanation, assessment, aspiration and motivation. In such a model of signification, the concept of a general mean of ignorance does have tractability as the individual glass of social knowledge is propositionally filled with a readily appreciable level of 'correct' information, with the clarity of the information being instantly apparent to all.⁶

⁵ Ibid 251-2.

⁶ Accordingly, the Dunning-Kruger hypothesis might also be readily appreciated as being a model of signification that is comparable with that which is commonly described as the 'Hegelian dialectic,' being 'thesis + antithesis = synthesis + thesis... (etc.). However, a semiotically informed perspective of analysis is resistant to supporting any broad generalisations or typification's relating to the social discourse facility of a society *in toto* (as opposed to cognisance's relating to particular linguistic markets). This is simply because the concept of a common social discourse facility is one that is appreciated as serving to inform all sides of every debate and difference of opinion within society. Therefore, it is not at all theoretically supportable to assert that *all* the traditional narratives, definitions and rhetorical habits of the contemporary society are informed by what might be described as a 'Hegelian,' or a 'liberal,' or a 'post-modern,' or a 'modern' (or any other particular proposition regarding an overarching) 'sensitivity.' These propositions might be

These observations serve to illustrate that we all recognise and understand a range of concepts regarding social ordering and interaction, that are sometimes mutually incompatible. We all pragmatically acknowledge a diversity of cultures and worldviews whenever we are reading a text or working out what we might personally think about a particular matter, yet we are all also necessarily familiar with the proposition of a ‘mainstream’ audience, and the legal fiction of a homogenous and equally endowed audience.

Consequently, it is argued in this submission that the proposed bill must be formulated in a fashion that serves to acknowledge and describe the actual communications dynamics that are in evidence in the Australian social and media discourse, *then translate these observations into legislation in a quite prescriptive fashion*. This is because many of the propositions that commonly inform most instances of legal analysis (especially those relating to cultural and epistemic diversities), are antithetical to many of the political and social policy ambitions that are informing this legislative package. Thus, these matters must be addressed in a clear fashion in the text of the legislation.

Recommendations

Recommendation 1: Clear and adequate descriptions of the existing culturally and epistemically diverse social discourse and media environment must be included in the legislation, so as to obviate the potential for ambiguity regarding these matters.

It is suggested that it is essential that the legislative package provide a clear acknowledgement that the Australian media and social discourse is diversely constituted and that it contains a variety of cultures and epistemologies that enjoin in discourse in a range of differently ordered and constituted electronic and physical environments.

Recommendation 2: The terms ‘misinformation’ and ‘disinformation’ are problematic and should be avoided.

The terms ‘misinformation’ and ‘disinformation’ are currently commonplace in the political discourse of our country and will likely be appreciated as arbitrating diverse (and potentially contentious) concepts, by differently constituted audience segments, within differently formulated arenas of discourse. Thus, it is suggested that the terms ‘misinformation’ and ‘disinformation’ should be avoided and replaced with less ‘triggering’ and more adequately descriptive phrases such as ‘wilful misreporting’ and ‘fraudulent reporting’.

appropriately tendered relative to a particular linguistic market or context, or regarding commonplace conceptions relating to audience segmentation and predisposition, but not regarding the common social discourse facility of society.