

Fork in the Road: A submission regarding the 2023 Australian 'Combatting Misinformation and Disinformation' Bill

Introductory

Could we face collective decisions so fundamental that discourse itself buckles under conceptual strain? If so, maybe this is such a time and it would accordingly be wise to map it in the most reliable tradition, which prioritises agreed facts and valid inference from them.

This also befits a need to be incisive, given the gravity of the issue which is likely acknowledged by all, though in different ways with respect to details and priorities.

Such precision, however, might be well-prefaced with a stylistic counterpoint by way of a short story to set the scene in an illustrative way.

Finding a sealed bottle washed upon his island of solitude, an old hermit pulls the cork to examine a note inside. But when it pops, loud noises and flashing colours leave him falling toward the sand.

“You have one wish and an hour to decide it.”

The philosopher regathered his senses and resolved to mediate.

When at last prompted by the genie, he said, “I found the highest truth on this island, but the world rejected it and suffers much in consequence. They are lost and require an arbiter of truth. It could no longer be me, but perhaps some tribunal, council or data industry will suffice. Please grant me this wish.”

“Alas, it shall be granted.”

The man heard no more and looked around for a sign of the genie. But the only trace that remained was the lifeless bottle. He picked it up and saw the note again, still curled inside. With rising feelings, too unsettled and indistinct to name, he shook it free and began to read.

“You are lucky to be on this island, as the world will lie in ruins within a decade, every individual having been stripped of their most fundamental right to self-determination, by you.”

It is in the nature of society that nothing prevents it from considering and making collective decisions without sufficient wisdom to avoid catastrophe, as the previous century and others made clear.

The relevant individuals were not generally primitive by comparison to us. For every new sophistication we regard as a form of progress, there was already another and perhaps better one that has fallen by the wayside.

Ergo, no comfort is to be taken by observing present norms of decision making.

Centrepiece

I submit the numbered argument below as addressing the crux of our present issue.

- 1) Classification of anything as misinformation or disinformation is inherently contentious.
- 2) Normalised government imposition of contention is the essence of totalitarianism (whereas all horrors of the latter are at most its results).
- 3) Democracy and totalitarianism are in essence mutually exclusive.
- 4) (It follows from 1-3 that) state classification of particular information as misinformation or disinformation, whether or not by proxy through industry regulation, is essentially antidemocratic.
- 5) The Misinformation and Disinformation Bill provides for or mandates proxy if not internal effective classification by the government of particular information as misinformation or disinformation.
- 6) Nothing essentially antidemocratic should be law in Australia.
- 7 (It follows from 4-6 that) the Misinformation and Disinformation Bill should not pass as law.

Logically valid objection to this argument will necessarily commit to categorical denial of at least one point above which is clearly identifiable for that purpose by number.

The following sections attend to further points worth noting as supplementary.

Unadulterated Over-Reactions

Despite much hyperbole to the contrary, defamation, bullying, harassment, misleading, deceiving and inciting, online or off, are already covered by law in ways that nothing new about misinformation or disinformation leaves particularly wanting.

Yes, lies travel further and faster, but only because everything does, including truth and balancing responses.

Indeed, arguments for why legislation to control deception is not already in excess, routinely present as non-sequiturs, premised on Chicken Little notions of unprecedented calamity. More specifically, the relevant style is increasingly of the type made famous and paradigmatic by UK Prime Minister, Tony Blair, when he firmly set our millennium on the wrong foot, shortly after collapse of the twin towers in New York.

“Whatever the dangers of the action we take, the dangers of inaction are far, far greater.”

Thus began a war on presumed error, which flourished into decades of state terrorism raining ordnance and torture on the Middle East, accomplishing nothing else.

Perhaps that was soil for the growth of misinformation and disinformation, as conceptual labels for dissenting content, which are now shamelessly verbatim and prolific.

Double Standard

The UN explicitly and repeatedly warns of misinformation or disinformation ironically issued in response to content classified in those terms (see appendix) and its identification of this problem is clearly not to support legislated exemption of the government in such instances.

Indeed, notwithstanding the Bill's exemption likewise applying to professional news services, which typically defer to the government line, it is hard to conceive of any robust check or balance to the threat of establishment dogma under such an arrangement.

That exemption of this kind is clearly necessary to prevent the scheme from hamstringing itself in practice might underscore how centrally abortive the Bill's general undertaking is.

Documented Downsides to Dogmatism

A series of investigative reports were recently and sequentially released under the rubric of Twitter Files, detailing various ugly turns in discourse management of late. But faith in the latter has apparently not been shaken enough to root out all support for the present Bill, which is of course not intended to curb, but rather urgently and massively expand such “regulation.”

A casual read of Wikipedia's entry for the Twitter Files could leave you none the wiser about the substance, as opposed to cursory outline, of what they contain. Yet you might leave it a veritable sage on their proper estimation as declared by qualified pundits.

This difference, which the Twitter Files positively exemplifies, between substance and spin as typically found in primary and secondary sources respectively, can be said with no possibility of overstatement to be the lifeblood of democracy.

The Root of Dogma

Who could deny that there is such a thing as tyranny of orthodoxy, namely everything about its power which does not serve as a demonstration to the impartial of its being well-founded?

The phenomenon is ancient, enduring and inevitably exacerbated by imposed epistemic measures like censorship and blacklisting, in ways that are even less fair and accordingly hamfisted at best.

Regardless of intention (which is naively pristine at times), such measures provoke justified perception in the recipients of having been intellectually cheated as a matter of policy – an abuse inevitably founded on rationales that are shared by totalitarianism and thus fertile ground for all things nefarious.

Since it is only human to overreact, such measures also effectively amplify unfounded conspiracy claims and in turn, erroneous perception of dissent as fundamentally based on or implying such.

Absolute Dichotomy

There is perhaps no more savvy or articulate critic of social media than Tristan Harris, who often laments the “race to the bottom of the brainstem” which is at least a partial facet of our contemporary “attention economy.”

He details a set of drivers and symptoms of the trouble without being especially prescriptive. Nevertheless, I dare say most who are likely to appreciate his characterisation of the problem would be inclined to err on the side of “reigning it in” with restrictions and by amplification of orthodox messaging.

Yet what might that actually involve? Or more precisely, what even remains to be considered as a principle for regulation of discourse, apart from that which legislation and institutions already cover?

Could any approaches even come to mind which are not easily described as censorship of concepts, or dogmatism?

Industry may have the capacity to innovate, but aside from Community Notes on the X platform, nothing on the horizon promises to reduce levels of misinformation or disinformation without being contentious at the level of concepts, whether by choice of what to suppress (censor) or amplify (dogma).

Moreover, the promise shown by Community Notes is purely in virtue of its being decentralised down to the user level, where the term 'regulatory' is accordingly inapplicable in any formal sense. The system is just a mechanism to provide maximally unbiased advice regarding context by way of demographic balance.

The presumed challenge to which this Bill eagerly rises, is by virtue of its being draft legislation, specifically formal regulation of discourse with regard to misinformation and disinformation, *without undue restriction of freedom*, at the general conceptual level as opposed to anything which existing legislation concerns.

This is unfortunately one and the same as the challenge to have one's cake and eat it too, as in both cases, logic does not provide for any 'both' option, irrespective of infinite innovation. Any restriction of freedom at the level of expressing concepts, as opposed to normally codified offences, is undue restriction of freedom.

In other words, despite all hopes, wishes or pretence to the contrary, the entire issue intended to be addressed by this Bill happens to boil down to the question of whether censorship and/or dogmatism are better than exposure to concepts they are rallied against.

Each of the two approaches, for and against intervention, might indeed trade off real harms. But if and when some agreeable balance is struck by conceptual censorship or dogmatism, we could only have an exception which proves the enduring rule of history and thus inevitably returns to bite society's derriere.

Technology might destabilise to an arbitrary degree, but inverting the relative merits of totalitarian and democratic tendencies, in anything but superficial appearance, is necessarily not among its potentials.

Development and implementation of protocols imposing inevitably contentious information conformity is, if not expressly required, abetted in the extreme by this Bill.

The latter is accordingly a technocratic liability which, irrespective of any fine spirit it may be offered in, fits the essential definition of totalitarianism in point 2.

Appendix – Salient Excerpts from 'Countering Disinformation for the Promotion and Protection of human rights and Fundamental Freedoms' a Report of the Secretary-General dated 12th August, 2022.

“Given the challenges in defining disinformation, it is not surprising that some measures adopted by States or companies in recent years to counter disinformation have resulted, whether unwillingly or knowingly, in undue restrictions on freedom of expression. In some cases, efforts to combat disinformation have been used by governments and political and other public figures to restrict access to information, particularly online, at key political moments; to discredit and restrict critical reporting...Approaches that seek simple solutions to this complex problem are likely to censor

legitimate speech that is protected under international human rights law. Such overbroad restrictions are likely to exacerbate societal ills and increase public distrust and disconnection, rather than contribute to the resolution of underlying problems.” - paragraph 41

“The High Commissioner has noted that laws designed to address vaguely defined concepts of “disinformation” often contravene human rights law, lead to the criminalization of permissible content and significantly restrict information flows around the globe.” -paragraph 43

“..existing laws based on defamation, cyberbullying and harassment have been used effectively to counter instances of disinformation. Although not directly designed to address disinformation as such, these long-existing legal frameworks, when crafted in compliance with the legitimate restriction grounds under article 19 (3) of the Covenant, can be applied to reduce the spread of particularly harmful disinformation without imposing new restrictions on freedom of expression.” - paragraph 44

“Some laws compel social media companies to respond to disinformation on their platforms, including through intermediary liability regimes, making business enterprises the de facto adjudicators of content, generally without sufficient transparency safeguards to assess human rights impacts or effective accountability mechanisms. - paragraph 45d

“Disinformation can be particularly pernicious when it is spread by political or public officials, yet addressing it in such contexts poses significant additional challenges. In some cases, such figures have portrayed the arguments of their opponents as “false”, rather than as simply different from their own, or categorized journalists’ mistakes as “lies” for their own political or ideological gain. Freedom of expression experts have underlined that State actors have a particular duty in this context and “should not make, sponsor, encourage or further false information. As the Inter-American Court of Human Rights has established, “public officials ... are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot be such that they disregard said rights so that they must not amount to a form of interference with or pressure impairing the rights of those who intend to contribute to public deliberation by means of expression and dissemination of its thought.” - paragraph 45f