Politics

A Fairness Doctrine for the Twenty-First Century

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Michael Goldhaber, who popularized the term the *attention economy*, said of the US Capitol insurrection: "It felt like an expression of a world in which everyone is desperately seeking their own audience and fracturing reality in the process. I only see that accelerating." If we don't do something about this, American democracy may not survive. For when there is no longer any common ground of evidence and reason, history shows that misinformation will eventually overwhelm public discourse and authoritarianism can take over. That is precisely what dictators across the world gleefully anticipate will happen in the US.

Historically, such an outcome was prevented by the existence of public spaces in which people with differing viewpoints could confront each other. Radio became a national conversation platform, as the public and the Federal Communications

Commission recognized the need to protect the airwaves from unrelenting political bias. Given that there were only so many spots on the radio dial, regulators reasoned that the space should be treated as a limited public resource, free from dishonest and misleading content. They therefore required stations to fairly represent opposing views: any station broadcasting one-sided opinions had to allow reply time for other perspectives. The fairness doctrine—which later also encompassed television—was in place from the 1940s up until 1987, when the FCC repealed it on the grounds that modern media technology provides for a potentially unlimited number of voices, so "the electronic press should have the same First Amendment guarantees enjoyed by print media."

As it stands, however, no court has ever deemed the fairness doctrine unconstitutional in letter or in spirit. That's probably because the doctrine worked so well for so long and because judges feared the effects of new media technologies on public discourse. They were right to do so. Our present technology tailors news to each individual, according to increasingly sophisticated algorithms designed to predict engagement. The preselected material is often maximally provocative or sensational, which compels us to like, comment or share it among our affinity groups. Each of us manoeuvres for attention and recognition by a specific audience with shared identities, inclinations and allegiances. Naturally, what tends to emerge is self-affirming groupthink. The upshot is that we now live in a cacophonic reality, which undermines the possibility of coherent national conversations based on common sets of recognized facts.

The Biden administration could combat this by establishing a digital fairness doctrine for the twenty-first century. This would not mean setting up a government agency as the arbiter of truth. The purpose of such a doctrine is

simply to preserve the possibility of a functioning national discourse on critical issues of public interest. It would not run afoul of First Amendment free speech guarantees, given that it would do nothing to block speech itself. In fact, it would expand and enrich national conversations, by preventing echo chambers prone to systematic bias.

Any digital media platform employing targeting algorithms and with an audience of 1 million or more could be required to provide opposing viewpoints on a consistent basis: at least for the 10% most viewed news or opinion stories. Tax incentives could be provided for those who go above and beyond this. Top ranked stories would have to include prominent tabs marked *opposing view* or *disputed claims*. Disputed claims tabs would lead to a reputable third-party factchecking service and opposing view tabs would lead to an honest counterview, if available.

This would only require microtargeting platforms to examine their highest ranked content. Facebook and Twitter have already shown that they are willing and able to do this, given their recent crackdowns on QAnon and Covid-19 conspiracies. A fairness doctrine would help streamline their policies, while holding them accountable. The FCC would simply have to conduct periodic audits, including certification of fact-checking services to ensure lack of political bias. Likewise, opposing views would have to be audited for honesty and accuracy.

Critics might object that this still sets up truth arbitration in the form of factchecking and honesty assessment. However, no original content would be censored. Small to medium-sized outlets and individual content providers would remain unaffected. Though major media platforms would be regulated, they could still disseminate whatever they chose, so long as they opened their most viewed pieces to a wider critical conversation. Twitter and Facebook are already moving in this direction.

This rule would increase engagement, help platforms attract wider audiences and protect them from defamation and libel suits, which can cost billions. Fox News has already cancelled its highest rated programme in the wake of a $2.7 million suit. This would be especially useful to social media companies if article 230 of the Communications Decency Act, which shields them from liability, is modified or repealed. But while new libel challenges may clear up significant amounts of disinformation, they will be ineffective against distortions or lies that do not attack any specific person or branded property. Conspiracies about Covid-19 vaccines, for instance, can inflict tremendous damage without maligning anyone in particular.

Another approach, suggested by Jaron Lanier, could be to require platforms to pay users for their data or to charge them for platform access, instead of relying on advertising for the bulk of their revenue. However, this would not prevent echo chambers. A fairness doctrine, by contrast, would ensure that disputed claims and opposing views were sewn directly into the digital media tapestry.

A new fairness doctrine along these lines is imperative at this moment in history and should pass constitutional muster. Even if the conservative SCOTUS majority finds slight violations, the government should be able to present a case for strict scrutiny, which allows courts to approve exceptions so long as there is a compelling state interest—which there clearly is. Acknowledging that we have a problem is the first step. But real change will require action. The good news is that the opportunity is within our grasp.

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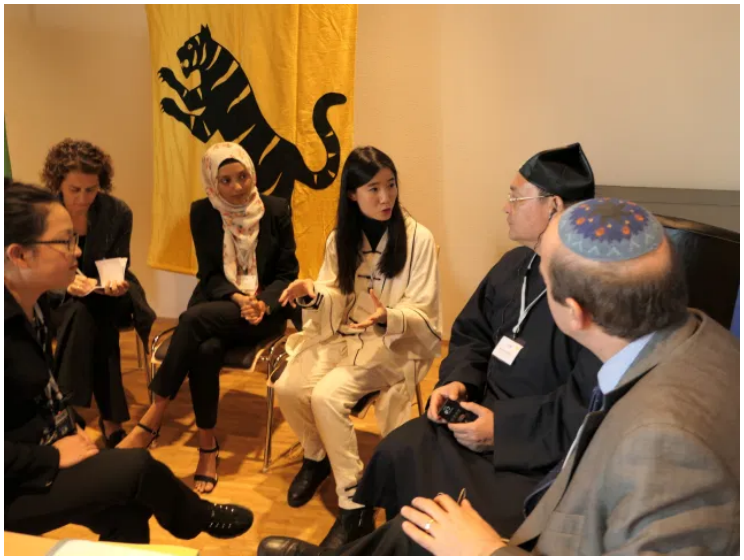

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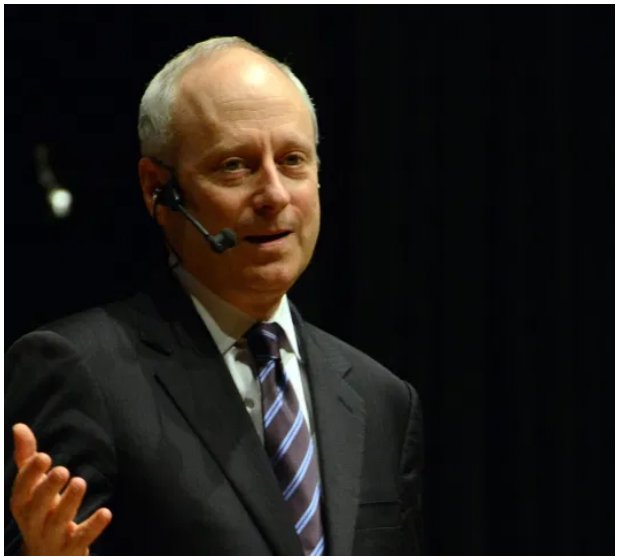

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