Conclusion

Embracing the Unknown

Social media platforms have revolutionized the ways in which people in the United States and around the world communicate, engage with public affairs, and even organize their relationships with others. Yet social media is a very new technology. Most of the major extant platforms (Facebook, Twitter/X, YouTube) did not become available to the general public until around 2006, Instagram was founded in 2010, and TikTok did not become available internationally until 2017. Furthermore, even the early platforms were relatively niche interests until the widespread adoption of smartphones, starting around 2010 (the first iPhone was released in 2007). Yet in 2016 social media, including Russian interference via social media, was said to play a potentially significant role in the US presidential election. And by 2020, both US presidential candidates were calling for regulation of social media. Very rarely, if ever before in human history, has a new technology been adopted so quickly and widely, and had such a rapid impact on society worldwide.

Given the rapid adoption and impact of social media, it is perhaps unsurprising that so many critics find the growth of social media disorienting or even threatening. After all, change, especially rapid social and technological change, is often unsettling. In the case of social media, the primary way in which this reaction has manifested itself is through a torrent of criticism from across the political spectrum. This book has argued, however, that much of this criticism is unwarranted or exaggerated, and lacks an empirical basis.

Criticisms of social media from the political right generally come down to an argument that platforms are silencing too much speech. In particular, many conservative politicians and commentators have alleged a systematic bias on the part of platforms against conservative viewpoints. As we saw, however, empirical studies simply do not support these charges, and in any event the evolution of the most important platform for political discourse, Twitter/X, since its purchase by Elon Musk makes these claims highly dubious going forward.

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In contrast to conservatives, progressive attacks on social media generally express a desire for platforms to silence more speech than they do, especially hate speech and disinformation. Yet these critiques too are not entirely coherent. After all, the major platforms *do* have policies against hate speech – indeed, it is the enforcement of these policies that triggers many of the conservative attacks on social media. Progressive criticisms thus ultimately come down to complaints that platforms are imperfect in their efforts to block harmful speech. Yet the dream of perfectly effective content moderation is a fantasy, and certainly left-wing critics have utterly failed to articulate how they think it could be achieved.

Furthermore, just as many of the politically motivated attacks on social media lack a solid grounding, so too most of the proposals to regulate or reform social media platforms are, as we have seen, deeply problematic and often blatantly unconstitutional. Many would-be regulators, from across the political spectrum, approach social media regulation as if it were equivalent to regulating consumer products or prescription medications. But social media is *media*, meaning it is a platform for speech and public discourse. And in the US constitutional tradition, anchored in the First Amendment, there is a strong presumption against governmental intervention in public discourse. At a minimum, would-be regulators must bear the burden of proving the need for, and efficacy of, proposed regulation. And in the social media sphere, that burden has generally not been met.

None of which is to say that all regulations directed at social media are without merit. There can be little doubt that given how much social media has accelerated the spread of information, it has to some extent exacerbated existing, troublesome social problems and divisions. Some of the criticisms of social media from across the political spectrum, in particular about privacy and about the impact of social media on children, certainly have a basis (though it should be said that, especially regarding the impact of social media on children, the attacks are often exaggerated and lacking in empirical support).

Regardless of the strength or weakness of specific critiques of social media, some things are clear. First and foremost, as discussed in the last chapter of this book, it is high time that social media firms be held to account when they violate existing, generally applicable legal principles. This includes obvious sources of constraint such as antitrust laws and the common law of torts. But it also includes some well-established bodies of law, including family law, which have not been thought to apply to social media platforms, arguably incorrectly.

In addition, there are some new and narrow regulatory proposals directed specifically at social media or new technology that are worth considering.

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This includes some narrowly focused forms of Section 230 reform, badly needed (especially in the United States) privacy regulations, and laws protecting minors from online harms by empowering parents. Social media is not, and should not in any way be, a law-free zone.

Ultimately, however, much of the current war on social media is rooted in hysteria. And it is an historically familiar form of hysteria, which has regularly been triggered by revolutionary new communications technologies, from the printing press to motion pictures to video games. In 1909, for example, in the infancy of the motion picture industry, the New York Times published an article suggestively titled "Moving Pictures as Helps to Crime."[1] And perhaps as a result of such overblown fears (to put it gently), when the US Supreme Court was first faced with efforts to censor the new industry, it held that motion pictures were not constitutionally protected "speech."[2] We should not repeat the errors of our past.

Furthermore, any such efforts would be futile. Just as Henry VIII of England could not tame the printing press by imposing press licensing, modern day would-be Henrys cannot put the social media genie back in the bottle. The fast spread of information and the democratization of speech are here to stay, and no government has the power to turn back the clock on these developments. Nor should they try.

It is time to acknowledge that we live in a new era. The age of Gatekeepers carefully controlling what the public sees and hears is over. So too is the age of elites and experts monopolizing public discourse. And while members of the traditional media, as well as politicians, have understandably fixated on the negative impacts of these changes – they are, after all, the ones disempowered by them – the rest of us need not be so pessimistic. After all, for all our current growing pains, the democratization of public discourse enabled by the internet, and especially social media, should be seen as a *good* thing. In perhaps the most famous passage ever written about the First Amendment, US Supreme Court Justice Louis Brandeis opined that "the greatest menace to freedom is an inert people [and] public discussion is a political duty."[3] But there is nothing more likely to encourage inertia, and dissuade political participation, than excluding the *public* from public discourse. Social media has proven to be a revolutionary tool in reengaging the broader public in political discussions, sometimes for the worse, but often for the better. In our rush to rein in social media, we should not forget this basic point.

[1] *Moving Pictures as Helps to Crime: Exhibitions That Excel the Old-Time Dime Novel in Suggestiveness Watched by the Police*, N.Y. Times (Feb. 21, 1909), https://timesmachine.nytimes.com/timesmachine/1909/02/21/106117731.html?pageNumber=40.

[2] Mutual Film Corp. v. Industrial Commission of Ohio, 236 U.S. 230, 241–45 (1915).

[3] Whitney v. California, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring).

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Nor does it make sense to instinctively fear disruptive new technologies, as those who wield social and political power tend to do. The printing press brought religious wars to Europe, but it also ultimately brought a scientific revolution, mass literacy, and an explosion of the arts. Who knows what a new, truly interconnected world, in which every person can potentially have a global voice, will bring. Perhaps it will resemble Aldous Huxley's dystopia;[4] but perhaps it will instead give birth to new, positive social revolutions. In the face of that uncertainty, it behooves us not to risk strangling that new world in the cradle because of fear of the unknown.

[4] Aldous Huxley, Brave New World (1932).

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