

24.150 Liberalism, Toleration, and Freedom of Speech, Fall 2023

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+CO

locutionary

I say the words

illocutionary

in saying the words

perlocutionary

as a result of saying the words

'I promise to pay you'

I promised to pay you

I reassured you

'Watch out!'

I warned you

I saved you from being hit by a bus

'I'm sorry'

I apologized

I impressed you

Subordination as a illocutionary act

Consider this utterance [in apartheid SA]: 'Blacks are not permitted to vote.' ... In virtue of what do the speech acts of apartheid subordinate? In virtue of what are they illocutionary acts of subordination? In virtue of at least the following three features, I suggest. They *rank* blacks as having inferior worth. They *legitimate* discriminatory behavior on the part of whites. And finally, they *deprive* blacks of some important powers: for example, the power to go to certain areas and the power to vote.

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Someone may rank an athlete as the fastest, legitimate beer drinking on campus, or deprive a driver of his license. These may be illocutionary acts that rank, legitimate, or deprive people of powers, yet they are not acts of subordination. But, unlike these, the speech acts of apartheid are acts of subordination: they *unfairly* rank blacks as having inferior worth; they *legitimate* discriminatory behavior on the part of whites; and they *unjustly* deprive them of some important powers.

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...in order to answer the question, 'Does pornography subordinate?' one must first answer another: 'Do its speakers have authority?' If they do, then a crucial felicity condition is satisfied: pornographers' speech acts may be illocutions that authoritatively rank women, legitimate violence, and thus subordinate.

This question is, I think, at the heart of the controversy.

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if you believe, with MacKinnon, that pornography's voice is the voice of the ruling power...Just as the speech of the umpire is authoritative within a certain domain—the game of tennis—so pornographic speech is authoritative within a certain domain—the game of sex. The authors of pornographic speech are not mere bystanders to the game; they are speakers whose verdict counts. Pornography tells its hearers what women are worth: it ranks women as things, as objects, as prey. Pornography tells its hearers which moves are appropriate and permissible: if it tells them that certain moves are appropriate because women want to be raped, it legitimates violence. If pornography is authoritative speech it may subordinate.

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Pornography may (or may not) be subordination

Another topic: silencing

Before considering whether pornography silences women, I will look at how speech acts, in general, may be silenced, and then ask whether in principle speech acts can silence.

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At the first and most basic level, members of a powerless group may be silent because they are intimidated, or because they believe that no one will listen...Sometimes, however, people will speak, but what they say will fail to achieve the effects that they intend: such speakers fail to perform their intended perlocutionary act. Silencing of this second kind, which we can call *perlocutionary frustration*, is a common enough fact of life...

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What are some examples?

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But there is a third kind of silencing that happens when one speaks, one utters words, and fails not simply to achieve the effect one aims at, but fails to perform the very action one intends. Here speech misfires, and the act is unhappy in the way that Austin described: although the appropriate words are uttered, with the appropriate intention, the speaker fails to perform the intended illocutionary act. Silencing of this third kind we can call *illocutionary disablement*...

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Example (1): Warning. Imagine this: the actor is acting a scene in which there is supposed to be a fire. . . . It is his role to imitate as persuasively as he can a man who is trying to warn others of a fire. 'Fire!' he screams. And perhaps he adds, at the behest of the author, 'I mean it! Look at the smoke!' etc. And now a real fire breaks out, and the actor tries vainly to warn the real audience. 'Fire!' he screams. 'I mean it! Look at the smoke!' etc.

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Why does Langton think the actor does not warn?

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Sometimes 'no', when spoken by a woman, does not count as the act of refusal. The hearer fails to recognize the utterance as a refusal; uptake is not secured. In saying 'no' she may well intend to refuse. By saying 'no' she intends to prevent sex, but she is far from doing as she intends. Since illocutionary force depends, in part, on uptake being secured, the woman fails to refuse.

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Some speech determines the kind of speech there can be. This shows that it is indeed possible to silence someone, not just by ordering or threatening them into simple silence, not just by frustrating their perlocutionary goals, but by making their speech acts unspeakable. It is possible to use speech to disable speakers, and possible to prevent them from satisfying the felicity conditions for some illocutions they might want to perform.

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3. Why does Langton think that pornography (might) silence women?



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What, if anything, has pornography to do with ... this disablement of women's speech ...? If the felicity conditions for such illocutions constrain women in these contexts, we need to ask how those conditions came into being. ... felicity conditions for illocutions in general can be set by other speech acts. MacKinnon's claim ...[may be that] felicity conditions for women's speech acts are set by the speech acts of pornography. The words of the pornographer... are 'words that set conditions'. They are words ...that make certain actions—refusal, protest—unspeakable for women in some contexts. This is speech that determines the kind of speech there can be. ... Pornography might...silence refusal by ... leave no space for the refusal move in its depictions of sex.

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Cohen:

I think it is a mistake to suppose that the issue of regulation can or ought to be settled...by first determining whether it causes subordination or subordinates.

...According to Langton, pornography subordinates (and silences) only if pornographers' speech is authoritative about matters of sex. I cannot see how this could settle the issue, because their speech may be authoritative because people regard them as 'in the know' and so listen to them. Or it might be that men who think that women enjoy subordination go to pornography to learn how to do it (not because a producer of pornography is in authority, but because he or she is an authority). No amount of speech act theory is going to shift the debate away from causal argument and questions about the assignment of responsibility.

Cohen, Joshua. From "Freedom, Equality, Pornography." Chapter 11 in *Prostitution and Pornography: Philosophical Debate about the Sex Industry*. Edited by Jessica Spector. Stanford University Press, 2006. © Stanford University Press. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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What is the connection to the right to freedom of speech or expression?

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It is not uncommon, in discussions about free speech, to cast ideas as the heroes of the story. Free speech is a good thing, because it provides a free marketplace for ideas where the best and truest ideas can win out in the end. To say that some speech silences is to describe a kind of shopping problem: some ideas that could be on the market are not. Censorship may or may not be needed as a means of improving the marketplace, a little local regulation to improve things overall. Perhaps some ideas must be censored so that others can find space on the shelves.

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But

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the claim that pornography silences women is not about ideas, but about people. Free speech is a good thing because it enables people to act, enables people to do things with words: argue, protest, question, answer. Speech that silences is bad, not just because it restricts the ideas available on the shelves, but because it constrains people's actions.

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4. Is the right to freedom of speech (if there is one) a right to perform locutionary acts, illocutionary acts, or perlocutionary acts?

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If the right to free speech is not the right to perform any old illocutionary act, which illocutionary acts do we have a right to perform?

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The junior senator from RI



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Section 230 Reforms

SHELDON WHITEHOUSE

Introduction

For better or worse, a few social media companies dominate today's internet. In recent years, with the spread of disinformation and other dangers online, the worse now overshadows the better.

Social media platforms—companies that facilitate information sharing through virtual networks—have shielded themselves more than any other media from responsibility for destructive content that they house and propagate.¹ They claim that their algorithms simply promote whatever is selected by the collective wisdom of the public;² and that they lack the resources or expertise to identify and remove unlawful or untruthful content. But the truth is they are not neutral or incapable observers. Social media companies spread disinformation,³ exacerbate preexisting biases,⁴ and disseminate unlawful content⁵ because of deliberate, profit-seeking choices. These platforms choose how to structure their services; what content to allow or disallow; what content to promote; what ads to sell, and to whom; and how they connect advertising to the content users consume or create.

These deliberate choices create real-world harm. Although Facebook Chief Operating Officer Sheryl Sandberg initially tried to deflect blame to other platforms that she claimed “don’t have our abilities to stop hate, don’t have our standards and don’t have our transparency,” a leaked internal Facebook report acknowledged that the company chose not to act against January 6, 2021, insurrection plotting on its platform.⁶ A *New York Times* study of the 2020 Senate runoff election in Georgia found that the “top 20 Facebook and Instagram ac-counts spreading false claims aimed at swaying voters in Georgia accounted for more interactions than mainstream media outlets.”⁷ A 2021 study by University of Southern California researchers found Facebook job advertisements were infected with gender bias, disproportionately targeting men for male-dominated

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Are internet platforms providers or distributors?

In the '90s, CompuServe did **not** moderate user-generated content; Prodigy did. Courts ruled that this made CompuServe just a distributor, but Prodigy a publisher.

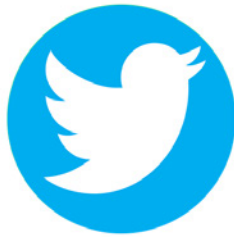
'if that rule was going to take hold then the internet would become the Wild West and nobody would have any incentive to keep the internet civil.' (Rep. Christopher Cox, D-CA.)

Reynolds, Matt. From "The Strange Story of Section 230, the Obscure Law that Created Our Flawed, Broken Internet." *Wired*, March 24, 2019. © Condé Nast. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

'The 26 words that made the Internet.'

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1. What legal protections does section 230 give companies like Facebook and Twitter (X)?



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The intent of Cox and Wyden’s original Section 230 was to afford platforms enough immunity to let them moderate content, while keeping liability for intellectual property abuses and federal criminal law violations.

As the internet changed, courts construed Section 230 to shield websites that failed to effectively moderate even known objectionable content.

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2. Whitehouse claims that misinformation spreads more widely and more quickly on social media platforms than true information, and describes (what he takes to be) several causes of this fact. What are those causes?

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A 2019 MIT study found that “falsehoods are 70% more likely to be retweeted on Twitter than the truth, and reach their first 1,500 people six times faster.” By contrast, true stories are rarely retweeted by more than a thousand people. Making matters worse, the spread of falsehoods tends to accelerate at critical moments when salience is high and truth counts the most, such as presidential elections.

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While social media companies may argue that the spread is driven by the innate appeal of certain falsehoods, certain falsehoods are strategically accelerated on social media by deliberate propagators.

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...the platforms' own algorithms play a significant role in spreading misinformation. A recent NYU study found that users of Facebook are more engaged with misinformation: "[F]rom August 2020 to January 2021, news publishers known for putting out misinformation got six times the amount of likes, shares, and interactions on the platform as did trustworthy news sources, such as CNN or the World Health Organization."

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Notably, it is in social media companies' financial interest for misinformation and disinformation to spread. This content drives user engagement; platforms' algorithms amplify content that drives engagement because engagement drives ad dollars. Internal Facebook documents indicate the company resisted changing algorithms that reduced the spread of misinformation and divisive content at the expense of user engagement.

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The spread of true and false news online

[SOROUSH VOSOUGHI](#) , [DEB ROY, AND SINAN ARAL](#)  [Authors Info & Affiliations](#)

SCIENCE • 9 Mar 2018 • Vol 359, Issue 6380 • pp. 1146-1151 • DOI: 10.1126/science.aaa9559

89,779  2,684



Lies spread faster than the truth

There is worldwide concern over false news and the possibility that it can influence political, economic, and social well-being. To understand how false news spreads, Vosoughi *et al.* used a data set of rumor cascades on Twitter from 2006 to 2017. About 126,000 rumors were spread by ~3 million people. False news reached more people than the truth; the top 1% of false news cascades diffused to between 1000 and 100,000 people, whereas the truth rarely diffused to more than 1000 people. Falsehood also diffused faster than the truth. The degree of novelty and the emotional reactions of recipients may be responsible for the differences observed.

Vosoughi, Soroush, Deb Roy, and Sinan Aral. From "The Spread of True and False News Online." *Science* 359, no. 6380 (2018): 1146–51. © American Association for the Advancement of Science. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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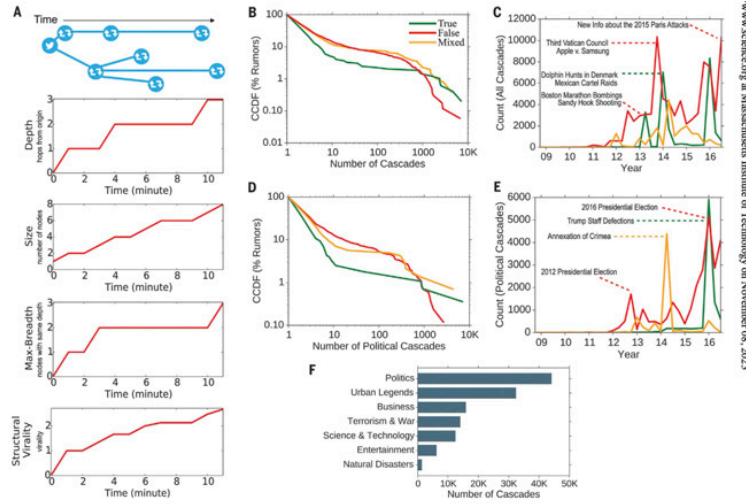


Fig. 1. Rumor cascades. (A) An example rumor cascade collected by our method as well as its depth, size, maximum breadth, and structural virality over time. “Nodes” are users. (B) The complementary cumulative distribution functions (CCDFs) of true, false, and mixed (partially true and partially false) cascades, measuring the fraction of rumors that exhibit a given number of cascades. (C) Quarterly counts of all true, false, and mixed rumor cascades that diffused on Twitter between 2006 and 2017, annotated with example rumors in each category. (D) The CCDFs of true, false, and mixed political cascades. (E) Quarterly counts of all true, false, and mixed political rumor cascades that diffused on Twitter between 2006 and 2017, annotated with example rumors in each category. (F) A histogram of the total number of rumor cascades in our data across the seven most frequent topical categories.

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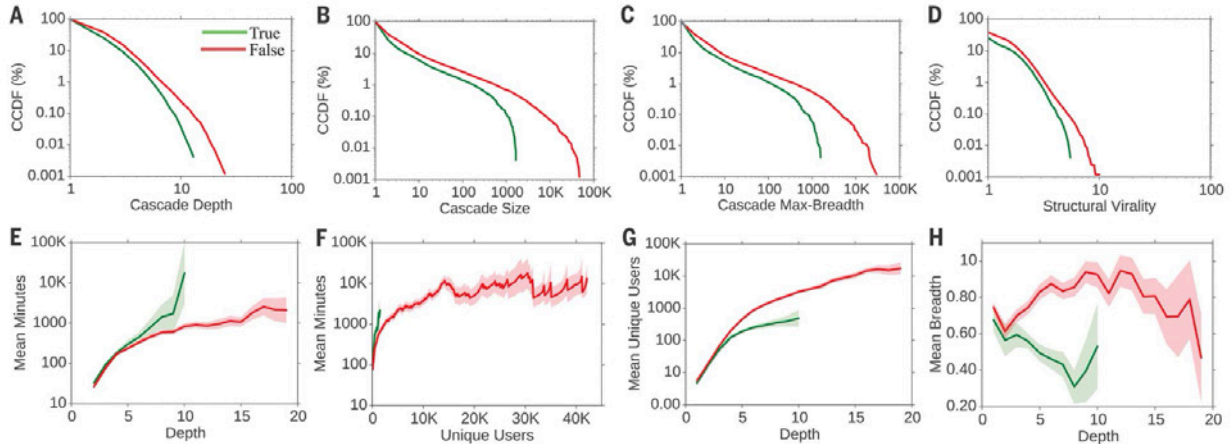


Fig. 2. Complementary cumulative distribution functions (CCDFs) of true and false rumor cascades. (A) Depth. (B) Size. (C) Maximum breadth. (D) Structural virality. (E and F) The number of minutes it takes for true and false rumor cascades to reach any (E) depth and (F) number of unique Twitter users. (G) The number of unique Twitter

users reached at every depth and (H) the mean breadth of true and false rumor cascades at every depth. In (H), plot is lognormal. Standard errors were clustered at the rumor level (i.e., cascades belonging to the same rumor were clustered together; see supplementary materials for additional details).

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systematic analyses. Our analysis of all the verified true and false rumors that spread on Twitter confirms that false news spreads more pervasively than the truth online. It also overturns conventional wisdom about how false news spreads. Though one might expect network structure and individual characteristics of spreaders to favor and promote false news, the opposite is true. The greater likelihood of people to retweet falsity more than the truth is what drives the spread of false news, despite network and individual factors that favor the truth. Furthermore, although recent testimony before congressional committees on misinformation in the United States has focused on the role of bots in spreading false news (36), we conclude that human behavior contributes more to the differential spread of falsity and truth than automated robots do. This implies that misinformation-

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3. Whitehouse claims that reforming section 230 with 'transparency requirements' will help fight the spread of disinformation. What requirements does he have in mind? Do you agree with him that the government is justified in imposing such requirements? Why or why not?

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a. we ought to require platforms to disclose what is paid content and who is behind it, and to separate paid content from other content. Users should also be required by platforms' terms of service to disclose when they are paid to disseminate particular messages.

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b. social media companies should open their algorithms up to scrutiny. In cybersecurity, firms deploy 'white hat' researchers to probe their systems for glitches and weaknesses. Mandating some form of access to social media platforms' algorithms would allow researchers to determine whether and how those algorithms contribute to illegal activity, and also provide a way to counteract any illegal actions found.

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