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## René Cassin 'Human Writes' Essay Competition 2019 – winner

Competition judge Adam Wagner comments:

*“... a well-put together essay expressing the dangers which the rise of social media pose to human rights protections. The examples and sources are usefully deployed and the conclusion is accurate in its proposal for the future. A thoughtful piece which made me think, thank you for writing it.”*

## Social media: friend or foe of human rights?”

### Introduction

Social media has been hailed as a game-changing tool for activists, who have used social media to expose, document and organise against human rights abuses on an extraordinary scale. The protests following Moldova’s fraudulent general election of 2009, which led to the Communist Party losing power, as well as the series of protests which took place across the Middle East and North Africa during the ‘Arab Spring’, are widely credited to the power of social media.<sup>1</sup> However, it is now apparent that the threats to human rights posed by social media exceed its advantages.

The scope of the question at hand is broad: with a vast global footprint, social media interacts with our human rights in diverse ways and its impact can be considered through many different lenses. This essay focuses on the impact of social media on the enjoyment of fundamental rights and examines how the exploitation of social media by private companies and oppressive regimes interferes with the enjoyment of these rights. This essay posits that the threats posed to human rights by social media will always outweigh the benefits:

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<sup>1</sup> Clay Shirky, ‘The Political Power of Social Media: Technology, the Public Sphere and Political Change’ (2011) *Foreign Affairs* 90(1) 28

structurally, and as an unavoidable consequence of corporate behaviour, social media must always prevail as a “foe” to human rights.<sup>2</sup>

Before turning to the main discussion, the relationship between human rights law and social media companies merits discussion. Human rights law applying to individuals and the state, it seems counter-intuitive that social media, operated by private companies, should interact with human rights. The relationship between social media companies and human rights law is indirect: social media companies have obligations towards their users through user license agreements and other laws. Governments, in turn, must protect the human rights of people within their jurisdiction and may be in violation of these laws by failing to ensure social media companies act in accordance with the law. This is a well-established principle of human rights law.<sup>3</sup>

It is from this starting point that this discussion proceeds.

### **Exploitation by private companies**

Social media is an essential function of businesses. In addition to serving as mass marketing platforms, companies are increasingly reaping the benefits of social media to gather and use data about their customers on an enormous scale.

Through the language we use, accounts we follow and content we share, social media companies build highly detailed profiles of users. These profiles are invaluable to third-party companies, who use this information to market more effectively. This process is lucrative not only for third-party companies, who are able to sell more, but the social media companies themselves, who profit from selling user insights.

The right to privacy is a fundamental right guaranteed by major international human rights instruments.<sup>4</sup> As social media has become a greater presence in our lives, courts have begun

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<sup>2</sup> Note that this discussion will employ the definition of social media set out in Jonathan Obar and Steve Wildman, ‘Social Media Definition and the Governance Challenge: An Introduction to the Special Issue’ (2015) *Telecommunications Policy* 39(9):

“1) Social media services are (currently) Web 2.0 Internet-based applications,

2) User-generated content is the lifeblood of social media,

3) Individuals and groups create user-specific groups for a site or app designed and maintained by a social media service,

4) Social media services facilitate the development of social networks online by connecting a profile with those of other individuals and/or groups.”

<sup>3</sup> See for instance *Fadeyeva v Russia* (2005) EHRR 4

<sup>4</sup> European Convention on Human Rights (1953) art. 8; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art. 17; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978)

to examine its implication for human rights, and there is a growing body of case law<sup>5</sup> and treaty law<sup>6</sup> discussing the right to the protection of personal data.

It is clear, therefore, that human rights interact with digital privacy. The process described above does not always interfere with rights: we consent to submitting data and allowing social media companies to build detailed profiles about us when we register a profile with them. However, when carried out with little oversight, the mass collection and sale of data to third-party companies can have, and is having, serious repercussions for the human rights of millions of people globally.

The notable example of data mining companies such as Cambridge Analytica is illustrative of this. The mining of the personal data of millions of users by the company was facilitated by a failure on the part of social media giant Facebook to protect users' data.<sup>7</sup> The data misappropriated by Cambridge Analytica was then employed for the purposes of 'micro-targeting' of election adverts by political campaigns such as the 2016 United States Presidential Election and referendum on the UK's membership of the EU.<sup>8</sup> This is a notorious example of interference with not only the right to privacy, but with fundamental democratic rights.

In response to this, it could be argued that this is merely a particularly egregious example. But it must be borne in mind that the collection and retention of personal data is essential to the business model of companies like Facebook. Since social media profiles are free at the point of use, advertising revenues account for most of their profits, and the more user data social media companies can sell, the better. Social media companies have little incentive to protect users' agency over their personal data, and therefore, to protect their rights. Since social media companies compete with one another to attract third-party companies as advertisers on their platforms, they compete with one another as to which can offer the most comprehensive user data. What results is a 'race to the bottom' whereby individual rights are cast aside.

It is not simply the case that the Cambridge Analytica example is one of a 'bad egg' – its behaviour, and that of other data mining companies, was enabled by the business practices of social media companies.

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<sup>5</sup> See for instance *M.L. and W.W. v Germany* Applications nos. 60798/10 and 65599/10 (ECHR, 28 June 2018)

<sup>6</sup> Charter of Fundamental Rights of the European Union [2012] OJ 326/2, art. 8

<sup>7</sup> Carole Cadwalladr and Emma Graham-Harrison, 'Revealed: 50 million Facebook profiles harvested for Cambridge Analytica in major data breach' (*The Guardian*, 17 March 2018) <https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election> accessed 14 October 2019

<sup>8</sup> *Ibid.*

## Exploitation by governments

Social media was once hailed as a powerful tool to hold governments to account by exposing and publicising human rights abuses. Social media has been used to expose repression of peaceful protests in Sudan;<sup>9</sup> targeting of Syrian civilians by Russian airstrikes;<sup>10</sup> and police brutality in Hong Kong,<sup>11</sup> to name but a few examples. It is undoubtable that social media has an enormous potential for organising, inspiring and igniting political protest. However, authoritarian regimes have now begun to harness this potential in order to violate human rights.

This pattern of behaviour is having tragic consequences. In Myanmar, for example, government social media accounts and those of government officials have been used to incite violence against the Rohingya people, a minority ethnic group which faces persecution, violence and ethnic cleansing. Hatred has been incited at the highest levels of government: former President Thein Sein used his public Facebook page to describe Rohingya people as “terrorists” and called on the military to “eradicate them until the end.”<sup>12</sup> Indeed, its role in inciting violence against the Rohingya people has even been recognised by Facebook, who admitted to a failure to respond to swathes of posts and misinformation that helped to fuel ethnic cleansing in Myanmar.<sup>13</sup> Similarly, in Malta, investigations have shown that top figures including Prime Minister Joseph Muscat, his Chief of Staff and other senior advisors to be moderators of online groups which incite violence against journalists and political opponents.<sup>14</sup> The comments shared on the group included calls for anti-corruption activists to be identified, targeted, and attacked.<sup>15</sup> These groups were brought to the attention of Facebook, but remained online.

It is important to distinguish these examples, which involve the use of social media by governments to incite hatred and spread propaganda, from a government’s ordinary

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<sup>9</sup> Alexander Durie, ‘The Sudan Uprising and the critical role of social media’ (*The New Arab*, 17 September 2019) <https://www.alaraby.co.uk/english/indepth/2019/9/17/sudans-uprising-and-the-critical-role-of-social-media> accessed 14 October 2019

<sup>10</sup> Christiaan Triebert, Evan Hill, Malachy Browne, Whitney Hurst and Dmitriy Khavin, ‘How Times Reporters Proved Russia Bombed Syrian Hospitals’ (*The New York Times*, 13 October 2019) <https://www.nytimes.com/2019/10/13/reader-center/russia-syria-hospitals-investigation.html> accessed 14 October 2019

<sup>11</sup> Daniel Mattingly, ‘The Hong Kong protests have been going on for months. What explains this sustained action?’ (*The Washington Post*, 30 September 2019) <https://www.washingtonpost.com/politics/2019/09/30/hong-kong-protests-have-been-going-months-what-explains-this-sustained-action/> accessed 14 October 2019

<sup>12</sup> Azeem Ibrahim, *The Rohingyas: Inside Myanmar’s Hidden Genocide* (Hurst 2016) 83

<sup>13</sup> Alexandra Stevenson, ‘Facebook Admits It Was Used to Incite Violence in Myanmar’ (*The New York Times*, 6 November 2018) <https://www.nytimes.com/2018/11/06/technology/myanmar-facebook.html> accessed 14 October 2019

<sup>14</sup> ‘Investigating Joseph Muscat’s online hate machine’ (*The Shift*, 14 May 2018) <https://theshiftnews.com/2018/05/14/investigating-joseph-muscats-online-hate-machine/> accessed 16 October 2019

<sup>15</sup> *Ibid.*

communications functions. There is nothing nefarious about governments using social media to communicate their policies to the general public or using it as an engagement tool. However, the ubiquitous nature of social media also means that it enables governmental human rights abuses on a much larger scale than would otherwise be possible using traditional media. In the same way that government-backed militias in Rwanda used the airwaves of Radio-Télévision Libre des Mille Collines to incite genocide against the Tutsis,<sup>16</sup> governments today are inciting and promoting human rights abuses through social media. At the same time, social media companies are aware that taking meaningful action to remove state-sponsored hate speech from their platforms risks damaging their relations with governments, and limiting their market access. Since social media companies are accountable to their shareholders to deliver greater profits (rather than to human rights monitoring bodies), the incentive in cases such as Myanmar and Malta will always be to facilitate these human rights abuses, at least in part. Once set apart as powerful tools to hold governments accountable, social media companies have now become complicit in abuses of state power and human rights violations.

## Conclusion

This essay has demonstrated that the prevailing impact of social media companies has been to damage the cause of human rights protection, through the violation of fundamental rights including the right to privacy, democratic rights and, most troublingly, the right to life. These harms are inevitable corollaries of the commercial structures of social media companies. This is not to say that the use of any social media platform will always violate fundamental rights: this essay has also shown the crucial role that social media has played in protest movements and in documenting human rights abuses. However, for social media to truly serve as a friend to the human rights movement, it must be recast and reformed in a way that centres the rights of users, as opposed to the pursuit of profit. Human rights advocates must take the lead in calling for and designing these reforms: with an estimated 3.5 billion people using social media today,<sup>17</sup> the implications for our collective liberty and security have never been greater.

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<sup>16</sup> Jolyon Mitchell, 'Remembering the Rwandan Genocide: Reconsidering the Role of Local and Global Media' [2007] *Global Media Journal* 6

<sup>17</sup> Simon Kemp, 'Digital 2019' (2019) available <https://hootsuite.com/pages/digital-in-2019> accessed 17 October 2019

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