

PEOPLE OR TECHNOLOGY: WHAT DRIVES DEMOCRACY?

There is no doubt that technology has shaped democracy. However, it is also the legal rules concerning technology which have shaped and have been shaped by democracy. Developing and using technologies according to democratic rules is what we need. There are libertarians today who deliberately design technological systems in a way that makes control by democratic states increasingly difficult. However, there is sufficient counter power and engagement, at least in Europe, to ensure that democracy functions and we work together to produce rules that are sensible for the future of democracy and confirm the supremacy of democracy over technology and business interests.

Paul Nemitz*



* Paul Nemitz is the Principal Adviser on Justice Policy in the EU Commission; Member of German Data Ethics Commission, Global Council on Extended Intelligence; Visiting Professor of Law, College of Europe. He here expresses a personal opinion, not necessarily that of the European Commission.

In a democracy, the path to change must be open. This involves changing both the government and the people at the top. Change is brought about by people and thus history is not predetermined by ideologies or technological advancements. The future is open, some harm will be unavoidable, but nothing good can happen unless people engage with rigor and perseverance. We must make this clear because both authoritarians and technocrats claim the opposite. In the perception of those who believe the future is predetermined, what they foresee and plan will unavoidably happen. That is their strategy for disengaging people from democratic involvement. However, we shouldn't let this happen.

There is no doubt that technology has shaped democracy. However, it is also the legal rules concerning technology which have shaped and have been shaped by democracy. For example, Hitler used public radio to manipulate public opinion. It was for this reason that many countries in Europe passed legislation after World War II establishing detailed rules for public radio and public television, including their administration and financing. The objective of these rules was and is to ensure that these technologies serve democracy in the form of public broadcasters, independent of profit or state control. The rise of populism and antidemocratic tendencies can be linked to a lack of strong, independent public broadcasters and rules that ensure the media remain pluralistic and work independently in order to inform the public in a way that fosters democracy. Democracies have always intended to use media policy to make sure that a genuine democratic public sphere (Habermas) is created and that it remains.

In the United States, the degeneration of democracy is traced back to private television becoming so powerful and so vital for campaigning that candidates for elected office are either required to be very rich or to spend an increasing part of their time collecting funds to finance TV advertisements. Former Vice President Al Gore once told me that when elected representatives had to consider the impact each call would have on campaign financing, politics was no fun anymore. The Harvard Constitutional Law Professor Lawrence Lessig has described in detail the poison money has brought into American politics,¹ and much of this need for money has to do with the development of Television and Radio financed through advertisements, for which candidates for office must pay to be able to win an election campaign.

We have seen a surprising pattern of political advertising spending on Facebook during the U.S. election campaigns, and now we have arrived at contemporary AI-driven social networks and their effects on democracy. Former President Trump

¹ Lawrence Lessig, "Lesterland" TED Talk on Youtube: <https://www.youtube.com/watch?v=mw2z9IV3W1g>

had to pay a lot less per view on Facebook than democratic candidates. How come? Because the Democratic Party initially had many candidates, they all vied for the same electorate during the primaries. As a result of collecting mass data and leveraging artificial intelligence, Facebook auctions off every American voter with a profile that is of interest to the bidder bidding the most. And there were many bidders on the democratic side, namely all the Democratic Party presidential candidates. This increased the auction price and thus the spending of democratic candidates. Trump, on the other hand, as the sole candidate of the Republicans, benefitted from a lower price as nobody in the add auctions stood against him when he was reaching out to his potential voters.²

“All of these examples are American, and for a very good reason: the lack of rules on the collection and use of personal data in the U.S., as well as an under regulated technology market and an advertisement market on fire, has a terrible impact on democracy.”

Even worse, individual micro-targeting of social media messages to voters, calibrated for maximum manipulation with the help of mass data and artificial intelligence, robs the election process of the transparency and scrutiny that democratic societies need. When only the addressee sees the messages received from the party, the party can say whatever it wants without being held accountable for the inconsistency of its messaging. Because democracy cannot work in this way, the European Commission has proposed a regulation of the election advertising on the internet.³ Could we leave this matter to the market or civil society to resolve? Dream on. The state must take responsibility for the institutional guarantees of democracy to function, including the institutional guarantees for the public sphere. It is good that the American Journalist Julie Angwin and her philanthropically financed tech accountability newsroom “The Markup” developed a “Citizenbrowser” app plugin for volunteers to document the divergence of messaging based on micro targeting on Facebook.⁴ Her findings confirm the need for democracy to act through law.

In the U.S., it may be fair to say that every new technology cycle relevant to media and public opinion shaping has driven up the price of democracy in that evermore only the richest and smartest have the time and money to in fact find the truth and

² Jeremy B. Merrill, “Facebook Charged Biden a Higher Price than Trump for Campaign Ads,” *The Markup*, 29 October 2020, <https://themarkup.org/election-2020/2020/10/29/facebook-political-ad-targeting-algorithm-prices-trump-biden>

³ “European Democracy: Commission sets out new laws on Political Advertising, Electoral Rights and Party Funding,” *European Commission*, (25 November 2021), https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6118

⁴ “Citizen Browser,” *The Markup*, <https://themarkup.org/series/citizen-browser>

make proper judgments among the cacophony of fake news and lies and only rich people or those who made the necessary pleasing gestures to bring in money have a chance to be elected.⁵ Since the first Obama campaign, billions of dollars have been spent on developing the app and algorithmic environment for voter mobilization. On the day of the election in 2012, the mobilization app of the Mitt Romney campaign did not work properly.⁶ As early as midday, Obama staffers at every polling station knew who they still needed to call or pick up to come to the election because the system they had in place to track voters at the polling stations against their list of potential Obama voters worked. They could thus mobilize people until the very last minute. Mitt Romney could not, because his app failed.

As well as the good arguments, this campaign may have been the first to win through technology. The following campaigns saw technology become an increasingly important element, culminating with the Cambridge Analytica Scandal of the Trump Campaign, which showed how Facebook made it possible for the Trump Campaign to use personal information and manipulate people. All of these examples are American, and for a very good reason: the lack of rules on the collection and use of personal data in the US, as well as an under-regulated technology market and an advertisement market on fire, has a terrible impact on democracy. Currently, elections and democracy in America are large money feasts for big businesses, which perverts democracy. There is a very real chance that in America's campaigns of the future, the best arguments will matter less, and the one with the most sophisticated AI and Tech systems will win. This means that the campaign with the most money will have a greater chance of winning, since more money probably buys better manipulation technology.

What keeps campaigns in Europe away from these perversions are two sets of rules: Election and party financing are often provided by the state, at least to some extent. This and stringent rules limiting the financial influence of big capitalists as well as restrictions on data collection and use are key. An effective democracy cannot function without well-calibrated and rigorously enforced rules. The relationship between Tech, AI, and Democracy is heavily influenced by them, AI is being the key tool for collecting and manipulating individual data.

Can AI and Blockchain Drive down the Cost of Democracy and Re-democratize Elections?

In an optimistic vision, AI in the future will help curate reliable, true information,

⁵ Lawrence Lessig, "Lesterland" video: <https://www.youtube.com/watch?v=mw2z9IV3W1g>

⁶ Steve Mullis, "On Election Day, Romney's Killer Whale 'App' Couldn't Stay Afloat," *NPR*, 10 November 2012, <https://www.npr.org/sections/alltechconsidered/2012/11/10/164869691/on-election-day-romneys-killer-whale-couldnt-stay-afloat?t=1642517005525>

while the Blockchain will ensure efficient, secure data inputs and transmissions. Additionally, since Blockchain relies on decentralized consensus to pass along information, it contains an element of democracy. We see many discussions about technologies without a solid understanding of the power consolidation and economic profit objectives that motivate interest in developing and deploying technology like AI and Blockchain. It is clear that much of the conceptual discussion on AI Ethics or the AI and Democracy debate or even the “AI for good” or “Blockchain for good” debate suffer from this malaise. In this sense, techno naivety makes it easier for big tech to push “techno solutionism” in which Tech for good is held up as solving all problems, including challenges to democracy. Technology is certainly capable of solving many problems, hopefully including those that it created in the first place. It is also certain, however, that if Big Tech is in control of this endeavour, or even if it runs it, it will not lead to results those democratic legislators or the majority of people would consider good. Because capitalists cannot escape the stock market’s pressures. In other words, those pressures are not for the best, but rather for the profit of the shareholders and for monopoly power.

“AI will cement conservative structures of society and make reforms, based on criticism and democratic will, much more difficult. We must be careful not to lock cities, governments, and other public services into AI systems that have huge sunk costs that will make any subsequent reversal of policy difficult.”

Developing and using technologies according to democratic rules is what we need. The definition of Tech for Good is subject to many different points of view, and some tech may be good for some and not for others. It is a classic case of democratic deliberation and decision making when it comes to “Tech for Good.” It appears in principle that Big Tech today accepts democracy as the supreme authority over technology, at least in op-eds and college commencement speeches. Nevertheless, profits in capitalism are used to generate more profits, and that means lobbying democracy to death in order to make sure that no rules by legislators reduce profits. Is big tech always successful in this endeavor? Praise God it is not, thanks to the engagement of many. But it is a constant battle. Furthermore, we must ensure that all the structures which keep democracy alive and curtail the impact of big money and technology on democracy are strengthened simultaneously with the exponential financial growth and dominance of big tech in public discourse. It seems that the more money GAFAM (Google, Apple, Facebook, Amazon and Microsoft) spends to

buy academics, journalists, or entire publishing houses, politicians, and competitors, the more important it becomes to strengthen our institutions and rules to make sure this does not happen and that the checks and balances that democracy requires are maintained and strengthened.

Undermining democracy's system of checks and balances is the single most significant risk AI and its corporate backers pose to democracy. The claim that AI will be a better curator of truth than journalists and a better writer of language undermines the critical potential of the press as the fourth estate in a democratic society. By replacing journalists with automated algorithms, which is cheaper, the press will lose its critical, questioning function against power, whether public or private. Past facts are the basis of artificial intelligence. They do not tell us anything about how the world should be, these facts cannot provide a basis for normative views and criticisms. Consider this in conjunction with the erosion of revenue from advertising in the press, to the benefit of Google and Facebook. Only these two companies today reap 80 percent of the new internet advertisement revenues previously accrued to hundreds of newspapers. In turn, they hand-feed the press in their so-called news programs, making them dependent on them, and rendering them friends rather than critics of their power. Eventually, they will take them over or imitate them. Amazon founder Bezos took over the Washington Post. Next up I bet: Springer in Germany and the United States, with KKR as one of its major shareholders. What will they do to maximize return on investment if they don't sell to one of the GAFAMs?

Asserting that artificial intelligence (AI) will be better scientists than human scientists and that we should put our trust in "trustworthy AI" is insulting to human thinking, reflection, and critical thinking which has been developed through enlightenment. Using data from yesterday, AI will cement conservative structures of society and make reforms, based on criticism and democratic will, much more difficult. We must be careful not to lock cities, governments, and other public services into AI systems that have huge sunk costs that will make any subsequent reversal of policy difficult. Though public officials are known for their persistence and resistance to change, they still learn quicker and are better at following new directions after an election which led to a change in government than machines. If a child has seen the door handle three times, he or she understands that it opens by pushing down on it. AI needs 100000 thousand sets of training data for even the simplest tasks. And even if that distance between human learning and artificial intelligence becomes smaller, we cannot have public administrations that are devoid of human faces, empathy, and good judgement, as well as deliberation, reasonable discretion, and all that is genuinely human. In the end, humans cannot be controlled by machines, and it is no paradise to have AI take ever more decisions over our lives. If

we become objects of machine governance and control, human free governance will be hell for humans, since it will inevitably reduce their humanity. The scarcest and most needed resource today is not the new technology, but the willingness and ability to agree on the rules according to which we want to live together. Covid is the latest example for that. And we need to work on this challenge, within societies and across the Atlantic.⁷

The technological society in which we already reside and which we are becoming ever more requires the participation of many in democratic processes. It involves a willingness to fight for freedom, fundamental rights, the rule of law, and democracy in the age of artificial intelligence. To achieve this, we must let go of naive hopes for an AI which we can trust, corporations that are benevolent, and the idea that we don't need to rely on democracy anymore, which sets rules for technology and enforces them. The Blockchain and crypto scene is going very far in this direction. There are libertarians today who deliberately design technological systems in a way that makes control by democratic states increasingly difficult. Those who follow these trends do so either because they are fascinated with the technology or to make money. Others even pursue an idealistic agenda, in that they hope these technologies will solve major issues of sustainability. Despite this, there are those, I fear they are among the economically most successful shapers of the crypto-sphere and Blockchain, who believe they can continue to make the biggest profits if the systems are designed to systematically evade laws and control by democratic governments. They may follow a public discourse of respect for legislation and democracy, like big tech. However, their actions speak for themselves. Again, let us look at the economics. Within only a few years, the major crypto exchanges have grown to a capitalization similar to those of the world's largest banks. As of today, the question is no longer whether the banks will buy crypto exchanges, but whether the crypto exchanges will buy the banks. Together, AI and crypto will become a very powerful combination of technology and money. Will it be beneficial for democracy? I have serious doubts. We cannot leave the development and deployment of these technologies without the necessary rules and controls imposed by democracy.

The primacy of democracy is increasingly challenged by technology. Blockchain and AI will be the strongest challenge since they combine powerful technology with a lot of money. In contrast to AI, Blockchain also attracts millions of people who believe they can earn money with these new cryptocurrencies. The number of small investors in Cryptocurrency, as well as the students in the global teaching courses, is growing by the millions, just as the profits of the crypto exchanges and promoters

⁷ Paul Nemitz, "Democracy Through law: The Transatlantic Reflection Group and its manifesto in defence of democracy and the rule of law in the age of "artificial intelligence," *European Law Journal*, (1 December 2021): p. 1-12, <https://doi.org/10.1111/eulj.12407>

of cryptocurrency are growing by the billions. Democracy has nothing to do with consensus on Blockchain, and decentralization in cryptography is not what defines democracy. It lacks transparency, outside criticism, renewal, and inclusive discussion with all, not just those who invest in computers for mining. A blockchain is a democracy in which only the rich who invested in mining can vote, and the richer get more votes because computing power determines whether a consensus is reached. Not to mention the power of the promoters and exchanges and their profits. Blockchain cannot be used to build a society, but, like AI, it can fulfil certain defined functions that are regulated by law.

The way must be open for change that is what democracy is about. For decades, neo liberalism and conservatives have failed to regulate the internet and Blockchain. These times are now over. The change now is that the European Commission has put on the table a package of proposals for binding rules for the new technologies and networks,⁸ with the aim to secure Democracy, Rule of Law and Fundamental Rights for the future and to make the new markets work with openness for future entry and innovation. Of course, these rules shall also serve innovation and economic growth. Of course the lobby to soft wash these rules so that they don't serve their purpose and only serve one goal, namely private profits, is on, while the legislators deliberate. However, there is sufficient counter-power and engagement, at least in Europe, to ensure that democracy functions and we work together to produce rules that are sensible for the future of democracy and confirm the supremacy of democracy over technology and business interests. We must recognize that law is the most noble expression of democracy, and stop talking it down. It is necessary to foster human engagement in deliberation based on language and a critical attitude towards power, rather than preaching technocratic visions of the world, in which democracy plays a smaller role, and which could potentially attract both technocrats and authoritarians. The future is made by humans, so the way must remain open to change. Are AI and other technologies going to support this transition to a more humane, more democratic society? No one knows for sure. Tax-financed research programs are on their way on both sides of the Atlantic for this purpose. Tech Giants spent little for this purpose and continue to encourage views that are hostile toward the law and strong democracy, which makes binding decisions and enforces them. They lobby one way on specific legislation, while in the other was publishing books and articles vowing allegiance to democracy. However, we should not wait for technology or corporations to repair democracy. Let's make democracy work again by engaging people.

⁸ See for example the proposed rules on AI at <https://digital-strategy.ec.europa.eu/en/policies/european-approach-artificial-intelligence> and the proposed DSA at <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>