

FINAL WORD ↔ BY MARNI SOUPCOFF

‘Honest Ads’ in the Agora

The human impulse to censor runs deep. Man has been shutting up his fellow man since at least ancient times, when Socrates was sentenced to drink hemlock for nattering on about having a personal god full of sound advice. (Athens had a pre-approved list of officially sanctioned gods, thank you very much.)

Squelching objectionable or unwanted ideas is almost instinctive to any human being capable of understanding ideas. This instinct is always dangerous, but it becomes most dangerous when it’s exercised by a party with the power not only to delete the speaker’s ideas, but *the speaker himself*. See, e.g., the hemlock reference above.

The party with such power is often—and in present times, almost always—the government. The folks at Facebook may remove a white supremacist’s racist rant from their network, but only the government can put the white supremacist in prison for posting it. Or put the Facebook folks in prison for failing to remove it.

The United States currently enjoys robust enough protections that neither of those scenarios can occur. However, most of the rest of the Western world doesn’t. Hate speech laws in Canada and Western Europe criminalize actions of the first type (writing and posting harmful rants). But now the United States seems poised to take a step closer to criminalizing the second (being the online conduit for offending statements).

There are a lot of people and complex factors to blame for this development, but for the sake of brevity I’m going to make things simple: it’s all the Russians’ fault.

OK, that may be slightly unfair.

The Russians aren’t responsible for Americans’ growing hostility toward big tech companies and Silicon Valley. Nor are they responsible for Americans’ increasing appetite for suppressing online speech they don’t like. But the Russians certainly didn’t help the case for tech self-regulation when, during the last presidential election, they quietly bought Facebook ads linking Hillary Clinton to Satan.

Now Congress is talking about requiring new disclosures for online political ads. Sen. Diane Feinstein (D-CA) has warned Facebook, Twitter, and Google executives that since the platforms they created are “being misused,” the companies “have to be the ones to do something about it, or we [i.e., the government] will.”

The government’s current plan for “doing something about it”—the Honest Ads Act, introduced as a bill in October—is every bit as hapless as you would expect it to be. And for once, the futility of the legislation, which would require tech companies to reveal the identity of anyone buying ads with “a message relating to any political matter of national importance,” isn’t the government’s fault. Regulating paid political speech online is an impossible task. As *Bloomberg Technology*’s Joshua Brustein has pointed out, such rules will never be broad enough to catch all the “culprits” (Russian hackers or others), but such rules will always be

too broad to avoid chilling the speech of normal Americans wanting to express a political opinion.

The fact that the government has already found a reasonably workable way to regulate television campaign ads isn’t much comfort here because television is an entirely different beast.

“The trickiest part about regulating online advertising ... is agreeing on what advertising is,” Brustein wrote in October. “A Facebook message from a political group could start its life as a regular old organic post, turn into an ad when the group pays to show it to people of certain demographics, then cease to be an ad when those targeted users start reposting it for their own friends to see.”

Everyone knows exactly what a TV commercial is; no one knows exactly what an online commercial is. Conversely, almost everyone can afford to boost a Facebook post touting a position on a current political controversy, but almost no one outside of formal politics can afford to buy a TV spot doing the same. So, the censorship required by legislation like the Honest Ads Act would burden the little guy the most. The Internet won’t last long as an equalizer for reaching an audience and espousing a cause if compliance costs make the price of doing so prohibitive.

So should we just sit back and let the Russians—and anyone else who cares to—interfere in democratic American elections using clandestine, targeted Facebook ads and fake news? Preferably not. Should we tackle the problem by effectively censoring online political speech in violation of the First Amendment? Preferably not.

In the end, the best counter to “fake news” is real news. But for this to work, lawmakers must leave the channels for all news open—and open to all comers.

Let’s use the Russian ads as a cue to rise above our base instinct for censorship and put the evolved right to speak freely to its highest use. It would be the most technically and ethically advanced thing to do. **R**

