

## Restoring and Preserving an Undistorted, Open and Rational Broad Public Discourse as a Precondition for Reclaiming Democratic Lawmaking

### I. Introduction

1. My third time at ICDNR: a reason to be happy or sad?
  - At ICDNR 2022, I warned about the "New Threats for Democracy in the Era of Digitalisation"<sup>2</sup>, but these threats have since increased, and some measures I suggested are even more urgent than before.
2. Democracy under threat worldwide
  - a) The unabated global rise of anti-democratic populism
    - populist movements, parties and politicians trying to destroy democracy from within
  - b) The short way from democracy to autocracy under a populist government
    - spectacular: the transformation of the USA into a de facto dictatorship by Donald Trump and Project 2025 within just a few months and with little resistance, after 249 years of democracy
  - c) The authoritarian war against democracy
    - waged by Russia, China, the Trump Administration (esp. J.D. Vance, Elon Musk) and their global allies
    - promotion of authoritarian rule not only in the own country but also abroad
    - Russia's war on democratic Ukraine, China's threats against democratic Taiwan, autocrats' alliance in the Shanghai Cooperation Organisation, Trump's attacks on democratic self-determination in Canada, Greenland, Brazil
    - bullying against foreign democratic governments but high esteem for foreign authoritarian leaders
    - systematic support of anti-democratic populists and far-right extremists in Europe and America
      - even interference in foreign jurisdiction and election campaigns (almost successful in Romania 2024/25)
    - outlook: towards a *new cold war between political systems?*
  - d) The libertarian billionaires' attack on democracy
    - the new type of *tech oligarchs* who want to go further than traditional oligarchs
      - Peter Thiel, Mark Zuckerberg, Elon Musk, Sam Altman, Jeff Bezos and others
    - driven by the billionaire-friendly ideology of *right-wing libertarianism*
      - lean government, deregulation, no social responsibility but unlimited freedom for entrepreneurs
    - opposing any regulation that would limit their business activities
    - rejecting or relativising democracy as an impediment to their own personal freedom
    - aligning with Donald Trump in return for bullying foreign states and the EU to prevent unwelcome foreign legislation
    - outlook: on the way towards *global plutocracy?*
3. Democracy in advanced decline
  - a) Growing alienation between democratic elites and citizens
    - hardly surprising when out-of-touch parliamentarians grant themselves a monthly housing allowance amounting to ten times the minimum wage...
  - b) Inability of elites to meet the citizens' expectations
    - elites *unable to find quickly answers to the pressing problems* of our times
    - citizens develop *unrealistic expectations*
  - c) Difficult consensus-building in a highly polarised society
    - viable solutions require compromises that many citizens are no longer willing to make
    - political disputes are conducted more unfairly and ruthlessly
  - d) Declining public patience with the performance of democratic institutions
    - a growing irrational willingness to assume that a "strong leader" could achieve more and faster
  - e) Billionaires meddling in politics
    - influential lobbying that undermines trust in politics
    - financing election campaigns of convenient candidates with huge sums of money
    - strategically promoting the career of candidates who can later be used as puppets
    - aligning with autocratic rulers to achieve domestic and foreign policies that suit own business interests
    - outlook: on the way towards *"plutocratic democracy"?*
  - f) Deficiencies in the broad public discourse essential for democracy (→ infra, II.2/3)

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<sup>2</sup> Underlined text passages indicate links to relevant internet resources. Just click on the link in the pdf file!

## II. The distorted public discourse

1. The need for an undistorted, open and rational, broad public discourse for a functioning democracy
  - a fundamental doctrine in democratic theory, elaborated in particular by German scholar → JÜRGEN HABERMAS
  - democracy is more than majority rule; it requires
    - a *broad public discourse*
    - with a *free exchange of views*, opinions, ideas and arguments
    - in a *pluralistic society*
    - as an important basis for democratic decision-making
  - the broad public discourse must be
    - *open and inclusive* (for everyone)
    - *free* (→ freedoms of communication)
    - *domination-free* (equal participation without control by people with power or authority)
    - and *rational* (aimed at reaching a rational consensus *through argumentative debate and on the basis of facts*, without deception, persuasion or coercion)
2. The slight distortion of the public discourse by the excessive influence of economic lobbies
  - economic lobbies often have an unfairly greater influence on politics and in the public discourse
  - however, this classic distortion can
    - be limited or made transparent by institutional guidelines of ministries, parliaments and media that regulate lobby contacts
    - be counteracted by the counter-influence of professionally organised civil society organisations (e.g. environmental associations, social lobbies)
3. The serious distortion and irrationalisation of the public discourse through the misuse of digital media
  - a) Attacks against the rational, fact-based public discourse
    - aa) Dissemination of fake news
      - more common and dangerous today, due to general availability and wide reach of digital media
        - recently facilitated by AI chatbots that can be used to create and spread misinformation
      - since false allegations of facts (especially lies) *can only have a destructive effect* on the formation of opinions, every single case distorts the public discourse
    - bb) In particular: video manipulation
      - exploiting the supposedly higher credibility of video documentation
      - AI-fabricated videos
        - that pretend to be "documentary" but are completely artificial
      - technically manipulated videos
        - e.g. where certain persons have been removed from the frames
        - e.g. images combined with a false audio track in which protestors make a different demand
      - deceptive editing of videos
        - e.g. deleting important segments to present a different story
        - e.g. compiling segments from different videos to form a false narrative
      - deceptive presentation of videos
        - presenting authentic video footage in a false context to create a false impression
        - the nebulous case of the dance video of Indonesian lawmakers from August 2025 that caused public anger
          - it does matter if they celebrated the end of the Annual Session or their high monthly housing allowances!
    - cc) Disinformation campaigns
      - coordinated massive disinformation with a wide reach, targeting the foundations of the rational discourse
        - often not aimed to convince of the false allegations but to *undermine the trust in any information*
        - often used for foreign election interference (e.g. by Russia, China, Iran)
      - propaganda media of foreign governments (esp. Russia, China)
      - lobbyist groups controlled by foreign governments
        - e.g. pro-Russian "peace initiatives" in Germany who support the Russian war of aggression on Ukraine
      - deceptive imitations of renowned news portals
        - fake websites that imitate deceptively existing news portals and disseminate fake news under their names
      - disinformation campaigns of private stakeholders to promote their ideological or business interests
        - e.g. of corona sceptics during the Covid-19 pandemic
        - e.g. the global climate disinformation campaign of the fossil fuel lobby
        - can include the operation of fake scientific institutes, fake scientific journals and disinformation think tanks
    - dd) Politically manipulated AI chatbots
      - programmed or trained to present facts and the spectrum of theories and positions in a distorted manner
      - e.g. Deepseek (does not report about the Tiananmen Square massacre 1989)
      - e.g. Grok (repeatedly "revised" until in line with opinions of Elon Musk)
    - ee) Outlook: on the way towards a "post-factual democracy"?
  - b) Attacks against the free, self-determined participation in the public discourse
    - aa) Hate posts in the internet
      - online attacks on personal honour and human dignity - the scourge of the internet
        - but worldwide still on the rise
      - the *risk of a "shitstorm"* deters many educated users from expressing themselves online

- the EU Digital Services Act of 2022 (Regulation 2022/2065) obliges online platforms to moderate content, delete hate speech, provide easy complaint mechanisms and report serious offences immediately, but...
    - some American and Chinese providers do not comply and the Act is so far not enforced
    - the EU is under pressure of the Trump Administration to revoke it
- bb) Cyberbullying and cyberintimidation ("cyberviolence")
- powerful digital means of harassment and psychological coercion
    - cyberstalking, doxxing, trolling, threatening etc.
    - can go as far as threats of rape or murder or public incitement to commit such crimes
    - but no direct physical violence (the term "cyberviolence" is misleading)
  - has already forced politicians to withdraw and mayors to resign
  - often targeted against politically active young women to silence them in public
    - fueled by sexism or sometimes Generation Z's gender divide on politics
  - the EU Digital Services Act also obliges to combat such content
- cc) Dissemination of deepfake porn videos
- a powerful but easy-to-use means of humiliation
  - used to attack the Italian Prime Minister Giorgia Meloni
  - even more humiliating: unauthorised dissemination of authentic intimate videos (if existing)
- c) Attacks that undermine the authenticity of the public discourse
- aa) Covert use of social bots
- software agents operating autonomously and covertly on social media and internet platforms, feigning personal communication by a human being
    - in 2023, open and undercover social bots together caused 49.6% of internet traffic
  - many seemingly "personal" posts, comments and likes actually originate from machines, creating a *distorted impression of the debate*
    - the apparently "prevailing opinion" in the internet may be that of a small minority of users who invest a lot of money or work in the large-scale use of bots
    - an apparent "minority opinion" may actually be shared by the majority but not by those manipulative players
  - thus, internet research no longer allows reliable conclusions on the opinion trends in the internet
- bb) Flooding social media and internet platforms with AI-generated content
- fully AI-generated content is *no human content anymore* and therefore cannot contribute to the inter-human discourse in a democracy
  - AI-generated content is not harmful in itself but...
    - *spams* discussion platforms
    - *distracts* attention from the authentic content, which then risks to be ignored in the discussion
    - *creates a false impression* of the debate

### III. How to restore and preserve an undistorted public discourse?

1. No reclaiming of democratic lawmaking without restoring an undistorted, rational discourse
  - lawmakers can only be kept from ignoring good solutions and favouring bad ones in pursuit of the wrong interests if all options, with all their advantages and disadvantages and their assessment by experts, and thus lawmakers' full responsibility, become clear to everyone in an unmanipulated transparent public process
2. The need to develop solutions internationally
  - since all solutions carry a *high risk of abuse*, under the present conditions in most democratic states,
    - with a highly polarised society where different political factions treat each other as enemies
    - and politicians with authoritarian mindset are lurking for their chance everywhere,
  - any *isolated attempt* at the level of the individual state *will most certainly lead to censorship and oppression* in a new authoritarian regime superficially disguised as a democracy (e.g. like in → Turkey)
  - to avoid this, any solution must follow *international democratic standards* that...
    - safeguard communicative freedoms while protecting against their abuse
    - need to be *elaborated in a community of democratic states* in a transparent procedure with broad participation of political scientists, legal scientists and civil society
    - can be enforced by *effective international enforcement mechanisms*, including individual complaints and/or complaints by civil society organisations and preferably judicial control by an international court
3. A selection of measures to restore an undistorted discourse
  - see for further possible measures my contribution to ICDNR 2022, p. 2 f.
  - a) A priori exclusion of proven false allegations of facts from the protection by the communicative freedoms
    - by reinterpretation or reformulation of the respective clauses in human rights treaties and constitutions
    - a simple legal precaution that facilitates the intervention of authorities and courts against disinformation
    - inspired by the positive German experience with the restrictive interpretation of the scope of protection of the freedom of opinion (art. 5(1) phrase 1 of the German Basic Law) by the Federal Constitutional Court<sup>3</sup>, but also by the negative experience with the excessive understanding of freedom of speech in the USA

<sup>3</sup> See especially the famous decision on the holocaust denial, Federal Constitutional Court, 13.04.1994, 1 BvR 23/94, B.II.1.b (BVerfGE 90, 241, 247), English translation of excerpts at <https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=621>, with further references.

- b) Promotion of fact checking and public exposure of fake news
  - a valuable contribution by journalists and civil society in special portals and journalistic formats to objectify the debate
  - has proven effective in various scientific studies in Europe and in the Global South
  - sends out a *sign that facts still matter* in the political discourse
  - some fact checks of statements of prominent politicians with wide media coverage have drawn much attention and caused politicians to be more cautious about factual statements in public debates
- c) Strict regulation of social media
  - aa) The need for comprehensive social media regulation
    - ***if democracy does not end the misuse of social media against it soon, social media will soon end democracy!***
    - the rules governing social media are the responsibility of democratic institutions, not of billionaire IT oligarchs
    - the EU Digital Services Act is an important step, but only the first step
  - bb) Legally binding standards for algorithms
    - obligation to disclose algorithms to state or international authorities
    - prohibition of favouring provocative posts with extreme views or style to attract attention
      - the need to put an *end to outrage economy*
    - prohibition of covert ideological indoctrination via manipulated social media threads
      - the need to prevent concealed political influencing through political filtering of content
    - prevention of bubbles of like-minded users
      - the need to expose the user to the diversity of opinions in a pluralistic democratic society
  - cc) Strict obligation of social media providers to take immediate and effective action against fake news, hate posts and other illegal content
    - backed by the sanction to suspend or ban a platform in a state at short notice in case of repeated late or non-compliance or inadequate arrangements for handling complaints
    - ***immediate worldwide ban on X*** (formerly Twitter), since this platform has degenerated to a right-wing extremist weapon and its owner Elon Musk made already clear that he will not take action against its abuse
  - dd) Strict liability (liability without fault) of social media providers
    - the most effective way to make providers live up with their responsibility as operators of an extremely dangerous and harmful machinery
    - civil liability, even without fault, for any illegal content on their platforms that violates the rights of others
    - the victim must gain *civil compensation in the form of a lump sum* in a quick and simplified standard procedure *directly from the provider*, who then may take recourse against the responsible user
      - the amount should follow the concept of punitive damages
      - the provider must bear the risk that the offender cannot be identified or is insolvent
- d) Precautions against AI politicisation
  - necessary to prevent the conceptual abuse or external manipulation of AI chatbots for propaganda wars (a development that has already started)
  - a difficult challenge, as politically biased AI texts may not only result from AI politicisation but also from AI "hallucination", improper AI use or simply coincidence
- e) General criminal ban on covert use of social bots
  - no tolerance for deceptive means to feign interpersonal communication or public resonance!
  - mandatory labelling of any social bot use with a *conspicuous mark in the individual post or comment itself*
  - mandatory separation of human-generated and machine-generated content on platforms (e.g. in different threads)
  - a mandatory *authenticity button* in the menus to filter out machine-generated content
  - strict ban on any use of social bots by political parties and in electoral campaigns
- f) General ban on unmarked AI-generated content
  - mandatory labelling of any AI-generated content with a conspicuous mark
  - serious violations (e.g. fake videos of politicians) should be prosecuted as criminal offence
  - it does matter for the democratic discourse if posted content emanates from a human being or machine!

## IV. Conclusion

- the distortion and irrationalisation of the public discourse through misuse of digital media has become one of the main courses for the worldwide destabilisation of democracies
- the destructive effect of the misuse of social media, which have been regulated too little too long, has the potential to destroy democracy in most states; in some, such as the USA, it may soon trigger massive outbreaks of political violence
- it is uncertain whether democracy can be preserved as a universal political concept or will become an exotic exception, but restablisng democracy will first of all require the restoration of an undistorted, rational public discourse
  - on the basis of internationally developed democratic standards
  - through strict and comprehensive regulation of social media (incl. binding standards for algorithms and strict liability of providers), precautions against AI politicisation, and measures to restore the internet as a forum of authentic human, not machine communication