

Coronavirus Misinformation, Social Media and Freedom of Speech

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ABSTRACT

Misinformation about coronavirus is rampant on social media networks. In many instances, this misinformation – whether about the virus’s cause or its cure – is dangerous, leading people to harm themselves or others. What should be done to contain or counter this misinformation? Does a proper commitment to freedom of expression mean that individuals must be free to peddle dangerous falsehoods – and that social media companies must be free to provide a platform for them? This chapter argues that coronavirus misinformation is not protected by the moral right to free speech, opening up the possibility of justifying restrictions against it.

Misinformation about the novel coronavirus SARS-CoV-2 and the disease it causes, COVID-19, is ubiquitous. Some of the misinformation concerns the origin of the virus, as with the conspiracy theory that the Chinese government manufactured it in a lab as a biological weapon. Other misinformation addresses the various measures that reduce transmission, with a wide array of sources falsely claiming that people shouldn’t wear masks on the grounds that they cause greater harm. Still more misinformation concerns the appropriate treatment for COVID-19, with many prominent figures—including the US and Brazilian presidents—advancing the false claim that hydroxychloroquine (an anti-malarial drug) is a proven effective treatment. And a raft of conspiracy theories concern the long-awaited vaccine, with a prominent theory falsely avowing that Bill Gates seeks to use the vaccine to implant location-tracking microchips in all of humanity (see Sanders 2020, Goodman and Carmichael 2020, Wong 2020)

Misinformation about coronavirus is problematic for a number of reasons, but the most important reason is that it can lead to harm. It can lead people to harm themselves—making risky decisions that increase their exposure or involve harmful self-medication, and may have caused such harm already (Islam et al. 2020). But misinformation can also lead people to harm others. In some cases, it does so by assisting the virus’s transmission. Failing to wear a mask when one may be infected increases the risk that one will infect others. Likewise, refusing available vaccination endangers others, too, such as those who cannot be vaccinated. In other cases, misinformation is dangerous because it can inspire violence. For example, conspiracy theories alleging that the virus is a scam created to control citizens have resulted in death threats against contact tracers (Thomas and Gatewood 2020). Similarly, the

mistaken assumption that the Chinese are to be blamed for the virus seems at least partly responsible for the considerable spike in anti-Asian hate crime, which is up 21% in the UK (Grierson 2020).

That *something* should be done to confront this misinformation seems undeniable. The controversy arises when we consider what, exactly, the appropriate solution is. One possibility is to reduce the circulation of misinformation by insisting that social media networks remove it from their platforms, or at least reduce its dissemination. Yet in the public debate, this suggestion continually inspires a chorus of opposition from those who think that such a move would run afoul of one of the most cherished values of liberal democracy: *freedom of speech*. On this view, even if speech risks causing harm, suppressing it is typically not an acceptable response. The headline of a recent article nicely articulates the underlying sentiment: “Don’t let free speech be a casualty of coronavirus” (Mudde 2020).

Here, my aim is to argue that efforts by social media companies to repress coronavirus misinformation are perfectly compatible with freedom of speech, properly understood. This is true especially when such efforts are voluntarily undertaken by the companies themselves, as many have started to do. But such efforts would be acceptable, in principle, even if they were legally mandated by the state. My reason is that the moral right to freedom of speech, like all our moral rights, is limited by a moral duty we have not to impose undue risks of harm on others. When users post harmful misinformation, they violate this duty, even if unintentionally. Accordingly, those who endanger others by posting misinformation are not wronged when their posts are removed. That does not mean that removal is the right response in all cases; in some cases, posting links to fact-checkers, or otherwise merely slowing the spread of the misinformation, will be the most sensible approach. But which exact technique ought to be used is largely a question of effectiveness. As a matter of principle, there is nothing wrong with taking aggressive action against this category of dangerous speech.

Defining the Debate

Two clarifications will help to set the terms of this discussion. First, the term *freedom of speech* can be used in different ways. The most obvious thing it can refer to is *the moral right to free speech*. This is a moral right (or, if you prefer, a human right) that all people have to express themselves and to communicate with others—a moral right that should be (though in many places isn’t) codified as a *legal right*. As Article 19 of the Universal Declaration of Human Rights states: “this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” This right is codified in the First Amendment to the U.S. Constitution, and in Article 10 of the Human Rights Act in the UK.

Importantly, this is a right that we hold *against the state*, which paradigmatically forbids the state from restricting our speech on the grounds that it disapproves of the viewpoint we are expressing. Everyone agrees that there can be exceptions here, such as speech that encourages violence or incites hatred (though even these are controversial); a chief task in what follows is to examine whether restrictions on harmful misinformation count as such an exception. For now, the point I want to emphasise is that the right to free speech is a right we hold against our government, not against the various private companies on whose forums we might choose to post content.

Accordingly, the idea that a social media company violates our *right* to free speech by removing content that violates its community guidelines is difficult to accept. (Note, however, that if we viewed these social networks as crucial public infrastructure, albeit privately owned, the idea that they could violate our moral right to free speech becomes more plausible.)

Yet social media firms nevertheless routinely express their support for “free speech”—even invoking this value to explain decisions not to suppress users’ speech (Zuckerberg 2019). What is going on here? This helps us to see that there is a second meaning to free speech, understood not as a *right*, but as a kind of *culture*. As Robert Simpson aptly puts it, the idea of a free speech culture is one “in which all are encouraged to speak their minds and to work through their disagreements in debate and discussion, instead of trying to silence or ostracize opponents” (2020: 290). Thus when social media companies claim to support free speech, what’s happening is that they are voluntarily committing themselves to the creation and maintenance of this kind of culture. And so those who complain that companies undermine free speech aren’t saying anything incoherent. They are simply best understood as talking about the culture of free speech, rather than the moral right.

The second definitional issue concerns the term *misinformation*. It has become commonplace in the public debate to distinguish between *disinformation*, understood as the deliberate dissemination of content one knows to be false, and *misinformation*, understood as the dissemination of false content that one honestly believes to be accurate (Strauss 2018). I will focus here on misinformation for three reasons. First, it is often unclear whether content is disinformation, since it depends on whether the person posting it knows it to be false—yet the relevant decisionmakers will seldom be in a position to establish this (with the possible exception of concerted state-run disinformation campaigns). Second, what begins as disinformation can swiftly become misinformation, as content created nefariously gets passed along by people who’ve been duped. Finally, it seems easier to justify restrictions on disinformation; indeed, disinformation is simply *lying* by another name, and prominent philosophers have argued persuasively that lying falls outside the protection of the moral right to free speech (e.g., see Shiffrin 2014). The more difficult case is that of misinformation, where falsehoods are disseminated by those who believe they are (or could be) true. Yet even in this case, I will argue, restrictions on speech can be justified.

A Duty Not to Endanger Others

My starting point is a simple principle: everyone has a moral duty not to endanger others, unless they have a good reason for doing so. Sometimes we have a good reason; we endanger one another by driving our cars, even when we drive conscientiously and within the rules, but we consent to these risks and in any case benefit significantly from the existence of a system of automotive transit. In contrast, speeding is wrong because it endangers others without any such justification. In other work, I have argued that this same principle applies to our speech. For example, the reason why it is wrong for a religious leader to encourage his followers to kill members of other faiths isn’t that such speech is offensive (though it certainly is); it is that such speech *endangers* others for no good reason. Likewise, hateful speech that stirs up hostility toward vulnerable groups is similarly objectionable, on account of its dangerousness (Howard 2019b: 217ff).

My suggestion is that this same argument can help explain why the dissemination of harmful misinformation about coronavirus is morally wrong: it violates the duty not to endanger others without a good reason. This is clearest in the case of malevolent disinformation campaigns, where those posting the false content know it to be false and intend to cause the harm that will likely eventuate. But it is true even in cases of misinformation. Consider someone who disseminates a fake article indicating that wearing masks is futile or counter-productive, unsure about whether it is true or false. This is a case of *recklessly* endangering others by increasing the likelihood that one's followers will stop wearing masks (thereby imperilling themselves and others). (What if someone inserts a caveat, indicating uncertainty as to whether it is true or false? Given that the post nevertheless amplifies harmful misinformation, and thus still carries a risk that others will come to believe it, my sense is that such caveats are not sufficient to immunize one from accountability; see Rini 2017.)

What if the person honestly believes that the misinformation one posts is true? In these cases, posting misinformation can sometimes still be wrongful. Even if someone doesn't know that their post on masks is untrue, it may still be reasonable to expect her to do some background research on the matter before disseminating it. Sometimes, even if someone doesn't know that something is false, she really ought to know, and it is reasonable to expect her to refrain from disseminating it until she undertakes some minimal due diligence. Thus peddling misinformation can be *negligent*. Of course, negligently endangering others isn't as *blameworthy* as intentionally doing so, just as stepping on a stranger's foot through one's carelessness is less blameworthy than doing so deliberately. We likely wouldn't want to subject those who negligently circulate falsehoods to *criminal punishment* (though having one's post demoted or removed on social media is a far cry from that, and so much easier to justify). But it is, I think, still presumptively wrongful.

An Interest in Expressing or Receiving Misinformation?

Suppose I'm right that we have a duty not to endanger others, unless we have a sufficient justification for doing so. Maybe, in the case of coronavirus misinformation, there *is* a sufficient justification. What might it be? Well, we might think that the very interests that justify free speech—both as a right against the state, and a culture to be promoted in civil society—could do the trick here. Specifically, once we examine the reasons why we care about free speech in the first place, perhaps we will see that these can explain why people must be free to spread misinformation. If so, then even if spreading misinformation is harmful, we should be free to do so. While initially tempting, this strategy comes up short.

Consider the interest that we all have as speakers in expressing our sincere beliefs to each other. Even if we are wrong about what we think, it is arguably still valuable that we are free to express these thoughts to others. C. Edwin Baker defends a version of this thought in the debate on hate speech, writing: "Respect for personhood, for agency, or for autonomy requires that each person must be permitted to be herself and to present herself" (1977: 992). On this view, even if expressing one's authentic white supremacist convictions inspires one's audience to engage in racist attacks, one must still be free to speak, to express one's authentic identity as a person.

But just as I think we should reject this position in the context of hate speech, I think we should reject it here, too. Indeed, some coronavirus misinformation takes the

form of hate speech, as in spurious claims about the danger or blameworthiness of people with Chinese ancestry which have motivated violence against them. Likewise, just because someone genuinely believes that masks are ineffective—and just because someone thinks this passionately and with certainty—does not justify endangering others by publicly expressing such a view.

The reason why is that our moral rights are limited by the moral duties we owe to others. In this respect, the right to free speech is like other moral rights we have. So consider, for example, the right to religious freedom. Imagine someone was commanded by her religious doctrine to sacrifice a new-born infant. We would not think her right to religious freedom gives her a right to do so. Nor would we say that it gives her such a right, but that the right sadly must be infringed in this case since it is outweighed by the infant's right to life. The tidier way of thinking about what's happening here is simply to say that our moral rights are limited by our moral obligations not to endanger others (unless a compelling justification can be offered (Howard 2019b: 233)).

Now consider another interest that is thought to justify freedom of speech, which concerns *the quest for truth*. On this view, we need free speech to achieve a “marketplace of ideas” through which citizens can discover—and develop their appreciation of—the truth. A crucial feature of this view is that even if a view is false, we secure important benefits by engaging with it. As J.S. Mill argued, engagement with erroneous views can help us to sharpen our apprehension of *why* we believe what we believe—“produced by its collision with error” (1978 [1859], p. 16).

I have two objections to this view. First, it is highly doubtful that a wholly unregulated marketplace of ideas leads to the successful identification of the truth. The claim that it does is among the most criticized views within the scholarship on free speech (see Brietzke 1997). While there is clearly a range of questions about COVID-19 on which there is ongoing scientific disagreement, some questions really are settled, and the wrong answers to those questions are plainly dangerous. It's not plausible that banning a selective set of indisputable falsehoods about COVID-19—or simply tamping down their spread online—would have the effect of subverting humankind's quest for knowledge, even granting that this is an important component of a system of free expression.

But second, even if suppressing some misinformation came with an epistemic cost—since it's valuable to engage with false views—it is a cost worth paying. Consider the fact that we allow the state to limit false advertising. Is it worth losing the epistemic benefit—i.e., whatever benefits we might enjoy when having to confront misinformation—for the sake of offering increased protection from misinformation? The answer seems to me to be plausibly ‘yes’. However valuable it might be for consumers to “decide for themselves” whether a product does what its sellers say it does, it is more important to prevent harm. So it seems to be here, too.

I have only considered two interests underlying free speech: our interest in expressing our sincere beliefs, and our interest in discovering truth. There are other interests that underlie freedom of speech beyond the ones I have considered; an extended treatment of this topic would explore these other interests in detail (see Howard 2019a: 96-100 and 2019b: 219-237). But what I've said is enough to illustrate my basic suggestion: even if we have some interests in expressing mistaken views, or in

engaging the mistaken views of others, these are unlikely to be weighty enough to justify seriously endangering one another.

The Regulatory Challenge: The Path Forward

I have argued that we have moral duties not to endanger others by propagating harmful misinformation about COVID-19. It might be suggested that these duties should not be enforced by the state, since it is too risky for the state to be entrusted with decisions about truth and falsehood. I am sceptical of this claim, since we entrust the state to adjudicate on matters of truth and falsehood all the time (in defamation law, in consumer protection matters, and more). But suppose it were true. Even so, it would not show that there is a *moral* right to endanger others through propagating misinformation as part of our freedom of speech. It would simply show that legislation in this area is, all things considered, misguided—whether in the form of criminal penalties for individual citizens, or civil regulation of social media companies themselves (Howard 2019b: 246).

If state action against misinformation is indeed misguided, this would leave open an extra-legal solution: social media companies themselves could combat misinformation on their own accord. And this is precisely what many have started to do. So we are left with the question: given that social media companies avow to be committed to a *culture* of free speech, what ought they to do? Social media companies that seek to protect a culture of free speech are, in essence, aiming to protect citizens' speech *as if* they were states. Therefore any suppression of citizens' speech that would be wrong for a state to do, on this view, would be wrong for a company to do. But conversely, if it is not wrong for a state to suppress certain speech, it is certainly not wrong for a private company to do so on its private networks.

But this does not yet determine what form these efforts should take. The most obvious way to counter misinformation is to remove it from online platforms, but this is only one possibility. There are several further options. The first is to challenge the speech by offering links to official fact-checkers, targeting those who have shared misinformation with additional information. This constitutes a valuable form of “counter-speech” against the harmful misinformation. Yet it is an open question whether such methods of challenging misinformation are actually effective at slowing its spread and reducing harm. Alternatively, companies can simply reduce the “virality” of the misinformation (forgiving the pun)—for example, by limiting the ability of others to re-post it without comment, preventing users from forwarding it without having actually read it, or requiring users to click through an interstitial warning label in order to see it. Or it can pursue some combination of these methods, such as banning extremely harmful content while also sending fact-checks to those who shared it.

While few want social media companies to have this kind of power over public discourse, the alternative—a world in which social media companies do nothing—is, I suspect, even worse. *Given* that social media companies have this enormous power, it is vital that we determine which of these techniques are most effective at countering misinformation about COVID-19—both offline and online. This is largely an empirical question, requiring knowledge of psychology, behavioural social science, and (in the case of social media regulation) the relevant technology. As a philosophical matter, however, we should be sceptical of those who condemn concerted action in this area as anathema to free speech. Morally speaking, all options are on the table.

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