

Does Freedom of Expression Entail a Right to Anonymous Publication?

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Last week in the United States, the Republican presidential candidate Nikki Haley made a controversial statement to the effect that social media companies should ban people from posting anonymously online [1]. The responses were not favorable, for example:

"dangerous and unconstitutional"

"Anonymous speech is a core part of free speech"

"It's not a free speech position, and it's not in keeping with the way our country was founded"

and Elon Musk wrote:

"She can stop pretending to run for president now"

Nikki Haley back-pedaled to some extent the day after, saying she just wanted foreign nationals to divulge their names in social media, whereas Americans should still be free to use acronyms. One may wonder how such a distinction would be implemented. However, I regret this turn of events since I do think Nikki Haley had some good arguments in her original proposal and, besides, I have argued a similar position since several years. Therefore I want to explain my position on this issue.

There are two major problems that could be solved, to a large extent, if every published statement is accompanied by the author's name, so that it is clear who stands behind it. Assuming, of course, that the statement of the author's name is reliable and has been verified. The first reason is that this would go a long way towards eliminating the use of virtual users, such as 'bots'. The other reason is that this would cause people to act responsibly when they make public statements in writing, since they would be morally responsible for what they had written. Bullying, hate speech, defamation, and the dissemination of false statements and fake news could come back to hurt the author later in life.

However, there are a few important objections that can be raised against the simple scheme of just always publishing the name of the author. These objections can be overcome, but they must be addressed. I shall first discuss the case of social media that operate in a single local language, such as Swedish language

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in my case, and then proceed to the case of 'international' media that operate in a widely used language, such as English, as well as multi-language media. This turns out to involve some additional technical problems.

Social Media in a Local Language – Practical Problems

The first problem is, obviously, how the identity of the author is to be verified. The natural solution must be to make use of the eID systems for electronic identification that exist already in many European countries and that are part of common European planning [2] , [3] . Using this infrastructure, users would use their eID for identifying themselves when they create their account in a social media system, and then whenever they wish to log in to that account.

Another problem is, obviously as well, that there will often be more than one person with the same combination of first name and last name, in a given country. Electronic identification systems use additional information for describing a particular person, such as a civic registration number or a tax number, but these numbers could hardly be used to designate the author of a published article or statement in social media. However, one simple solution would be to arrange that each person that is electronically registered should have the option of choosing a suffix that is added to their name. For example, if I were to choose 'Linköping' as my suffix, then I would be referred to as e.g. "Erik Sandewall @Linköping" if the @ character has been chosen as the suffix marker. The electronic service where everyone can choose their suffix must then be set up so that two persons with the same first names and last names will always have different suffixes; they will choose their respective suffixes on a first-come, first-served basis.

It arrives sometimes that people become unhappy about their first name or their last name, and the same could occur with respect to suffixes. A natural way of dealing with this problem would be that whenever a person's extended name (i.e. including the suffix) is shown in a social media or any similar context, it should be displayed as a clickable expression leading to a page that shows the various extended names that the person has accumulated until the time that the page is visited, together with some minimal information about the person.

Social Media in a Local Language – Principles

Besides those technical issues, there is also an important argument in favor of anonymous authorship, namely, that people sometimes have legitimate reasons for anonymity, for example because of confidentiality constraints, or in order to protect themselves or their family from threats and abuse. Many of the objections to Nikki Haley's proposal emphasize this point. Such situations ought to be rare in social media as long as these are not used by an inherently hostile commu-

nity where abuse is recurrent. Occasional cases may be handled in the same way as newspapers have traditionally treated anonymity requests in their section for 'letters to the editor' where a contribution may be signed as 'Name withheld by request' provided that the editor knows the identity of the author and is willing to take the responsibility for having the letter published.

The same approach could be used for social media if their mode of operation is modified in two ways so that their vetting of submitted content becomes manageable. One would like to reduce the number of potential authors that a given director must handle, and it would also help if the discussion gave more room for substantial contributions that have been well thought through, while reducing the flow of short "comments" or "tweets". These changes may be facilitated by using media systems such as mastodon that encourage the emergence of many small discussion environments, instead of relatively monolithic systems such as Twitter/X.

The use of the 'Name withheld by request' paradigm is reminiscent of the concept of 'responsible publisher' for a journal, as used in countries such as Italy (Direttore responsabile), France (Directeur de la publication), and Sweden (Ansvarig utgivare). The basic idea in those cases is that if there is a legal challenge against something that has been published in the journal, then it is the responsible publisher and no one else that has to answer to the challenge in court. This practice has the advantage that legal responsibility is made clear. In the United States, according to [4], "The corporation is responsible for what was published. Others who could be sued are the writers and editors, depending on who did what". However, shared responsibility is unclear responsibility, which leads to unclear authority which must be detrimental for the publisher's ability to oversee what they publish.

Social Media on the European Scene – Practical Problems

Many Europeans are used to expressing themselves in one or more languages besides their mother tongue which means that they may wish to participate in discussions in several linguistic environments. Also, the populations in a number of European countries consist of one majority group and several minorities, from a language point of view. The scheme for unique author names by means of a suffix, as described above, would require a choice between a number of possibilities. One may imagine an all-European system for author names and the assignment of suffixes, with all the advantages and difficulties that this would entail. At the other extreme, one may imagine that each country sets up its own system of this kind, and that a person that wishes to participate in social media that are hosted in several countries would have to register for their own suffix in each of those countries. It would be natural then to choose a suffix that can be registered in

several countries at the same time, but problems may arise anyway if the person wishes to add one more country to their repertoire later on.

An intermediate solution may be to form groups of countries that share the same language (the countries where German is the main language, for example), or where the main languages are easily inter-understandable in writing (such as between the Scandinavian countries). This would reduce the number of countries that a person might want to register in, but at the expense of additional complexity in the total system, maybe.

Yet another possibility might be to leave the administration of the naming scheme to the dominant media companies, such as Facebook, Google, or Microsoft. This does not seem to be a desirable way ahead from the European point of view, however. Personal identification certainly qualifies as a natural monopoly, and it should be organized by the state since it is a foundation for a fair and democratic voting system.

Social Media on the Global Scene – Practical Problems

The considerations for the European scene may be repeated on the global scene, but the conclusions may differ. In particular, it is hard to see any need for a truly universal naming system, or any practical possibility for it, at least from the point of view of the naming of authors in social media. At a minimum one should accept having separate naming spheres for different alphabets, although of course it should still be possible for a particular person to obtain their unique name in more than one of those spheres. Latin, Chinese, and Arabic scripts qualify naturally as being spheres of this kind. Cyrillic script does as well, although one may envisage problems with organizing it in the present political situation.

With respect to the sphere that uses the Latin alphabet with its many variants, the major issues seem to be with the English, French, and Spanish languages, since all the others may be handled in the same ways as were described for the European scene. (Please tell me if I am mistaken on this point). The case of the English language is particularly difficult, for two reasons. The lack of an all-encompassing system for civic id numbers in the United States means that one major building-block for a suffix assignment system is not available. At the same time, since commercial actors build their own, competing systems for identification, the matter becomes quite complicated.

The Arguments against Nikki Haley’s Proposal in the Debate in the U.S.

A simple Google search for ‘Nikki Haley anonymity’ will return a large number of recent articles that reject her proposal, and where three arguments occur repeatedly. These arguments have been summarized in [5] ; they are:

(1) "When you create a climate in which people get punished for expressing their political views, anonymity becomes crucial". This is true in a sense, and it was discussed in the previous section here.

(2) "The ability to speak anonymously is a centerpiece of First Amendment rights". It is of course up to the Americans how they want to interpret their own constitution, and other parties need not intervene in such a discussion. But it is still appropriate to consider whether there are some aspects of the constitutional argument that could be relevant for us as well. Now, the supporting details of the constitutional argument seem to be merely that there have been several cases in courts that have confirmed the right to hand out sheets of paper that contain political statements and that do not specify who is the author of the leaflet in question. This is a fairly special case, it is hardly applicable for statements in social media, and it does not seem carry much weight outside the U.S.

(3) "Throughout history, many renowned advocates for freedom and purveyors of truth have chosen to write under a pseudonym". But similar cases today could easily be handled by the 'name withheld by request' scheme, where the responsibility for publication is taken by the publisher and not by the author. It is only the massive use of pseudonyms in social media that is a new phenomenon today and that is clearly detrimental to society, without any strong reasons for continuing that practice.

It will be interesting to see whether the published opinion in the United States will continue to be as uniform as it is now, or whether opposite arguments will also be heard.

In fact, with respect to the constitutional argument, the exact wording of the First Amendment is as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Anonymous Publication is not a Human Right

Several of the objections against Nikki Haley's proposal were based on the notion that anonymous speech is a core part of free speech, where 'speech' is taken to include the public dissemination of written text. I submit that this opinion is incorrect and untenable since it is in the nature of freedom that it must be exercised responsibly; if not then it will destroy the fabric of society. Anonymous publication in the strict sense means that authors evade the responsibility that comes with their publishing activities, the consequences of which may be substantial. If additional arguments should be required then the results of anonymous publication in

social media during the last ten years ought to be proof enough.

The use of the 'responsible publisher' scheme takes care of this objection since it means that authors do not abandon their responsibility; they just arrange that someone else assumes it in their place, and their message does get through to the general public. However, this scheme requires that the 'name withheld by request' option is only used sparingly, such as when someone makes a new and very controversial proposal. Other situations may also occur, for example in a heated debate about vaccination, or about genetically modified crops, where feelings are so heated among some that abuse and physical threats may occur in the course of the debate. This well-known problem may be used as an argument in favor of anonymous debate, but I propose that the opposite conclusion should be drawn instead: if large-scale anonymity is not allowed in social media, then violently controversial topics are not going to be debated there at all, and that is just as well. Those topics are best treated in environments where they can be debated in a calm and rational way, and where the outcome of the debate can be reported in mass media such as newspapers and television.

The overriding purpose of free speech must be to make ongoing debates available to the general public, including their supporting arguments and facts, and the evidence for these. Providing safe spaces for aggressive or destructive utterances can not be its purpose. If there is a need for that at all, it would be better to provide it in some other way.

The overriding purpose of free speech must be to make important facts and debates available to the general public, together with the evidence and the arguments that support them. Providing safe spaces for aggressive or destructive utterances can not be its purpose. If there is a need for that at all, it would be better to provide it in some other way.

References

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