

# What Social Media Facilitates, Social Media should Regulate: Duties in the New Public Sphere

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## Abstract

This article offers a distinctive way of grounding the regulative duties held by social media companies (SMCs). One function of the democratic state is to provide what we term the right to democratic epistemic participation within the public sphere. But social media has transformed our public sphere, such that SMCs now facilitate citizens' right to democratic epistemic participation and do so on a scale that was previously impossible. We argue that this role of SMCs in expanding the scope of what counts as fair democratic epistemic participation, and in becoming the providers of access to the digital public sphere, brings with it duties of regulation.

**Keywords:** social media, regulation, public sphere, rights, democracy, epistemic participation

## Introduction

THE PUBLIC SPHERE is the space in which people express opinions and exchange views about what is going on in their society. Within democratic societies, enabling access to a well-constituted public sphere is recognised as one of the functions of the state: as Jürgen Habermas claims, access to this 'realm of our social life ... is guaranteed to all citizens'.<sup>1</sup> This article will refer to this activity—that is, expressing opinions, lending support to or contesting others' views, gaining knowledge in order to become informed as a citizen, and so on—as *democratic epistemic participation* (or epistemic participation for short). Citizens should be able to access a broad range of opportunities for epistemic participation within the public sphere and thus, democratic states plausibly have a duty to protect and enable such participation.

Social media has transformed the public sphere. In short, many of the practices and institutions comprising this shared space are now digital.<sup>2</sup> For many across the world,

Twitter and Facebook have become their main civic fora, with internet users spending nearly 2.5 hours on average on social media sites each day, and recent Ofcom studies showing that nearly half of the UK population use social media to keep up with the latest news stories.<sup>3</sup> Importantly then, social media *facilitates* citizens' epistemic participation within this new digital public sphere, and in fact does so on a scale that was previously impossible. Whereas before, individuals had to either rely on or create collective bodies to represent their voices *en masse*, they can now speak their own minds directly to the world, in principle at least. This is only possible because social media companies (SMCs) now exist as such powerful institutions within the public sphere.

That social media structures the new public sphere is well recognised, but less well recognised—and the focus of this discussion—

<sup>1</sup>J. Habermas, 'The public sphere: an encyclopedia article (1964)', *New German Critique*, vol. 3, 1974, pp. 49–55, at p. 49.

<sup>2</sup>J. M. Balkin, 'How to regulate (and not regulate) social media', *Knight Institute Occasional Paper Series* 1, 2020; [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3484114](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3484114) (accessed 24 May 2021).

<sup>3</sup>Statista, 'Daily time spent on social networking by internet users worldwide from 2012 to 2020'; <https://www.statista.com/statistics/433871/daily-social-media-usage-worldwide/>; Ofcom, 'Half of people now get their news from social media', 2019; <https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/half-of-people-get-news-from-social-media/>; Ofcom, 'News consumption in the UK: slight reduction (from 49% to 45% in 2020)', August 2020; <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/news-media/news-consumption> (all accessed 24 May 2021).

are two interconnected claims implied by this fact. The first claim is that the emergence of social media has expanded the *scope* of what counts as fair democratic epistemic participation; this now entails an equal opportunity for citizens to participate in the expanded public sphere offered online. The second claim is that democratic states have as a result, knowingly or otherwise, effectively outsourced the *provision* of fair epistemic participation in the public sphere to SMCs who provide the platforms for doing this. What follows from this is a third claim: that SMCs have *duties* of regulation with regard to epistemic participation in the public sphere.

The aim in this article is to demonstrate the first and second claims, and to show that acceptance of these claims grounds the regulatory duties referenced in the third claim. Indeed, SMCs have implicitly recognised this conclusion. As such, the article aims to show that our formal understanding of the role of SMCs simply needs to adapt to the actual role they now play in the democratic fabric of modern states. As set out in the next section, it is suggested that this way of grounding SMCs' duties in the right to democratic epistemic participation offers a better option than the currently dominant route, which seeks to justify regulatory duties by reference to concerns relating to truth.

## Where (not) to look

The legal scholar Jack Balkin posits that social media have three main functions within the public sphere: (1) to *facilitate public participation* in culture, politics, art, and so on; (2) to *organise public conversation* so that people can easily find and communicate with each other; and (3) to *curate public opinion*, both through SMCs' personalised presentation of information on feeds (as he puts it, by 'regulating the speed of propagation and the reach of content') and through the enforcement of community standards and terms of service.<sup>4</sup> Our argument will flow from the first of these functions, which is considered to be the most basic and uncontroversial.

In recent years, though, attention has primarily been directed towards the appropriate way for SMCs to carry out the third, curatorial function. This discussion is especially pressing

in the light of the prevalence of misinformation and disinformation circulating in the digital public sphere and the impact of this on democratic decisions. The worry here is clear: we need to be able to access accurate information about aspects of the world that affect our lives and interests as citizens, so that we can form beliefs on the basis of this information about matters as crucial as vaccinating our children or ourselves, how to cast our vote in the next election or referendum, and so on. The problem, however, is that it is difficult to know which information is accurate and who to trust epistemically while navigating our way through an 'epistemically polluted' online environment.<sup>5</sup> The question that has been asked, then, is what SMCs should be doing to regulate against (the spread of) these kinds of epistemic pollutants. This is clearly a very important question, and there has been critical work in this area. An increasingly prominent way of discussing this issue, in political epistemology and beyond, is in terms of *epistemic rights*. In the context of mainstream media, Lani Watson, for instance, argues that individuals in democratic societies have 'a right to knowledge, information, understanding and truth', and that this right 'imposes a duty on the mainstream media to provide these epistemic goods.'<sup>6</sup> On the basis of this, she argues, for example, that there were systematic epistemic rights violations in the media coverage leading up to the Brexit referendum vote.

But, it is not clear precisely how this type of argument extends to social media. Plausibly, if we do have an epistemic right to accurate information, SMCs have duties of regulation relating to misinformation and disinformation—which may, for example, justify regulatory (curatorial) actions such as fact checking, de-emphasising or taking down content, epistemic nudging (as in the case of Twitter's 'manipulated media' flags), and so on.<sup>7</sup> However, these claims are heavily

<sup>5</sup>S. Ryan, 'Epistemic environmentalism', *Journal of Philosophical Research*, vol. 43, 2018, pp. 97–112.

<sup>6</sup>L. Watson, 'Systematic epistemic rights violations in the media: a Brexit case study', *Social Epistemology*, vol. 32, no. 2, 2018, pp. 88–102, at p. 92.

<sup>7</sup>M. Adams and F. Niker, 'Harnessing the epistemic value of crises for just ends', in F. Niker and A. Bhattacharya, eds., *Political Philosophy in a Pandemic: Routes to a More Just Future*, London, Bloomsbury Academic, 2021.

<sup>4</sup>Balkin, 'How to regulate', p. 4.

contested, precisely because of the distinctive nature of SMCs as *facilitators*, rather than as producers of information and other epistemic goods (as discussed more fully below). While arguments exist for the democratic duties of those agents of the press who create content, and are seen as fulfilling a vital democratic duty (namely, that of protecting citizens from state misinformation and silence with regard to important matters), the same is harder to claim with regard to SMCs, who do no such thing and make no claims to do so.

We should, therefore, start with the fundamental and distinctive role played by social media, in the first instance at least, when looking for the principle(s) that specify and ground SMCs' duties of regulation. To put it another way: the focus has been on seeking to justify regulatory duties by reference to concerns relating to truth; but we believe that we can get a better grasp on what grounds these duties—both the self-regulative duties of SMCs and the regulative oversight by states—by starting with democratic epistemic participation, which SMCs uniquely facilitate.

## The right to democratic epistemic participation

The first main function of social media, as noted above, is to facilitate participation in the public sphere. As Twitter CEO, Jack Dorsey, puts it: 'People see Twitter as a public square, and therefore they have expectations that they would have of a public square.'<sup>8</sup> A key component of this is the facilitation of reciprocal *epistemic* participation in the formation of public opinion, which is the focus here. Whereas others have introduced the category of epistemic rights as a way of potentially grounding regulatory duties, this article proposes the *right to democratic epistemic participation* as fundamental to the debate. This is understood as a right to participate on a fair footing within epistemic practices in the public sphere. This right is often violated in practice, but this article deals with the principle.

<sup>8</sup>B. Hiatt, 'Twitter CEO Jack Dorsey: the Rolling Stone interview', *Rolling Stone*, 23 January 2019; <https://www.rollingstone.com/culture/culture-features/twitter-ceo-jack-dorsey-rolling-stone-interview-782298/> (accessed 31 March 2021).

What kind of right is this? Does it, for instance, fall into the category of epistemic rights, mentioned above? It is not clear where the boundaries of epistemic rights may be, but we don't want or need to claim that the right to epistemic participation is an *epistemic* right.<sup>9</sup> Rather, it is enough to say that it is a *moral* right held by those within democratic states. We might ground this right in different ways: in fair epistemic participation being intrinsic either to human flourishing or to social personhood, or in some other claims around equality within a democracy, or in the value of epistemic agency in its own right.<sup>10</sup> However it is grounded, we claim that it is the duty of the democratic state either to provide this right or to ensure that it is provided.

A second question about the nature of this right is how it relates to the moral right to freedom of speech. Although 'free speech' is a contested concept, it is fair to say that many of its advocates and critics alike understand it in terms of the negative freedom to hold opinions and to articulate these opinions and ideas without interference or fear of censorship or legal sanction by public authority.<sup>11</sup> The focus here on democratic epistemic participation is broader than this, in two ways. First, the right to epistemic participation involves a positive right to the *provision of equal access* for citizens to enable them to engage in critical democratic epistemic activities, not just a freedom from state interference in their freedom to speak. While this may be in the scope of what some

<sup>9</sup>For more on the idea of epistemic rights, see Lani Watson, *The Right to Know: Epistemic Rights and Why We Need Them*, London, Routledge, 2021.

<sup>10</sup>M. Fricker, 'Epistemic contribution as a central human capability', in G. Hull, ed., *The Equal Society: Essays on Equality in Theory and Practice*, Maryland, Lexington Books, 2015, pp. 73–89. L. Smith, 'The right to press freedom of expression vs the rights of marginalised groups: an answer grounded in personhood rights', in M. Garcia-Godinez, R. Mellin and R. Tuomela, eds., *Social Ontology, Normativity and Law*, Berlin, De Gruyter, 2020, pp. 79–96. C. Z. Elgin, 'Epistemic agency', *Theory and Research in Education*, no. 11, 2013, pp. 135–152; M. Congdon, '"Knober" as an ethical concept: from epistemic agency to mutual recognition', *Feminist Philosophy Quarterly*, no. 4, 2018, pp. 1–26.

<sup>11</sup>See, for example, Article 10 of UK Human Rights Act 1998.

understand as ‘free speech’, it is far from agreed upon by all advocates of the principle. Second, the right requires the opportunity for *reciprocal engagement* in epistemic exchange and opinion formation, rather than merely a unidirectional ability to speak out, as freedom of speech implies.

The emphasis, then, is not only on there being no state restrictions on free speech, or even on the provision of a platform enabling free speech. Rather, the value of a public sphere is to enable the forming of ‘public opinion’ in its broadest sense, and the right to democratic epistemic participation is the right to take part in that process on an equal footing. For those who do believe that this scope exactly coincides with the scope of ‘free speech’ claims, they are welcome to interpret this claim in those terms. However, we believe that many who are less keen to associate these more positive claims with free speech will nevertheless recognise that where there are epistemic goods essential to democratic participation, there is a demand to ensure equally fair (if not outcome-equal) access to those democratic epistemic goods, and that these goods go beyond the mere provision of freedom from state interference. We suggest that the right to democratic epistemic participation encompasses those goods. It is a right held by the citizens of democratic states and in principle held *equally* by all citizens.

## Social media and the right to epistemic participation

With the right to epistemic participation on the table, we now need to ask how social media’s remaking of the public sphere has affected the provision and scope of this right.

What is distinctive about social media, relative to mainstream media, is their fundamentally *participatory* nature. It is a difference that relates to the production of epistemic goods: in the mainstream media, professionals—journalists, editors, and so on—produce information and knowledge for consumption by citizens. By contrast, those working for SMCs do not produce any epistemic content, but rather, provide a platform for their users to create their own content and to consume, share, and engage with others’ content. This distinct role of SMCs in providing

opportunities for participation within a shared epistemic community is one which SMC chiefs such as Dorsey recognise and endorse:

I think the real interestingness of Twitter is not us. It was the fact that we were able to see what people are doing with it and made it more accessible. I think the true inventions were not the initial stuff. It was the @ symbol. It was the # symbol. It was the retweet ... Our role there was observing that people were actually trying to communicate with one another. I think that is the greatest role we had.<sup>12</sup>

This quote draws attention not only to the fact that users interpreted Twitter as a forum for participating in reciprocal communicative practices, regardless of the intent of the creators, but also to the role that Twitter played in facilitating this. Twitter acted on those participants’ actions, embracing their own role as facilitators of the epistemic community. At base, then, social media are concerned with the provision of *participation* (understood as involving contribution, creation, and extraction of information) in the epistemic community. And this is a role willingly embraced by both participants and SMCs.

Consequently, just as the traditional press facilitate citizens’ rights to have access to news and accurate information, and schools facilitate citizens’ rights to education, SMCs have become the facilitators of individuals’ right to be treated equally as *epistemic participants* (all else being equal or notwithstanding) within democratic states. In so doing, SMCs fulfil a role in the functioning of the democratic state, just as these other parties do: by facilitating participation in the public sphere, SMCs facilitate democratic participation in the formation of, and access to, public opinion. This relates to the epistemic bases of democratic citizenship in a different way to citizens’ entitlement to accurate information in mainstream media; it concerns citizens’ equal entitlement to participate in and shape the creation of social beliefs, opinions, and knowledge within their society.

Importantly, SMCs have not only become the facilitators of this right; their very existence has re-shaped what the opportunity for

<sup>12</sup>Hiatt, Dorsey interview.

democratic epistemic participation looks like. Prior to the advent of social media, an average individual's ability to exercise this right was, in practice, restricted to participation in epistemic interactions within a fairly limited sphere of influence, or to being represented by a collective in certain ways (through activist groups, or political parties, for example). Within the digital public sphere, these individuals are not restricted in these ways to anywhere near the same degree. Although it's true that factors such as celebrity, wealth and power affect the amplification of one's voice on social media, it is also true that anyone can go viral. We now have the capacity to participate epistemically as individuals, expressing our own voices and indicating our support for assertions and claims publicly on a relatively equal footing. In other words, SMCs have extended the reach of the equal right to democratic epistemic participation—which, in itself, is a good thing, given the potential to democratise expression and diversify public discourse.

Our first claim, then, is that social media have expanded the *scope* of fair democratic epistemic participation, since the existence of SMCs means that this now includes an equal opportunity for citizens to participate in the new, expanded public sphere offered online.

## State duties, facilitated through corporate agents

The state ultimately bears the duty to protect and enable the rights of citizens to participate in the creation of ideas, beliefs and knowledge, including the ability to access the epistemic inputs of others. This is fundamental for the purposes of meeting the (human) rights of citizens to epistemic goods such as education, as well as for the maintenance of an informed citizenry. Such a duty, however, can and often is fulfilled primarily through the delegation of provision of the right to 'corporate' agents (understood as collective bodies of all kinds). Such agencies are, as a result, supported and overseen by democratic states, at a minimum through not obstructing provision, but also through the state's capacity as both a permission-granting and regulatory body.

In a well-functioning democracy, for example, the print press and traditional media

provide access and insight into matters which interest, affect and concern the citizens of the state (and those beyond its borders), thereby enabling citizens to have the capacity to form accurate beliefs. The press in a well-functioning democracy are granted the freedom to do this, unhindered by the threat of arbitrary silencing or retaliation by powerful state, corporate, or individual actors. Similarly, the state ensures the provision of the right to education by financially supporting and regulating schools and universities set up to provide that education. So, those groups and bodies which facilitate the provision of these epistemic rights—to accurate information and to education, respectively—are supported by the state in doing so because they fulfil certain *roles* in the functioning democratic state.

If what we've argued so far is correct, then SMCs serve a somewhat analogous role in democratic societies. SMCs offer a space for citizens to be involved in and to contribute to the formation of public opinion, and thus are key actors in the provision of a citizen's right to epistemic participation. It would, in principle at least, be possible for a state to block SMCs from operating within their territories; but in reality, such an option is not available to a democratic state, partly in virtue of the point made above that the existence of social media has expanded the scope of fair epistemic participation. What this means is that, whether knowingly or not, democratic states have effectively *outsourced* the provision of epistemic participation in the public sphere to SMCs. This is the second claim of this article.

On the face of it, the comparison between SMCs and schools as corporate actors, each facilitating rights for the state, may appear dis-analogous: schools are located within states, and specific states have long histories of determining the content and delivery of education within their own boundaries in ways which may or may not mesh with the provision of the right to education in other states. In contrast, SMCs operate beyond state boundaries in direct relationships with their users. SMCs' role in facilitating the right to agential epistemic participation is not, therefore, mediated by the choices of the states in which those citizens reside in any kind of similar way.

However, the relevant point of comparison between the two is with the facilitation of the

right itself, rather than the specifics of how well (or not) states have outsourced that facilitation through state policies and control. The fact that schools are governed by education policy within the state does not indicate that the right to education is whatever the state determines it to be. Rather, it suggests that it is entirely possible that states may intervene in regulating and setting education policy in ways which support or obstruct the facilitation of the right to education. What exactly the right to education requires is outside the scope of this article but schools would, for example, no longer be facilitating the right to education on behalf of the state if they were constrained by state regulation and education policy in ways which breached that right. States fulfil their duty to enable the right to education by not taking measures that would hinder or prevent the enjoyment of this right.

Similarly, states fulfil part of their duty to enable the right to democratic epistemic participation by not taking measures that would hinder or prevent the enjoyment of this right. Blocking SMCs from operating altogether would be such an act. But, as with ensuring the rights to education and to accurate information in the mainstream media, the democratic state may also need to fulfil part of its duty by taking regulatory measures whenever necessary.

## SMCs and duties of regulation

What follows from our analysis for whether SMCs have regulatory duties for the digital public sphere, and for what grounds any such duties? The first thing to note is that we can distinguish between two sources of duties with respect to the right to epistemic participation.

First, there are those duties which *every* individual agent bears to ensure that the exercise of their right to epistemic participation does not cause undue harm (epistemic or otherwise) to others. We can see this particularly clearly in the case of those who hold epistemic power. A person in a position of relative power—a schoolteacher in a classroom, for example—can epistemically harm her students by providing inaccurate or unsuitable information. Her individual right to epistemic participation in the classroom is bound in this instance by her duty not to epistemically harm her

students by failing to enable their access to education, a facilitative provision-right delegated to the school and its members by the state. Teachers have duties to those they have particular epistemic power over, grounded in the role granted to them as the facilitators of the right to education. But the right to epistemic participation may be bounded by any number of other duties—the general duty not to incite hatred (in the case of prominent public figures and hate speech in the media, for example)—or simply by the duty not to breach the rights of others to equal democratic epistemic participation.

Second, there are duties borne by those who *facilitate* and *enable* the right to equal democratic epistemic participation in the public sphere. To understand this, first, consider general cases of the source of democratic regulatory duties. There are, generally, duties borne by any corporate agent or actor who delivers or enables citizenship rights for the democratic state. These are (or at least include) duties of self-regulation. Consider again the case of the teacher who epistemically harms her students. This teacher will be held accountable for harming her students; she has her own duty not to harm others through exercising her right to epistemic participation, as we all do. But it is the school and school board who hold the duty to protect their students' rights to education itself, because the school is the provider of the state-backed right to education. As such, the school acts as the regulator of this duty (at least in the first instance). As part of this regulatory role, the school leadership may need to, for example, carry out due diligence when hiring teachers, provide their employees with relevant training, investigate and respond to complaints, and so on. If they fail in this duty, schools may be held liable, and the state (or the next layer in the structure) will step in to deal with that failure to regulate appropriately.

This general case translates to the specific case of those who facilitate the right to democratic epistemic participation. Just as the school has a duty to regulate what teachers do in the classroom in order to protect students' epistemic rights relating to education, so too do SMCs have duties to act as the regulator of how users participate on their platform in order to protect all users' democratic epistemic participation rights. As the facilitators of

this right through provision of the expanded public sphere, SMCs have a duty to self-regulate in order to ensure that this right is provided equally to all citizens. Precisely what this may involve will be contextually determined. But this regulation may include restrictions on dissemination, provision of a wider platform for less powerful epistemic agents, fact checking at source, penalties for users who cause harm, and so on. Just as the mainstream media, for example, self-regulate their practices in the first instance as the democratic providers of certain state-backed citizen epistemic rights, SMCs have a duty to do the same with regard to their specific democratic role as facilitators of citizens' right to democratic epistemic participation. And in order to ensure delivery of this role, SMCs collectively may also be required to determine a code of practice and penalty process as a body; again, just as corporate members of the traditional press have done. This should not be a controversial claim. As Facebook CEO, Mark Zuckerberg, said in his testimony to the US Congress: 'I think the real question, as the internet becomes more important in people's lives, is what is the right regulation, not whether there should be [regulation] or not.'<sup>13</sup>

However, this regulatory role, in the case of SMCs and their facilitation of democratic epistemic participation, is more extensive than it might at first appear. What is distinctive about social media is how the *existence* of SMCs affects the exercise of epistemic participation rights by the vast majority of users who would otherwise be in non-influential epistemic positions. The first duty outlined above, in principle, attaches to everyone equally. But the vast majority of citizens are not epistemically influential in the way the teacher is relative to her students. Of course, there are some epistemically powerful agents who now also use social media and, in such cases, the first kind of duty attaches to the exercise of their epistemic participation rights in a straightforward sense: epistemically powerful actors have the potential to harm others through their epistemic participation in numerous ways. SMCs therefore have a duty to regulate this

to prevent harm through exercise of that right on their platforms.

But SMCs have also changed the capacity of *ordinary* citizens to cause harm through exercising their right to epistemic participation. Before the existence of SMCs, it would have been very difficult in practice for the vast majority of ordinary, epistemically non-influential people to violate their individually-held duty while exercising their right to epistemic participation, because they each had relatively little ability to actually harm others with their epistemic content. Instead, this duty might be understood as being minimal, or self-directed; perhaps relating to being an individually epistemically virtuous agent, or to adherence with some other norms of testimonial assertion. And this might imply that those who facilitate this right have a minimal regulatory role. But, social media have changed this by transforming the reach of the right to democratic epistemic participation.

With the rise of social media, all users now do have the opportunity to violate our individual duties not to harm others in our exercising of this right. Crucially, this will only occur when our individual voices combine with other voices and/or reach far more people than they previously could have, or when that collective of voices negatively affects our individual ability to form well-grounded epistemic perspectives. SMCs make this collectively-generated harm possible. For instance, 'liking' and sharing conspiracy theories and other falsehoods within the digital public sphere causes active harm (epistemically and otherwise). Thus, uncoordinated collectives of individuals, when repeating and sharing the same messages on social media, can cause harm in ways that non-powerful individuals in the pre-SMC-facilitated public sphere simply could not.

It is possible to see more clearly now how the facilitation of the provision of users' equal right to epistemic participation leads to the problems with respect to truth that we mentioned earlier. By enabling so many people actively to participate in the public sphere, and by structuring this engagement such that uncoordinated, networked collectives of individuals' engagements can become harmful, SMCs play a role in facilitating any violation of further, distinctively epistemic rights, such as the right to accurate information.

<sup>13</sup>M. Zuckerberg, Zuckerberg Senate transcript, 10 April 2018; <https://www.judiciary.senate.gov/imo/media/doc/04-10-18%20Zuckerberg%20Testimony.pdf> (accessed 24 May 2021).

Therefore, two features of social media ground the regulative duties of SMCs. First and most straightforward is the fact that epistemically powerful agents not only use SMCs platforms, but that their voices become even louder and their reach even wider because of social media. Any potential harm that these individuals may do is multiplied as a result of their exercise of the right of epistemic participation. SMCs have a regulatory role to play with regard to these straightforward cases of individual harm. But the second, more distinctive feature of the regulatory duties of SMCs, is the fact that the nature and design of social media platforms means that even epistemically non-influential users can cause harm when individually innocuous exercises of the right of epistemic participation merge into a collectively harmful contribution to the public sphere.

SMCs bear duties of regulation in virtue of being the facilitators of this (two-part) increased level of influence in epistemic participation. They have these duties owing to their role as the facilitators of state democratic epistemic participation in the public sphere. And if they fail in discharging such duties, then, just as the state may step in when school boards fail to perform their outsourced regulatory duties, the state may also step in to hold SMCs liable or to require greater state involvement in that regulation.

## Conclusion

SMCs, the state, and individuals all appear to accept and recognise that SMCs have taken on a facilitatory role within the public sphere. This article has highlighted how this role is the facilitation of *democratic epistemic participation rights*. The state has a duty to protect these rights, but the enactment (and widened reach) of those rights is facilitated by SMCs. Since we need a well-functioning

public sphere in order to have a well-functioning democracy, and SMCs provide access to this sphere, SMCs are now part of the democratic infrastructure of societies across the world. As a result, these bodies have taken on a role in the democratic state which few people dispute in practical terms.

This, combined with the increased scope of fair democratic epistemic participation which SMCs facilitate, imposes duties of regulation on SMCs: SMCs are the only ones who arguably have the capacity to act as regulators for the fair provision of that right within democratic states. The extent of this duty is something which they, and to a large extent citizens and governments, have—so far—been largely unwilling to recognise or accept in a formal way. In practice, however, these duties follow from the claims that SMCs themselves make with regard to their own role and status. This role brings a corresponding regulatory duty.

The question remains how this role ought to be implemented and governed in practice. Here we have suggested that, as with other rights-facilitating corporate bodies, SMCs themselves ought to be the first port of call. This may include establishing a self-regulatory body as a collective of social media organisations (in much the same way as the traditional print press have done) in order to identify rules and appropriate guidelines. And, just as with other forms of provision of epistemic and other rights, states should only step in when SMCs fail to fulfil this role. What this will look like in practice is something which states and SMCs need to define together.

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