

Proceedings of the Weizenbaum Conference 2021

Democracy in Flux

Order, Dynamics and Voices in Digital Public Spheres

The Double Harm Caused by Political Micro-Targeting

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KEYWORDS

political micro-targeting; data-driven; political campaign; human rights; freedom of expression; freedom of information, democratic process; public discourse.

DOI: 10.34669/wi.cp/3.1

The proceedings of the Weizenbaum Conference 2021 "Democracy in Flux: Order, Dynamics and Voices in Digital Public Spheres" have been funded by the Federal Ministry of Education and Research of Germany (BMBF) (grant no.: 16DII121, 16DII122, 16DII123, 16DII124, 16DII125, 16DII126, 16DII127, 16DII128 – "Deutsches Internet-Institut").

1 INTRODUCTION

The sophisticated psychological and technological targeting methods which had been developed by the commercial advertising industry has been leveraged by the political parties in recent elections (Papakyriakopoulos, Hegelich, Shahrezaye, & Serrano, 2018; Bodó, Helberger, & de Vreese, 2017; Chester & Montgomery, 2017, EDPS 2018: 11).

But the impact of commercial advertising is different from that of political advertising: first, political competition culminates in one common decision passed by the political community, which affects each member of that polity, whereas commercial decisions are individually made, and effect mainly the same individual. Second, commercial decisions are more or less based on rational consideration, but political preferences are to a large extent emotional (Weir, 2019). It has been observed that voters' preference for their political candidate is not influenced by debunking what their favourite has said (Swire et al. 2017). This is a signal of the audience's vulnerability in the context of political manipulation: people of all political beliefs are more prone to bias, and less likely to recognise bias consistent with their political belief (Ditto et al., 2018).

The democratic deliberative process should ideally be based on an open public discourse (Habermas, 1996), a free exchange of thoughts on the marketplace of ideas (Mill, 1863). According to some theories, the citizenry ought to develop a *general will* (*volonté du peuple*, Rousseau, 1789, Dunning, 1909). In any case, possessing a common information basis appears necessary for a society to function, to pass and accept political decisions. "In a well-functioning democracy, people do not live in [an] echo chamber or information cocoons" (Sunstein, 2007).

Political micro-targeting shares selected messages only with a carefully tailored audience. The basis of selection are the personal data of the users, traces that they leave while browsing, posting, sharing and liking.

2 VIOLATION OF THE RIGHT TO INFORMATION

This paper argues that beyond violating privacy rights of the targeted users, **micro-targeted political advertising robs non-targeted voters of the information which is communicated to the targeted voters. This violates their right to information**, which is the counterpart of freedom of expression, as expressed by Article 10 of the European Convention of Human Rights. Theorists like Dworkin, Mill, Baker, Barendt, Meiklejohn have emphasized that democratic formation of the public's political will should be based on common discussion of public matters. Expressions, especially political expressions are protected, but speech which reduces diversity and access to information, can be legitimately restricted on the basis of the European Court of Human Rights jurisprudence.

Data-driven political campaigns lead to a collision of freedom of political expression and the right to information. Paradoxically, the balancing should be made not between two fundamental rights, but the two sides of the same fundamental right. Political expressions are the most highly protected forms of expression, while access to information, and the public informational landscape as such, is also a cornerstone of the democratic system.

An important aspect of the discussion is, whether micro-targeting can be used for "beneficial" purposes. Indeed, not all uses are manipulative, malicious uses. First, even beneficial purposed applications of this method fragment the public information landscape. However, there may be situations when this fragmentation is desired for the social good. For political purposes, micro-targeted political advertising could provide detailed information in special areas, to interested voters. For purposes of

education, it could apply micro-targeted “social purpose advertisements” as ‘nudges’. For example, addressing persons with certain characteristics to inform them about healthy habits, information literacy, etc. If micro-targeted political – and commercial – advertising is liberally allowed (as it currently is), then nudges are also applicable. Where is the limit of intrusion to personal matters, and what should be the safeguards?

3 PLATFORM POLICIES

Since 2019, giant social media platforms developed their policy regarding political ads. Twitter opted for completely rejecting political ads, while Facebook set transparency rules and created an ad repository. However, this repository proved insufficient to provide information about targeting criteria, and whether vulnerabilities have been exploited (Panoptikon, 2020, Edelson, Lauinger & McCoy, 2020), and did not cooperate with researchers adequately to ensure transparency (Forbes, 2020). ERGA’s monitoring found that the databases required further development in order to provide the tools and data necessary to ensure the required level of transparency (ERGA, 2019).

The draft European regulatory action 'Digital Services Act' provides that the repository should also contain the main parameters of microtargeting and other relevant data (Article 30, DSA), as well as access to such data (Article 31) – but with significant exceptions (Section 6. Article 31).

The paper's novelty lies in translating the violation of individual rights into collective rights – the right to information and a fair political campaign. Based on a legal analysis of fundamental rights, and the case law of the European Court of Human Rights, it makes a statement at the intersection of political theory and communication theory.

The topic is likely to raise discussion for some reasons. First, because the freedom of political expression is a very strong fundamental political right, and its restriction – even if it would affect only certain types of transmission – is a delicate issue. Moreover, the class which is the most affected, major political parties, are counter-interested, as they would benefit from this practice, which can be best leveraged by financially strong actors. Second, there is a current dispute around the concept of fragmentation of the public sphere, and the interpretation of its consequences.

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