

1-27-2023

## Harmful Speech and the Covid-19 Penumbra

Kenneth Grad

*Osgoode Hall Law School, York University*

Amanda Turnbull

*Osgoode Hall Law School, York University*

Follow this and additional works at: <https://digitalcommons.schulichlaw.dal.ca/cjlt>



Part of the [Computer Law Commons](#), [Intellectual Property Law Commons](#), [Internet Law Commons](#), [Privacy Law Commons](#), and the [Science and Technology Law Commons](#)

---

### Recommended Citation

Kenneth Grad and Amanda Turnbull, "Harmful Speech and the Covid-19 Penumbra" (2023) 19:1 CJLT 1.

This Article is brought to you for free and open access by the Journals at Schulich Law Scholars. It has been accepted for inclusion in Canadian Journal of Law and Technology by an authorized editor of Schulich Law Scholars. For more information, please contact [hannah.steeves@dal.ca](mailto:hannah.steeves@dal.ca).

# Harmful Speech and the COVID-19 Penumbra

*Kenneth Grad and Amanda Turnbull \**

## INTRODUCTION

We have witnessed a disturbing rise in harmful speech during the COVID-19 pandemic.<sup>1</sup> This rise, described by United Nations (UN) Secretary General Antonio Guterres as a “tsunami of hate, xenophobia, scapegoating and scare-mongering,”<sup>2</sup> has been facilitated by technology. Digital interconnectivity has resulted in false information spreading more quickly and with greater reach than ever before. The World Health Organization (WHO) has called the misinformation and disinformation swirling amidst COVID-19 a “massive infodemic.”<sup>3</sup> Shocked by the incredible volume of bad information, many have called for a coordinated global effort to combat harmful views online and particularly on social media.<sup>4</sup>

But we should not have been surprised by the explosion of disinformation and misinformation.<sup>5</sup> Although COVID-19 has illustrated the power of false information in an era of mass internet access, the increase in harmful speech expedited by technological development during pandemics has deep historical precedent. These historical antecedents have received very little attention in the COVID-19 academic commentary.<sup>6</sup> This paper brings them to the fore.

---

\* Kenneth Grad, BA, MA, JD, LL.M., PhD candidate (Osgoode Hall Law School); Amanda Turnbull, BA, ARCT, MA, PhD candidate (Osgoode Hall Law School). The authors are grateful to Professor Benjamin Berger, Professor Margaret Boittin and Professor Carys Craig for ongoing support of their doctoral collaborative series.

<sup>1</sup> This increase has been observed by numerous commentators. See *e.g.* “The COVID-19 infodemic” (2020) 20:8 *Lancet Infection Diseases* at 875, DOI: <10.1016/S1473-3099(20)30565-X>; George N Tzogopoulos, “Government Accountability is Being Tested in the Age of Coronavirus” in Efraim Karsh, ed, *The COVID-19 Crisis: Impact and Implications* (Tel Aviv: Begin-Sadat Center for Strategic Studies, 2020) 46 at 47.

<sup>2</sup> United Nations (UN), Press Release, SG/SM/20076, “Secretary-General Denounces ‘Tsunami’ of Xenophobia Unleashed amid COVID-19, Calling for All-Out Effort against Hate Speech” (8 May 2020), online: <[www.un.org/press/en/2020/sgsm20076.doc.htm](http://www.un.org/press/en/2020/sgsm20076.doc.htm)>.

<sup>3</sup> Julie Posetti & Kalina Bontcheva, “Disinfodemic: Deciphering COVID-19 disinformation” (Paris: UNESCO, 2020) at 2, online (pdf): <[en.unesco.org/sites/default/files/disinfodemic\\_deciphering\\_covid19\\_disinformation.pdf](http://en.unesco.org/sites/default/files/disinfodemic_deciphering_covid19_disinformation.pdf)>.

<sup>4</sup> See *e.g.* UN, Press Release, *supra* note 2.

<sup>5</sup> We refer to disinformation as erroneous information disseminated with intent to mislead and misinformation as information spread without intent to mislead. When referred to together, we will use phrases such as “harmful speech,” “false information,” “bad information,” and “mal-information.”

<sup>6</sup> For a rare exception, see Margareta Matache & Jacqueline Bhabha, “Anti-Roma Racism is Spiraling during COVID-19 Pandemic” (2020) 22:1 *Health & Hum Rts* 379.

We make two central claims in this essay. First, the themes of mal-information have remained remarkably consistent across pandemics. What has changed is only the manner of their spread through evolving technologies and globalization. Thus, as with pandemic preparedness more generally, our failure to take proactive measures reflects a failure to heed the lessons of the past. Second, we argue that the COVID-19 pandemic presents a unique opportunity to tackle online falsehoods and mitigate their impact in the future.

We proceed in three parts. Part one addresses the harmful speech that inevitably follows in pandemic's wake. We illustrate this through three historical examples: plague, the 1918-19 influenza epidemic, and AIDS.<sup>7</sup> By turning to history, we explore how the spread of false information, while constant in every pandemic, has evolved over time with technological advancement.

In part two, we cast a spotlight on harmful speech during COVID-19. We examine how the disturbing outbreak of erroneous information and hate speech in the present pandemic shares notable common features with prior contagions. What is unprecedented about the current pandemic is only the ease with which malign speech has spread, amplified, and reverberated over the internet.

In part three, we discuss legal and policy measures implemented during COVID-19 to mitigate the growth of, and exposure to, online misinformation and disinformation. We focus on three prominent endeavors: the global movement to regulate internet speech; advancements in artificial intelligence (AI) as an effective content-moderation tool; and investments in closing the digital divide—the gap between those who have reliable internet access and those who do not.<sup>8</sup> The latter is typically seen as a way to boost economic and health outcomes, but we make the novel argument that it may also prove an effective measure for suppressing harmful speech.

Our goal in looking to the future is twofold. First, a fundamental benefit of history is that we can learn from it. A failure to do so risks allowing the vicious cycle of pandemic-related disinformation to continue into the future. Second, it is notable that the COVID-19 related academic literature has been overwhelmingly negative.<sup>9</sup> This is logical: the pandemic has brought the deaths of over three

---

<sup>7</sup> Although we have identified these contagions as historical in the sense that they pre-date the current pandemic, we acknowledge that these diseases—particularly AIDS—remain of global concern to the present day.

<sup>8</sup> See Jan Van Dijk, *The Digital Divide* (Cambridge: Polity Press, 2020) at 1. See also Anne Peacock, *Human Rights and the Digital Divide* (London: Routledge, 2019) at 2.

<sup>9</sup> See e.g. Brooke Peterson Gabster et al., “Challenges for the female academic during the COVID-19 pandemic” (2020) 395:10242 *Lancet* 1968; Andrew A Schwartz, “Contracts and COVID-19” (2020) 73 *Stan L Rev Online* 48; Joseph J Amon, “COVID-19 and Detention: Respecting Human Rights” (2020) 22:1 *Health & Hum Rts* 367; Abdul Basit, “The COVID-19 Pandemic: An Opportunity for Terrorist Groups?” (2020) 12:3 *Counter Terrorist Trends & Analyses* 7; Matthias Rogg, “COVID-19: The Pandemic and Its Impact on Security Policy” (2020) 8:4 *PRISM* 54; Gabriel A Fuentes, “Federal Detention and ‘Wild Facts’ During the COVID-19 Pandemic” (2020) 110:3 *J Crim L & Criminology* 441; Gary Ackerman & Hayley Peterson, “Terrorism and COVID-19:

million people and led to widespread health, educational, and socio-economic harms.<sup>10</sup> But a narrow focus on the negative can elide the ways in which pandemics also, paradoxically, present opportunities for constructive change. In bringing attention to these constructive aspects, we seek to inspire a discourse of resilience.

## 1. “THE NIGHT-SIDE OF LIFE”<sup>11</sup>: PANDEMIC AS A VECTOR FOR HARMFUL SPEECH

In this section, we chart harmful speech arising from plague, influenza, and AIDS, before turning to the similarities between prior pandemics and COVID-19. We emphasize how technological evolution and globalization have accelerated the spread of bad information.

### (a) The Plague: Disinformation Through the Post, Newspaper, and Telegraph

Scapegoating and spreading of mal-information have been endemic wherever plague<sup>12</sup> has travelled. Amid the Plague of Justinian, which was identified in 542 CE in Constantinople and recurred throughout the Mediterranean for the next two hundred years, non-Christians—including Jews and homosexuals—were accused of its spreading and subjected to quarantine.<sup>13</sup> During the height of the next outbreak of plague—commonly referred to as the Black Death<sup>14</sup>—in fourteenth-century Europe, Jews were accused of poisoning the wells and food

---

Actual and Potential Impacts” (2020) 14:3 Perspectives Terrorism 59; Matache & Bhabha, *supra* note 6; Taylor Riley et al, “Estimates of the Potential Impact of the COVID-19 Pandemic on Sexual and Reproductive Health In Low- and Middle-Income Countries” (2020) 46 Intl Perspectives Sexual & Reproductive Health 73; Zapan Barua et al, “Effects of misinformation on COVID-19 individual responses and recommendations for resilience of disastrous consequences of misinformation” (2020) 8 Progress Disaster Science, DOI: <10.1016/j.pdisas.2020.100119> .

<sup>10</sup> See “Global Map: COVID-19 Dashboard by the Center for Systems Science and Engineering”, online: *Coronavirus Resource Center, John Hopkins University of Medicine* <coronavirus.jhu.edu/map.html> .

<sup>11</sup> See Susan Sontag, *Illness as Metaphor and AIDS and Its Metaphors* (New York: Farrar, Straus and Giroux, 1978) at 3.

<sup>12</sup> Plague is caused by the bacterium *Yersinia pestis* and is typically communicated to humans from rodents through the bite of infected fleas. The most common form of plague is bubonic. See Anne Carmichael, “VIII.21 — Bubonic Plague” in Kenneth F Kiple et al, eds, *The Cambridge World History of Human Disease* (New York: Cambridge University Press, 1993) 628 at 628-29.

<sup>13</sup> See Kelly Drews, “A Brief History of Quarantine” (2013) 2 Virginia Tech Undergraduate Historical Rev, DOI: <10.21061/vtuhr.v2i0.16/> .

<sup>14</sup> Between 1347 and 1351, one-third or more of Europe’s population died as a result of plague. This second cycle of plague lasted approximately 500 years. In 1665, the Great Plague of London killed between 75,000 and 100,000 of London’s inhabitants. See e.g. Howard Markel, *When Germs Travel: Six Major Epidemics That Have Invaded America*

supply, rounded up in city squares and synagogues, and murdered in large numbers.<sup>15</sup> Hundreds of Jewish communities in western Europe were destroyed, resulting in a fundamental realignment of the Jewish population of Europe to the east.<sup>16</sup> Individual Jews were imprisoned and tortured into “confessing” their role in the plague’s transmission.<sup>17</sup>

Misinformation spread by letter through developing messenger or postal systems of the period. For example, in August 1348, the city council of Strasbourg sent letters to cities in neighbouring regions requesting information about whether Jews were to blame for the calamity. Many of the responses survive, containing detailed descriptions of alleged conspiracies to poison wells, springs, and food supplies, obtained from persons subjected to torture. Based on this evidence, the Jews of Strasbourg were gathered and burned to death.<sup>18</sup> In Sicily, Catalans took the place of the Jews as the scapegoated foreigner and in 1348 were massacred across the island.<sup>19</sup>

With the invention of the Gutenberg printing press, false information traveled via a new medium: the newspaper.<sup>20</sup> During the Great Plague of 1665, Roger L’Estrange, London’s leading publisher, used his platform to deny the rising death toll, insist that the plague was absent from “better neighborhoods”, promote quack cures, and forecast the plague’s demise based on astrological signs.<sup>21</sup> L’Estrange’s newssheets claimed that the greatest mortality was found in “the sluttish parts of those parishes where the poor are crowded up together.”<sup>22</sup> Quakers, who refused to permit the Anglican Church to count their dead, also fell under suspicion.<sup>23</sup>

---

*and the Fears They Have Unleashed* (New York: Vintage Books, 2009) at 50; Drews, *supra* note 13.

<sup>15</sup> See Samuel K Cohn, Jr., “The Black Death and the Burning of Jews” (2007) 196:1 Past & Present 3 at 3—4, DOI: < 10.1093/pastj/gtm005 > .

<sup>16</sup> See Albert Winkler, “The Medieval Holocaust: The Approach of the Plague and the Destruction of Jews in Germany, 1348-1349” (2005) 13 Federation East European Family History Societies 6 at 23.

<sup>17</sup> See John Aberth, *The Black Death: The Great Mortality of 1348-1350: A Brief History with Documents* (New York: Palgrave MacMillan, 2005) at 139—40.

<sup>18</sup> See Aberth, *ibid.* at 145-55; Cohn, *supra* note 15 at 19—20.

<sup>19</sup> See Cohn, *supra* note 15 at 8.

<sup>20</sup> See Julie Posetti & Alice Matthews, “A short guide to the history of ‘fake news’ and disinformation: A learning module for journalists and journalism educators” (23 July 2018) at 1, online (pdf): *International Center for Journalists* < www.icfj.org/news/short-guide-history-fake-news-and-disinformation-new-icfj-learning-module > .

<sup>21</sup> A Lloyd Moote & Dorothy C Moote, *The Great Plague: The Story of London’s Most Deadly Year* (Baltimore & London: The Johns Hopkins University Press, 2004) at 28—29, 66, 81, 105. See also Eric Andrew-Gee, “When misinformation goes viral: A brief history of plague panic, from the 1600s to today’s coronavirus crisis”, *The Globe and Mail* (31 January 2020), online: < www.theglobeandmail.com/canada/article-when-misinformation-goes-viral-a-brief-history-of-plague-panic-from/ > .

<sup>22</sup> Moote & Moote, *supra* note 21 at 186.

A notorious outbreak of plague occurred in San Francisco's Chinatown in 1900.<sup>24</sup> The first suspected case was identified on March 6 of that year and the city's board of health declared a quarantine of Chinatown the next morning.<sup>25</sup> Only Caucasians could leave and no one could enter.<sup>26</sup> The quarantine was lifted a few days later but re-imposed when additional infections were discovered.<sup>27</sup> San Francisco's Chinatown had been portrayed as a plague on the body politic for decades;<sup>28</sup> the discovery of a literal plague within its midst fit within this narrative, and the quarantine was generally met with approval in the remainder of the city, even though the decision to isolate Chinatown was illogical even under medical knowledge at the time.<sup>29</sup>

The printed press helped spread misinformation. The San Francisco *Chronicle*, the city's leading Republican newspaper, viewed news of a plague outbreak as a ploy by Democrats to line their pockets and obtain higher budgetary appropriations for the board of health.<sup>30</sup> As the outbreak spread, the *Chronicle* continued to insist that there was no plague in the city and that rumors to the contrary were doing irreparable harm to San Francisco's economy.<sup>31</sup>

News of the outbreak was also disseminated through more novel technology: the telegraph. The *Chronicle* complained that once the quarantine was put in place, it was "telegraphed to the ends of the earth" that San Francisco was an infected city.<sup>32</sup> When three new suspected cases were found in Chinatown in mid-March, the news was reported by the Associated Press wire services and picked up by newspapers on the east coast.<sup>33</sup> Mayor James Phelan responded with an urgent telegram to the mayors of fifty eastern cities claiming that Chinatown had been disinfected and "there [was] no further danger"—despite the fact that local health authorities were confident the suspected cases would be confirmed as plague, which they subsequently were.<sup>34</sup>

<sup>23</sup> See Andrew-Gee, *supra* note 21.

<sup>24</sup> The third outbreak of plague originated in Central Asia in the middle of the eighteenth century, spread to China and northern India, and then to Australia, eastern Africa, and North and South America. See Carmichael, *supra* note 12 at 630–31.

<sup>25</sup> See Charles J McClain, *In search of equality: The Chinese struggle against discrimination in nineteenth-century America* (Berkeley and Los Angeles: University of California Press, 1994) at 234–35.

<sup>26</sup> Felice Batlan, "Law in the Time of Cholera: Disease, State Power, and Quarantines Past and Future" (2007) 80:1 Temp L Rev 53 at 106.

<sup>27</sup> McLain, *supra* note 25 at 240–41, 259–60; Batlan, *supra* note 26 at 107–08.

<sup>28</sup> Keith Aoki, "Foreign-ness & Asian American Identities: Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes" (1996) 4:1 UCLA Asian Pac Am LJ 1 at 27, 29-31; Batlan, *supra* note 26 at 105.

<sup>29</sup> See McClain, *supra* note 25 at 236–37.

<sup>30</sup> See *ibid.* at 237.

<sup>31</sup> See *ibid.* at 242.

<sup>32</sup> *Ibid.* at 241.

<sup>33</sup> See *ibid.* at 243.

Wire also eased communication between the federal government and the city. After being apprised of additional cases, the Surgeon General of the United States dispatched a telegram ordering the mass inoculation of San Francisco's Chinese population with an experimental (and highly toxic) vaccine.<sup>35</sup> In response, an anti-vaccination movement spread in the Chinese community and newspapers reported that those who were vaccinated had become deathly ill. This information led to Chinatown's residents avoiding vaccination *en masse*.<sup>36</sup>

Ultimately, the Chinese in San Francisco were able to successfully challenge the quarantine and forced inoculation program in federal court, emphasizing the city's unfair targeting of its Chinese citizens.<sup>37</sup>

### (b) Influenza: Globalization of Disease and Misinformation

The most well-known outbreak of influenza occurred in 1918-19. The virus spread worldwide in a rapidly globalizing world, killing an astounding fifty to one hundred million people within a span of eighteen months—four times those who died in combat during the First World War—making it the most lethal disease to ever afflict humanity.<sup>38</sup>

As with the virus, misinformation permeated the “global village.”<sup>39</sup> The contagion's (arguably) most common nickname, the “Spanish flu,” is itself the product of misinformation; because Spain was not a belligerent in World War I, its newspapers were not subject to wartime censorship and news of the virus disseminated freely, including the infection of King Alfonso XIII in the spring of 1918.<sup>40</sup> However, the name Spanish flu prevailed only in certain countries, such as the United States, Britain, and France. Further afield from the War, influenza's aliases included, “Brazilian flu,” “German flu,” and “Bolshevik disease” to name but a few.<sup>41</sup> The actual provenance of the disease is unclear, but

---

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.* at 243—45.

<sup>36</sup> *Ibid.* at 247—50.

<sup>37</sup> *Ibid.* at 250—56, 268—74; Batlan, *supra* note 26 at 106—109. See also John Fabian Witt, *American Contagions: Epidemics and the Law from Smallpox to COVID-19* (New Haven: Yale University Press, 2020) at 73—74.

<sup>38</sup> See John M Barry, *The Great Influenza: The story of the deadliest pandemic in history* (New York: Penguin, 2004) at 4; Michael A Vance, “Disease mongering and the fear of pandemic influenza” (2011) 41:1 Intl J Health Services 95 at 102, DOI: <10.2190/HS.41.1.g> .

<sup>39</sup> The term “global village” was popularized later in the twentieth century and refers to the idea that communication technologies allow for village-like thinking on the global scale. See Marshall McLuhan, *The Gutenberg Galaxy: The Making of Typographical Man* (Toronto: University of Toronto, 1962).

<sup>40</sup> See Catharine Arnold, *Pandemic 1918: Eyewitness accounts from the greatest medical Holocaust in Modern History* (New York: St. Martin's Griffin, 2018) at 3-4, 59-60.

<sup>41</sup> Laura Spinney, *Pale rider: The Spanish flu of 1918 and how it changed the world* (London: Jonathan Cape, 2017) at 58—59.

it may have originated in a military base in Kansas and invaded Europe alongside American soldiers.<sup>42</sup>

Newspapers played down the threat posed by the pandemic. For example, *The Times* of London predicted it would pass quickly and blamed the disease on the dry, windy Spanish spring.<sup>43</sup> Other sources suggested that the disease was easily preventable, offering a platform for the dissemination of sham remedies. The *Washington Post*, for example, ran ads extolling the virtues of Formamint lozenges as a measure to ward off influenza in public places.<sup>44</sup> The *Times of India* urged readers to gargle with permanganate of potash.<sup>45</sup> Other publications promised relief through everyday household products. An ad in the *Nottingham Journal* assured readers that a cupful of OXO beef stock taken two or three times a day would “prove an immense service as a preventive measure.”<sup>46</sup>

The worldwide media also spread that other commodity present during every infectious outbreak: blame. In South Africa, the *Cape Times* placed fault squarely with the Germans, reporting that the illness was caused by Germany’s use of poison gas in battle, while *The Friend* claimed to have received numerous letters attesting to the Kaiser’s role in the calamity.<sup>47</sup> In American cities, newspapers and public officials found the source of blame much closer to home. In Colorado, Denver Health Commissioner William Sharpley blamed “foreign settlements of the city,” primarily Italians, for the influenza outbreak, and the *Durango Evening Herald* found fault with the neighbouring Utes—the Indigenous peoples of present-day Utah and Colorado—who allegedly ignored the advice of nurses and physicians.<sup>48</sup>

### (c) Aids: Victim-Blaming and Fake News

Acquired Immune Deficiency Syndrome (AIDS) was first identified in 1981 and its cause, the Human Immunodeficiency Virus (HIV), was discovered in 1983.<sup>49</sup> Because AIDS was initially most prevalent in the gay community, disinformation and blame quickly spread and hampered efforts to combat the disease.<sup>50</sup> The illness was referred to as the “gay cancer” or “gay pneumonia”

<sup>42</sup> See Vance, *supra* note 38 at 102.

<sup>43</sup> See Arnold, *supra* note 40 at 4, 69.

<sup>44</sup> See *ibid.* at 154.

<sup>45</sup> See *ibid.* at 210.

<sup>46</sup> *Ibid.* at 154-55.

<sup>47</sup> See Howard Philipps, “Why did it happen? Religious and lay explanations of the Spanish ‘Flu epidemic of 1918 in South Africa’” (1987) 12 *Kronos* 72 at 84–85; Arnold, *supra* note 40 at 202.

<sup>48</sup> Barry, *supra* note 38 at 394.

<sup>49</sup> See Allan M Brandt, “VIII.1 — Acquired Immune Deficiency Syndrome (AIDS) in Kiple, et al, *supra* note 12, 545 at 547–48.

<sup>50</sup> See *ibid.* at 549–50. The disease was initially prevalent among gay men only in “Pattern I” countries: North America, Western Europe, Australia, New Zealand, and many



and, later, “Gay-Related Immune Deficiency” (GRID), before it was called AIDS.<sup>51</sup> Victims were blamed for having contracted AIDS due to their high-risk lifestyle of unrestrained and deviant sexuality. Already seen as a social danger, gays were now increasingly viewed as a physical danger, too. Gays were simultaneously the disease and the diseased.<sup>52</sup>

A unique characteristic of the AIDS pandemic is that false information spread more freely in its early years because of a conscious effort by the media to suppress coverage, even in democratic societies. This lack of attention was famously embodied in a gay activist logo that exhibited a pink triangle and the words SILENCE = DEATH.<sup>53</sup> In the last quarter of 1982, by which time the disease had claimed approximately six hundred victims in the United States,<sup>54</sup> only thirty articles on AIDS had appeared in leading American news magazines and newspapers. Most of these reported on cases transmitted perinatally or via blood transfusion, rather than through sexual contact.<sup>55</sup> Editors killed pieces “because they didn’t want stories about gays and all those distasteful sexual habits littering their newspapers.”<sup>56</sup> Articles that did appear focused on “straight men” rather than “non-homosexual victims” or on medical professionals, distinguishing between supposedly guilty (gay) and innocent (straight) victims.<sup>57</sup> The media’s approach cemented the popular conception that AIDS was someone else’s problem—it was a gay disease, undeserving of broader societal concern, and only newsworthy when it affected the blameless.

---

urban centers in Latin America. In contrast, in “Pattern II” countries (sub-Saharan Africa and other parts of Latin America), transmission occurred predominantly through heterosexual contact (see *ibid.*).

<sup>51</sup> Randy Shilts, *And the band played on: Politics, people, and the AIDS epidemic*, 20<sup>th</sup> anniversary ed (New York: St. Martin’s Griffin, 2007) at 72, 103–4, 120–21, 138; Deborah B Gould, *Moving Politics: Emotion and ACT UP’s fight against AIDS* (Chicago and London: University of Chicago Press, 2009) at 60.

<sup>52</sup> See Robert Crawford, “The boundaries of the self and the unhealthy other: Reflections on health, culture and AIDS” (1994) 38:10 *Social Science & Medicine* 1347 at 1359–61; Dorothy Nelkin & Sander L Gilman, “Placing blame for devastating disease” in Arién Mack, ed, *In time of plague: The history and social consequences of lethal epidemic disease* (New York: NYU Press, 1991) 39 at 45–46; Allan M Brandt, “AIDS and metaphor: Toward the social meaning of epidemic disease” in Mack, *ibid.*, 91 at 107 [Brandt, “AIDS and metaphor”].

<sup>53</sup> See Carol S Goldin, “Stigmatization and AIDS: Critical issues in public health” (1994) 39:9 *Social Science & Medicine* 1359 at 1359.

<sup>54</sup> See “HIV/AIDS: Snapshots of an Epidemic”, online: *amfAR, The Foundation for AIDS Research* < [amfar.org/thirty-years-of-hiv/aids-snapshots-of-an-epidemic/](http://amfar.org/thirty-years-of-hiv/aids-snapshots-of-an-epidemic/) > .

<sup>55</sup> See Shilts, *supra* note 51 at 212-13.

<sup>56</sup> *Ibid.* at 110; Brandt, “AIDS and metaphor”, *supra* note 52 at 108, quoting Robin Marantz Henig, “AIDS: A New Disease’s Deadly Odyssey,” *New York Times Magazine* (6 Feb 1983) at 36.

<sup>57</sup> See Goldin, *supra* note 53 at 1360; Shilts, *supra* note 51 at 126, 146, 212.

Television, like newspapers, mainly avoided discussion of AIDS until the death toll was too high to ignore and it began to significantly affect the heterosexual community.<sup>58</sup> Nightly news programs devoted little attention to the pandemic. Typical was an August 1982 report by CBS Evening News, one of the first network pieces to appear on HIV, in which Dan Rather emphasized that AIDS was a disease “you rarely hear anything about.”<sup>59</sup> This apathy among television broadcasters also hampered AIDS prevention. For example, in February 1985, all but one television station in the Los Angeles area refused to air a public service announcement about safe sex and AIDS because they deemed such ads in poor taste.<sup>60</sup> Other attempts at raising awareness were hindered by homophobia.<sup>61</sup>

False information rushed in to fill the vacuum created by the absence of reporting. Holistic healers claimed they had cured AIDS through amino acid injections and by taking the supplement dimethyl sulfoxide; amino acid clinics made a fortune from desperate AIDS victims.<sup>62</sup> Posters throughout Manhattan printed by the United Front Against Racism and Capitalist Imperialism blamed AIDS on a CIA plot to wage bio-warfare against the gay community.<sup>63</sup> Tabloids focused on other potential sources: The *Globe* published a lengthy article in 1983 in which it explained that AIDS was part of King Tut’s curse, carried to the United States when the pharaoh’s treasures toured America in the late-1970s.<sup>64</sup>

Globalization and technological advancement facilitated the spread of misinformation. Reminiscent of the deliberate dissemination of “fake news” in recent years, disinformation concerning AIDS’ origin was purposely spread for geopolitical ends. In the mid-1980’s, the Soviet Union State Security Committee (KGB), in conjunction with the Eastern German State Security Ministry (Stasi) and other Eastern bloc countries, sought to damage the United States by promoting the idea that HIV was a biological weapon created in a lab in Maryland by the Centers for Disease Control (CDC). This rumor soon spread from “witting multipliers”—the KGB and its allies—to “unwitting multipliers,” who came to believe the account on its own merits. The story then rapidly gained traction in newspapers, on the radio, and on television stations around the world. Even American media outlets reported it, sowing division in the United States and leading minority communities to fear that the US government was deliberately targeting them. Moreover, once the Western press picked up the story, Soviet media cited Western outlets to bolster their own credibility. This

---

<sup>58</sup> See Shilts, *supra* note 51 at 212-13.

<sup>59</sup> *Ibid.* at 172.

<sup>60</sup> See *ibid.* at 533—34.

<sup>61</sup> See *ibid.* at 321.

<sup>62</sup> See *ibid.* at 240—41.

<sup>63</sup> See Nelkin & Gilman, *supra* note 52 at 52.

<sup>64</sup> Shilts, *supra* note 51 at 268.

bioweapon theory proved incredibly intractable and eventually found a home on the Internet, where it continues to disseminate.<sup>65</sup>

Explanations provided by American commentators were more prosaic, if perhaps more odious. Patrick Buchanan, conservative pundit and speechwriter for Ronald Reagan, like other members of the religious right, placed blame squarely on gay sexual practices: “[t]here is only one cause of the AIDS crisis,” Buchanan declared, “the willful refusal of homosexuals to cease indulging in the immoral, unnatural, unsanitary, unhealthy, and suicidal practice of anal intercourse.”<sup>66</sup> Buchanan and other right-wing figures used television to spread their pernicious message.<sup>67</sup> Conservative groups also leveraged their expanding print-media influence: the July 1983 edition of the *Moral Majority Report*, a magazine produced by Jerry Falwell Sr.’s Christian advocacy group, featured an article entitled “AIDS: Homosexual Diseases Threaten American Families,” which “explored every unsavory aspect of gay life in gory full-color detail.”<sup>68</sup> A photo on the front page depicted a White family wearing masks, suggesting the illness could spread through the air, even though it was well known at the time that this was untrue.<sup>69</sup> In general, gay men encountered ubiquitous displays of hate and were repeatedly told they deserved to die.<sup>70</sup> Conservative pundits also targeted lesbians, classifying them without evidence as AIDS carriers.<sup>71</sup> Victim-shaming of gay AIDS victims exacerbated feelings of social annihilation and nonrecognition by heteronormative society and caused deep pain and anguish.<sup>72</sup>

---

<sup>65</sup> See generally Douglas Selvage, “Operation ‘Denver’: The East German Ministry of State Security and the KGB’s AIDS Disinformation Campaign, 1985-1986 (Part I)” (2019) 21:4 *J Cold War Studies* 71.

<sup>66</sup> Richard Poirier, “AIDS and Traditions of Homophobia”, in Mack, *supra* note 52, 139 at 151.

<sup>67</sup> See Shilts, *supra* note 51 at 347. Nor, of course, is this phenomenon limited to the 1980’s. For example, in 2013, appearing on the *700 Club* on the Christian Broadcasting Network, co-host Patrick Robertson accused gay men in San Francisco of using rigged rings to cut people and spread AIDS while shaking hands. See Abby Ohlheiser, “Pat Robertson Defends His Warning of Gay AIDS Handshake Rings”, *The Atlantic* (27 August 2013), online: < [www.theatlantic.com/national/archive/2013/08/cbn-edits-out-pat-robertsons-comments-gays-handshake-aids-ring/311623/](http://www.theatlantic.com/national/archive/2013/08/cbn-edits-out-pat-robertsons-comments-gays-handshake-aids-ring/311623/) > .

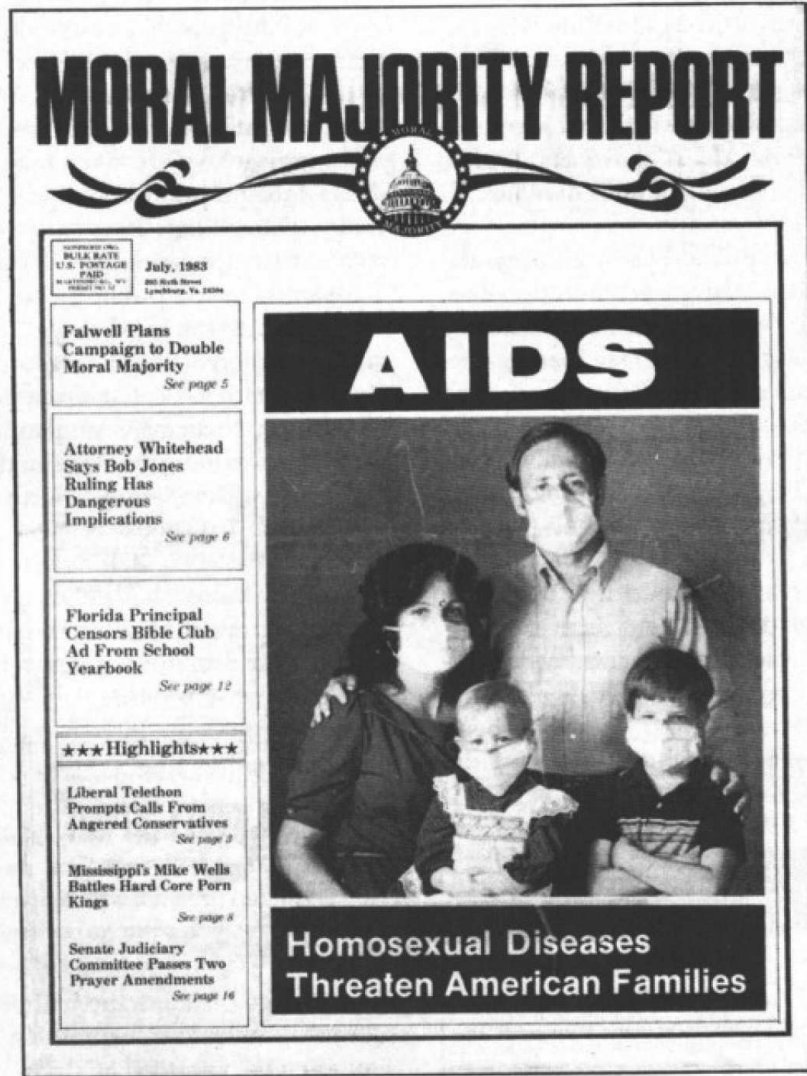
<sup>68</sup> Shilts, *supra* note 51 at 352.

<sup>69</sup> See Colin Clews, “1983. AIDS and the Moral Majority” (15 August 2016), online: *Gay in the 80s* < [gayinthe80s.com/2016/08/1983-aids-and-the-moral-majority/](http://gayinthe80s.com/2016/08/1983-aids-and-the-moral-majority/) > .

<sup>70</sup> See “Understanding and regulating hate speech: A symposium on Jeremy Waldron’s *The Harm in Hate Speech*” (2014) 13:1 *Contemporary Political Theory* 88 at 96–97, DOI: < 10.1057/cpt.2013.41 > .

<sup>71</sup> See Gould, *supra* note 51 at 66–67.

<sup>72</sup> See *ibid.* at 57–58.



THE FALWELLIAN VIEW

Fig. 1: July 1983 edition of the *Moral Majority Report*<sup>73</sup>

<sup>73</sup> Clews, *supra* note 69.

## 2. COVID-19: THE SOCIAL MEDIA PANDEMIC

The recent outbreak of COVID-19, a novel coronavirus first identified in 2019 in Wuhan, China,<sup>74</sup> has brought with it a pandemic of mal-information and intolerance. The ubiquity of social media and digital interconnectivity has resulted in false information spreading more quickly and with greater reach than ever before.<sup>75</sup> Referred to as “the world’s first social media pandemic,” harmful speech has disseminated rapidly over multiple social media platforms.<sup>76</sup>

Increased social media reliance has had appalling consequences.<sup>77</sup> For example, a recent study found a strong association between social media exposure and misperceptions about COVID-19.<sup>78</sup> This is alarming because social media platforms are increasingly used as primary sources of news and medical information.<sup>79</sup> Moreover, even social media users who are not nested in networks that propagate misinformation are likely to be exposed to false information

<sup>74</sup> See Sui-Lee Wee & Vivian Wang, “China grapples with mystery pneumonia-like illness”, *New York Times* (6 January 2020), online: < nytimes.com/2020/01/06/world/asia/china-SARS-pneumonialike.html > .

<sup>75</sup> See e.g. Amelia M Jamison, et al, “Not just conspiracy theories: Vaccine opponents and proponents add to the COVID-19 ‘infodemic’ on Twitter” (2020) 1: Special Issue on COVID-19 Harvard Kennedy School Misinformation Rev 1 at 2, DOI: < 10.37016/mr-2020-38 > .

<sup>76</sup> Barua et al, *supra* note 9 at 1.

<sup>77</sup> Increased social media reliance also has implications for data mining and privacy. See e.g. Theresa Scassa, “Private sector data, privacy and the pandemic” (24 March 2020), online (blog): *Teresa Scassa* < www.teresascassa.ca/index.php?option=com\_k2&view=item&id=322:private-sector-data-privacy-and-the-pandemic&Itemid=80 > ; Michael Geist, “After the Tech-Lash: Digital Policy Priorities in the Post-Pandemic World” (6 May 2020), online (blog): *Michael Geist* < www.michaelgeist.ca/2020/05/after-the-tech-lash-digital-policy-priorities-in-the-post-pandemic-world/ > ; Joseph Marks & Tonya Riley, “The Cybersecurity 202: Privacy experts fear a boom in coronavirus surveillance”, *Washington Post* (14 April 2020), online: < www.washingtonpost.com/news/powerpost/paloma/the-cybersecurity-202/2020/04/14/the-cybersecurity-202-privacy-experts-fear-a-boom-in-coronavirus-surveillance/5e94901988e0fa101a7615be/ > (discussing also “mission creep”); Jane Bailey et al, “Children’s privacy is at risk with rapid shifts to online schooling under coronavirus”, *The Conversation* (21 April 2020), online: < theconversation.com/childrens-privacy-is-at-risk-with-rapid-shifts-to-online-schooling-under-coronavirus-135787 > (discussing privacy and children).

<sup>78</sup> See Aengus Bridgman et al, “The causes and consequences of COVID-19 misperceptions: Understanding the role of news and social media” (2020) 1: Special Issue on COVID-10 and Misinformation Harvard Kennedy School Misinformation Rev 1 at 5, DOI: < 10.37016/mr-2020-028 > .

<sup>79</sup> See *ibid.* at 2; Amrita Khalid, “Americans can’t stop relying on social media for their news”, *Quartz* (3 October 2019), online: < qz.com/1720695/pew-study-shows-more-americans-rely-on-social-media-for-news/ > ; Heidi Oi-Yee Li, et al, “YouTube as a source of information on COVID-19: a pandemic of misinformation?” (2020) 4:e002604 *BMJ Global Health* 1, DOI: < 10.1136/bmjgh-2020-002604 > .

incidentally.<sup>80</sup> Bad information has drowned out good information and fostered widespread distrust of public health authorities.<sup>81</sup>

But, although the means of communication have evolved, the types of false information that have spread with the virus are deeply rooted in historical precedent. We provide three examples of common themes below: racist speech, phony remedies, and downplaying severity.

First, as with prior contagions, COVID-19 has led to an increase in racist speech, as people have sought comfort in blaming minorities and other allegedly bad actors. Indeed, COVID-19 has been associated with a virulent outbreak of hate speech, disseminated through the internet and numerous social media platforms, which has targeted a wide swathe of minority groups.

Anti-Asian speech has proliferated.<sup>82</sup> Many have insisted on using names that link the illness with China to cast blame for the outbreak and downplay domestic failures.<sup>83</sup> As with the AIDS bioweapon theory, popular COVID-19 conspiracy theories assert that China either intentionally created the virus as a bioweapon or that it was accidentally released into the community from a lab in Wuhan that studied bat coronaviruses.<sup>84</sup> Former President Donald Trump and members of his administration played up this purported Chinese connection by insisting on referring to COVID-19 as the “China virus” and using more inflammatory terms like “kung flu”.<sup>85</sup> Others mimicked this rhetoric.<sup>86</sup>

<sup>80</sup> See Bridgman et al, *supra* note 78 at 3.

<sup>81</sup> See J Scott Brennen et al, “Types, Sources, and Claims of COVID-19 Misinformation”, *Reuters* (7 April 2020), online: <primaonline.it/wp-content/uploads/2020/04/COVID-19\_reuters.pdf>; “Confusing COVID-19 advice is undermining public trust; here’s how to restore it”, *CBC Radio* (9 October 2020), online: <cbc.ca/radio/whitecoat/confusing-covid-19-advice-is-undermining-public-trust-here-s-how-to-restore-it-1.5755220> .

<sup>82</sup> See e.g. Fiona Tinwei Lam, “The ‘Shadow Pandemic’ of Anti-Asian Racism”, *The Tyee* (7 May 2020), online: <thetyee.ca/Analysis/2020/05/07/Shadow-Pandemic-Anti-Asian-Racism/> .

<sup>83</sup> See J Jaiswal, C LoSchiavo & DC Perlman, “Disinformation, Misinformation and Inequality-Driven Mistrust in the Time of COVID-19: Lessons Unlearned from AIDS Denialism” (2020) 24 *AIDS & Behavior* 2776 at 2776.

<sup>84</sup> See Mary Van Beusekom, “Scientists: ‘Exactly zero’ evidence COVID-19 came from a lab” (12 May 2020) online: *Center for Infectious Disease Research and Policy* <www.cidrap.umn.edu/news-perspective/2020/05/scientists-exactly-zero-evidence-covid-19-came-lab> .

<sup>85</sup> Bill Bostock, “Kellyanne Conway, who once said the term ‘kung flu’ was offensive, now says Trump can use the racial slur because Americans must blame China”, *Business Insider* (25 June 2020), online: <businessinsider.com/kellyanne-conway-defends-trump-kung-flu-racial-slur-coronavirus-2020-6>; “Trump calls the coronavirus the ‘kung flu’” (20 June 2020), online (video): *Youtube* <youtube.com/watch?v=fN2tgcKGck>; Meagan Vazquez, “McEnany defends Trump using racist term to refer to coronavirus”, *CNN* (22 June 2020), online: <cnn.com/2020/06/22/politics/kayleigh-mcenany-defends-racist-coronavirus-term/index.html> .

<sup>86</sup> See e.g. Ishaan Tharoor, “It’s not just Trump who’s angry at China”, *Washington Post*

Anti-Semitic speech has likewise disseminated widely.<sup>87</sup> False information has linked COVID-19 with Holocaust denial.<sup>88</sup> Further instances include claims that Jews are profiting from the virus in various ways,<sup>89</sup> and conspiracy theories blame George Soros,<sup>90</sup> the Rothschild family,<sup>91</sup> Israel and/or the Jews generally,<sup>92</sup> for manufacturing the virus and using it as a bioweapon. These allegations have included use of the term “Jew flu.”<sup>93</sup>

Online racism has led to real-world violence. In Canada, a Chinese-Canadian ER nurse was struck with an umbrella and spat on while waiting outside a Toronto restaurant, and a store clerk sprayed disinfectant on an Asian-Canadian man in Halifax.<sup>94</sup> In the United Kingdom, persons of Asian appearance have been punched in the face, taunted, and accused of spreading the coronavirus.<sup>95</sup>

---

(14 April 2020), online: < [washingtonpost.com/world/2020/04/14/its-not-just-trump-whos-angry-china/](https://www.washingtonpost.com/world/2020/04/14/its-not-just-trump-whos-angry-china/) > .

<sup>87</sup> See generally “Coronavirus crisis elevates Antisemitic, racist tropes” (17 March 2020), online (blog): *ADL* < [adl.org/blog/coronavirus-crisis-elevates-antisemitic-racist-tropes](https://www.adl.org/blog/coronavirus-crisis-elevates-antisemitic-racist-tropes) > . See also “Coronavirus and the plague of Antisemitism: Research briefing” (2020), online (pdf): *Community Security Trust* < [cst.org.uk/data/file/d/9/Coronaviruses%20and%20the%20plague%20of%20antisemitism.1586276450.pdf](https://www.cst.org.uk/data/file/d/9/Coronaviruses%20and%20the%20plague%20of%20antisemitism.1586276450.pdf) > .

<sup>88</sup> See Edina Friedberg, “Hatemongers exploiting coronavirus pandemic to push anti-Semitism worldwide”, *Chicago Sun-Times* (5 May 2020), online: < [chicago.suntimes.com/2020/5/5/21248296/anti-semitism-anti-immigrant-racism-bigotry-pandemic-holocaust-museum-edna-friedberg](https://www.chicago.suntimes.com/2020/5/5/21248296/anti-semitism-anti-immigrant-racism-bigotry-pandemic-holocaust-museum-edna-friedberg) > . See also “The coronavirus conspiracy theorist and Holocaust denial” (3 May 2020), online: *The Online Hate Prevention Institute* < [ohpi.org.au/the-coronavirus-conspiracy-theorist-and-holocaust-denial/](https://ohpi.org.au/the-coronavirus-conspiracy-theorist-and-holocaust-denial/) > .

<sup>89</sup> See Irene Connelly, “Online anti-Semitism thrives around coronavirus, even on mainstream platforms”, *Forward* (11 March 2020), online: < [forward.com/news/441421/anti-semitic-coronavirus-response-thrives-online-even-on-mainstream/](https://www.forward.com/news/441421/anti-semitic-coronavirus-response-thrives-online-even-on-mainstream/) > .

<sup>90</sup> See “Soros conspiracy theories and the protests: A gateway to Antisemitism” (2 June 2020), online (blog): *ADL* < [adl.org/blog/soros-conspiracy-theories-and-the-protests-a-gateway-to-antisemitism](https://www.adl.org/blog/soros-conspiracy-theories-and-the-protests-a-gateway-to-antisemitism) > .

<sup>91</sup> See Rainer Zitelmann, “The corona crisis: The Rothschilds? Bill Gates? The search for a scapegoat has begun”, *Forbes* (23 March 2020), online: < [forbes.com/sites/rainerzitelmann/2020/03/23/the-corona-crisis-the-rothschilds-bill-gates-the-search-for-a-scapegoat-has-begun/#37eb6ade2283](https://www.forbes.com/sites/rainerzitelmann/2020/03/23/the-corona-crisis-the-rothschilds-bill-gates-the-search-for-a-scapegoat-has-begun/#37eb6ade2283) > .

<sup>92</sup> See Stuart Winer, “COVID-19 fueling worldwide wave of anti-Semitism, researchers find”, *The Times of Israel* (23 June 2020), online: < [timesofisrael.com/covid-19-fueling-worldwide-wave-of-anti-semitism-researchers-find/](https://www.timesofisrael.com/covid-19-fueling-worldwide-wave-of-anti-semitism-researchers-find/) > .

<sup>93</sup> Flora Cassen, “‘Jews control Chinese labs that created coronavirus’: White supremacists’ dangerous new conspiracy theory”, *Haaretz* (3 May 2020), online: < [haaretz.com/jewish/.premium-the-jews-control-the-chinese-labs-that-created-coronavirus-1.8809635](https://www.haaretz.com/jewish/.premium-the-jews-control-the-chinese-labs-that-created-coronavirus-1.8809635) > .

<sup>94</sup> See Gerald Chan, “The virus of anti-Asian prejudice”, *Toronto Star* (13 April 2020), online: < [thestar.com/opinion/contributors/2020/04/13/the-virus-of-anti-asian-prejudice.html](https://www.thestar.com/opinion/contributors/2020/04/13/the-virus-of-anti-asian-prejudice.html) > . See also Carol Liao, “COVID-19 has put a harsh spotlight on the anti-Asian racism that has always existed in Canada”, *CBC* (16 May 2020), online: < [cbc.ca/news/canada/british-columbia/covid-19-has-put-a-harsh-spotlight-on-the-anti-asian-racism-that-has-always-existed-in-canada-1.5572674](https://www.cbc.ca/news/canada/british-columbia/covid-19-has-put-a-harsh-spotlight-on-the-anti-asian-racism-that-has-always-existed-in-canada-1.5572674) > .

Numerous similar incidents have taken place in these and other countries.<sup>96</sup> Furthermore, on March 16, 2021, six women of Asian descent, along with two White victims, were murdered in Atlanta, Georgia, although the killer's motivation was initially unclear.<sup>97</sup>

Asians and Jews have not been the only impacted groups. Coronavirus-related hate speech and violence have targeted 2SLGBTQQIA,<sup>98</sup> Black,<sup>99</sup> and Muslim<sup>100</sup> communities. Even older persons have encountered hate speech: the spread of coronavirus has led to tweets and internet memes calling the virus a "boomer remover" or "boomer doomer."<sup>101</sup> Scapegoating and brutalizing of disadvantaged groups is especially devastating because minorities have also been disproportionately affected by the health and economic harms of the pandemic.<sup>102</sup>

<sup>95</sup> See Sanjeeta Bains, "Chinese student's jaw dislocated by thugs in Harbone as coronavirus hate crimes rise", *Birmingham Mail* (9 March 2020), online: < birminghammail.co.uk/news/midlands-news/chinese-students-jaw-dislocated-thugs-17890637 > ; Anna Russell, "The rise of coronavirus hate crimes", *The New Yorker* (17 March 2020), online: < newyorker.com/news/letter-from-the-uk/the-rise-of-coronavirus-hate-crimes > .

<sup>96</sup> See "Covid-19 fueling anti-Asian racism and xenophobia worldwide", *Human Rights Watch* (12 May 2020), online: < hrw.org/news/2020/05/12/covid-19-fueling-anti-asian-racism-and-xenophobia-worldwide > .

<sup>97</sup> Richard Fausset & Neil Vigdor, "8 People Killed in Atlanta-Area Massage Parlor Shootings", *New York Times* (16 March 2021), online: < nytimes.com/2021/03/16/us/atlanta-shootings-massage-parlor.html > .

<sup>98</sup> See Nita Bhalla & Alice McCool, "Arrests, evictions and scapegoating: Coronavirus takes a toll on LGBT+ Africans", *Reuters* (16 April 2020), online: < reuters.com/article/health-coronavirus-lgbt-africa/rpt-feature-arrests-evictions-and-scapegoating-coronavirus-takes-a-toll-on-lgbt-africans-idUSL8N2C40JE > .

<sup>99</sup> See Shayma Bakht, "Hate-hacking and Zoom 'bombing': Racism in the virtual workspace", *Al Jazeera* (23 June 2020), online: < aljazeera.com/indepth/features/hate-hacking-zoom-bombing-racism-virtual-workspace-200601140807806.html > .

<sup>100</sup> See Lauren Frayer, "Blamed for Coronavirus Outbreak, Muslims in India Come Under Attack", *NPR* (23 April 2020), online: < npr.org/2020/04/23/839980029/blamed-for-coronavirus-outbreak-muslims-in-india-come-under-attack > .

<sup>101</sup> Bronwen Lichtenstein, "From 'Coffin Dodger' to 'Boomer Remover': Outbreaks of Ageism in Three Countries with Divergent Approaches to Coronavirus Control" (2021) 76:4 *J Gerontology: Series B* e206, e210, DOI: < 10.1093/geronb/gbaa102 > .

<sup>102</sup> See e.g. Beverly Bain, OmiSoore Dryden & Rinaldo Walcott, "Coronavirus discriminates against Black lives through surveillance, policing and the absence of health data", *The Conversation* (20 April 2020), online: < theconversation.com/coronavirus-discriminates-against-black-lives-through-surveillance-policing-and-the-absence-of-health-data-135906 > ; Kenya Evelyn, "'A slap in the face': How racial bias dogs US coronavirus response at every level", *The Guardian* (14 July 2020), online: < theguardian.com/world/2020/jul/14/coronavirus-us-racial-bias-black-latino?CMP=oth\_b-aplnews\_d-1 > ; Roni Caryn Rabin, "Why the Coronavirus More Often Strikes Children of Color", *New York Times* (1 September 2020), online: < www.nytimes.com/2020/09/01/health/coronavirus-children-minorities.html > ; Eric Morath, Theo Francis & Justin Baer, "The Covid Economy Carves Deep Divide Between Haves and Have-Nots" *The*



Often overlapping with racist speech, other conspiracy theories have focused more generally on global elites and other supposedly nefarious actors. Numerous theories have attempted to scapegoat the alleged conspirators, including China, Russia, Bill Gates, Democrats, the “deep state,” and the pharmaceutical industry.<sup>103</sup> These theories profess, for instance, that global elites including Gates, Soros, Barack Obama, and/or Anthony Fauci created the virus as part of a plan to install tracking chips through mandatory worldwide vaccinations, which will be activated by 5G radiowaves.<sup>104</sup> A twenty-six minute video called “Plandemic”, promoting the 5G conspiracy theory, has been viewed millions of times and continues to circulate online despite being taken down by YouTube and Facebook.<sup>105</sup> Similar theories have spread exponentially and proved nearly impossible to suppress.<sup>106</sup>

---

*Wall Street Journal* (5 October 2020), online: < [wsj.com/articles/the-covid-economy-carves-deep-divide-between-haves-and-have-nots-11601910595?mod=djem10point](https://www.wsj.com/articles/the-covid-economy-carves-deep-divide-between-haves-and-have-nots-11601910595?mod=djem10point) > .

<sup>103</sup> See Adam Enders et al, “The different forms of COVID-19 misinformation and their consequences” (2020) 1:8 *Harvard Kennedy Schools Misinformation Rev* 1 at 2, DOI: < 10.37016/mr-2020-48 > .

<sup>104</sup> See Wasim Ahmed et al, “Four experts investigate how the 5G coronavirus conspiracy theory began”, *The Conversation* (11 June 2020), online: < [theconversation.com/four-experts-investigate-how-the-5g-coronavirus-conspiracy-theory-began-139137](https://theconversation.com/four-experts-investigate-how-the-5g-coronavirus-conspiracy-theory-began-139137) > .

<sup>105</sup> See John Cook et al, “Coronavirus, ‘Plandemic’ and the seven traits of conspiratorial thinking”, *The Conversation* (15 May 2020), online: < [theconversation.com/coronavirus-plandemic-and-the-seven-traits-of-conspiratorial-thinking-138483](https://theconversation.com/coronavirus-plandemic-and-the-seven-traits-of-conspiratorial-thinking-138483) > .

<sup>106</sup> See e.g. Alex Kaplan, “YouTube took down a coronavirus conspiracy theory video for violating its rules, but it’s making money through ads on reuploads” (30 April 2020), online: *Media Matters* < [www.mediamatters.org/coronavirus-covid-19/youtube-took-down-coronavirus-conspiracy-theory-video-violating-its-rules-its](https://www.mediamatters.org/coronavirus-covid-19/youtube-took-down-coronavirus-conspiracy-theory-video-violating-its-rules-its) > .

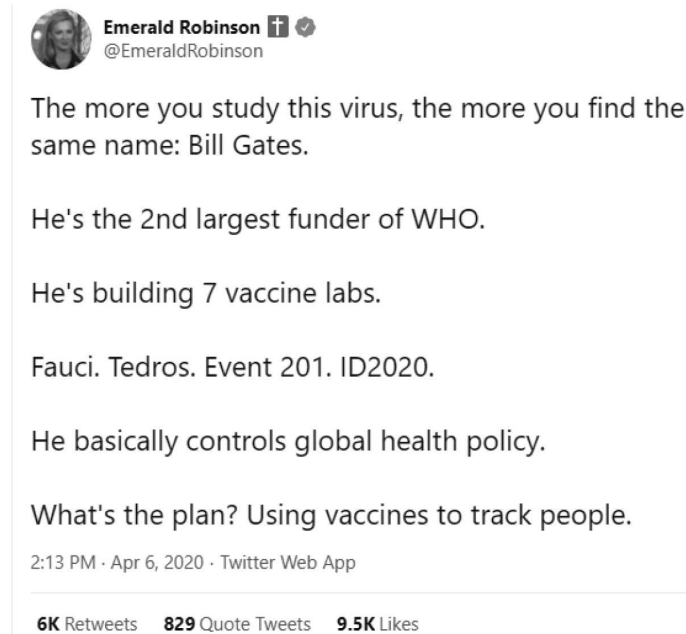


Fig. 2: Example of Bill Gates/5G conspiracy theory<sup>107</sup>

Second, another common feature is the promotion of phony remedies. Such mal-information has disseminated from the highest levels. The array of false claims made by former President Donald Trump concerning the pandemic<sup>108</sup> has included encouraging the use of hydroxychloroquine and azithromycin and suggesting combating the virus by injecting disinfectant or hitting one's body with ultraviolet light.<sup>109</sup> Brazil's president Jair Bolsonaro, too, has spread health-related myths, promoting hydroxychloroquine and claiming that it helped his own recovery.<sup>110</sup> Other heads of state and leading politicians have promoted false prophylactics and antidotes via social media.<sup>111</sup>

<sup>107</sup> Emerald Robinson, "The more you study this virus, the more you find the same name: Bill Gates. He's the 2nd largest funder of WHO. He's building 7 vaccine labs. Fauci. Tedros. Event 201. ID2020. He basically controls global health policy. Whats the plan? Using vaccines to track people." (6 April 2020 at 14:13), online: *Twitter* < [twitter.com/EmeraldRobinson/status/1247225908429234176](https://twitter.com/EmeraldRobinson/status/1247225908429234176) > .

<sup>108</sup> See Christian Paz, "All the President's Lies About the Coronavirus", *The Atlantic* (2 November 2020), online: < [theatlantic.com/politics/archive/2020/10/trumps-lies-about-coronavirus/608647/](https://theatlantic.com/politics/archive/2020/10/trumps-lies-about-coronavirus/608647/) > .

<sup>109</sup> Katie Rogers et al, "Trump's suggestion that disinfectants could be used to treat coronavirus prompts aggressive pushback", *New York Times* (24 April 2020), online: < [www.nytimes.com/2020/04/24/us/politics/trump-inject-disinfectant-bleach-coronavirus.html](https://www.nytimes.com/2020/04/24/us/politics/trump-inject-disinfectant-bleach-coronavirus.html) > .

<sup>110</sup> See Shobhan Axena and Florencia Costa, "A COVID Miracle: Brazil's Bolsonaro Loves

Third, as in the past, many have downplayed the severity of the virus and suppressed information about its death toll. In the early days of the pandemic, the Chinese state silenced medical professionals in Wuhan, including by issuing a letter of admonition to Dr. Li Wenliang—who died on February 7, 2020 of COVID-19 after trying to raise alarm bells about an emerging pandemic—to stop “spreading rumours” about the virus.<sup>112</sup> Moreover, the Chinese government undertook a widespread online and social media campaign after Dr. Li’s death to shape the coronavirus narrative, deemphasize the disease’s severity, and promote the purported efficacy of the authorities’ response.<sup>113</sup> In Russia, the Kremlin’s claims of a low death rate—attributed to the superiority of Russia’s medical system and the leadership of Vladimir Putin—have been belied by reports on the ground.<sup>114</sup> The Russian state-controlled media has also muted coverage about the coronavirus while amplifying other issues, such as racial protests in the United States.<sup>115</sup>

Although mal-information themes have, then, remained consistent across pandemics, the speed and depth in which this information has permeated the global consciousness is unprecedented. Public-opinion polling offers some insight. For instance, in May 2020, a Canadian study revealed that forty-six per cent of Canadians believed in at least one of four unfounded COVID-19 theories: the virus was engineered in a Chinese laboratory; the virus is being spread to cover up the effects of 5G wireless technology; drugs such as hydroxychloroquine can cure COVID-19 patients; or rinsing one’s nose with a saline solution can protect from infection.<sup>116</sup>

---

to Deny the Virus but Pushes a Cure”, *The Wire* (9 July 2020), online: <thewire.in/world/bolsonaro-covid-19-miracle-denial>; Lisandra Paraguassau (Reuters), “Brazil’s Bolsonaro says journalist ‘wimps’ more likely to die of COVID-19”, *National Post* (24 August 2020), online: <nationalpost.com/pmnh/health-pmn/brazils-bolsonaro-says-journalist-wimps-more-likely-to-die-of-covid-19>; Ernesto Londoño, “Brazil’s Bolsonaro, leading virus skeptic, says he’s no longer infected”, *New York Times* (25 July 2020), online: <nytimes.com/2020/07/25/world/americas/bolsonaro-coronavirus.html>.

<sup>111</sup> See e.g. “Coronavirus: World leaders’ posts deleted over fake news”, *BBC News* (31 March 2020), online: <www.bbc.com/news/technology-52106321>.

<sup>112</sup> “Li Wenliang: Coronavirus kills Chinese whistleblower doctor”, *BBC News* (7 February 2020), online: <www.bbc.com/news/world-asia-china-51403795>.

<sup>113</sup> See Raymond Zhong et al, “Leaked Documents Show How China’s Army of Paid Internet Trolls Helped Censor the Coronavirus”, *ProPublica* (19 December 2020), online: <www.propublica.org/article/leaked-documents-show-how-chinas-army-of-paid-internet-trolls-helped-censor-the-coronavirus>.

<sup>114</sup> See Isabelle Khurshudyan, “In Dagestan, a covid recount adds to questions on Russia’s overall numbers”, *Washington Post* (3 August 2020), online: <www.washingtonpost.com/world/europe/dagestan-russia-covid-count-mortality/2020/08/01/c8533220-cdc8-11ea-99b0-8426e26d203b\_story.html>.

<sup>115</sup> See Richard Weitz, “Assessing the Russian Disinformation Campaign During COVID-19” (13 November 2020), online: *International Centre for Defence and Security*.

<sup>116</sup> See Jillian Kestler-D’Amours, “COVID-19 conspiracy theories creating a ‘public health

But although the dissemination of bad information is unprecedented, so too is the global movement in favour of tackling harmful online speech. We turn to this topic now.

### 3. COVID-19: CATALYST FOR CONSTRUCTIVE CHANGE

The disturbing rise in malign information during the recent pandemic has underlined the manner in which evolving technology and globalization can deepen pandemic harms. However, at the same time, the pandemic has revealed how digital interconnectedness can serve as the catalyst of a worldwide movement to combat mal-information. We highlight three ways below that the COVID-19 crisis has inspired this global effort: increased content moderation by both state and non-state actors, improvements in AI content moderation, and efforts aimed at addressing disparities in internet access.

Before embarking on this discussion, a few caveats are in order. Although there is cause for optimism, we do not suggest that any of the responses identified below present a panacea. The root causes of harmful speech are deep and predate COVID-19. Indeed, the rise in online hate speech during pandemics rests on feelings of anger, uncertainty, and social and economic isolation, magnified by mass infection.<sup>117</sup> Efforts at fighting online hatred must be performed in conjunction with tackling these underlying causes or else risk inefficacy.

In addition, each approach has strengths and weaknesses. State regulation of online speech, for example, invariably raises freedom of speech concerns and bumps up against constitutional provisions, particularly in liberal democracies—for example, Section 2(b) of the Canadian *Charter of Rights and Freedoms*<sup>118</sup>—that place limits on the extent of government intervention. Nor do we suggest that the regulatory measures identified below are created equal. Some government regulation implemented during the pandemic may have been designed as a cover for suppressing anti-government speech rather than out of a concern for promoting accurate information.<sup>119</sup>

---

crisis' in Canada, experts say", *CBC* (3 August 2020), online: < cbc.ca/news/politics/covid-19-conspiracy-theories-1.5672766 > .

<sup>117</sup> See Jiyoung Han, Meeyoung Cha & Wonjae Lee, "Anger contributes to the spread of COVID-19 misinformation" (2020) 1: Special Issue on COVID-19 and Misinformation Harvard Kennedy School of Misinformation Rev 1, DOI: < 10.37016/mr-2020-39 > ; Talene Bilazarian, "Countering Violent Extremist Narratives Online: Lessons from Offline Countering Violent Extremism" (2020) 12:1 Policy & Internet 46 at 59—60, DOI: < 10.1002/poi3.204 > .

<sup>118</sup> *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c. 1.

<sup>119</sup> See "Turkey passes controversial law regulating social media", *France 24* (29 July 2020), online: < www.france24.com/en/20200729-turkey-passes-controversial-social-media-law-to-increase-censorship > ; Flavia Durach, Alina Bârgaoanu & Catalina Nastasiu, "Tackling Disinformation: EU Regulation of the Digital Space" (2020) 20:1 Romanian J European Affairs 5 at 12. See also Shannon Van Sant, "Russia Criminalizes the Spread

Furthermore, while recent efforts by tech companies to police online platforms and promote counternarratives are praiseworthy, the sincerity of these measures is open to question.<sup>120</sup> Targeted-advertising business models utilized by these companies rely on amplifying controversial and sensationalized content.<sup>121</sup> Thus, while a tech platform's AI is working to identify misinformation, other algorithms simultaneously promote and encourage harmful speech.<sup>122</sup> As Andrew Marantz recently put it, instead of searching for needles in a haystack—as Facebook has described its efforts at rooting out hate speech—a

more honest metaphor would posit a powerful set of magnets at the center of the haystack—Facebook's algorithms, which attract and elevate whatever content is most highly charged. If there are needles anywhere nearby—and, on the Internet, there always are—the magnets will pull them in. Remove as many as you want today; more will reappear tomorrow. This is how the system is designed to work.<sup>123</sup>

Accordingly, two points bear emphasis. First, empirical research into the efficacy of measures aimed at countering online extremism is sorely lacking and much needed.<sup>124</sup> It is vital that we avoid conducting the online hate-speech

---

of Online News Which 'Disrespects' the Government", *NPR* (18 March 2019), online: < [www.npr.org/2019/03/18/704600310/russia-criminalizes-the-spread-of-online-news-which-disrespects-the-government](http://www.npr.org/2019/03/18/704600310/russia-criminalizes-the-spread-of-online-news-which-disrespects-the-government) > .

<sup>120</sup> See e.g. Julie E Cohen, Woodrow Hartzog & Laura Moy, "The Dangers of Tech-Driven Solutions to COVID-19" (17 June 2020), online: *TechStream, Brookings* < [www.brookings.edu/techstream/the-dangers-of-tech-driven-solutions-to-covid-19/](http://www.brookings.edu/techstream/the-dangers-of-tech-driven-solutions-to-covid-19/) > .

<sup>121</sup> See Nathalie Maréchal, Rebecca MacKinnon, & Jessica Dheere, "Getting to the Source of Infodemics: It's the Business Model" (New America: May 2020), online (pdf): < [www.newamerica.org/oti/reports/getting-to-the-source-of-infodemics-its-the-business-model/](http://www.newamerica.org/oti/reports/getting-to-the-source-of-infodemics-its-the-business-model/) > .

<sup>122</sup> For a general discussion of AI and its capacity to "bake in inequality," see Bitu Amani, "AI and 'Equality by Design'" in Florian Martin-Bariteau & Theresa Scassa, eds, *Artificial Intelligence and the Law in Canada* (LexisNexis: forthcoming 2021).

<sup>123</sup> Andrew Marantz, "Why Facebook Can't Fix Itself", *The New Yorker* (12 October 2020), online: < [newyorker.com/magazine/2020/10/19/why-facebook-cant-fix-itself](http://newyorker.com/magazine/2020/10/19/why-facebook-cant-fix-itself) > . A notable example of how business models undermine censorship measures is Facebook's decision to ban Holocaust denial; despite the purported ban, numerous Holocaust-denial groups remain active "and for users who find the pages, Facebook's algorithms continue to recommend related content, effectively creating a network for pushing anti-Semitic content." Aaron Sankin, "Facebook Said It Would Ban Holocaust Deniers. Instead, Its Algorithm Provided a Network for Them", *The Markup* (24 November 2020), online: < [themarkup.org/news/2020/11/24/facebook-ban-holocaust-deniers-antisemitism](http://themarkup.org/news/2020/11/24/facebook-ban-holocaust-deniers-antisemitism) > .

<sup>124</sup> See e.g. Sophie L Vériter, Corneliu Bjola & Joachim A Koops, "Tackling COVID-19 Disinformation: Internal and External Challenges for the European Union" (2020) 15:4 *Hague J Diplomacy* 569 at 571, DOI: < 10.1163/1871191X-BJA10046 > ("[w]hilst the literature on the impact of false news and propaganda has expanded in recent years, research is still limited and theoretical answers are more advanced than empirics"); Bharath Ganesh & Jonathan Bright, "Countering Extremists on Social Media:

debate in a purely theoretical realm; we must focus not only on philosophical questions such as whether freedom of speech is compatible with regulatory efforts, but also on whether regulation will actually create a more benign online space. To do otherwise risks expending time and resources in vain. Indeed, as Bridgman et al recently concluded, despite recent efforts during COVID-19 to increase content moderation, “[t]he extent to which misinformation continues to circulate on these platforms, and influence people’s attitudes and behaviours is still very much an open question.”<sup>125</sup> We cannot simply point to increased emphasis on countering online disinformation and declare the mission accomplished.

Second, no single mechanism is likely to prove effective at diminishing online hate speech. Rather, the below efforts should be utilized as part of a multi-pronged strategy. Unlike the pandemic itself, there is no vaccine for the infodemic; a multifaceted approach at reducing misinformation is, therefore, our most promising recourse.<sup>126</sup>

#### **(a) Increased Content Moderation During COVID-19**

##### *(i) State Regulation*

Alarmed by the rise in harmful information, state actors are becoming increasingly aggressive at targeting online content. Germany is a leader in this area. In late 2017, it passed the Network Enforcement Act,<sup>127</sup> known as “NetzDG,” requiring internet service providers with over two million registered users to remove “manifestly unlawful” content within twenty-four hours and make a decision on content complaints within one week, or else risk a fine of upwards of fifty million euros.<sup>128</sup> NetzDG was strengthened in June 2020 to require the reporting of certain criminal content to the police.<sup>129</sup>

---

Challenges for Strategic Communication and Content Moderation” (2020) 12:1 Policy & Internet 6 at 9, DOI: <10.1002/poi3.236> (noting “that more stakeholders in the cultural industries are increasingly becoming involved in governance processes to counter extremist exploitation of digital media” but “[m]uch of this work proceeds without significant academic scrutiny and evaluation, often with thin evidence that these initiatives are indeed as effective as they promise to be.”)

<sup>125</sup> Bridgman et al, *supra* note 78 at 2. See also Todd C Helmus & Kurt Klein, “Assessing Outcomes of Online Campaigns Countering Violent Extremism: A Case Study of the Redirect Method” (Rand Corporation, 2018) at 1, DOI: <10.7249/RR2813> (“[w]hile the number of programs dedicated to countering violent extremism (CVE) has grown in recent years, a fundamental gap remains in the understanding of the effectiveness of such programs.”)

<sup>126</sup> See Matthew D Kearney, Shawn Chiang & Philip M Massey, “The Twitter origins and evolution of the COVID-19 ‘pandemic’ conspiracy theory” 1:Special Issue on COVID-19 and Misinformation Harvard Kennedy School Misinformation Rev 1, DOI: <10.37016/mr-2020-42> .

<sup>127</sup> Germany, *Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz—NetzDG)*, Bundesgesetzblatt, Vol. 2017, Pt. I, No. 61.

Several European countries have enacted or proposed like-minded legislation since the pandemic's onset. In May 2020, France passed a law similar to NetzDG, although most of this legislation was later struck down by the French Constitutional Council as an infringement on freedom of speech.<sup>130</sup> The Austrian Parliament enacted a NetzDG-inspired law in December 2020.<sup>131</sup> Also in December 2020, the United Kingdom announced that it would introduce an Online Harms Bill in 2021<sup>132</sup> and the European Union released a draft of a *Digital Services Act*<sup>133</sup> that will impose new transparency, mandate audits, and empower regulators to impose fines on companies that failed to adequately address harmful content.<sup>134</sup>

Nor is Europe alone in this trend. For example, in March 2020 South Africa criminalized the publication of “any statement through any medium including social media, with intent to deceive” and followed this with directives from the Minister of Communications and Digital Technologies compelling communications service providers to identify and remove COVID-19-related misinformation.<sup>135</sup>

In the United States, recent events, including mal-information circulating on the internet concerning COVID-19 and the November 2020 election, have resulted in bipartisan support for amending Section 230 of the *Communications*

<sup>128</sup> William Echikson & Olivia Knodt, “Germany’s NetzDG: A key test for combatting online hate” (Counter Extremism Project, November 2018) at 6–8, online (pdf): < wp.ceps.eu/wp-content/uploads/2018/11/RR%20No2018-09\_Germany’s%20NetzDG.pdf > .

<sup>129</sup> See Natasha Lomas, “Germany tightens online hate speech rules to make platforms send reports straight to the feds”, *Tech Crunch* (19 June 2020), online: < techcrunch.com/2020/06/19/germany-tightens-online-hate-speech-rules-to-make-platforms-send-reports-straight-to-the-feds/ > .

<sup>130</sup> Aurelien Breeden, “French Court Strikes Down Most of Online Hate Speech Law”, *New York Times* (18 June 2020), online: < nytimes.com/2020/06/18/world/europe/france-internet-hate-speech-regulation.html > .

<sup>131</sup> See EU Disinfo Lab, Newsletter, “Disinfo Update” (15 December 2020), online: < www.disinfo.eu/outreach/our-newsletter/disinfo-update-15122020 > .

<sup>132</sup> *Online Harms Reduction Regulator (Report) Bill* [HL] (UK), 2019-21 sess, Bill 22. See Leo Kelion, “Online harms law to let regulator block apps in UK”, *BBC News* (15 December 2020), online: < www.bbc.com/news/technology-55302431 > .

<sup>133</sup> EC, *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC*, [2020], COM/2020/825 final, online: < eur-lex.europa.eu/legal-content/en/TXT/?qid=1608117147218&uri=COM%3A2020%3A825%3AFIN > .

<sup>134</sup> Sam Schechner, “Tech Giants Face New Rules in Europe, Backed by Huge Fines”, *Wall Street Journal* (16 December 2020), online: < www.wsj.com/articles/tech-giants-face-new-rules-in-europe-backed-by-huge-fines-11608046500?mod=hp\_lead\_pos2 > .

<sup>135</sup> Tusi Fokane, “Regulating Freedom of Association Amidst the Covid-19 Response in South Africa” (25 November 2020), online: *CIPESA* < cipesa.org/2020/11/regulating-freedom-of-association-amidst-the-covid-19-response-in-south-africa/ > .

*Decency Act of 1996*.<sup>136</sup> This legislation provides social media platforms with two key protections: (1) immunity when one of their users posts something offensive or harmful; and (2) broad leeway to moderate objectionable content without fear of legal consequence.<sup>137</sup> Critics of this provision have contended that it has disincentivized social media companies from addressing online hate speech.<sup>138</sup> Although both Republicans and Democrats are in favour of amending the law, their goals appear contradictory. Republican proposals seek to increase liability for content moderation decisions—which many Republicans allege have unfairly targeted conservative views—creating the risk that harmful information will remain untouched.<sup>139</sup> Democrats, in contrast, tend to focus on restricting online platforms’ legal immunity for content posted to their sites.<sup>140</sup> Although the precise future of Section 230 remains uncertain, under President Biden, its amendment or even repeal appears inevitable.<sup>141</sup>

As for Canada, the federal government recently declared that it will soon table legislation creating a new regulatory framework for online platforms aimed at suppressing online hate speech and other malign content.<sup>142</sup>

---

<sup>136</sup> Pub. L. No. 104-104, 110 Stat. 133 (codified as amended in scattered sections of 47 U.S.C.).

<sup>137</sup> See *ibid.*, §230(c)(1) and (c)(2)(a) (1996).

<sup>138</sup> See e.g. Daisuke Wakabayashi, “Legal Shield for Social Media Is Targeted by Lawmakers,” *New York Times* (28 May 2020), online: < [www.nytimes.com/2020/05/28/business/section-230-internet-speech.html](http://www.nytimes.com/2020/05/28/business/section-230-internet-speech.html) > .

<sup>139</sup> See Sabri Ben-Achour & Candace Manriquez Wrenn, “There’s a bipartisan effort to change laws that govern speech on the internet” (28 September 2020), online: *Marketplace* < [www.marketplace.org/2020/09/28/internet-liability-law-section-230-social-media-twitter-facebook-congress-trump/](http://www.marketplace.org/2020/09/28/internet-liability-law-section-230-social-media-twitter-facebook-congress-trump/) > ; US Department of Justice, News Release, “The Justice Department Unveils Proposed Section 230 Legislation” (23 September 2020), online: < [www.justice.gov/opa/pr/justice-department-unveils-proposed-section-230-legislation](http://www.justice.gov/opa/pr/justice-department-unveils-proposed-section-230-legislation) > .

<sup>140</sup> See Marguerite Reardon, “Democrats and Republicans agree that Section 230 is flawed”, *Cnet* (21 June 2020), online: < [www.cnet.com/news/democrats-and-republicans-agree-that-section-230-is-flawed/](http://www.cnet.com/news/democrats-and-republicans-agree-that-section-230-is-flawed/) > .

<sup>141</sup> See Ryan Tracy, “Social Media’s Liability Shield Is Under Assault”, *Wall Street Journal* (26 November 2020), online: < [www.wsj.com/articles/social-medias-liability-shield-is-under-assault-11606402800](http://www.wsj.com/articles/social-medias-liability-shield-is-under-assault-11606402800) > . During the campaign, Joe Biden called for revoking Section 230 in its entirety. See “Joe Biden: Former Vice-President of the United States”, *New York Times* (17 January 2020), online: < [www.nytimes.com/interactive/2020/01/17/opinion/joe-biden-nytimes-interview.html](http://www.nytimes.com/interactive/2020/01/17/opinion/joe-biden-nytimes-interview.html) > .

<sup>142</sup> See Anja Karadeglija, “New definition of hate to be included in Liberal bill that might also revive contentious hate speech law”, *National Post* (3 March 2021), online: < [nationalpost.com/news/politics/new-definition-of-hate-to-be-included-in-liberal-bill-that-might-also-activate-contentious-hate-speech-law](http://nationalpost.com/news/politics/new-definition-of-hate-to-be-included-in-liberal-bill-that-might-also-activate-contentious-hate-speech-law) > . This builds on the government’s introduction in May 2019 of a “digital charter,” which contained as part of its ten principles the protection of Canadians from online hate. At that time, Prime Minister Trudeau threatened that the government would impose “meaningful financial consequences” on tech companies if they failed to reign in mal-information on their platforms. See “Canada’s Digital Charter: Trust in a digital world”, online: *Government*



(ii) *Self-regulation*

Social media companies are taking increasing steps to combat misinformation and hateful speech on their platforms. Private, large tech companies like Twitter and Facebook had long been reluctant to regulate internet speech. In their early years, these platforms applied content moderation in an *ad hoc* manner; this approach began to change significantly on account of, among other things, the spread of “fake news” on social media during the 2016 American presidential election. Since then, tech companies have introduced detailed hate-speech policies and adopted proactive measures to remove harmful information. Nevertheless, social media companies remained reluctant to censor disinformation, particularly when it emanated from popular users with large followings.<sup>143</sup>

Content moderation has ramped up significantly during COVID-19.<sup>144</sup> Tech platforms have proudly collaborated with one another to censor misinformation related to the coronavirus.<sup>145</sup> For example, Facebook reported in August 2020 that it had applied warning labels to ninety-eight million pieces of COVID-19-related misinformation and removed more than seven million items,<sup>146</sup> including posts by Donald Trump that promoted medical misinformation.<sup>147</sup> In December 2020, Facebook announced that it would remove false claims about COVID-19

---

*of Canada* < [www.ic.gc.ca/eic/site/062.nsf/eng/h\\_00108.html](http://www.ic.gc.ca/eic/site/062.nsf/eng/h_00108.html) > (last updated 23 November 2020); Mack Lamoureux, “Justin Trudeau Announces Plans to Fine Social Media Companies for Fake News” (16 May 2019), online: *Vice* < [www.vice.com/en/article/mb87zb/justin-trudeau-announces-plans-to-fine-social-media-companies-for-fake-news](http://www.vice.com/en/article/mb87zb/justin-trudeau-announces-plans-to-fine-social-media-companies-for-fake-news) > ; “Fact Sheet: Digital Charter Implementation Act, 2020,” online: *Government of Canada* < [www.ic.gc.ca/eic/site/062.nsf/eng/00119.html](http://www.ic.gc.ca/eic/site/062.nsf/eng/00119.html) > (last updated 17 November 2020).

<sup>143</sup> See Stefanie Ullmann & Marcus Tomalin, “Quarantining online hate speech: technical and ethical perspectives”, (2020) 22:1 *Ethics & Information Technology* 69 at 70, DOI: < 10.1007/s10676-019-09516-z > ; Marantz, *supra* note 123; “Twitter CEO says ‘people can form their own opinions’ about Alex Jones, Infowars”, *CBC* (8 August 2020), online: < [www.cbc.ca/news/world/twitter-dorsey-alex-jones-statement-1.4777254](http://www.cbc.ca/news/world/twitter-dorsey-alex-jones-statement-1.4777254) > ; Kate Klonick, “The Facebook Oversight Board: Creating an Independent Institution to Adjudicate Online Free Expression” (2020) 129:8 *Yale LJ* 2418 at 2435-42.

<sup>144</sup> See Jack Goldsmith & Andrew Keane Woods, “What Covid Revealed About the Internet”, *The Atlantic* (25 April 2020), online: < [www.theatlantic.com/ideas/archive/2020/04/what-covid-revealed-about-internet/610549/](http://www.theatlantic.com/ideas/archive/2020/04/what-covid-revealed-about-internet/610549/) > .

<sup>145</sup> See *ibid.*

<sup>146</sup> See Jefferson Graham, “Facebook says it removed over 7M pieces of wrong COVID-19 content in quarter”, *USA Today* (11 August 2020), online: < [www.usatoday.com/story/tech/2020/08/11/facebook-removed-over-7-m-misleading-covid-19-content/3346629001/](http://www.usatoday.com/story/tech/2020/08/11/facebook-removed-over-7-m-misleading-covid-19-content/3346629001/) > .

<sup>147</sup> See “Facebook removes Trump post that compared the pandemic to the flu, saying it spread coronavirus misinformation”, *New York Times* (8 October 2020), online: < [nytimes.com/live/2020/10/06/us/trump-covid-live-updates#facebook-removes-trump-post-that-compared-the-pandemic-to-the-flu-saying-it-spread-coronavirus-misinformation](https://www.nytimes.com/live/2020/10/06/us/trump-covid-live-updates#facebook-removes-trump-post-that-compared-the-pandemic-to-the-flu-saying-it-spread-coronavirus-misinformation) > .

vaccines, signaling a more aggressive approach than how it handled vaccine-related misinformation in the past.<sup>148</sup> Twitter has taken similar steps, blocking Twitter accounts, appending warning labels, and hiding or removing misleading tweets regarding coronavirus, including from Trump, Bolsonaro, and Venezuelan president Nicolás Maduro.<sup>149</sup> Twitter and YouTube have also removed misinformation about vaccines.<sup>150</sup>

Concurrent with efforts to police health-related information, tech platforms have increased moderation of hate speech. In August 2020, Facebook amended its guidelines to restrict the activities of “organizations and movements that have demonstrated significant risks to public safety,” including “US-based militia organizations.”<sup>151</sup> In addition, in October 2020, Facebook reversed longstanding policy and announced that it would ban Holocaust denial.<sup>152</sup> Other social media sites, including Twitter,<sup>153</sup> LinkedIn,<sup>154</sup> Snapchat,<sup>155</sup> Reddit,<sup>156</sup> YouTube,<sup>157</sup> and TikTok,<sup>158</sup> have expanded efforts since the beginning of the pandemic to remove hateful content. Furthermore, in September 2020, Twitter, YouTube, Facebook

<sup>148</sup> See Mike Isaac, “Facebook says it will remove coronavirus vaccine misinformation”, *New York Times* (3 December 2020), online: < [www.nytimes.com/2020/12/03/technology/facebook-coronavirus-vaccine-misinformation.html](http://www.nytimes.com/2020/12/03/technology/facebook-coronavirus-vaccine-misinformation.html) > .

<sup>149</sup> See Marianna Spring, “Trump Covid post deleted by Facebook and hidden by Twitter”, *BBC* (6 October 2020), online: < [www.bbc.com/news/technology-54440662](http://www.bbc.com/news/technology-54440662) > ; Kim Lyons, “Twitter removes tweets by Brazil, Venezuela presidents for violating COVID-19 content rules”, *The Verge* (30 March 2020) online: < [www.theverge.com/2020/3/30/21199845/twitter-tweets-brazil-venezuela-presidents-covid-19-coronavirus-jair-bolsonaro-maduro](http://www.theverge.com/2020/3/30/21199845/twitter-tweets-brazil-venezuela-presidents-covid-19-coronavirus-jair-bolsonaro-maduro) > .

<sup>150</sup> See “COVID-19: Our approach to misleading vaccine information” (16 December 2020) online (blog): *Twitter* < [blog.twitter.com/en\\_us/topics/company/2020/covid19-vaccine.html](http://blog.twitter.com/en_us/topics/company/2020/covid19-vaccine.html) > ; “COVID-19 Medical Misinformation Policy”, online: *YouTube Help* < [support.google.com/youtube/answer/9891785](http://support.google.com/youtube/answer/9891785) > ; Nicole Wetsman, “YouTube will remove videos with COVID-19 vaccine misinformation”, *The Verge* (14 October 2020), online: < [www.theverge.com/2020/10/14/21515796/youtube-covid-vaccine-misinformation-policy](http://www.theverge.com/2020/10/14/21515796/youtube-covid-vaccine-misinformation-policy) > .

<sup>151</sup> Marantz, *supra* note 123.

<sup>152</sup> See Monika Bickert, “Removing Holocaust Denial Content” (12 October 2020), online: *Facebook* < [about.fb.com/news/2020/10/removing-holocaust-denial-content/](http://about.fb.com/news/2020/10/removing-holocaust-denial-content/) > .

<sup>153</sup> See Kate Conger, “Twitter Takedown Targets QAnon Accounts”, *New York Times* (21 July 2020), online: < [www.nytimes.com/2020/07/21/technology/twitter-bans-qanon-accounts.html](http://www.nytimes.com/2020/07/21/technology/twitter-bans-qanon-accounts.html) > .

<sup>154</sup> See Sara Fischer, “Axios Media Trends” (24 March 2020), online: *Axios* < [axios.com/newsletters/axios-media-trends-b644854d-8230-4758-bd56-e493913cd9b7.html?chunk=4&utm\\_term=twsocialshare#story](http://axios.com/newsletters/axios-media-trends-b644854d-8230-4758-bd56-e493913cd9b7.html?chunk=4&utm_term=twsocialshare#story) > .

<sup>155</sup> See *ibid.*

<sup>156</sup> See Mike Isaac, “Reddit, Acting Against Hate Speech, Bans ‘The\_Donald’ Subreddit”, *New York Times* (29 June 2020), online: < [www.nytimes.com/2020/06/29/technology/reddit-hate-speech.html](http://www.nytimes.com/2020/06/29/technology/reddit-hate-speech.html) > .

<sup>157</sup> See *ibid.* Note that YouTube operates as a subsidiary of Google. See “Terms of Service” (10 December 2019), online: *Youtube* < [www.youtube.com/t/terms](http://www.youtube.com/t/terms) > .

and other social networking platforms reached a deal with advertisers to allow independent audits of their treatment of hate speech.<sup>159</sup>

In addition to removing or hiding bad information, tech platforms are directing users to accurate information. Google, for example, launched an information portal in March 2020 to surface authoritative information alongside coronavirus content.<sup>160</sup> YouTube introduced health panels in April 2020 that include information from the WHO and National Health Service, which appear in results for COVID-19 related searches.<sup>161</sup> YouTube subsequently added mental health resources to its health information panels to reflect the effect of COVID-19 on mental health.<sup>162</sup> Twitter, in addition to hiding harmful tweets, has appended labels to these tweets that promote accurate health data.<sup>163</sup> Facebook has directed billions of people to resources from the WHO and other reliable organizations through its COVID-19 information center and pop-ups on Instagram and Facebook.<sup>164</sup> And LinkedIn has promoted editorially-curated coronavirus resources.<sup>165</sup> More recently, tech platforms have made efforts to promote accurate information concerning COVID-19 vaccines.<sup>166</sup>

---

<sup>158</sup> See Eric Han, “Countering hate on TikTok” (20 August 2020), online: *TikTok* <newsroom.tiktok.com/en-us/countering-hate-on-tiktok> .

<sup>159</sup> See Hanna Ziady, “Facebook and YouTube accept hate speech audits to keep advertisers happy”, *CNN* (24 September 2020), online: <www.cnn.com/2020/09/23/tech/facebook-youtube-advertisers/index.html> .

<sup>160</sup> See Ingrid Lunden, “Google launches COVID-19 page and search portal with safety tips, official stats and more, US-only for now”, *Tech Crunch* (21 March 2020), online: <techcrunch.com/2020/03/21/google-launches-covid-19-page-and-search-portal-with-safety-tips-official-stats-and-more-us-only-for-now/> .

<sup>161</sup> See “Coronavirus disease 2019 (COVID-19) updates”, online: *YouTube Help (Google)* <support.google.com/youtube/answer/9777243?p=covid19\_updates&visit\_id=637439826014975902-2812341090&rd=1> .

<sup>162</sup> See *ibid.*

<sup>163</sup> Jay Peters, “Twitter introducing new labels for tweets with misleading COVID-19 information”, *The Verge* (11 May 2020), online: <theverge.com/2020/5/11/21254733/twitter-covid-19-misleading-information-label-warnings-misinformation> .

<sup>164</sup> See Sara Fischer, “Facebook will notify users who engaged with coronavirus misinformation” (16 April 2020), online: *Axios*, <axios.com/facebook-coronavirus-misinformation-5ca1f233-2deb-4ed6-b40e-4aed81ade9a8.html> . Note that Instagram is a subsidiary of Facebook. See “Terms of Service” (20 December 2020), online: *Instagram (Facebook)* <www.facebook.com/help/instagram/termsfuse> .

<sup>165</sup> See Sara Fischer, “Tech companies embrace publisher role as virus intensifies” (24 March 2020), online: *Axios* <www.axios.com/newsletters/axios-media-trends-b644854d-8230-4758-bd56-e493913cd9b7.html?chunk=4&utm\_term=twosocialshare#story4> .

<sup>166</sup> See *e.g.* “Coronavirus disease 2019 (COVID-19) updates,” *supra* note 161; Jon Porter, “Google search panel launch to counter vaccine misinformation”, *The Verge* (10 December 2020), online: <www.theverge.com/2020/12/10/22167185/google-vaccine-information-search-results-youtube-information-panels> .

Despite criticisms of online censorship—some of which have been noted above—empirical evidence suggests that content moderation can be successful in inhibiting message credibility and the sharing of mal-information.<sup>167</sup> However, the enormous quantity of such information makes it incredibly difficult to moderate online content effectively. Recent investments in AI have the potential to mitigate this concern.

### (b) Improvements in AI Content Moderation During COVID-19

Tech platforms have traditionally relied on an army of reviewers for content moderation—Facebook, for example, used about fifteen thousand worldwide as of October 2020.<sup>168</sup> In recent years, social media companies have introduced AI review alongside human reviewers. However, as recently as April 2018, Mark Zuckerberg acknowledged that Facebook’s AI was five to ten years away from being “able to comprehend the ‘linguistic nuances’ of content with enough accuracy to flag potential risks” and experts asserted that the AI was “still miles away from [being] a responsible alternative to a human looking at a screen.”<sup>169</sup>

COVID-19 has served as a catalyst for improvements to AI content moderation. Mass lockdowns implemented in the early months of the pandemic took human content reviewers out of action; due to security protocols, content review could not be undertaken from home. Although many have returned to work or commenced review from outside the office, tech platforms continue to operate at reduced human capacity. As a result, social media organizations have relied heavily on AI during the pandemic. At the same time, tech platforms have increased investments into automated tools, including by expanding AI review to new languages and making improvements to detection technology. A notable example of this investment is the “hateful memes challenge,” a one hundred thousand dollar competition launched in May 2020 by Facebook to spur researchers to develop AI systems that can capably identify multimodal hate speech (e.g. a mixture of text and images), which is difficult for AI to detect.<sup>170</sup>

<sup>167</sup> See e.g. Paul Mena, “Cleaning Up Social Media: The Effect of Warning Labels on Likelihood of Sharing False News on Facebook” (2019) 12:2 Policy & Internet 165 at 175–79, DOI: <10.1002/poi3.214> .

<sup>168</sup> See Marantz, *supra* note 123.

<sup>169</sup> Drew Harwell, “AI will solve Facebook’s most vexing problems, Mark Zuckerberg says. Just don’t ask when or how”, *Washington Post* (11 April 2018), online: <www.washingtonpost.com/news/the-switch/wp/2018/04/11/ai-will-solve-facebooks-most-vexing-problems-mark-zuckerberg-says-just-dont-ask-when-or-how/> .

<sup>170</sup> See Niva Elkin-Koren & Maayan Perel, “Separation of Functions for AI: Restraining Speech Regulation by Online Platforms” (2020) 24:3 Lewis & Clark L Rev 857 at 878; Guy Rosen, “Community Standards Enforcement Report, August 2020” (11 August 2020), online: *Facebook*, <about.fb.com/news/2020/08/community-standards-enforcement-report-aug-2020> ; “Hateful Memes: Phase 1”, online: *Driven Data* <www.drivendata.org/competitions/64/hateful-memes/> ; “How AI is getting better at detecting hate speech” (19 November 2020), online: *Facebook AI* <ai.facebook.com/blog/how-ai-is-getting-better-at-detecting-hate-speech> .

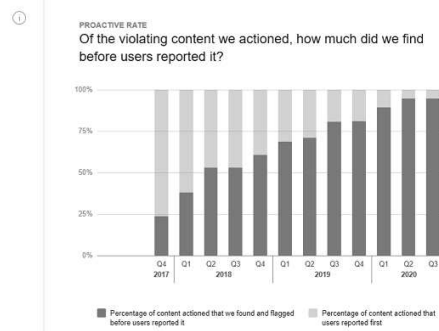
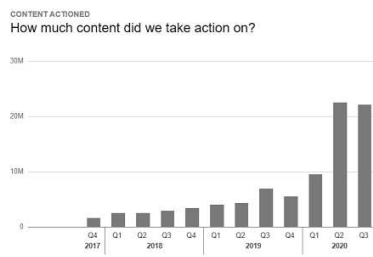
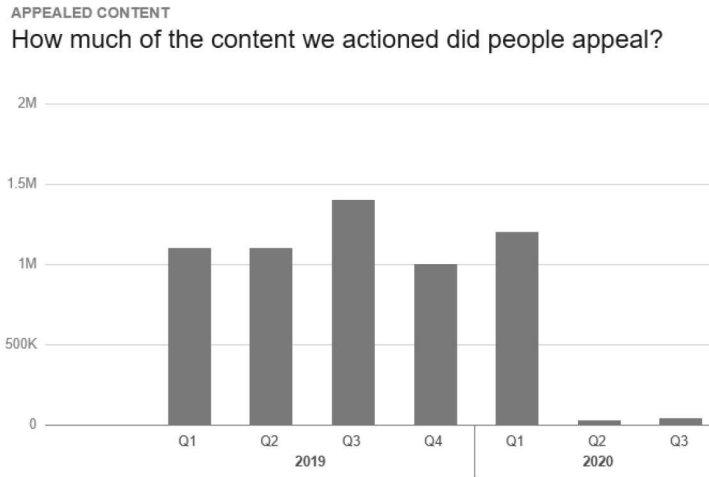


Fig. 3: Examples of multimodal hate speech<sup>171</sup>

Early results of this pivot to AI are encouraging, suggesting improvements in the speed, volume, and accuracy of content moderation. For instance, Facebook reported that in the third quarter of 2020 its AI proactively identified 94.7 per cent of known hate speech on its platform—in other words, before it was reported by users—up from 80.5 per cent one year prior and just twenty-four per cent in 2017. Similarly, the proactive detection rate on Instagram shot up to ninety-five per cent in the third quarter from forty-five per cent earlier in the year. Furthermore, more hate speech is being identified—likely reflecting both increased accuracy and a rise in the volume of harmful speech during the pandemic. Facebook took action on more than twenty million pieces of hate speech in both the second and third quarter of 2020, up from less than ten million in the first quarter, while Instagram reported even larger increases. Google also reported a doubling in the amount of harmful content removed in the second quarter of 2020 versus the previous quarter. And AI appears to be getting more accurate, as the number of take-downs appealed by Facebook users fell sharply in second and third quarter.<sup>172</sup>

<sup>171</sup> Kyle Wiggers, “AI still struggles to recognize hateful memes, but it’s slowly improving” (1 December 2020), online: *VentureBeat* [venturebeat.com/2020/12/01/ai-still-struggles-to-recognize-hateful-memes-but-its-slowly-improving/](https://venturebeat.com/2020/12/01/ai-still-struggles-to-recognize-hateful-memes-but-its-slowly-improving/) .

<sup>172</sup> See “Community Standards Enforcement Report”, online: *Facebook Transparency* < [transparency.facebook.com/community-standards-enforcement#hate-speech](https://transparency.facebook.com/community-standards-enforcement#hate-speech) > ; “How AI is getting better at detecting hate speech”, *supra* note 170; Mark Sullivan, “Facebook’s AI for identifying hate speech seems to be working”, *Fast Company* (12 August 2020), online: < [www.fastcompany.com/90538941/facebook-ai-for-identifying-hate-speech-seems-to-be-working](https://www.fastcompany.com/90538941/facebook-ai-for-identifying-hate-speech-seems-to-be-working) > ; Arcadiy Kantor, “Measuring Our Progress Combating Hate Speech” (19 November 2020), online: *Facebook* < [about.fb.com/news/2020/11/measuring-progress-combating-hate-speech/](https://about.fb.com/news/2020/11/measuring-progress-combating-hate-speech/) > ; Mark Scott & Laura Kayali, “What happened when humans stopped managing social media content”, *Politico* (21 October 2020), online: < [www.politico.eu/article/facebook-content-moderation-automation/](https://www.politico.eu/article/facebook-content-moderation-automation/) > . Note that the availability of user appeals on Facebook has also been reduced on account of staffing shortages due to the pandemic.



Figs. 4a and 4b: Facebook content moderation statistics as of Q3 2020<sup>173</sup>

Despite these encouraging signs, AI content moderation has significant room for improvement. Recent studies suggest that a considerable amount of harmful content is still being missed and that AI is wrongly flagging large amounts of benign material. In contrast to Facebook, YouTube reported a fourfold increase in successful appeals of content deletions, reflecting that AI still has difficulty understanding video and other multimodal speech.<sup>174</sup>

Accordingly, more investment is needed. As AI has at least three significant advantages over human review, we encourage such investments to continue or

<sup>173</sup> “Community Standards Enforcement Report,” *supra* note 172.

<sup>174</sup> See Maréchal, MacKinnon & Dheere, *supra* note 121 at 13; Scott & Kayali, *supra* note 172.

accelerate, even after the pandemic. First, AI can work faster than humans and review larger quantities of content. The enormous amount of harmful material circulating online makes it difficult for human review to keep pace. Moreover, speed is essential to effectiveness: mal-information, once uploaded, can spread to hundreds of thousands of viewers in a matter of hours and continue to circulate even after it is taken down.<sup>175</sup> Second, AI does not need to sleep. While large companies conduct human review twenty-four hours a day, seven days a week, many smaller platforms conduct review only during business hours.<sup>176</sup> Third, AI does not suffer mental health impacts. The psychological effects of content moderation are a serious concern: in May 2020, thousands of moderators joined a class-action lawsuit against Facebook alleging that reviewing harmful material caused them to experience Post-Traumatic Stress Disorder (PTSD)—which Facebook later settled for fifty-two million dollars—and YouTube has required its moderators to sign a statement acknowledging that they may experience PTSD.<sup>177</sup>

### (c) Combating Hate Speech by Closing the Digital Divide

COVID-19 has underlined the importance of fast and reliable internet. The pandemic has led to widespread reliance on information communication technologies (ICTs) to restore a modicum of normalcy to our lives. This amplification of ICTs has been essential to coping with the uncertainty posed by COVID-19.

The protection afforded by ICTs is only available to those who have access to them. Forty-six per cent of the world's population remains offline.<sup>178</sup> Internet use is highest in Europe at 82.5 per cent, and lowest in Africa at 28.2 per cent where affordability and digital literacy pose hurdles.<sup>179</sup> There are also gender gaps: forty-eight per cent of women worldwide access the Internet versus fifty-

---

<sup>175</sup> See Mark Sullivan, “Facebook’s AI for detecting hate speech is facing its biggest challenge yet”, *Fast Company* (14 August 2020), online: <[www.fastcompany.com/90539275/facebooks-ai-for-detecting-hate-speech-is-facing-its-biggest-challenge-yet](http://www.fastcompany.com/90539275/facebooks-ai-for-detecting-hate-speech-is-facing-its-biggest-challenge-yet)> (referring to an August 5, 2020 tweet by Donald Trump claiming that children were “almost immune” from the coronavirus, which was viewed almost 500,000 times in 4 hours).

<sup>176</sup> See Sabine A Einwiller & Sora Kim, “How Online Content Providers Moderate User-Generated Content to Prevent Harmful Online Communication: An Analysis of Policies and Their Implementation” (2020) 12: 2 *Policy & Internet* 184 at 197, DOI: <[10.1002/poi3.239](https://doi.org/10.1002/poi3.239)> .

<sup>177</sup> See Marantz, *supra* note 123; Casey Newton, “YouTube Moderators are Being Forced to Sign a Statement Acknowledging the Job Can Give Them PTSD”, *The Verge* (24 January 2020), online: <[www.theverge.com/2020/1/24/21075830/youtube-moderators-ptsd-accenture-statement-lawsuits-mental-health](http://www.theverge.com/2020/1/24/21075830/youtube-moderators-ptsd-accenture-statement-lawsuits-mental-health)> .

<sup>178</sup> See International Telecommunications Union, Press Release, “New ITU data reveal growing Internet uptake but a widening digital gender divide” (5 November 2019), online: <[www.itu.int/en/mediacentre/Pages/2019-PR19.aspx](http://www.itu.int/en/mediacentre/Pages/2019-PR19.aspx)> .

<sup>179</sup> See *ibid.*

eight per cent of men.<sup>180</sup> Statistics further reveal a racial disparity: in the United States, twenty-one per cent of White adults lack broadband at home, compared with thirty-four per cent of Black adults, thirty-nine per cent of Latino and Latina adults, and forty-seven per cent of Indigenous people living on tribal lands.<sup>181</sup> And a gap exists in terms of age: nine per cent of the world's population was over the age of sixty-five in 2019,<sup>182</sup> and according to available data in Canada, the United States, and Europe, between thirty and forty per cent of that group remains offline.<sup>183</sup>

The COVID-19 pandemic has cast a spotlight on the digital divide—the disparity between those who have reliable internet access and those who do not.<sup>184</sup> At the same time, the pandemic has spurred significant investment aimed at closing it.<sup>185</sup> In Canada, the federal government promised billions of dollars in additional funding in November 2020 for high-speed internet access through its Universal Broadband Fund and the Canada Infrastructure Bank, adding to the existing patchwork of funding sources aimed at diminishing the digital divide.<sup>186</sup>

---

<sup>180</sup> See *ibid.*

<sup>181</sup> See Mark Barna, “Access to internet crucial during COVID-19 outbreak: Broadband connection considered social determinant of health”, *The Nation's Health* 50:7 (September 2020) 5, online: <[thenationshealth.aphapublications.org/content/50/7/5.2](http://thenationshealth.aphapublications.org/content/50/7/5.2)>. See also Emily A Vogels et al, “53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak” (30 April 2020), online: *Pew Research Centre* <[pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/](http://pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/)>.

<sup>182</sup> See “Peace, dignity and equality on a healthy planet”, online: *United Nations* <[web.archive.org/web/20201210181203/www.un.org/en/sections/issues-depth/ageing/](http://web.archive.org/web/20201210181203/www.un.org/en/sections/issues-depth/ageing/)>.

<sup>183</sup> See Statistics Canada, *Analytical Studies Branch Research Paper Series: Evolving Internet Use Among Canadian Seniors*, by Jordan Davidson & Christoph Schimmele, Catalogue No 11F0019M — No 427 (Ottawa: Statistics Canada, 10 July 2019) at 17, online (pdf): <[www150.statcan.gc.ca/n1/pub/11f0019m/11f0019m2019015-eng.htm](http://www150.statcan.gc.ca/n1/pub/11f0019m/11f0019m2019015-eng.htm)>; Monica Anderson & Andrew Perrin, “Tech Adoption Climbs Among Older Adults” (17 May 2017), online: *Pew Research Center* <[www.pewresearch.org/internet/2017/05/17/tech-adoption-climbs-among-older-adults/](http://www.pewresearch.org/internet/2017/05/17/tech-adoption-climbs-among-older-adults/)>; *Ageing Europe: Looking at Lives of Older People in the EU*, 2019 ed (Luxembourg: Publications Office of the European Union, 2019) at 136, DOI: <10.2785/811048>.

<sup>184</sup> See Van Dijk, *supra* note 8.

<sup>185</sup> In a recent op-ed, we suggest that as society works towards closing the digital divide, increased access to ICTs will contribute to improved health outcomes among older persons, particularly as we emerge from COVID-19. See Amanda Turnbull & Kenneth Grad, “Mind the Age Gap — Closing the Digital Divide in a Post-Pandemic World”, *Ottawa Citizen* (13 January 2021), online: <[ottawacitizen.com/opinion/turnbull-and-grad-mind-the-age-gap-closing-the-digital-divide-in-a-post-pandemic-world](http://ottawacitizen.com/opinion/turnbull-and-grad-mind-the-age-gap-closing-the-digital-divide-in-a-post-pandemic-world)>.

<sup>186</sup> See “Universal Broadband Fund and Telestat low Earth capacity agreement” (last modified 9 November 2020), online: *Government of Canada* <[www.canada.ca/en/innovation-science-economic-development/news/2020/11/universal-broadband-fund-and-tesat-low-earth-orbit-capacity-agreement.html](http://www.canada.ca/en/innovation-science-economic-development/news/2020/11/universal-broadband-fund-and-tesat-low-earth-orbit-capacity-agreement.html)>; “Growth Plan” (accessed 21 December 2020), online: *Canada Infrastructure Bank* <[cib-bic.ca/en/partner-with-us/](http://cib-bic.ca/en/partner-with-us/)>.



Similarly, the EU recently announced that one hundred and fifty billion euros of its seven hundred and fifty billion euro coronavirus support fund will be directed to digital investments, including increased access to high-speed internet connectivity.<sup>187</sup> In the United States, millions of dollars allocated to individual states by Congress under the Coronavirus Aid, Relief, and Economic Security (CARES) Act passed in March 2020 have been directed to funding broadband access and improvements.<sup>188</sup> In addition, the nine hundred billion dollars stimulus bill passed in December 2020 includes seven billion dollars for broadband internet access, including a fifty-dollars-per-month emergency broadband benefit for people laid off or furloughed during the pandemic.<sup>189</sup> Under President Biden and with the Democrats taking control of both the Senate and the House of Representatives, additional investment in this area is likely to soon follow.<sup>190</sup>

In announcing these investments, governments have emphasized the socio-economic benefits of stable ICT access.<sup>191</sup> This makes sense: COVID-19 has shown how internet access is fundamentally linked to economic, educational, and health outcomes.<sup>192</sup> In our view, however, there is another benefit to closing the digital divide that has escaped attention: tackling online hate speech.

---

growth-plan/>; “Editorial: Still waiting for reliable, affordable rural high-speed internet”, *The Chronicle Herald* (16 November 2020), online: < [www.thechronicleherald.ca/opinion/local-perspectives/editorial-still-waiting-for-reliable-affordable-rural-high-speed-internet-520774/](http://www.thechronicleherald.ca/opinion/local-perspectives/editorial-still-waiting-for-reliable-affordable-rural-high-speed-internet-520774/) > .

<sup>187</sup> See Natasha Lomas, “Europe will go it alone on digital tax reform in 2021 if it must, says EU president, as bloc directs €150BN in COVID-19 relief toward cloud, AI and broadband”, *Tech Crunch* (16 September 2020), online: < [techcrunch.com/2020/09/16/europe-will-go-it-alone-on-digital-tax-reform-in-2021-if-it-must-says-eu-president-as-bloc-directs-e150bn-in-covid-19-relief-toward-cloud-ai-and-broadband/](http://techcrunch.com/2020/09/16/europe-will-go-it-alone-on-digital-tax-reform-in-2021-if-it-must-says-eu-president-as-bloc-directs-e150bn-in-covid-19-relief-toward-cloud-ai-and-broadband/) > .

<sup>188</sup> See Kathryn de Wit, “States Tap Federal CARES Act to Expand Broadband” (16 November 2020), online: *Pew Trusts* < [www.pewtrusts.org/en/research-and-analysis/issue-briefs/2020/11/states-tap-federal-cares-act-to-expand-broadband](http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2020/11/states-tap-federal-cares-act-to-expand-broadband) > .

<sup>189</sup> See Makena Kelly, “US relief package provides \$7 billion for broadband”, *The Verge* (21 December 2020), online: < [www.theverge.com/2020/12/21/22193133/us-coronavirus-covid-relief-stimulus-package-broadband-huawei-zte](http://www.theverge.com/2020/12/21/22193133/us-coronavirus-covid-relief-stimulus-package-broadband-huawei-zte) > .

<sup>190</sup> See David Shepardson, “Biden calls for \$100 billion to expand U.S. broadband access”, *Reuters*, online: < [reuters.com/article/us-usa-biden-infrastructure-broadband-idUSKBN2BN3L1](http://reuters.com/article/us-usa-biden-infrastructure-broadband-idUSKBN2BN3L1); The White House Briefing Room, “Executive Order on Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers” (21 January 2021), s 2(d), online: < [www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-supporting-the-reopening-and-continuing-operation-of-schools-and-early-childhood-education-providers/](http://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-supporting-the-reopening-and-continuing-operation-of-schools-and-early-childhood-education-providers/) > .

<sup>191</sup> See “\$10B Investment to Grow the Economy and Create Jobs”, online: Canada Infrastructure Bank, < [cib-bic.ca/en/canada-infrastructure-banks-growth-plan-background/](http://cib-bic.ca/en/canada-infrastructure-banks-growth-plan-background/) > .

<sup>192</sup> See e.g. Alec MacGillis, “The Students Left Behind by Remote Learning”, *ProPublica* (28 September 2020), online: < [www.propublica.org/article/the-students-left-behind-by-remote-learning](http://www.propublica.org/article/the-students-left-behind-by-remote-learning) > .

There are at least three reasons why closing the digital divide might reduce harmful speech: it addresses the speech's root causes, promotes a diversity of views, and facilitates informal content moderation.

First, closing the digital divide addresses the root causes of hate speech and conspiratorial thinking. Belief in conspiracy theories is linked to feelings of powerlessness, lack of socio-economic control, and lower levels of education and income.<sup>193</sup> Mistrust of authority has thus encouraged the flow of misinformation during COVID-19.<sup>194</sup> Moreover, anger and political grievance provide fertile ground for hate speech.<sup>195</sup> Closing the digital divide has the potential to promote economic and educational equality and reduce social isolation, thereby eroding the bedrock that supports receptivity to mal-information—in other words, by addressing the causes and not merely its symptoms.

Second, closing the digital divide can rebalance the online marketplace of ideas by shaping the online narrative and promoting a diversity of views. As noted, the digital divide disproportionately affects racial minorities, thus muting their online voice. This has consequences for hate speech and disinformation because belief in this information is influenced by other online actors. For example, a 2014 Pew Research Center study found that people are influenced by their perceptions of majority opinion in an online environment.<sup>196</sup> Furthermore, recent studies have illustrated that individuals often turn to social media to counter negative discourse and that observational correction can lead others to change their views and have a beneficial impact across online communities.<sup>197</sup> In fact, a significant percentage of users take it upon themselves to counter racist narratives when confronted with them online.<sup>198</sup> This reaffirms the work of antiracism practitioners who encourage individuals to speak out against odious opinions as an effective way to challenge hateful narratives.<sup>199</sup> And in general, engaging in dialogue across a diversity of opinions can stimulate critical thinking

---

<sup>193</sup> See Daniel Freeman et al, “Coronavirus conspiracy beliefs, mistrust, and compliance with government guidelines in England” (2020) *Psychological Medicine* 1 at 2, DOI: <10.1017/S0033291720001890> .

<sup>194</sup> See Han, Cha & Lee, *supra* note 117 at 2.

<sup>195</sup> See Alexei Abrahams & Gabrielle Lim, “Repress/redress: What the ‘war on terror’ can teach us about fighting misinformation” (2020) 1: Special Issue on COVID-19 and Misinformation *Harvard Kennedy School of Misinformation Rev* 1, DOI: <10.37016/mr-2020-018> .

<sup>196</sup> See Ifran Chaudhry & Anatoliy Gruzd, “Expressing and Challenging Racist Discourse on Facebook: How Social Media Weaken the ‘Spiral of Silence’ Theory” (2020) 12:1 *Policy & Internet* 88 at 91, DOI: <10.1002/poi3.197> .

<sup>197</sup> See Leticia Bode, Emily K Vraga & Melissa Tully, “Do the right thing: Tone may not affect correction of misinformation on social media” (2020) 1:4 *Harvard Kennedy School Misinformation Rev* 1 at 2–4, DOI: <10.37016/mr-2020-026> .

<sup>198</sup> See Chaudhry & Gruzd, *supra* note 196 at 102.

<sup>199</sup> See *ibid.*

and suppress mal-information.<sup>200</sup> Thus, online diversity can limit the spread and impact of harmful speech.

Third, related to the above, content moderation is more effective when conducted by informal actors—that is, organically rather than imposed in a top-down fashion by governments or tech companies. Social media censorship can be a badge of pride for extremists and stimulate community-building among these networks.<sup>201</sup> Moreover, content moderation by governments or large organizations can create the appearance that these entities have something to hide, thereby solidifying belief in hateful and/or conspiratorial messages.<sup>202</sup> Accordingly, interpersonal interaction is key to countering false narratives. Indeed, research has found that counterextremism is most effective when conducted by individuals enmeshed in digital cultures.<sup>203</sup> By investing in digital equality, then, we may empower private actors and foster more impactful forms of counterspeech.

**CONCLUSION: “THOSE WHO CANNOT REMEMBER THE PAST ARE CONDEMNED TO REPEAT IT.”<sup>204</sup>**

COVID-19 has confirmed an indisputable fact: human beings are poor at anticipating and averting catastrophe. Despite being warned for years about an impending global pandemic by infectious disease experts, we were ill-prepared for dealing with direct pandemic harms. Notwithstanding the vital lessons that we could have learned from history, we failed to take adequate precautions. Our mitigation measures were too little, too late and have resulted in needless suffering and death.

The same is true of harmful speech. As we have shown in this paper, although the manner in which disinformation has spread is unique to COVID-19, the themes have remained remarkably consistent across pandemics. We should not have been surprised by the disturbing increase in hatred and misinformation that has accompanied the coronavirus. As with the other impacts of the disease, our failure to inoculate society against mal-information shows that we did not heed the lessons of the past.

---

<sup>200</sup> See e.g. Bethany Mandel, “We Need to Start Befriending Neo Nazis”, *The Forward* (24 August 2017), online: <[forward.com/opinion/380510/we-need-to-start-befriending-neo-nazis/](http://forward.com/opinion/380510/we-need-to-start-befriending-neo-nazis/)>.

<sup>201</sup> See Ganesh & Bright, *supra* note 124 at 11.

<sup>202</sup> See Bilazarian, *supra* note 117 at 51—53, 59—60.

<sup>203</sup> See Benjamin Lee, “Countering Violent Extremism Online: The Experiences of Informal Counter Messaging Actors” (2020) 12:1 *Policy & Internet* 66 at 71, DOI: <10.1002/poi3.210>.

<sup>204</sup> George Santayana, *The Life of Reason, or, The Phases of Human Progress* (New York: Charles Scribner’s Sons, 1905) at 284.

However, technology and globalization present a unique opportunity to decrease harmful speech and mitigate its effects going forward. Three promising avenues have emerged during COVID-19: a global movement aimed at content moderation, advancements in AI as a means to combat harmful views, and unprecedented investments in closing the digital divide. We strongly urge additional investment combined with empirical research into the efficacy of these measures. It is imperative that we seize the opportunity created by the COVID-19 pandemic to make a meaningful impact on lessening online harms. The insidiousness of internet misinformation, exacerbated during COVID-19, presents one of the central challenges of our time. It is vital that we capitalize on the momentum created by the pandemic by continuing to take meaningful steps to fight back against this threat.

Technology, then, is both the problem and the solution. While the pandemic's penumbra will inevitably wane, we will be dealing with its reverberations far longer than the disease itself. The question remains whether we will learn from past mistakes to provide for a better future.