

A Democratic Solution to Social Media Election Warfare, and the First Amendment

Author : Mark Kende

Date : March 18, 2021

David L. Sloss, *Information Warfare and Democratic Decay, in Tyrants on Twitter: Protecting Democracies from Chinese and Russian Information Warfare* (forthcoming 2021), available on [SSRN](#).

During the rise of big tech like Facebook, Twitter, and YouTube, there has been an increase in autocratic governments. Political leaders in Hungary and Poland have used democratic constitutions to curb democracy. They have ignored the European Union's complaints about their actions. But perhaps the most dangerous development is the information warfare carried out by Russia, China, Iran, and others with the intention of interfering with democratic elections. Some experts argue that Russia's "organized social media manipulation" was the reason for Trump's victory over Clinton.¹ These countries used U.S. First Amendment values against the U.S.

Professor David Sloss is authoring a book detailing how "Chinese and Russian cybertroops" accomplish their goals, as well as the weak efforts by the U.S. social media companies to respond. These platforms have profit incentives that conflict with the need to block information warfare or disinformation campaigns. This review briefly examines the newly released first chapter of the book. What makes the book significant is that Sloss proposes a multi-national alliance and registration identification system to deter this cyber-espionage and perhaps slow the corresponding democratic erosion. The solution, however, raises serious First Amendment issues even though it may promote democracy.

The initial chapter contains charts on recent democratic deterioration, including in the U.S. Meanwhile nations like China are economically booming and increasing in power. Though Sloss declares himself a liberal internationalist, he explains that foreign agents have no part in U.S. self-government, and that they have fewer First Amendment rights. He also produces some nice turns of phrase. Whereas Clausewitz said war is politics by other means, Sloss writes that information warfare is war by political means.

Sloss therefore advocates an Alliance for Democracy—a transnational system of democratic states guaranteeing strong free speech for its members. But outsiders would have fewer speech rights.² For example, their election-related messages would contain disclaimer warnings. Moreover, all social media users would have to register and identify themselves, declare their nationalities, and consent to verification. Sloss writes that this avoids content discrimination, replacing it with identity information concerning dangerous speakers.

He then addresses objections, especially privacy concerns. But he points out that the influence of fake accounts is huge anyway. Sloss is also aware that the disclaimers raise concerns. And he sees the large administrative costs. But he argues that the benefits to democracy far outweigh the horrifying costs, and that the First Amendment is not violated, though this is debatable. Certainly, Sloss should address this question in detail later in the book.

One criticism is that he does not show in these pages that social media causes less democracy. For example, social media fueled the "Arab Spring's" democratic moments. Moreover, the 2020 U.S. Presidential election was quite safe. Yet the Sloss alliance and registration system could provide a fascinating opportunity to reduce or block the social media interference of autocracies in democratic elections. The proposal deserves examination, if the First Amendment problems can be overcome. Thus, his book could be very important.

1. See e.g., Kathleen Hall Jamieson, *Cyberwar: How Russian and Trolls Helped Elect a President: What We*

Don't, Can't and Do Know (Oxford 2018).

2. *Agency for Int'l Development v. Alliance for Open Society Int'l Inc.*, 140 S.Ct. 2082 (2020).

Cite as: Mark Kende, *A Democratic Solution to Social Media Election Warfare, and the First Amendment*, JOTWELL (March 18, 2021) (reviewing David L. Sloss, *Information Warfare and Democratic Decay*, in **Tyrants on Twitter: Protecting Democracies from Chinese and Russian Information Warfare** (forthcoming 2021), available on SSRN), <https://conlaw.jotwell.com/a-democratic-solution-to-social-media-election-warfare-and-the-first-amendment/>.