



On democracy

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Abstract: Democracy is valuable and vulnerable, which is reason enough to remain alert for new developments that can undermine her. In recent months, we have seen enough examples of the growing impact of personal data in campaigns and elections. It is important and urgent for us to publicly debate this development. At the same time, we need to stay cool-headed. New technologies have a huge impact, but human nature will not suddenly change due to 'big data' and its use.

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DEMOCRACY

Democracy is valuable and vulnerable, which is reason enough to remain alert for new developments that can undermine her. In recent months, we have seen enough examples of the growing impact of personal data in campaigns and elections. It is important and urgent for us to publicly debate this development. It is easy to see why we should take action against extremist propaganda of hatemongers aiming to recruit young people for violent acts. But we euphemistically speak of 'fake news' when lies, 'half-truths', conspiracy theories, and sedition creepily poison public opinion.

The literal meaning of *democracy* is 'the power of the people'. 'Power' presupposes freedom. Freedom to choose and to decide. Freedom from coercion and pressure. Freedom from manipulation. 'Power' also presupposes knowledge. Knowledge of all facts, aspects, and options. And knowing how to balance them against each other. When freedom and knowledge are restricted, there can be no power.

In a democracy, every individual choice influences society as a whole. Therefore, the common interest is served with everyone's ability to make their choices in complete freedom, and with complete knowledge.

The interests of parties and political candidates who compete for citizen's votes may differ from that higher interest. They want citizens to see their political advertising, and only theirs, not that of their competitors. Not only do parties and candidates compete for the voter's favour. They contend for his exclusive time and attention as well.

POLITICAL TARGETING

No laws dictate what kind of information a voter should rely on to be able to make the right consideration. For lamb chops, toothpaste, mortgages or cars, for example, it's mandatory for producers to mention the origin and properties. This enables consumers to make a responsible decision. Providing false information is illegal. All ingredients, properties, and risks have to be mentioned on the label.

Political communication, however, is protected by freedom of speech. Political parties are allowed to use all kinds of sales tricks.

And, of course, campaigns do their utmost and continuously test the limits of the socially acceptable.

Nothing new, so far. There is no holding back in getting the voters to cast their vote on your party or your candidate. From temptation with attractive promises, to outright bribery. From applying pressure to straightforward intimidation.

Important therein is how and where you can reach the voter. In the old days it was easy: Catholics were told on Sundays in church that they had no other choice in the voting booth than the catholic choice. And no righteous Catholic dared to think about voting differently. At home, the father told the mother how to vote. The children received their political preference from home and from school. Catholics learned about current affairs via a catholic newspaper, and through the catholic radio broadcaster. In the Dutch society, which consisted of a few of such pillars, one was only offered the opinions of one's own pillar¹. A kind of filter bubble *avant la lettre*.

POLITICAL MICRO-TARGETING

Nowadays, political parties have a different approach. With new technologies, the sky is the limit.

Increasingly advanced techniques allow the mapping of voter preferences, activities, and connections. Using endless amounts of personal data, any individual on earth can be

reconstructed in detail. Not only can their personal beliefs be distilled from large troves of data, no, it even is possible to predict a person's beliefs, even before they have formed them themselves. And, subsequently, it is possible to subtly steer those beliefs, while leaving the person thinking they made their decision all by themselves.

As often is the case, the Americans lead in the use of new techniques. While we Europeans, touchingly old-fashioned knock on doors and hand out flyers at Saturday's market, the American employ the latest technology to identify, approach, and influence voters.

Of course, trying to find out where voters can be reached and how they can be influenced is no novelty. Political parties map which neighbourhoods predominantly vote for them, which neighbourhoods have potential, and in which neighbourhoods campaigning would be a wasted effort. Parties work with detailed profiles and target audiences, for which they can tailor their messages.

But the usage of personal data on a large scale has a lot more to offer. Obviously, this is a big opportunity for political parties, and for anyone else, who runs campaigns or aims to influence the elections.

However, the influencing techniques become increasingly opaque. As a result of the alleged filter bubble, voters are being reaffirmed in their own beliefs, and they hardly receive information anymore about the beliefs and arguments of other groups. This new kind of segmentation may stifle critical thinking. There may not be enough incentive to test one's own ideas, to find new arguments, or to critically reflect on the truthfulness of information.

I am a social and economic liberal D66 politician, and I get suggestions for news articles from websites like The Guardian or Le Monde. My colleague from the right wing nationalist PVV, may well receive URLs from Breitbart.

Pluralism is essential for a healthy, robust democracy. In a polarised society, people live in tightly knit groups, which hardly communicate with each other. In a pluralist society people engage in the free exchange, confrontation, and fusion of ideas.

The concept pluralism is under pressure. Populist parties declare themselves representative of The People. In their vision, The People, is uniform and homogenous. There is a dominant cultural norm, dictated from the top-down, to which everyone must conform. Whomever refuses, gets chewed out. Often, it is about one-dimensional symbolism such as Easter eggs and Christmas trees. There is no place for pluralism in the world of the populists. But when there is no pluralism, there is no democracy. Without pluralism, democracy is nothing more than a simple tribal dispute, instead of the expression of the will of all citizens together.

VOTER DATA

European privacy legislation limits the use of personal data. In the world of 'big data', one of the explicit goals of regulation is to prevent restriction of the consumer's choice. Oddly enough, lawmakers do not explicitly aspire to guarantee voters as broad a choice as possible. But in politics, individual choices have consequences for society as a whole.

In 2018, the General Data Protection Regulation (GDPR) comes into effect. We have worked five years on the GDPR. At this moment, we work on the modernisation of the e-Privacy Directive,

which is mainly about the protection of communication. As was the case with the GDPR, companies from certain sectors scream bloody murder. European privacy protection would mean certain death for the European industry. According to some corporate Cassandras, entire European industries will move to other continents. That very same death of corporate Europe is also predicted for any measure concerning, say, environmental norms, procurement rules, or employee rights. All those measures are in place, but, as far as I know, the nightmare scenario has never occurred...

There are some corporate sectors, such as publishing and marketing, which have a huge impact on the information supply to citizens. They are the ones who now cry wolf. It is understandable that they are unhappy with stricter rules concerning their activities, but as the potential impact of the use of personal data and 'big data' increases, so does their social responsibility.

At the moment, there is not much public debate about the new techniques. Peculiar. Thirty years ago, 'subliminal advertising', as we called it then, was prohibited because people found it unethical to influence people without their knowledge. We need to have a similar debate. What do we think of opaque influencing? Do we need ethical norms? Should such norms apply only to political campaigns, or should we look at this from a broader perspective? In the 'big data' debate, we tend to speak in technical or legal terms, while actually the issue is fundamentally ethical, holding far-reaching consequences for the vitality of our democracy.

Such a public debate demands more clarity on the impact of 'big data', profiling, targeting, and similar techniques on the individual, her behaviour, and her choices, which determine in what direction society progresses. Which voters are being reached? How sensitive are they for the subtle influencing and what makes them resilient? How do people who are hardly reached only compare to the others? How do voters and non-voters compare? Is the voter truly predictable? Can we identify or influence the floating voter? Do voters actually float between different parties? Or do they especially float within their own party, their own bubble, their own segment? How important are other factors, such as the social context? If the new influencing techniques are indeed as potent as we think, how can polls get it so wrong? What can we learn from advertisers who return to contextual advertising, because targeting turns out less effective than they thought?

We need to stay cool-headed. New technologies have a huge impact, but human nature will not suddenly change due to 'big data' and its use. Our natural instincts and reflexes will definitely not evolve in a few years. That would take many thousands of years, as even in the 21st century, we seem to have more than a few cavemen traits, so losing internalised behaviour is not as easy as 1-2-3. Humans are resilient, but democracy is vulnerable. On a short term, the societal impact is large. This gives us all the reason to reflect on how to deal with the new reality, and how we can keep up our values in this new reality.

The use of personal data, clearly, is not solely reserved for decent political parties. Other persons and organisations, from the Kremlin to Breitbart, can bombard European voters with information and misinformation. But European governments, controlling endless amounts of personal data of their citizens, can also manipulate information, or circulate utter nonsense to advance their own interests. A random example: the Hungarian government influencing their voters with lies and manipulation about the so-called consultation on asylum seekers.

BEYOND VOTER DATA

This issue is not only about the personal data of voters, but also about the personal data of *political competitors, opponents, and critics, which* are increasingly being employed. Recently, we have seen efforts of external parties to influence the results of the 2017 French elections. We saw a large-scale hack of the Emmanuel Macron campaign, and the spread of false information, coming obviously from the Kremlin and the American Alt-Right, meant to discredit Macron's candidacy.

Also, the American elections show the shady game of hacking, leaking, and manipulating. The issue of the Hillary Clinton mails will undoubtedly occupy our minds for years. Who knows how the elections would have turned out without this affair?

Other democratic pillars can get corrupted as well by the misuse of data. Critical voices, opposition, and checks and balances are democracy's oxygen. Democracy is in acute jeopardy when data are employed to attack, undermine, discredit, blackmail, or persecute journalists, judges, lawyers, NGOs, whistleblowers, and opposition parties.

In Europe, we tend to shrug our shoulders at these dangers. "Oh well, we'll see, such things occur only in banana republics, not right here". Of course, this trust in our democratic rule of law is wonderful. But if we treat our rule of law this neglectfully, we will lose it eventually.

Within the European Union, we currently see this happening in Poland and Hungary. The governments of both nations ruthlessly attack independent judges, critical media, inconvenient NGOs. They do so with quasi-lawful means. Under the banner of transparency, they force NGOs to register. In doing so, they misuse laws against money laundering, and terror finance. Or the governments bring out compromising information about judges or politicians in strategic moments.

But critical voices struggle in other member states as well. Lawyers are being monitored, even without a legal basis. In the years after 9/11, we have created endless new abilities for intelligence services, police and justice departments to spy on citizens, even without suspicion, without the signature of a judge. The companies to which we unwittingly surrender our personal data, in exchange for service, are forced to hand over all information to the government, or forced to build in backdoors. Governments hack computers in other countries. Usually, it starts out with unlawful practices, but soon enough laws are put in place to legalise those practices. The magic word 'terrorism' silences any critique on such legislation.

But when politicians, journalists, NGOs, whistleblowers, lawyers, and many others cannot perform their tasks freely and without worry, our democracy withers. Not only do they have to operate without someone keeping an eye on them, they have to know nobody is in fact watching them. The mere *possibility* of being watched, results in a chilling effect.

For this principal reason, I have contested a French mass surveillance law before the French *Conseil d'Etat*. Since, as a member of the European Parliament, I spend four days a month on French soil (in Strasbourg), I could potentially be the target of the French eavesdropping programme. This is not totally imaginary, as I am not only a politician, but also a vocal critic of certain French anti-terror measures. It is not about me actually worrying about being spied on, but about the fact that I might be spied on. Luckily, I am not easily startled, but I can imagine that many politicians are vulnerable. That is a risk for democracy.

I do not discard the possibility of a ruling of the European Court of Human Rights on my case. In that turn of events, it will lead to jurisprudence valid in the entire EU (and the geographical area covered by the Council of Europe).

But, of course, this should not depend on the actions of one obstinate individual whether politicians, NGOs, journalists, and so on, can do their jobs fearlessly, to fulfil their watchdog role.

It is my personal, deep, conviction that the biggest threat to our democracy is the fact that we have enabled the powerful to access, with almost no limitations, the personal data of those who should control those very same powerful entities.

WHAT CAN WE DO?

Some propose new forms of democracy, in which universal suffrage is weakened or even abolished. In his book 'Against elections: the case for democracy', David Van Reybrouck had the idea to appoint representatives on the basis of chance, and in his book 'Against democracy' Jason Brennan wants to give the elite more votes than the lower classes, presuming that people with more education or development make better choices. Others want to replace representative democracy with direct democracy.

I oppose those ideas. Universal suffrage and the representative democracy are great achievements, which have led to enormous progress in society.

First of all, we have to make sure our children grow up to be critical, independent thinkers. Think differently, deviate, provoke: this must be encouraged instead of condemned. A democracy needs non-conformists.

We must teach our children to contextualise information and to compare sources.

The counterpart of 'big data' must be 'big transparency'. We need to understand not just open administration, but also insights into the techniques of influence.

The regulation and limitation of the use of personal data, as I hope to have argued effectively, is not a game of out-of-touch privacy activists. It is essential for democracy. We need safeguards, not only to be sure people really are free in their choices, but also to protect the necessary checks and balances. As such, I plea for a rigorous application of the GDPR, and in the European Parliament, I will work for a firm e-Privacy Directive.

And yes, perhaps we should examine whether the rules for political campaigning are still up-to-date. In most countries, those rules cover a cap on campaign expenditures, a prohibition of campaigning or polling on the day before election day, or a ban on publishing information that may influence the election results, such as the leaked e-mails in France. But these rules have little impact on the use of personal data to subtly influence elections.

Last year, the European Parliament supported my proposal for a mechanism to guard democracy, the rule of law, and fundamental rights in Europe.²

On this day (*editor's note: 9 May, Europe Day*) of European democracy, I plead for equal, high norms in Europe. The last years have shown that national elections are European elections. It is

crucial for us to trust that all elections in EU member states are open, free, and honest elections, free of improper influencing.

These last sixty years, the European Union has developed itself into a world leader in democracy and freedom. If we start a public debate, Europe can remain a world leader.

FOOTNOTES

1. Pillars are referred to here as societal cleavages along ideological or religious lines

2. The report I refer to is a legislative initiative of the European Parliament. I was the initiator and the rapporteur. This is a proposal to guard democracy, the rule of law, and the fundamental rights in the EU. The Commission, at first, did not want to proceed with the initiative. Recently, however, the Commission has announced a legislative proposal for such a mechanism. I suspect this proposal will look quite different from Parliament's. But the fact that there will be a mechanism, is most important. The realization that the EU is a community of values, and not just on paper, spreads quickly. The URL to the proposal's text is added below. It was approved in the EP in October 2016, with 404 Yea votes and 171 Nay's. Source (last accessed 15 January 2018):

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bREPORT%2bA8-2016-0283%2b0%2bDOC%2bWORD%2bVo%2f%2fEN>