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The Censorship Boomerang

BY  BRET SWANSON JULY 17, 2024 CENSORSHIP, GOVERNMENT, LAW 9 MINUTE READ

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Madness is rare in individuals; but in groups, parties, nations, and ages it is the rule.

Friedrich Nietzsche

They fooled themselves. The censorship meant to keep regular people in the dark instead blinded the pseudo-elite censors and their friends.

The shock – both feigned and real – over Joe Biden’s long-obvious dementia cements our 2022 diagnosis of the ruling class’s **dysinformation** disorder. Yes, some knew and hid the truth, as the brilliant Timur Kuran **explains**. But many journalists and Democratic power brokers appear to have been truly clueless. Otherwise, they would have changed course long ago.

The refrain that Joe is “sharp as a tack” was just the latest in two decades’ worth of increasingly preposterous propaganda.

- Iraqi WMD
- Russian collusion
- 51 intel officers

- Everything Covid
 - SARS2 emerged in a wet market
 - Lockdown
 - Mask your toddlers
 - Jab the healthy
 - Horse dewormer
- Ukraine is winning – escalate!
- The border's secure

This propaganda is believed most deeply and fervently in Washington, D.C., New York, and Hollywood. Those who think they know the most turn out to know the least. So what? Lots of people are wrong lots of the time.

Well, it turns out self-delusion **at scale** is no trifling matter. With Covid, it produced the biggest set of policy debacles since the Great Depression and has now brought us closer to nuclear conflict than any time since October 1962.

A Dangerous Info Gap

In June of 2020, we **warned** of growing censorship spurred by the Internet's very openness:

The democratization of knowledge, expertise, and opinion is a fundamental and mostly welcome shift. Over time, it should allow us to learn faster and better stumble our way toward the truth. Ideally, preference cascades that expose falsehoods and improve the world won't take decades to emerge.

But not everyone is happy with this new transparency. Information threatens the totalitarian mindset and its programs. As the internet breaks down the old barriers which hid private truths, the central goal of authoritarians is to erect new structures to maintain public lies.

In May of 2022, we **speculated** about the self-delusional effects of censorship:

*Which brings us to ‘**dysinformation**’ as a disorder. At some point, the tactic becomes a strategy and then turns to addiction. The power of propaganda and censorship is seductive. Along the way, you mislead your followers over an epistemic cliff, and you lose touch with reality yourself.*

And in May of 2023, we said the **gap** between pseudo-elite opinion and reality had grown into a dangerous **chasm**:

The online world supercharges all these top-down tactics. We now have demonization and indoctrination at scale. And yet, the infoweb allows for a bottom-up insurgency as well.

In other words, the Internet makes narrative control far more effective or ineffective – depending on the audience. Unprecedented volumes of polished publicity flowing at tik-tok speed from legacy know-nothings etch messages on millions of lazy brains. Herds of online trolls defame anyone who strays from the plot.

Meanwhile, however, alternative exafloods of data and truly expert content, evading gatekeepers for the first time on thousands of decentralized channels, enlighten billions of savvy info consumers, who parse and argue and think critically for themselves...

When the incompetence of the ruling class is exposed and the people lose confidence, the ruling class must construct ever more elaborate and maximal stories to retain and project power.

The gap between narrative and reality grows into a chasm. Each side thinks the other is mad, as in batty and deranged. No doubt, each side has its loons. But – and here’s a crucial difference – only one side insists on a free flow of data and open discussion. The other side believes more information is a threat to “our democracy” and demands data lockdowns.

- **The Gurri-Kuran Dynamic: Information Wars, Part II** – June 2020
 - **Dysinformation: How the exaflood caused an information sickness** – May 2022
 - **Our Pseudocracy: How the ruling class constructs ever more elaborate and maximal stories to retain and project power** – May 2023
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Justice Barrett's Green Light

Last week, the Supreme Court greenlit more of these data lockdowns. In a 6-3 decision, it allowed government agencies to continue pressuring online platforms to suppress disfavored views and speakers. With the three moderate Republicans joining the three Democrats, the Court reversed a preliminary injunction, issued on July 4, 2023, blocking government-sponsored social media censorship. (We wrote about the case a year ago in the *Wall Street Journal* – [Covid Censorship Proved to Be Deadly](#).)

Writing for the majority, Justice Amy Coney Barrett said the plaintiffs, including Stanford medical professor Jay Bhattacharya, lacked standing. They hadn't shown the specific harms needed to meet the high bar of an injunction, remanding the case to Judge Terry Doughty of the 5th Circuit District Court.

Justice Samuel Alito, joined by Clarence Thomas and Neil Gorsuch, issued a sharp and persuasive dissent, arguing the plaintiffs had indeed shown, even before trial, both standing and a pattern of egregious First Amendment violations by the government-social media collective.

In one sense, the Supreme Court's opinion in *Murthy* was narrow – ruling only on the technical matter of “standing,” not reaching the merits of the evidence or First Amendment law.

In other ways, however, Justice Barrett's majority opinion was devastatingly broad. The majority appears to have established a much higher threshold to sue government censors.

In First Amendment jurisprudence, one factor affecting standing is “traceability.” In this case, can the plaintiffs point to specific government actions that yield specific censorial behavior? Could the plaintiffs show how the government pressured the social media companies to suppress information?

To most of us, the thousands of pages of emails documenting White House, FBI, and CDC coercion and collaboration with Facebook and Twitter showed clear government censorship and harms to individuals. Barrett, however, invented a new, higher standard. It's not enough to show the government ordered Facebook to take down content opposing lockdowns or supporting school reopenings, and that the social media firms then throttled or suspended doctors advocating those views. Barrett's new traceability framework seems to insist that a specific government employee writes to a specific private actor calling for the specific censorship of a specifically named person. It's kind of like insisting on a notarized confession letter of a bank robber while ignoring the bank video showing him entering the building and the million dollars in his suitcase.

Justice Alito showed a much deeper understanding of both the factual record and the novel web of institutional censorship. Barrett, he warned, had offered a roadmap for more data lockdowns. A savvy government censor can easily avoid naming specific victims of censorship and merely suggest to online platforms, wink and nod, they remove this or that viewpoint or even subtly call out individuals with less than explicit targeting. If government can effect the removal of viewpoints without demanding the banishment of a specific person, moreover, how is any individual ever to show harm, gain standing, and bring a case?

As Alito put it:

The Court...permits the successful campaign of coercion in this case to stand as an attractive model for future officials who want to control what the people say, hear, and think.

That is regrettable. What the officials did in this case was more subtle than the ham-handed censorship found to be unconstitutional in Vullo, but it was no less coercive. And because of the perpetrators' high positions, it was even more dangerous. It was blatantly unconstitutional, and the country may come to regret the Court's failure to say so. Officials who read today's decision together with Vullo will get the message. If a coercive campaign is carried out with enough sophistication, it may get by. That is not a message this Court should send.

Columbia law professor Philip Hamburger identified another major problem with Barrett's opinion – insisting plaintiffs prove government “coercion” of third parties.

The First Amendment, however, says nothing about coercion. On the contrary, it distinguishes between “abridging” the freedom of speech and “prohibiting” the free exercise of religion. As I have explained in great detail, the amendment thereby makes clear that the Constitution's standard for a speech violation is abridging, that is, reducing, the freedom of speech, not coercion. A mere reduction of the freedom violates the First Amendment.

The court in Murthy, however, didn't recognize the significance of the word “abridging.” This matters in part for the standing question. It's much more difficult to show that the plaintiffs' injuries are traceable to government coercion than to show that they are traceable to government abridging of the freedom of speech. More substantively, if the court had recognized the First Amendment's word “abridging,” it would have clarified to the government that it can't use evasions to get away with censorship.

Under the new Barrett rules, they've invented the perfect First Amendment-evading censorship machine.

The Crisis of Credulity

One reason so many hoaxes have gained traction over the last decade is a crisis of credulity among conservative intellectuals and GOP party leaders. Most of them bought hook, line, and sinker the Russian collusion fraud and most of the Covid narrative and policies. If more conservative D.C. think tanks, op-ed pages, and party leaders had not gone along with these swindles, they would have had far more difficulty gaining widespread purchase.

The Supreme Court itself is a victim of the censorship it now downplays. From Justice Barrett's opinion, one can see that the majority does not understand the new media dynamics of the Internet. It doesn't grasp the sophisticated, interwoven array of public, private, and non-profit players working to suppress information. In other words, it doesn't grasp the **'complex'** in the Censorship Industrial Complex.

Nor does the majority understand the direction and magnitude of the many Covid policy disasters. Justice Barrett simply assumes the government was informing and the plaintiff dissident scientists were misinforming. Because they are so deeply insulated in the D.C. infowarp, Barrett and her majority colleagues can't see the most potent and prolific sources of misinformation are the government and pseudo-elite institutions who often work hand in glove with government.

During Covid, for example, the FDA, NIH, CDC, and dozens of medical societies were the **primary and most authoritative** sources of misinformation. In the same way, in the weeks before the 2020 election, five former CIA directors and 46 of their intel colleagues, who received approval for their bogus "Russian information operation" letter from the existing CIA director, were the **primary and most authoritative** sources of misinformation.

The First Amendment should apply whether the information is true or not. Yet in the *Murthy* case, it surely would have helped if the justices had understood (1) the hyper-destructive effects of the censors' misguided propaganda and (2) the true insights of the censored scientists, which if followed would likely have delivered far better results. Understanding the size of the policy mistakes and the real sources of misinformation might have led the majority to dig deeper into the facts and the novel mechanism that threatens free speech. Instead, the narrative that shaped the failed Covid response – fear, lockdown, mask, jab, listen to Fauci – still has a hold on Justice Barrett.

How many more elaborate hoaxes will our leadership class promote and fall for? Could the Biden implosion finally lead to an epistemic reckoning?

The good news is this preposterous episode may help reorient our information landscape, at least for a while.