

# INDICTMENT THE PEOPLE(S) VS. FACEBOOK

## General Introduction

### Data: The “New Oil”

The world has undergone profound changes.

In the field of the economy, previously traditional sectors such as agricultural production, extractive industries (both for raw materials and energy sources) and industrial transformation were dominant.

Gradually the so-called tertiary sector, which is supposed to provide “services” to the primary and secondary sector, has gained importance.<sup>1</sup>

Since the early twentieth century finance capital gained control over most other economic activities. Of course, banking, transport, insurance, vending activities, etc., already existed in the pre-finance capital period but did not dominate other sectors of capital.

The financialization of the capitalist economy also resulted in a bureaucratization of the economy. Productive activities lost terrain to non-productive activities. The financialization further resulted in an increasing internationalization of capital, carrying with it all its consequences. This financialization, bureaucratization and internationalization require ever-increasing speed and capacity in communications and data exchange, collection and processing.

It is throughout the last decades during this booming area of activity that giant new players in the field of data management, such as Facebook, came about, providing services needed by modern capitalist economies and creating new forms of economic activities in turn.

Some authors described data as the “new oil”. This image rightly emphasizes that data is a new “raw material”, or a new type of “fuel”, for today’s economy.

The European Commission describes the importance of data for the present-day economy as follows:

*Data has become an essential resource for economic growth, job creation and societal progress. Data analysis facilitates the optimisation of processes and decisions, innovation and the prediction of future events. This global trend holds enormous potential in various fields, ranging from health, environment, food security, climate and resource efficiency to energy, intelligent transport systems and smart cities.*

*The ‘data economy’ is characterized by an ecosystem of different types of market players – such as manufacturers, researchers and infrastructure providers – collaborating to ensure that data is accessible and usable. This enables the market players to extract value from this data, by creating a variety of applications with a great potential to improve daily life (e.g. traffic management, optimisation of harvests or remote health care).<sup>2</sup>*

<sup>1</sup> The traditional description of an economy as divided into three sectors—a primary sector englobing agricultural and extraction industry-based activities, a secondary sector including manufacturing activities and a tertiary sector including services provided to the two first sectors—is actually an inadequate description of the reality of international capitalism. In this model, the banks and the other financial players are considered part of tertiary sector activities, providing “financial services” to the primary and secondary sectors. In reality, finance capital has gained a dominant position over both the primary and secondary sector since the early twentieth century.

<sup>2</sup> European Commission, *Building A European Data Economy* (Brussels: European Commission, 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:9:FIN>.

## Facebook: A Data Exchange- and Mining Giant

Facebook is one of the leading companies in the world in the field of data transfer because of the central role it plays in communication between individuals. On Facebook data is exchanged at a speed unmatched in human history.

2.2 billion people currently use Facebook, Instagram, WhatsApp or Messenger (Facebook's "Family of services") every day on average, and about 2.8 billion people use at least one of these services each month.<sup>3</sup>

A very large part of humanity therefore exchanges data on this network, to the point that Amnesty International concluded that *"for most people it is simply not feasible to use the internet while avoiding all Google and Facebook services"*.<sup>4</sup> That is even more true for groups and individuals in precarious positions, such as diaspora and immigrant communities who have no other choice other than to maintain contact with their families and friends through social media, or for many workers in precarious job situations for whom the platform is invaluable in creating cultural capital and generating job opportunities.

Facebook subsequently "harvests" or "mines" data on an unprecedented scale through the flows of data on the communication platforms it runs. This data is stored and then processed through algorithms and the results are subsequently used by Facebook to identify special target groups.

In its third quarter results for 2019, Facebook claims to have obtained \$17.383 million USD in advertising revenue, measuring 98.476% of its total revenue for the quarter.<sup>5</sup>

## Facebook: A New Feudal Lord?

In fact, Facebook has also invented what might potentially be considered as a new form of forced labour. Through their activity, 1.6 billion daily users unintentionally create the raw material that is then processed by Facebook. Multinationals take possession of these essential resources on very unjust terms. The "new oil" is therefore taken away for free from those who produce it.

Since we are in a position of dependency towards Facebook—a central player in our contemporary sociability—we are mechanically led to generate data for the algorithm, as we just need to connect, talk with our friends or post a photo. In short, we are forced to provide Facebook with an activity that has value. Given the inescapability of the platform, such an activity can only be analyzed as labor, a tasking that simply cannot be avoided (especially among young people) and which is not paid for. That position has some striking similarities with servitude under feudalism. Peasants were allowed to work the land, which was essential for their integration into society, but in exchange had to provide free services and goods to the feudal lord. In line with this analysis, Facebook's behavior is incompatible with Article 8 of the UN Covenant on Civil and Political Rights which forbids servitude and forced labor.

## Facebook: Ambition to Play the Role of a Central Bank

Facebook has thus become a major player in the world economy because of its dominant position in communications, its possession of unprecedented quantities of data and its capacity to process this data in an economy where the latter are of more and more key importance.

Moreover, Facebook has announced plans to further increase its control over the economy by launching its own currency: the libra. Conflicting news sources suggest

<sup>3</sup> "Facebook Reports Third Quarter 2019 Results," Facebook Press Release, Investor Relations, last modified October 30, 2019, <https://investor.fb.com/investor-news/press-release-details/2019/Facebook-Reports-Third-Quarter-2019-Results/default.aspx>.

<sup>4</sup> Amnesty International, "Surveillance Giants: How the business model of Google and Facebook threatens human rights," *Amnesty International*, 2019, [https://www.amnesty.be/IMG/pdf/surveillance\\_giants\\_report.pdf](https://www.amnesty.be/IMG/pdf/surveillance_giants_report.pdf).

<sup>5</sup> Investor Relations, "Facebook Reports Third Quarter 2019 Results."

that the libra may not be launched at all or that some states will oppose the launching of the libra. But even if that is the case, this shows the extent to which Facebook aims to not only control the means of communication, but also to shape and monitor economic structures.

Other players (notably Uber and Spotify) are participating in the project, and will offer “buyable” products in libra. Unlike bitcoin, for example, it is a currency that will be used in everyday life and on a very large scale. In order to guarantee the value of this currency, Facebook still offers to back it by existing currencies.

Facebook is therefore proposing to launch a monetary project. It would not be under the control of any state or any other body with democratic legitimacy.

At the last G20 summit, the Financial Stability Board raised the following concerns:

- *[Stablecoins] have the potential to grow quickly as a means of payment or a store of value. Their potential user base may be large, particularly if they are linked to other digital services offered by BigTech firms. If they were to have low volatility and great scalability, this may make them attractive as payment instruments, widely used by consumers and accepted by retailers or corporates. As a consequence, stablecoins have the potential to become of systemic importance in individual jurisdictions, including through the substitution of domestic currencies, or even on a global scale.*
- *[Stablecoins] combine characteristics of different financial services, with, for example, features of payment systems, bank deposits, foreign currency exchanges, commodities, and collective investment vehicles. These may, under certain circumstances and if on a sufficiently large scale, individually or through their interaction, give rise to new financial stability risks. For example, the soundness of a stablecoin may depend on how its reserve assets are managed and how redemption rights are designed. Insufficient prudence in this regard might destabilise other parts of the ecosystem.<sup>6</sup>*

By launching such a project, Facebook risks destabilizing the world economic order, without any democratic overview or control.

#### Facebook: Controlling Access to Information

Facebook plays a major role in getting information out into the public. It has a massive capacity to influence and steer public opinion in all parts of the globe.

Currently, people are accessing information on a huge scale through Facebook. A multinational study conducted by the Reuters Institute concluded that 44% of people use Facebook to inform themselves.

Many public school systems across the United States now allow corporate advertising to target students in exchange for a flow of shared revenue for the schools.<sup>7</sup>

As a result, Facebook has an unprecedented ability to control the information that people will be able to receive.

Facebook has the power to change its algorithm and thus change what users will see on their newsfeed. This is an extremely simple way to give visibility to some content and to reduce the visibility of other content.

Facebook has already used this power, which directly led to a loss of audience for many media outlets.<sup>8</sup>

<sup>6</sup> “Regulatory issues of stable coins,” *Financial Stability Board*, October 18, 2019, [https://www.mof.go.jp/english/international\\_policy/convention/g20/huzoku191018\\_01.pdf](https://www.mof.go.jp/english/international_policy/convention/g20/huzoku191018_01.pdf).

<sup>7</sup> Siva Vaidhyanathan, *Antisocial Media* (Oxford: Oxford Press, 2018), 87.

<sup>8</sup> Alessio Cornia, Annika Sehl, David A. L. Levy, Rasmus Kleis Nielsen, “Private Sector News, Social Media Distribution, and Algorithm Change,” *Reuters Institute*, September, 2018,

Facebook also censors content. The criteria determining when such censorship protocols are applied is opaque. Now, for example, images of war crimes are being censored. Also, artworks that display nudity have been censored. A famous recent case saw Facebook censor archival photos of the Vietnam War on the grounds of “explicit content”.

### Facebook: A Political Player

Although Mark Zuckerberg refuses to admit it, Facebook has also become politically influential.

Because of the availability for all those who have access to a computer or a smart-phone and the extraordinary speed of communication in real time, Facebook has been a central player in mass mobilizations. This form of organization is a fundamental element of political life in the broadest sense, used to collectivize and inform the public. The social network has been used across such disparate events as the Yellow Vest movement in France or the Arab Spring. Many people insist that the use of Facebook has played an important role in the toppling of some governments.<sup>9</sup> Such examples illustrate the potential Facebook has to wage political influence.

It is true that the capacity made available by Facebook—through fostering the spread information and communication between individuals or groups as well as the fact that all these instruments are, contrary to the classic media which require a substantive capital investment, accessible to many—offers previously unknown opportunities for emancipatory movements.<sup>10</sup>

However, the potential for a privately owned company to exercise a high degree of control over the development of such movements raises questions. Facebook has the possibility to “highlight” certain mobilizations, to inflate gatherings by targeting potential participants with ad hoc information and to block or to hinder communications regarding a protest movement.

Of course, states and governments exercise control over media and information through various mechanisms and many traditional media are controlled by strong economic powers and mostly by finance capital.<sup>11</sup> But Facebook has an altogether different kind of potential to influence and even to “steer” public opinion while it creates the illusion of uncensored peer-to-peer communication.<sup>12</sup>

But aside from the possibilities for emancipatory movements created by Facebook, there is also a serious democratic problem.

This area was particularly evident in the last US election. Facebook allowed a private firm, Cambridge Analytica, to collect data from 87 million citizens, the vast majority of whom had never given any authorization to do so.

This data was then used to establish certain profiles and submit tailored information to them. As proof of the potential ability to target profiles, Facebook boasted in an internal document that it could identify profiles of teens who feel “insecure”.<sup>13</sup> This document was drafted by one of Facebook’s “relationship managers” “and was intended for

<sup>9</sup> Although the impact of social media on the Arab Spring has been widely challenged—as very few Egyptian citizens were actually registered (only 8%) and because Facebook has been critiqued for “co-opting” the revolution—there would not have been revolt against Mubarak without it. See further: <http://www.themontrealreview.com/2009/Misnaming-the-Revolution.php>.

<sup>10</sup> On the obvious condition that they accept the terms of agreement.

<sup>11</sup> Of course, states, governments and political parties have attempted to use Facebook for their own benefit through, amongst other methods, placing huge financial investments in political advertisements. These tactics have been mapped by artist Manuel Beltrán and researcher Nayantara Ranganatha in their project *ad.watch* (2019). See: <https://ad.watch/index.html>.

<sup>12</sup> Facebook is indeed an accelerated infrastructure of communication, although the impact of traditional monopolized media during the World Wars cannot be underestimated. Facebook might influence elections, facilitate corporate extraction and enable violent hate campaigns, however it has yet to play a role similar to that of traditional media in enabling popular narratives towards mass warfare. Think here of mass media support of the Vietnam and Iraq wars, for example.

<sup>13</sup> Sam Levin, “Facebook told advertisers it can identify teens feeling ‘insecure’ and ‘worthless,’” *The Guardian*, May 1, 2017, <https://www.theguardian.com/technology/2017/may/01/facebook-advertising-data-insecure-teens>.

one of Australia's leading banks, which also happens to be an advertiser on the social network.

During his hearing in the US Congress led by Democrat Alexandria Ocasio-Cortez, Mark Zuckerberg had to admit that Facebook allowed an advertiser to target Republican voters to submit false information about their party's policies.<sup>14</sup>

Recent information published by, among others, the French newspaper *Le Monde* shows how intertwined the activities Cambridge Analytica undertook to influence the political process in specific countries were with its activities to promote specific business interests in the same countries.<sup>15</sup> This was all done through processing Facebook data.

Facebook also enables and works directly with authoritarian regimes in various ways, such as the Duterte regime in the Philippines. This is an element of their activities that will be discussed hereafter.<sup>16</sup>

### Facebook and Fundamental Rights

Because of all what has been stated above, Facebook has become one of the most powerful companies in the world with a tremendous economic, social and political (capacity to) influence.

Much has been said and written about the threat Facebook constitutes to the right to privacy. We will examine this aspect later.

But the threat Facebook poses to the fundamental rights of individuals and people, both individual and collective rights, goes far beyond the sole question of privacy.

The most fundamental source and root of the majority of individual and collective rights is the right to the self-determination of peoples. That right is often misunderstood as limited to the right of secession for minorities. In reality, the right to self-determination is the collective right of peoples to have control over their destiny.

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were both adopted by the UN General Assembly in 1966 and ratified by almost all states in the world. Together with the Universal Declaration of Human Rights, these two covenants comprise what is known as the International Bill of Human Rights. In their Common Article 1, the two covenants state:

1. *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
2. *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*
3. *The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.*

<sup>14</sup> Adélaïde Tenaglia, "Désinformation sur Facebook : Ocasio-Cortez fait souffrir Zuckerberg au Congrès américain," *Le Parisien*, October 24, 2019, <http://www.leparisien.fr/international/la-democrate-alexandria-ocasio-cortez-met-mark-zuckerberg-dans-l-embarras-au-congres-americain-24-10-2019-8179380.php>.

<sup>15</sup> Damien Leloup, "De nouveaux documents éclairent l'activité « business » de Cambridge Analytica," *Le Monde*, January 6, 2020, [https://www.lemonde.fr/pixels/article/2020/01/06/de-nouveaux-documents-eclairent-l-activite-business-de-cambridge-analytica\\_6024980\\_4408996.html](https://www.lemonde.fr/pixels/article/2020/01/06/de-nouveaux-documents-eclairent-l-activite-business-de-cambridge-analytica_6024980_4408996.html).

<sup>16</sup> Vaidhyanathan, *Antisocial Media*, 190–193.



As demonstrated above, Facebook has potentially major influence on each and every aspect of the right to self-determination as defined in the Covenants.

How can peoples be free to determine their political status if Facebook offers the possibility to influence elections in a decisive way and can make or break collective movements? How is that compatible with article 25 of the International Covenant on Civil and Political Rights which reads:

*Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:*

- (a) *To take part in the conduct of public affairs, directly or through freely chosen representatives;*
- (b) *To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors . . .*

How can peoples freely pursue their economic development if a major resource, data, is not only taken from them for free, but also placed under the control of private interests, preventing the peoples to use that resource in their collective interest to develop their economies and their societies? Therefore, the right to development as laid down in the Declaration on the Right to Development, adopted by UN General Assembly Resolution 41/128 of 4 December 1986, is also at stake.

How can peoples freely pursue their economic development when a private entity like Facebook creates a currency and can take control over monetary policies?

Importantly, these collective rights are decisive for all individual rights, not only for privacy.

How do we guarantee the right to work, to an income, to health and education if private interests rule the “new oil”?

How do we guarantee political rights if the circulation of information is controlled by private interests and the same private interests have control over the most sophisticated mechanisms ever to influence public opinion?

How can states comply with their obligation enshrined in the common article 2 of both International Covenants not only to respect but also ensure to all individuals the rights recognized in the Covenants, without distinction of any kind—such as those made along the lines of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status—if those states simply don’t have control over the levers necessary to fully exercise the peoples right to self-determination?

Of course, all this is not entirely new. Since the rise of financial monopoly capitalism, private interests have controlled most of the essential economic resources on earth as well as major instruments used to influence public opinion, such as written and audio-visual press. To that extent, Facebook is a mere illustration of a problem that has existed at least since the first half of the twentieth century.

However, what is new is that Facebook extends that system of private control by a very small minority to the new data-based economy. And it creates a concentration of potentially-combined economic, social and political control over society at a level never heard of before.

Therefore, collective democratic control over Facebook and similar players is an urgent and pressing need so as to preserve collective and individual fundamental rights. It is clear that traditional regulatory state mechanisms are currently ineffective to the required extent. When Facebook refused to disseminate the communications of the European Commission, the Commission had no other choice than to beg the multinational to change its decision.<sup>17</sup> The fact that the elections in the US, the first super

<sup>17</sup> Marc Rees, “Les institutions européennes implorent Facebook d’autoriser leurs publicités transnationales,” *Next Inpact*, April 17, 2019, <https://www.nextinpact.com/news/107803-les-institutions-europeennes-implore-facebook-dautoriser-leurs-publicites-transnationales.htm>.

power in the world, were influenced by Facebook's intervention also illustrates the amplitude of the problem and the insufficiency of the mere regulatory activity of states to guarantee the fundamental rights of peoples and citizens.

The challenge of this case is to become aware of how extensive and profound the influence of Facebook is on the most fundamental rights of the vast majority of the world's population. It will then become necessary to find appropriate democratic mechanisms of collectivization, ones that allow for the control of phenomena that is derisive toward our ability to determine our lives and societies, and to decide on our collective future.

In the next parts we will develop in further detail some aspects of the need to collectivize Facebook in order to make the full realisation of fundamental rights possible.

### Part One: Facebook's Monopolistic Position and Hegemonic Ambitions for Information Exchange and Communication

Currently, Facebook claims:

1. 1.62 billion active users daily.
2. 2.45 billion monthly active users.
3. 2.2 billion people currently use Facebook, Instagram, WhatsApp or Messenger (our "family" of services) every day on average, and about 2.8 billion people use at least one of these services each month.<sup>18</sup>

Facebook reported a market valuation of between \$475,730 and \$585,320 million USD, depending on the quarterly, for the year 2019. As a result, Facebook is either the fifth or sixth largest company in the world according to this criterion.<sup>19</sup>

In 2019 Facebook posted revenue of \$70.697 million USD (up 27% year-on-year) for a net profit of \$18.485 million USD; down 16% from 2018.<sup>20</sup>

Facebook achieves the aims of advertisers (over 98% return on sales) when it comes to targeted advertising. As further proof of the centrality of the social network in the global advertising market, it is relevant to note that in 2018 25% of all spending on advertising worldwide benefited Facebook or Google.<sup>21</sup>

Mark Zuckerberg explained this in a letter written in January 2019, when he noted:

*People consistently tell us that if they're going to see ads, they want them to be relevant. That means we need to understand their interests. So based on what pages people like, what they click on, and other signals, we create categories—for example, people who like pages about gardening and live in Spain—and then charge advertisers to show ads to that category. Although advertising to specific groups existed well before the internet, online advertising allows much more precise targeting and therefore more-relevant ads.<sup>22</sup>*

As a result, Facebook needs more and more users and more and more data on them in order to further improve its profitability.

<sup>18</sup> Investor Relations, "Facebook Reports Third Quarter 2019 Results."

<sup>19</sup> "List of public corporations by market capitalization," Wikipedia, last modified January 31, 2010, [https://en.wikipedia.org/wiki/List\\_of\\_public\\_corporations\\_by\\_market\\_capitalization](https://en.wikipedia.org/wiki/List_of_public_corporations_by_market_capitalization).

<sup>20</sup> Investor Relations, "Facebook Reports Third Quarter 2019 Results."

<sup>21</sup> Michel Sara, "En dehors de Google et Facebook, la publicité digitale est en déclin," *LAND Innovation*, April 18, 2019, <https://www.ladn.eu/entreprises-innovantes/parole-expert/dehors-google-facebook-publicite-digitale-declin/>.

<sup>22</sup> Mark Zuckerberg, "Understanding Facebook's Business Model," *Facebook*, January 24, 2019, <https://about.fb.com/news/2019/01/understanding-facebooks-business-model/>.

In 2014 Facebook acquired WhatsApp for about \$19 billion USD. WhatsApp now boasts two billion users,<sup>23</sup> making it the second most-used social network in the world (just behind Facebook).<sup>24</sup>

WhatsApp is also very interesting for Facebook as it is an application on which people spend a lot of time (more than on Facebook on average). So, *“85 billion hours is a lot of time. It’s 3.5 billion days, or over nine million years—9,582,650 years, to be exact. And it’s 11.425 hours for every human being on the planet. That’s how long we’ve collectively spent in WhatsApp over the past three months.”*<sup>25</sup>

However, “only” thirty-one trillion hours were spent on Facebook.

The acquisition further strengthened Facebook’s hegemony in the instant messaging industry, especially coupled with the fact that the company already owned Messenger (boasting 1.3 billion users).<sup>26</sup>

Facebook also bought Instagram for \$1 billion USD in 2012. Notably, this social network is particularly popular with young users. For instance, in the US 67% of eighteen to twenty-nine-year-olds use the social media site.<sup>27</sup> In Germany 69.2 % of Instagram users are under thirty-five years old.<sup>28</sup>

The figures above clearly show that Facebook has become one of the top ten transnational companies, carrying an overwhelming economic weight as well as, and perhaps more importantly, a quasi-monopoly in the area of social media and instant messaging. The systematic expansion of Facebook clearly shows the hegemonic tendency of Facebook in this specific area. The aim is clearly to recoup social media and instant messaging under exclusive control of Facebook.

The hegemonic policies of Facebook also reach out to other related fields of the economy.

Facebook seems to have ambitions to take control of the entire internet and over e-commerce.

As far as control over internet access is concerned, Facebook has also developed the Free Basics service (formerly Internet.org).

Under the pretext of allowing everyone to have access to the internet, Free Basics *“provides free selected services to people who do not have the internet. The system currently covers several countries in Africa, Latin America and Asia in partnership with operators. An ‘Internet.org’ app is provided on smartphone, through which services validated by Facebook are available, in the form of mobile websites.”*<sup>29</sup>

Amnesty International notes that while Facebook states that Free Basics does not store information about people’s activities or the content they view in a third-party app:

*According to the Free Basics Privacy Policy, however, they do collect data on use of third-party services to help offer more personalized services, and store information about the services accessed—along with users phone numbers—for ninety days. Free Basics is presented by Facebook as a philanthropic initiative providing an ‘onramp to the broader internet’ for those in the global south*

23 “Two Billion Users – Connecting the World Privately,” WhatsApp Blog, WhatsApp, last modified February 12, 2020, <https://blog.whatsapp.com/10000666/Two-Billion-Users--Connecting-the-World-Privately?lang=en>.

24 Rudy Viard, “Social Media Ranking,” *Webmarketing Conseil*, July 3, 2015, <https://www.webmarketing-conseil.fr/classement-reseaux-sociaux/>.

25 John Koetsier, “People Spent 85 Billion Hours In WhatsApp In The Past 3 Months (Versus 31 Billion In Facebook),” *Forbes*, August 20, 2018, <https://www.forbes.com/sites/johnkoetsier/2018/08/20/people-spent-85-billion-hours-in-whatsapp-in-the-past-3-months-versus-31-billion-in-facebook/#687e81601725>.

26 Josh Constine, “Facebook Messenger Day hits 70M daily users as the app reaches 1.3B monthlies,” *Tech Crunch*, September 14, 2017, <https://techcrunch.com/2017/09/14/facebook-messenger-1-3-billion/>

27 <https://blog.hootsuite.com/instagram-demographics/>.

28 “Instagram users in Germany,” *NapoleonCat*, last modified February, 2020, <https://napoleoncat.com/stats/instagram-users-in-germany/2020/02>.

29 Guénaél Pépin, “Internet.org s’ouvre aux développeurs tiers, mais à la sauce Facebook,” *Next Inpact*, May 6, 2015, <https://www.nextinpact.com/news/94029-internet-org-s-ouvre-aux-developpeurs-tiers-mais-a-sauce-facebook.htm>.



*who would otherwise lack internet access, Free Basics instead appears to be an 'onramp' for increasing data mining in the Global South.<sup>30</sup>*

By selecting services that are, or are not, accessible on Free Basics, Facebook wields exorbitant power and undermines net neutrality, which has led to the banning of Free Basics in India.<sup>31</sup>

*In addition, "If the initiative is therefore open, it remains the entire technical property of Facebook, which has the right to life or death on the 'internet.org' versions of the services. The data provided by internet.org is also owned by Facebook."<sup>32</sup>*

With this service, Facebook ensures immense control over users. This explains why in a recent survey 65% of Nigerians and 61% of Indonesians were able to reply that Facebook "is the internet".<sup>33</sup>

Facebook also wants to extend its influence to the financial sector through linking itself to the very juicy e-commerce sector, a move that led it to launch the cryptocurrency project libra.

*For this project (the libra), Facebook has set up a foundation in Geneva, Switzerland, which brings together the 28 members of the project. Each partner put at least \$10 million into the project to have a 'node' (server) of Facebook's cryptocurrency blockchain. Facebook hopes to attract a total of 100 groups by the end of 2019.*

*This crypto at Facebook's initiative will be indexed to a 'reserve' of foreign exchange. At least the euro, the dollar, the yen and the pound initially, in order to ensure stability. Reserves will be accumulated as the cryptocurrency purchases, particularly on crypto exchanges, will be accumulated. Other currencies could later be part of this currency 'reserve' to broaden and strengthen the 'libra' base.<sup>34</sup>*

Facebook is trying to position itself in this way so as to achieve the same position as the central banks of the States. In addition, it is likely that Facebook hopes to collect the commercial data of its users in order to further increase its ability to deliver a custom-made advertisement.

Thus Facebook has already shown interest in this type of data and would have:

*... approached major U.S. banks to ask them to share data of their customers subscribed to the social network, in order to offer new services on its Messenger messaging service. The well-known social network held discussions several months ago with Chase, JPMorgan's retail bank, Citi (Citigroup) and Wells Fargo, a source close to the matter told AFP on condition of anonymity, noting that Chase had terminated the talks.*

*Mark Zuckerberg's group wanted information on all credit card transactions and current account balances for customers, the source said. ... Facebook, however, did not specify what use it intended to make of the requested data, according to the source.*

*[...] 'Like many internet companies with business activities, we partner with banks and credit card issuers to offer services like chat (instant messaging) with customers and account management,' responded to AFP a spokeswoman.*

30 Amnesty International, "Surveillance Giants," 14.

31 Net neutrality is a principle that ensures equal treatment of all data flows on the internet. This principle excludes, for example, any positive or negative discrimination against the source, destination or content of information transmitted on the network.

32 Pépin, "Internet.org s'ouvre aux développeurs tiers, mais à la sauce Facebook."

33 Leo Mirani, "Millions of Facebook users have no idea they're using the internet," Quartz, February 9, 2015, <https://qz.com/333313/millions-of-facebook-users-have-no-idea-theyre-using-the-internet/>.

34 Raphaël Bloch and Nicolas Richaud, "Visa, Uber, eBay : ces géants qui soutiennent le projet de cryptomonnaie de Facebook," Les Echos, June 14, 2019, <https://www.lesechos.fr/finance-marches/marches-financiers/visa-uber-paypal-ces-geants-qui-soutiennent-la-cryptomonnaie-de-facebook-1029032>.

*She added: 'Current accounts linked to Facebook pages allow their owners to receive real-time updates on Messenger and can thus keep track of their transaction data, such as cash receipts, dates of deliveries and the balance of their current accounts.'*

*'We don't use this information for advertising purposes,' she said.<sup>35</sup>*

Facebook has a hegemony and quasi-monopoly over the channels and instruments the vast majority of the world's population uses today to communicate and to disseminate information. This demonstrates an ambition on part of Facebook to control the access all peoples (especially those in the Global South) have to the internet, an infrastructure that is without any doubt the main source of information for the many today. Added to this are first steps to control finance, at least in the area of e-commerce. However, with the fulgurant development of e-commerce, this can very quickly lead to substantial control over major branches of the financial system, marginalizing the role of central banks and their ability to conduct financial and economic policies.

These developments threaten the ability of citizens and peoples to freely determine their political status and freely pursue their economic, social and cultural development.

### Part Two: Facebook and the (Potential For) Influencing or Manipulating Political Choices

As previously stated, Facebook has become a central player in the field of information.

In addition to its audience, Facebook pays other media to track fake news, which obviously strengthens its influence in this sector. This is because these media are brought under form of economic dependency from Facebook and therefore depend on Facebook to disseminate their content.<sup>36</sup>

But Facebook is not a neutral space. Facebook's algorithm can prioritize the visibility of some forms of content over others. For example:

*In October 2017 Facebook changed how news provided by professional news services would appear on the pages of users in Cambodia, Slovakia, Sri Lanka, Bolivia, Guatemala, and Serbia. Professional and independent news items would no longer run in the main News Feed along with advertisements, personal posts, and music videos. Instead news would sit on a separate, harder-to-see tab on the Facebook page.<sup>37</sup>*

Amnesty International noted that this poses a real risk by stating:

*However, the combination of algorithmically-driven ad targeting and personalised content means Google and Facebook's platforms play an enormous role in shaping people's online experience and determining the information we see. This can influence, shape and modify opinions and thoughts, which risks affecting our ability to make autonomous choices.<sup>38</sup>*

This risk is also highlighted by the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. The Rapporteur underlines that informed actors can use their above-average understanding of the algorithm for manipulative purposes:

35 "Dossier: Facebook lorgne les comptes bancaires," *Tribune de Genève*, August 6, 2018, [https://www.tdg.ch/economie/facebook-lorgne-comptes-bancaires/story/14780525?dossier\\_id=1501](https://www.tdg.ch/economie/facebook-lorgne-comptes-bancaires/story/14780525?dossier_id=1501).

36 "In France, the media partners are: CheckNews de Libération, Decoders du Monde, Les Observateurs de France 24, AFP Factual and 20 Minutes. . . . In 2017, the amount collected by Libération was \$100,000. . . . In detail, we therefore collected: \$20,000 in January, \$22,500 in February, March, April, \$22,000 in May, \$22,500 in June, \$20,000 in July, \$14,000 in August, \$20,000 in September, \$18,000 in October, \$21,000 in November and \$20,000 in December. That's \$245,000. In total, from January 1 to December 31, 2018, we published and entered into the Facebook database 249 articles." Service Checkews, "Combien a rapporté à Libé son partenariat de factchecking avec Facebook en 2018?," *Libération*, January 30, 2019, [https://www.liberation.fr/checknews/2019/01/30/combien-a-rapporte-a-libe-son-partenariat-de-factchecking-avec-facebook-en-2018\\_1706160](https://www.liberation.fr/checknews/2019/01/30/combien-a-rapporte-a-libe-son-partenariat-de-factchecking-avec-facebook-en-2018_1706160).

37 Siva Vaidhyanatan, *Antisocial Media*, 193.

38 Amnesty International, "Surveillance Giants," 29.

*Content display and personalization. Social media and search platforms increasingly dominate how individuals access and share information and ideas and how news is disseminated. Algorithms and AI applications determine how widely, when and with which audiences and individuals content is shared. Massive datasets that combine browsing histories, user demographics, semantic and sentiment analyses and numerous other factors feed into increasingly personalized algorithmic models to rank and curate information, that is, to show information to individuals or implicitly exclude it. Paid, sponsored or hashtagged content may be promoted to the exclusion or demotion of other content. Social media newsfeeds display content according to subjective assessments of how interesting or engaging content might be to a user; as a result, individuals may be offered little or no exposure to certain types of critical social or political stories and content posted to their platforms. AI shapes the world of information in a way that is opaque to the user and often even to the platform doing the curation. . . . AI-driven personalization may also minimize exposure to diverse views, interfering with individual agency to seek and share ideas and opinions across ideological, political or societal divisions. Such personalization may reinforce biases and incentivize the promotion and recommendation of inflammatory content or disinformation in order to sustain users' online engagement. To be sure, all sorts of social and cultural settings may limit an individual's exposure to information. But by optimizing for engagement and virality at scale, AI-assisted personalization may undermine an individual's choice to find certain kinds of content. This is especially so because algorithms typically will deprioritize content with lower levels of engagement, banishing independent and user-generated content into obscurity. Savvy actors can exploit rule-based AI systems optimized for engagement to gain higher levels of exposure, and by appropriating popular hashtags or using bots, they can achieve outsized online reach to the detriment of information diversity.*

*[ . . . ] Efforts to automate content moderation may come at a cost to human rights (see A/HRC/38/35, para. 56). AI-driven content moderation has several limitations, including the challenge of assessing context and taking into account widespread variation of language cues, meaning and linguistic and cultural particularities. Because AI applications are often grounded in datasets that incorporate discriminatory assumptions, and under circumstances in which the cost of overmoderation is low, there is a high risk that such systems will default to the removal of online content or suspension of accounts that are not problematic and that content will be removed in accordance with biased or discriminatory concepts. As a result, vulnerable groups are the most likely to be disadvantaged by AI content moderation systems. For example, Instagram's DeepText identified 'Mexican' as a slur because its datasets were populated with data in which 'Mexican' was associated with 'illegal', a negatively coded term baked into the algorithm.*

*[ . . . ] Advances in AI have both benefited from and further incentivized the data-driven business model of the Internet, namely, that individuals pay for free content and services with their personal data. With the vast data resources amassed from years of online monitoring and profiling, companies are able to equip AI systems with rich datasets to develop ever more precise prediction and targeting models. Today, advertising by private and public actors can be achieved at an individual level; consumers and voters are the subject of 'micro-targeting' designed to respond to and exploit individual idiosyncrasies.*

*[ . . . ] An essential element of the right to hold an opinion is the 'right to form an opinion and to develop this by way of reasoning'. The Human Rights Committee has concluded that this right requires freedom from undue coercion in the development of an individual's beliefs, ideologies, reactions and positions*

*The intersection of technology and content curation raises novel questions about the types of coercion or inducement that may be considered an interference with the right to form an opinion. Content curation has long informed the capacity of the individual to form opinions(...)The use of AI extends and enhanc-*

es the tradition of content curation on the Internet, providing more sophisticated and efficient means of personalizing and curating content for the user at a scale beyond the reach of traditional media. The dominance of particular modes of AI-assisted curation raises concern about its impact on the capacity of the individual to form and develop opinions. For example, a handful of technology companies lay claim to the vast majority of search queries conducted online. Corporate monopoly of the search market makes it extremely difficult for users to opt out of the algorithmic ranking and curation of search results and may also induce users to believe (as companies intend it) that the results generated are the most relevant or objective information available on a particular subject.

*The issues that market dominance raises in the field of AI-assisted curation therefore test historical understandings of how content curation affects or does not affect the capacity to form an opinion. . . . Companies should, at the very least, provide meaningful information about how they develop and implement criteria for curating and personalizing content on their platforms, including policies and processes for detecting social, cultural or political biases in the design and development of relevant AI systems.*<sup>39</sup>

Beyond the influence of algorithms, Facebook may also decide to restrict or even block access to a particular account. Access to three Facebook accounts linked to a French trade union were thus restricted or suspended during a period of social mobilization.

When asked about this, Facebook remained vague, merely referring to “community standards” but never mentioning the rules that were allegedly broken. Facebook also did not specify whether the restrictions were imposed as a result of a third-party request.<sup>40</sup>

Similarly, all account administrators on the “Extinction Rebellion France” page have recently been banned from the network.<sup>41</sup>

Displaying images of certain political leaders is not allowed. So while it is possible to post images of various historical and contemporary extreme-right leaders, the accounts of Kurdish activists, for example, were systemically blocked. Merely posting an image of Kurdish revolutionary leader Abdullah Ocalan can trigger such a block.<sup>42</sup>

These cases, which are not isolated, invite us to question the legitimacy that Facebook has to decide which content can or cannot be disseminated.<sup>43</sup>

In other words, Facebook has a potential to influence political choices by promoting certain ideas or movements or, on the contrary, hindering their development by restraining or blocking access to certain content. This is done without any kind of control other than that of Facebook itself (unless of course a government decides to simply block access to Facebook). Facebook will obviously do so to promote its own corporate interests or better the interests of its shareholders, though never to prioritize the general interests of peoples. In addition to that, the Cambridge Analytica scandal (see hereafter) has revealed the risk related to the possibility that the extraordinary concentration of data in the hands of Facebook is accessed by third parties and subsequently used to influence political processes in the direction of private (business) interests.

Now, let us have a closer look at some of these questions and examples.

39 David Kaye, *Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and, Expression* (New York: United Nations General Assembly, 2018), 348.

40 Vincent V erier, “SNCF : Facebook restreint les comptes des syndicats SUD Rail et CGT cheminots,” *Le Parisien*, October 22, 2019, <http://www.leparisien.fr/economie/sncf-facebook-restreint-les-comptes-des-syndicats-sud-rail-et-cgt-cheminots-22-10-2019-8178201.php#xtor=AD-1481423553>.

41 Laurie Debove, “Alerte censure : tous les administrateurs de la page Extinction Rebellion France ont  t  bannis de Facebook sans explications,” *La Rel ve*, February 10, 2020, <https://lareleveetlapeste.fr/alerte-censure-tous-les-administrateurs-de-la-page-extinction-rebellion-france-ont-ete-bannis-de-facebook-no-explanations/>.

42 Eliza Egret, “Facebook accused of purging UK accounts speaking up for Kurdish human rights,” *The Canary*, May 10, 2019, <https://www.thecanary.co/global/world-analysis/2019/05/10/facebook-accused-of-purging-uk-accounts-speaking-up-for-kurdish-human-rights/>.

43 For a further example see: <https://www.clubic.com/internet/Facebook/actualite-868104-Facebook-mal-audience-collectifs-gauche-radicaux-raison-apparente.html>.



## A The Ability to Promote or Hinder the Development of Social Movements

It has been argued that many social mobilizations have developed thanks to Facebook (although the role of the social network has sometimes been exaggerated). Some examples of this are:

- *“The Yellow Jacket movement was born on Facebook, and today Facebook is the one that maintains it. Sympathizers and observers use the ‘live’ [function] offered by the platform to bring the movement to life in real time, with the hope of encouraging more and more people to join them.”<sup>44</sup>*
- *“The social network Facebook is at the heart of the Yellow Jacket protest movement, whether it is to organize actions, exchange information or relay proposals. The platform’s algorithms that make certain content visible more than others are no strangers to the palpable excitement that emerges from the social protest movement.”<sup>45</sup>*
- *In Iraq, “Whatsapp, Facebook, Twitter or Instagram have become the main source of information and communication. It was on Twitter, for example, that protesters learned that a rocket had just hit nearby, near the U.S. Embassy. It was also on Twitter that the hashtags on the protesters’ placards were launched. It was still on social media that calls were made on the night to ‘keep the peaceful character of the demonstrations’, coming from anonymous people or prominent anti-government activists, as protesters tried to force their way through two bridges to the Green Zone in Baghdad.”<sup>46</sup>*

According to sociologist Arab Izarouken, who spoke about the protest movement in Algeria, “social networks have played a decisive role. With the Internet, the gift of ubiquity is multiplied.” In Algeria, it is mainly thanks to smartphones that we surf. Because these phones are equipped with cameras, thousands of cameras broadcast the events live on social networks. Said Boudour, a human rights activist in Oran, said at the last rally that the police were overwhelmed. *“The police tried to ban people from filming. But there were thousands of them in the streets, so they avoided provoking the protesters.”<sup>47</sup>*

Other sources express the same opinion on the role played by Facebook. *“Many Algerians have been demonstrating regularly since last week against a new presidential bid by Abdelaziz Bouteflika, who is running for a fifth term. The protest was born on social media. Algeria has 40 million inhabitants and 21 million Facebook accounts.”* The source continues:

*The site founded by Mark Zuckerberg is mainly used in the country to lead the protest. It includes a page entitled ‘1, 2, 3 viva Algeria’ and which informs more than 800,000 people. One rapper also called for protests: he was followed by 6 million fans. On the eve of the first rally, the worried regime cut off the Internet, which did not prevent Algerians from taking to the streets and brandishing their phones, like weapons of mass spread.<sup>48</sup>*

Also in relation to the so-called Arab Spring, some emphasized the role played by Facebook:

*Arab activists have for years dreamed of revolt, but to end decades of autocracy, they needed a quick and anonymous mobilization tool and a space for organization: it was Facebook. Social networks ‘have for the first time given activists the*

44 Olivier Rozencwajg, “Facebook Live: le média privilégié des gilets jaunes,” *rtbf.be*, November 22, 2018, [https://www.rtf.be/info/societe/detail\\_Facebook-live-le-media-privilegie-des-gilets-jaunes?id=10079624](https://www.rtf.be/info/societe/detail_Facebook-live-le-media-privilegie-des-gilets-jaunes?id=10079624).

45 Pascal Hérard, “Facebook et les Gilets Jaunes : quel rôle joue la plateforme de Mark Zuckerberg ?,” *TV5MONDE*, December 12, 2018, <https://information.tv5monde.com/info/Facebook-et-les-gilets-jaunes-quel-role-joue-la-plateforme-de-mark-zuckerberg-275061>.

46 Agence France-Presse, “Le pouvoir tremble en Irak: voici comment Facebook et Twitter sont devenus les armes des manifestants,” *RTL INFO*, October 31, 2019, <https://www.rtl.be/info/monde/international/le-pouvoir-tremble-en-irak-voici-comment-facebook-et-twitter-sont-devenus-les-armes-de-manifestants-1170135.aspx>.

47 Margot Delpierre and Thibaut Cavallès, “Manifestations en Algérie : Facebook et ‘les réseaux sociaux ont joué un rôle déterminant,’” *franceinfo*, February 26, 2019, [https://www.francetvinfo.fr/internet/reseaux-sociaux/facebook/manifestations-en-algerie-facebook-et-les-reseaux-sociaux-ont-joue-un-role-determinant\\_3208245.html](https://www.francetvinfo.fr/internet/reseaux-sociaux/facebook/manifestations-en-algerie-facebook-et-les-reseaux-sociaux-ont-joue-un-role-determinant_3208245.html).

48 Ibid.



opportunity to quickly disseminate information while circumventing government restrictions,' Hussein Amine, a media specialist at the American University of Cairo.<sup>49</sup>

But Facebook can echo different types of movements. Including hate movements by amplifying rumors, for example.

In one such case in Myanmar, “Buddhist nationalists have spread rumors of a global Muslim conspiracy bent on ridding the world of Buddhism. Through Facebook they have called for boycotts of Muslim-owned businesses, a ban on interfaith marriages, and limitations on rights for Muslims who live in Myanmar. By 2017 Buddhist attackers, supported by the military, carried out genocidal attacks on the Muslim Rohingya.”<sup>50</sup>

The potential and the threat Facebook provides for emancipatory movements and people’s rights are therefore equally and simultaneously present. The question thus arises whether that potential can be left in the hands of private interests.

### B Cooperation with Anti-Popular and Authoritarian Regimes

To serve its own corporate interests and that of its shareholders, Facebook does not hesitate to collaborate with authoritarian regimes and to thus strengthen their grip on power.

In 2015 the Philippines invited Facebook to roll out its Free Basics service, which allowed it to gain a large amount of control over data and information exchange in a developing country.<sup>51</sup>

In January 2016 Facebook sent three employees to Manila to train the various presidential candidates and their staff on how best to use the service.

Facebook has continued to collaborate with the administration of current Philippine President Duterte after he was elected.

*After Duterte won, Facebook extended its partnership with the administration, helping Duterte execute its violent, nationalist agenda. Duterte banned the independent press from covering his inauguration live from inside Rizal Ceremonial Hall. He didn’t need journalists. He just had the inaugural events streamed live on Facebook. With the rise of Duterte, Facebook solidified itself as the only media service that matters in the Philippines.*

*In November 2017, Facebook announced a new partnership with the Duterte regime. Facebook will work with the government to lay underwater data cables that will bypass the Luzon Strait, where typhoons and earthquakes often damaged standard cables . . . A deep and profitable partnership with Facebook, while Facebook serves as the chief propaganda and harassment platform for the Duterte regime, means that Facebook will not have much choice but to continue to support Duterte as he expands his campaigns of terror.<sup>52</sup>*

49 “Facebook a donné au Printemps arabe un «outil et un espace» d’organisation,” *La Dépêche*, February 2, 2012, <https://www.ladepêche.fr/article/2012/02/02/1275965-Facebook-a-donne-au-printemps-arabe-un-outil-et-un-espace-d-organisation.html>. See also: [https://www.lemonde.fr/idees/article/2017/10/14/comment-inter-net-a-fait-les-printemps-arabes\\_5201063\\_3232.html](https://www.lemonde.fr/idees/article/2017/10/14/comment-inter-net-a-fait-les-printemps-arabes_5201063_3232.html).

50 Vaidhyanatan, *Antisocial Media*, 195.

51 In 2014 Facebook launched a service it then called Internet.org. The service was essentially an application interface, a sort of mobile operating system, that would work on any mobile device that allowed data connectivity. The operating system would allow access to a handful of Facebook-selected applications including the Bing search engine (Microsoft’s competitor to Google), women’s rights services, employment services, Wikipedia and weather information. It is important to note that these services would be offered at “zero rating,” meaning that using data through them would not count against the paid data one would purchase for a mobile account. Using a competing service, such as Google, or an employment service not selected by Facebook would cost data and thus money for the user. If the user could not afford a data plan—and, notably, this service was ostensibly targeted toward just those users—they would have to use the services that Facebook selected for Internet.org.

52 Vaidhyanathan, *Antisocial Media*, 192–193.

Or similarly with Hun Sen, the Cambodian dictator:

*Like Duterte, Hun Sen, the dictator of Cambodia, has become a Facebook star as he has leveraged the power of Free Basics to harass his opponents and promote his image. He has used the classic authoritarian playbook: developing a following; ensure that independent media can't compete with state propaganda on Facebook; make sure Facebook is the equivalent of the internet itself; and employ a troll army (in Hun's case, hired from firms based in India and the Philippines – two countries with experience in just such methods) both to push items that show him in a positive light and to terrorize and humiliate opponents and critics. Most important, Hun's staff works directly with Facebook staff to silence critics and maximize the influence Hun's Facebook pages can generate. Moreover, the algorithms are designed to find the best ways to nudge people towards particular outcomes based on an individual's unique personal characteristics. As such, techno-sociologist Zeynep Tufekci has described the platforms as 'persuasion architectures' that can manipulate and influence people at the scale of billions. Similarly, former Google advertising strategist James Williams has called it the 'industrialisation of persuasion', arguing that this 'attentional capture and exploitation' distracts us to the point that it limits our ability to think clearly and pursue our own goals.*

*These capabilities mean there is a high risk that the companies could directly harm the rights to freedom of thought, conscience and religion and freedom of opinion and expression through their use of algorithmic systems. Furthermore, they risk contributing to abuses of these rights by other actors who are able to access or utilise their models.<sup>53</sup>*

These collaborations represent a very big risk given the huge amount of data held by Facebook. In this respect, Amnesty International argues that:

*In addition to the direct impacts that the surveillance-based business model has on privacy, there is also a risk of indirect impacts through the relationship between corporate surveillance and state surveillance programs. State authorities, such as intelligence agencies, law enforcement and immigration agencies, are increasingly seeking to gain access to data held by technology companies. The vast vaults of data that Google and Facebook hold about people represent a centralized 'honeypot'—an opportunity for state authorities to access highly valuable personal data that would otherwise be very difficult to assemble.<sup>54</sup>*

The collaborative work Facebook undertakes with governments can therefore make it structurally unsafe for activists to use the platform.<sup>55</sup>

### C Facebook and Interference in Electoral Processes

Facebook has undoubtedly become an important tool for candidates in electoral processes.

Facebook also assumes this role and assists directly in electoral campaigns. This is evidenced in the fact that, *"For the 2016 elections, Facebook, Twitter, Microsoft, and Google, all embedded staff in the digital headquarters of major presidential candidates . . . These companies also worked as de facto unpaid consultants for the campaigns of both major U.S. parties."<sup>56</sup>*

Certainly, at this stage at least, Facebook is not committed to either candidate but rather figures itself as a "partner" in the process.

<sup>53</sup> Amnesty International, "Surveillance Giants," 30.

<sup>54</sup> Idem., 24.

<sup>55</sup> Jon Russell, "Government requests for Facebook user data continue to increase worldwide," *Tech Crunch*, December 19, 2017, <https://techcrunch.com/2017/12/18/government-requests-for-facebook-user-data-continue-to-increase-worldwide/>.

<sup>56</sup> Vaidhyanathan, *Antisocial Media.*, 172.

Nevertheless, this raises a series of questions. Even if Facebook seems to maintain an image of neutrality while intervening directly in election processes, what about “small” candidates or parties? Will Facebook make staff available to them to help out with the use of Facebook to promote their ideas? And what about candidates who criticize “big business” or even Facebook directly? Is it desirable that private and corporate interest-driven entities intervene directly in this way in elections?

At this point, the main threat Facebook poses to people’s right to free and fair elections is in providing a channel of unprecedented strength to influence elections in favor of very powerful interests, as well as in the risk generated through giving access to collected data to authorized or unauthorized third parties.

Amnesty International expressed concern over the potential of Facebook to influence electoral processes:

*The starkest and most visible example of how Facebook and Google’s capabilities to target people at a granular level can be misused is in the context of political campaigning—the most high-profile case being the Cambridge Analytica scandal). The same mechanisms and tools of persuasion used for the purposes of advertising can be deployed to influence and manipulate people’s political opinions. The use of microtargeting for political messaging can also limit people’s freedom of expression by creating a curated worldview inhospitable to pluralistic political discourse. The use of microtargeting for political campaigning is particularly problematic because of a lack of transparency or oversight over the messages that are sent and who is sending them. This leaves open the ability for campaigns to use ‘dark’ political ads, in which people receive highly tailored messages that are only visible to them, and where it may not be clear what organisation or individual is behind them—or what information other people are seeing and receiving.<sup>57</sup>*

In India, “trolls” are paid to influence elections (as well as other private interests).<sup>58</sup> Moreover, “Rival parties in India have established similar social media teams to mimic the BJP success [Modi’s Bharatiya Janata Party]. And now a slew of independent ‘troll farms’ offer their services to private citizens, politicians, and companies that wish to destroy people’s reputations.”<sup>59</sup>

Further still, during the US presidential elections:

*Russian agents [allegedly] targeted content using the Facebook advertising system to mess with American democracy. They created bogus Facebook groups and pages devoted to such issues as opposing gun control, opposing immigration, and pushing for Texas to secede from the United States. Russian agents even ran one Facebook page called ‘Blacktivist’, purporting to support a campaign against police violence. Once U.S. officials pressured Facebook to come clean about the extent to which the company had been hijacked by Russian operatives, Facebook found 470 pages and profiles linked to a Russian company called the Internet Research Agency. The people who controlled pages had purchased about three thousand ads, often paying in Russian currency. Ultimately these techniques reached more than 126 million Americans. These Facebook pages and groups managed to motivate more than 62,000 Americans to pledge to attend 129 rallies and events meant to support Donald Trump, oppose Hillary Clinton, and protest mosques around the United States.<sup>60</sup>*

*Alex Stamos, who was at the time head of security at Facebook wrote on a blog post, ‘We have found approximately \$100,000 in ad spending from June of 2015 to May of 2017—associated with roughly 3,000 ads—that was connected to about 470 inauthentic accounts and pages in violation of our policies.*

57 Amnesty International, “Surveillance Giants,” 32.

58 WhatsApp, a Facebook parent company, has also been specifically used in hate campaigns and for spreading misinformation, such as during the Bolsonaro election in Brazil. Daniel Avelar, “WhatsApp fake news during Brazil election ‘favoured Bolsonaro,’” *The Guardian*, October 30, 2019, <https://www.theguardian.com/world/2019/oct/30/whatsapp-fake-news-brazil-election-favoured-jair-bolsonaro-analysis-suggests>.

59 Vaidhyanathan, *Antisocial Media*, 190.

60 *Idem.*, 87–88.

*Our analysis suggests these accounts and Pages were affiliated with one another and likely operated out of Russia. The majority of ads did not directly mention either U.S. presidential candidate but ‘appeared to focus on amplifying divisive social and political messages across the ideological spectrum—touching on topics from LGBT matters to race issues to immigration to gun rights.’ . . . The ads, according to an expert on Facebook’s advertising system who spoke to BuzzFeed reporters, likely were seen by between twenty-three million and seventy million people, based on the \$100,000 buy alone.<sup>61</sup>*

Moreover, Facebook has reportedly promised the Dutch parliament to prevent foreign interference in the elections, however:

*Bits of Freedom wanted to know if it were possible to target Dutch voters from a foreign country, using the type of post and method of advertising that were employed in, among others, the Leave campaign in the UK. From Germany, we logged in to a German Facebook account, created a new page and uploaded a well-known Dutch political meme. We then paid to have it shown to Dutch voters and settled the bill using a German bank account. Contrary to what Facebook led members of parliament to believe, there was nothing that stood in our way of doing so.<sup>62</sup>*

#### D The Cambridge Analytica Scandal

Cambridge Analytica, a UK political consultancy company, advised the 2016 Trump presidential campaign through an app it developed. Cambridge Analytica was able to siphon the personal data of eighty-seven million Facebook users, nearly forty million more than reported in an early stage of the scandal.

*“The revelation was buried deep in a lengthy update from Facebook today about its plans to restrict data access for third-party apps, like the one that siphoned off data for Cambridge Analytica.”<sup>63</sup>*

The Cambridge Analytica scandal illustrates perfectly the risk in the misuse of data collected by Facebook and redirected to third-party private or corporate interest.

The *New York Times* reported on the interference as follows:

*So the firm harvested private information from the Facebook profiles of more than 50 million users without their permission, according to former Cambridge employees, associates and documents, making it one of the largest data leaks in the social network’s history. The breach allowed the company to exploit the private social media activity of a huge swath of the American electorate, developing techniques that underpinned its work on President Trump’s campaign in 2016.*

*[ . . . ] The documents also raise new questions about Facebook, which is already grappling with intense criticism over the spread of Russian propaganda and fake news. The data Cambridge collected from profiles, a portion of which was viewed by the Times, included details on users’ identities, friend networks and ‘likes’. Only a tiny fraction of the users had agreed to release their information to a third party.*

*[ . . . ] Mr. Wylie’s team had a bigger problem. Building psychographic profiles on a national scale required data the company could not gather without huge expense. Traditional analytics firms used voting records and consumer purchase histories to try to predict political beliefs and voting behavior. But those kinds of records were useless for figuring out whether a particular voter was, say, a*

<sup>61</sup> Idem., 176.

<sup>62</sup> Felipe Martins, “Facebook lies to Dutch Parliament about election manipulation,” *Bits of Freedom*, May 21, 2019, <https://www.bitsoffreedom.nl/2019/05/21/Facebook-lies-to-dutch-parliament-about-election-manipulation/>.

<sup>63</sup> Hanna Kozłowska, “The Cambridge Analytica scandal affected nearly 40 million more people than we thought,” *Quartz*, April 4, 2018, <https://qz.com/1245049/the-cambridge-analytica-scandal-affected-87-million-people-facebook-says/>.



neurotic introvert, a religious extrovert, a fair-minded liberal or a fan of the occult. Those were among the psychological traits the firm claimed would provide a uniquely powerful means of designing political messages.

Mr. Wylie found a solution at Cambridge University's Psychometrics Centre. Researchers there had developed a technique to map personality traits based on what people had liked on Facebook. The researchers paid users small sums to take a personality quiz and download an app, which would scrape some private information from their profiles and those of their friends, activity that Facebook permitted at the time. The approach, the scientists said, could reveal more about a person than their parents or romantic partners knew—a claim that has been disputed.

When the Psychometrics Centre declined to work with the firm, Mr. Wylie found someone who would: Dr. Kogan, who was then a psychology professor at the university and knew of the techniques. Dr. Kogan built his own app and in June 2014 began harvesting data for Cambridge Analytica. The business covered the costs—more than \$800,000—and allowed him to keep a copy for his own research, according to company emails and financial records.

All he divulged to Facebook, and to users in fine print, was that he was collecting information for academic purposes, the social network said. It did not verify his claim. Dr. Kogan declined to provide details of what happened, citing nondisclosure agreements with Facebook and Cambridge Analytica, though he maintained that his program was 'a very standard vanilla Facebook app'.

He ultimately provided over 50 million raw profiles to the firm, Mr. Wylie said, a number confirmed by a company email and a former colleague. Of those, roughly 30 million — a number previously reported by *The Intercept* — contained enough information, including places of residence, that the company could match users to other records and build psychographic profiles. Only about 270,000 users — those who participated in the survey — had consented to having their data harvested.

[...] Cambridge executives have offered conflicting accounts about the use of psychographic data on the campaign. Mr. Nix has said that the firm's profiles helped shape Mr. Trump's strategy—statements disputed by other campaign officials—but also that Cambridge did not have enough time to comprehensively model Trump voters.

In a BBC interview last December, Mr. Nix said that the Trump efforts drew on 'legacy psychographics' built for the Cruz campaign . . . Facebook verified the leak and—without publicly acknowledging it—sought to secure the information, efforts that continued as recently as August 2016. That month, lawyers for the social network reached out to Cambridge Analytica contractors. 'This data was obtained and used without permission,' said a letter that was obtained by the Times. 'It cannot be used legitimately in the future and must be deleted immediately.'

Mr. Grewal, the Facebook deputy general counsel, said in a statement that both Dr. Kogan and 'SCL Group and Cambridge Analytica certified to us that they destroyed the data in question.' But copies of the data still remain beyond Facebook's control. The Times viewed a set of raw data from the profiles Cambridge Analytica obtained.

While Mr. Nix has told lawmakers that the company does not have Facebook data, a former employee said that he had recently seen hundreds of gigabytes on Cambridge servers, and that the files were not encrypted.

[...] In the meantime, Mr. Nix is seeking to take psychographics to the commercial advertising market. He has repositioned himself as a guru for the digital ad age—a 'Math Man,' he puts it. In the United States last year, a former employee said, Cambridge pitched Mercedes-Benz, MetLife and the brewer AB InBev,



but has not signed them on.<sup>64</sup>

Cambridge Analytica also conducted work for the Leave.EU campaign and the United Kingdom Independence Party ahead of the 2016 referendum on European Union membership, according to Brittany Kaiser, the former head of business development at the firm. She said that Leave.EU used datasets created by Cambridge Analytica.<sup>65</sup>

According to Christopher Wylie, former director of research at Cambridge Analytica, the firm played a crucial role in the vote for Brexit by making it possible to target people with specific ads.

He even thinks that, without the help of Cambridge Analytica, Brexit would not have been passed.<sup>66</sup>

Of course, at this point Cambridge Analytica misused the data collected by Facebook without the latter's authorization.

But can it be justified, from a democratic point of view, to accept that the control over such a huge amount of data concerning such a large part of the world's population remains in the hands of private interest? And what if tomorrow Facebook decides, in the financial interests of its shareholders, to establish a commercial relation with the Cambridge Analytica's of this world?

### Part 3: Facebook and Forced Labor

As stated above, Article 8 of the UN Covenant on Civil and Political Rights (ICCPR) prohibits servitude and forced labor.<sup>67</sup> The UN General Assembly adopted the ICCPR in December 1966 in the immediate aftermath of the most important decolonization struggles.

The ban on forced or compulsory labor is provided for by the ILO Conventions 29 (1930) and 105 (1957).

Convention 29, although of general application, was heavily influenced by the colonial context of the time. Following investigations by the Special Committee on Forced Labour, Convention 105 was subsequently adopted in response to specific forms of forced labor, namely forms of forced labor conceived as a means of political coercion, punishment for violating work discipline or for economic purposes.<sup>68</sup>

Forced labor is also prohibited by other international instruments, including the European Convention on Human Rights, adopted in 1950, which stipulates in Article 4:

*“Prohibition of Slavery and Forced Labour*

1. *No one shall be held in slavery or servitude.*
2. *No one shall be required to perform forced or compulsory labour.”*

The definition of forced labor is given in Convention 29, Article 2, Point 1 which states that:

*“For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”*

64 Matthew Rosenberg, “How Trump Consultants Exploited the Facebook Data of Millions,” *New York Times*, March 17, 2018, <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html>.

65 Mark Scott, “Cambridge Analytica did work for Brexit groups, says ex-staffer,” *Politico*, July 30, 2019, <https://www.politico.eu/article/cambridge-analytica-leave-eu-ukip-brexit-facebook/>.

66 Sonia Delesalle-Stolper, “«Sans Cambridge Analytica, il n’y aurait pas eu de Brexit»,” *Libération*, March 26, 2018, [https://www.liberation.fr/planete/2018/03/26/sans-cambridge-analytica-il-n-y-aurait-pas-eu-de-brexit\\_1638940](https://www.liberation.fr/planete/2018/03/26/sans-cambridge-analytica-il-n-y-aurait-pas-eu-de-brexit_1638940).

67 Together with the International Covenant on Economic, Social and Cultural Rights and the Universal Declaration of Human Rights, the ICCPR formed the UN Human Rights Bill.

68 International Labour Conference (96th Session), *Report III (Part 1B): Eradication of forced labour: General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)* (Genève: International Labour Organization, 2007), 5.

Article 4.1 of the same convention provides that:

*“1. The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.”*

And Article 5.1 provides that:

*“1. No concession granted to private individuals, companies or associations shall involve any form of forced or compulsory labour for the production or the collection of products which such private individuals, companies or associations utilise or in which they trade.”*

All these international legal instruments obviously define the concepts they deal with according to the realities at the time of their drafting. The data society is of course a new reality not foreseen by the authors of these instruments.

The definitions of serfdom and forced labor contained in international legal instruments dating from fifty years or more ago will therefore not automatically and easily apply to the relationship created between Facebook and its users.

Could our activities on Facebook therefore be equated with forced labor based on this decades-old and pre-data-driven economy criteria?

There are some hurdles to this:

- The work provided by a particular user may be modest (depending on everyone’s investment in Facebook).<sup>69</sup>
- Work is “paid for” by the ability to use an ultra-efficient worldwide communication network for free.
- Many people don’t subjectively feel compelled to use Facebook.<sup>70</sup>

In view of these elements, there could be some difficulties in framing the activities of Facebook as extracting forced labor under the current legislation.

However, the law is bound to evolve. As noted above, the first convention on forced labor dates back to 1930 and mainly had the context of colonization in mind.

It goes without saying that the situation has changed considerably since then, and that new forms of work, unpredictable at the time, have emerged.

Changing the concept of forced labor therefore appears to be a political necessity.

This is even more pertinent as the thesis that Facebook imposes forced labor on its users is not as risky as it may seem.

In relation to the facts, Facebook is in a dominant position in many parts of the world. It is a major player in the fields of information and communication. To do without Facebook (or other social networks controlled by Facebook, such as Instagram) is unthinkable for many people, especially the younger generations.

However, to use Facebook is to provide data to Facebook.

To register, the social network already asks us to provide private information (surname, first name, date of birth, email address or phone number and sex).

<sup>69</sup> This is when user activity is read on an individual basis. However, collectively speaking, the global amount of labor provided daily by Facebook’s 2.5 billion users, who on average spend one hour each on Facebook a day, is very substantive. See further: <https://medium.com/@JBBC/how-much-time-do-people-spend-on-social-media-in-2019-infographic-cc02c63bede8>.

<sup>70</sup> This remains true even though Amnesty International has considered the use of Facebook difficult to avoid and many people are highly dependent on Facebook to (1) access to affective relationships, (2) access to information and (3) generate cultural capital for precarious workers. In this light, using Facebook is as voluntary as it is voluntary to walk the streets to get from point A to B.

Subsequently, all our activities (sometimes constrained by Facebook's dominant position) on the social network will be listed and will "feed" Facebook with data, data that will allow Facebook to effectively micro-target constituents, whether as consumers or voters.

Some legal arguments support the view that Facebook imposes forced labor.

Let's go back to the definition of forced labor: "All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."

This definition calls for answers to the following questions:

1. What is a penalty?
2. What is a "voluntarily offer"?
3. What is a job?

Let's start with the penalty, according to the Tripartite Meeting of Experts on Forced Labour or Human Trafficking Report: "The 'menace of any penalty' should be understood in a very broad sense as covering both penal sanctions and various forms of direct or indirect coercion, such as physical violence, psychological coercion or the retention of identity documents. The penalty may also take the form of a loss of rights or privileges."<sup>71</sup>

At the 96th International Labour Conference the same idea was developed on:

*The definition of 'forced or compulsory labour' covers work or service which is exacted 'under the menace of any penalty'. It was made clear during the consideration of the draft instrument by the Conference that the penalty here in question need not be in the form of penal sanctions but might take the form also of a loss of rights or privileges. This may occur, for instance, where persons who refuse to perform voluntary labour may lose certain rights, advantages or privileges, in a situation when such rights, privileges or other benefits (e.g. promotion, transfer, access to new employment, the acquisition of certain consumer goods, housing or participation in university programmes) depend on the merits that have been accumulated and noted in the worker's work book.<sup>72</sup>*

The impossibility of having access to a dominant social network could certainly be considered from that perspective as a "penalty".

This is all the more so since the 96th International Labour Conference drew attention to the problematic nature of forced labor in relation to the use of freedom of expression. Certainly, the focus of this conference was on the penalty of forced labor that could be imposed because of the expression of opinions. By analogy, however, it can be inferred that while the lack of access to a network can be considered a penalty, the resulting limitation of freedom of expression is also a sanction.<sup>73</sup>

This leads us to our second question, which focuses on when we can consider the work to have been offered voluntarily?

In this regard, it is clear from the Tripartite Meeting that:

*The terms 'offered voluntarily' refer to the freely given and informed consent of workers to enter into an employment relationship and their freedom to leave their employment at any time. Free and informed consent must be given by the worker when accepting the work and must cover the whole duration of the work or service. An external constraint or indirect coercion that interferes with a worker's freedom to 'offer himself voluntarily' may be a result not only of an act of the authorities, such as a statutory instrument, but also of a practice by an employer,*

<sup>71</sup> International Labour Organization, *Report for the tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation* (Genève: International Labour Organization, 2013), 7.

<sup>72</sup> International Labour Conference, *Report III (Part 1B): Eradication of forced labour*, 20.

<sup>73</sup> Idem., 86–87.

for example if an employer uses deception or false promises to induce a worker to provide services. Such practices represent a clear violation of the Convention.<sup>74</sup>

However, Facebook's practices are very opaque, and users are actually unable to know exactly how their data will be processed and how it will be used. The Facebook counter-argument—that the terms and conditions a user signs up for are transparent and for all to read—is dubious in light of the question as to whether the X amount of pages one has to work through with a lawyer's eye actually reveal what is done with data handed over to the platform. The existence of "free and informed" consent in such a context and in a situation where the use of Facebook is difficult to avoid seems highly unlikely.

In a case involving a person who was forced to defend litigants free of charge as part of his internship to become a lawyer, the European Court of Human Rights also clarified the concept of consent. According to the Court:

*Mr. Van der Mussele undoubtedly chose to enter the profession of avocat, which is a liberal profession in Belgium, appreciating that under its rules he would, in accordance with a longstanding tradition, be bound on occasions to render his services free of charge and without reimbursement of his expenses. However, he had to accept this requirement, whether he wanted to or not, in order to become an avocat and his consent was determined by the normal conditions of exercise of the profession at the relevant time. Nor should it be overlooked that what he gave was an acceptance of a legal régime of a general character. The applicant's prior consent, without more, does not therefore warrant the conclusion that the obligations incumbent on him in regard to legal aid did not constitute compulsory labour for the purposes of Article 4 § 2 (art. 4-2) of the Convention. Account must necessarily also be taken of other factors.<sup>75</sup>*

Given the importance of Facebook in our society, it is clear that a similar solution should be adopted by analogy.

Of course, there is no law requiring you to register with Facebook in order to take advantage of a particular benefit (unlike the regulations concerning the legal profession or car insurance). However, again, the importance that this network has taken in our lives seriously limits the freedom of potential users to choose and consent.

The last notion is that of work.

This is the most sensitive issue.

In this regard, the European Court of Human Rights stated in the above-mentioned case that:

*It is true that the English word 'labour' is often used in the narrow sense of manual work, but it also bears the broad meaning of the French word 'travail' and it is the latter that should be adopted in the present context. The Court finds corroboration of this in the definition included in Article 2 § 1 of Convention No. 29 ('all work or service', 'tout travail ou service'), in Article 4 § 3 (d) (art. 4-3-d) of the European Convention ('any work or service', 'tout travail ou service') and in the very name of the International Labour Organisation (Organisation Internationale du Travail), whose activities are in no way limited to the sphere of manual labour.<sup>76</sup>*

The Committee of Experts on the Application of Conventions and Recommendations ILO also refers "to the explanations provided in paragraphs 106 to 109 of its 1979 General Survey on the abolition of forced labour, where it pointed out that the scope of the Convention is not restricted to hard labour and other particularly arduous or oppressive forms of labour, as distinct from ordinary prison labour. The Convention prohibits the use of 'any form' of forced or compulsory labour, including compulsory

<sup>74</sup> International Labour Organization, *Report for the tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation*, 7.

<sup>75</sup> European Court of Human Rights, *CASE OF VAN DER MUSSELE v. BELGIUM*, November 22, 1983, Section 36.

<sup>76</sup> *Idem.*, Section 33.

prison labour, insofar as it is exacted in one of the five cases specified by the Convention.”<sup>77</sup>

The light tasks carried out by the prisoners stated in the file that led to this communication, however, were quite different from the tasks performed by Facebook users. This involved cleaning the premises, shaping the swab or crushing the macadam.

Moreover, in the above case, the European Court of Human Rights finally concluded:

*Be that as it may, the Court prefers to adopt a different approach. Having held that there existed a risk comparable to ‘the menace of [a] penalty’ (see paragraph 35 above) and then that relative weight is to be attached to the argument regarding the applicant’s ‘prior consent’ (see paragraph 36 above), the Court will have regard to all the circumstances of the case in the light of the underlying objectives of Article 4 (art. 4) of the European Convention in order to determine whether the service required of Mr. Van der Mussele falls within the prohibition of compulsory labour. This could be so in the case of a service required in order to gain access to a given profession, if the service imposed a burden which was so excessive or disproportionate to the advantages attached to the future exercise of that profession, that the service could not be treated as having been voluntarily accepted beforehand; this could apply, for example, in the case of a service unconnected with the profession in question.*<sup>78</sup>

The European Court has set out criteria to verify the “disproportion” of benefits:

*In the case of Van der Mussele, which concerned a pupil advocate’s duty to provide services under the legal-aid scheme without remuneration, the Court developed standards for evaluating what could be considered normal in respect of duties incumbent on members of a particular profession (ibid., § 39). These standards take into account whether the services rendered fall outside the ambit of the normal professional activities of the person concerned; whether the services are remunerated or not or whether the service includes another compensatory factor; whether the obligation is founded on a conception of social solidarity; and whether the burden imposed is disproportionate (see also Steindl v. Germany (dec.), no. 29878/07, 14 September 2010, concerning a medical practitioner’s duty to participate in an emergency service).*<sup>79</sup>

This criterion is not easily applied to Facebook.

In any case, it is clear that users do not get a financial counterpart and that the obligation imposed on them is not a matter of social solidarity (it is, on the contrary, to enrich a private company that pursues its profit).

With respect to the “disproportionate burden”, this criterion is complicated to handle. It can be argued that the breadth of knowledge that Facebook acquires about us through our online activities constitutes a disproportionate burden.

The disproportion would therefore not result from the workload but rather from the intrusion into our privacy that our activities on Facebook allow.

On the other hand, there is a link between our access to Facebook and the activities that are imposed on us.

In a nutshell, our activities on Facebook are close to several aspects of forced labor as defined in international law, but the existing international legal framework on forced labor has to be interpreted by analogy to fit with today’s reality of a data-driven economy and society.

An evolution of the concept of forced or compulsory labor would therefore be welcome in order to take these technological developments into account.

<sup>77</sup> International Labour Convention (83rd Session), *Observation (CEACR): Abolition of Forced Labour Convention, 1957 (No. 105)* (Genève: International Labour Organization, 1996).

<sup>78</sup> European Court of Human Rights, *CASE OF VAN DER MUSSELE v. BELGIUM*, Section 37.

<sup>79</sup> European Court of Human Rights, *CASE OF GRAZIANI-WEISS v. AUSTRIA*, October 18, 2011, Section 38.



However, collective control over and ownership of Facebook would fundamentally change the situation. As stated above, the European Court of Human Rights did take into consideration whether the obligation imposed is founded on a conception of social solidarity. A “collectively owned and governed” Facebook would be par excellence an instrument of social solidarity because the data would be exchanged between members of the community (instead of being siphoned off by private interests). As such, Facebook could, within the limits decided by the community, be used for the realization of the full political, civil, economic, social and cultural rights of all in accordance with the collective choice characteristic of the right to self-determination.

#### Part 4: Facebook and Privacy

Facebook has unprecedented possibilities to infiltrate the privacy of internet users.

The threat to privacy is probably the most well-known risk posed by the social media giant and it is extensively documented.

Generally, the public is aware that any information that is entrusted by Facebook users to the platform can be used and misused.

However, few know that the threat goes far beyond mere Facebook users. All internet users are in fact at risk.

Many webpages have a feature linking them to Facebook such as a “like” or “share” button. The mere activity of visiting such pages triggers a transmission of data to Facebook. The exact nature of the data transferred was not disclosed by Facebook.<sup>80</sup>

The significance of the data collected is even more important for Facebook users who together total more than 2.45 billion people worldwide.

A journalist downloaded his history from the social network and noticed that Facebook was keeping data on phone calls he conducted outside of the Facebook app.

The following information had been archived: the caller’s number and the date and time of sending and receiving the SMS, as well as the date, time and duration (in seconds) of the various calls.<sup>81</sup> However, it is not clear if this practice is still followed by Facebook.

In general, Facebook keeps all its users’ data. For example, people who are no longer on your friends list, your former romantic relationships, your ex-employers, your previous names, and so on. Everything is saved. When you post a photo on Facebook, all the metadata in the photo is recorded: the camera model, exposure, orientation, aperture, shutter speed, focal length and the IP address from which the picture was uploaded.<sup>82</sup> In some cases, the geographical coordinates of the place where the picture was taken are also stored.

If a user allows it, Facebook also sucks up all of its phone contacts with all the information they contain, from email addresses, home addresses, social media accounts and phone numbers. This permission is given when we accept that Facebook is “looking for our friends”. This data is collected even if the contact you registered in your phone did not give any authorization directly.

In this way, Facebook builds “shadow profiles” with a lot of information created from the inboxes and smartphones of other Facebook users, information of course obtained without the consent of the people involved.<sup>83</sup>

80 Morgane Tual, “Comment Facebook piste les internautes qui ne sont pas sur le réseau social,” *Le Monde*, April 13, 2018, [https://www.lemonde.fr/pixels/article/2018/04/13/comment-facebook-piste-les-internautes-qui-ne-sont-pas-sur-le-reseau-social\\_5285079\\_4408996.html](https://www.lemonde.fr/pixels/article/2018/04/13/comment-facebook-piste-les-internautes-qui-ne-sont-pas-sur-le-reseau-social_5285079_4408996.html).

81 “Facebook enregistre vos appels téléphoniques... sans vous prévenir”, *01net*, March 23, 2018, <https://www.01net.com/actualites/Facebook-enregistre-vos-appels-telephoniques-sans-vous-prevenir-1402488.html>.

82 Bastien L, “Facebook : voici toutes les données que le réseau social garde sur vous,” *Le Big Data*, March 13, 2018, <https://www.lebigdata.fr/Facebook-donnees-reseau-social>.

83 Kashmir Hill, “How Facebook Figures Out Everyone You’ve Ever Met,” *Gizmodo*, July 11, 2017, <https://gizmodo.com/how-facebook-figures-out-everyone-youve-ever-met-1819822691>.

The “shadow profile” is registered invisibly behind the profile of the user who authorized Facebook to have access to their contacts. The algorithm then runs through all shadow profiles and seeks connections. You might have refused Facebook to have access to your contacts but if two other Facebook users to whom you gave your contact information allowed Facebook to have access to their contacts or tagged you in a picture, then Facebook knows that the three of you are in contact. If the two users who authorized Facebook to have access to their contacts are also in contact between themselves, Facebook knows that there is a serious probability that the three of you are a mini network. One can only imagine the amount of data collected by an algorithm continuously scanning more than two billion shadow profiles of users.

It is these shadow profiles that could explain the following story:

*A man, years ago, gave sperm to a couple, in secret, so they could have a child. Facebook later recommended the child as someone he might know. He still knows the couple but is not friends with them on Facebook.*<sup>84</sup>

Facebook also has the biometric data of its users gathered through photos, which has allowed it to develop a facial recognition system.<sup>85</sup>

Facebook has also developed a feature that allows it to detect if two smartphones are in the same place at the same time.

Worse, Facebook is also able to determine whether the owners of these smartphones walk together alongside each other or face each other (which then makes it plausible to believe that these people are talking to each other).

Facebook assures us that it does not use this data to suggest friends, but this possibility is fully within its capabilities.<sup>86</sup>

As already mentioned above, such an extensive collection of data (and the subsequent capability to combine it into complex profiles) can constitute a particular threat to dissident activist of all kinds. In such a context, this tool can be used as a means of postulating guilt by association.

In addition, Facebook also allows other companies to access its users’ data.

For a long time, Facebook allowed apps to access the data of their users, but also of their users’ friends. Facebook says it has ended this practice.<sup>87</sup>

This announcement, however, did not put an end to the controversies.

It was revealed in 2018 that Facebook has shared its users’ data with sixty smartphone manufacturers.<sup>88</sup>

As recently as September 2019, Facebook suspended “tens of thousands” of apps that potentially had access to users’ personal data.<sup>89</sup>

As a result of these practices, Facebook has been convicted of invasions of privacy.

<sup>84</sup> Ibid.

<sup>85</sup> Elisa Braun, “Facebook va tester la reconnaissance faciale en Europe,” *Le Figaro*, March 1, 2018, <https://www.lefigaro.fr/secteur/high-tech/2018/03/01/32001-20180301ARTFIG00003-Facebook-va-tester-la-reconnaissance-faciale-en-europe.php>.

<sup>86</sup> Alexandra Saviana, “Facebook redouble de nouveautés pour vous espionner... et ça fait peur,” *Marianne*, January 21, 2018, <https://www.marianne.net/societe/Facebook-redouble-de-nouveautes-pour-vous-espionner-et-ca-fait-peur>.

<sup>87</sup> Josh Constine, “Facebook Is Shutting Down Its API For Giving Your Friends’ Data to Apps,” *Tech Crunch*, April 28, 2019, <https://techcrunch.com/2019/04/28/Facebook-api-shut-down/>.

<sup>88</sup> Julien Lausson, “Facebook a partagé les données de ses utilisateurs avec 60 constructeurs de smartphones,” *Numerama*, June 4, 2018, <https://www.numerama.com/tech/382385-Facebook-a-partage-les-donnees-de-ses-utilisateurs-avec-60-constructeurs-de-smartphones.html>.

<sup>89</sup> Fabian Ropars, “Facebook suspend des dizaines de milliers d’applications pour préserver les données personnelles des utilisateurs,” *BDM Media*, September 23, 2019, <https://www.blogdumoderateur.com/facebook-suspend-milliers-applications/>.

For example, the Dutch-speaking Court of First Instance in Brussels convicted Facebook of violations of the right to privacy, including:

- Placing cookies without informing internet users when they browse a third-party site with a Facebook “pixel”.
- Placing a series of unnecessary cookies in order to obtain further user information.<sup>90</sup>

US federal authorities have also fined Facebook a record \$5 billion USD for “misleading” social network users about their ability to control the privacy of their personal information.<sup>91</sup>

This fine is justified by the following breaches:

- The fact that Facebook transferred the data of friends of users of certain applications to the companies that developed the applications, without the consent of those friends whose data was therewith hoovered. Facebook claims to have put an end to these practices as noted above.
- The fact that Facebook was using facial recognition technology without the informed consent of some users.
- The fact that Facebook requested a phone number to supposedly “strengthen the security” of the Facebook account when this data was going to be used for advertising purposes.
- Facebook has not developed a program to control how app developers use the collected data.

Despite these convictions, it must be noted that it is in fact fatally naive to think of controlling the excesses of the social network through judicial procedures.

Several voices have spoken out criticizing the decision of the US authorities. Senator Elizabeth Warren, for example, said that such a fine “*is a little slap on the hand—a fraction of the profits Facebook makes in a year.*”

It is true that Facebook recorded \$2.4 billion USD in net profit in its last quarter, despite a provision of \$3 billion USD made in anticipation of the fine imposed by the US authorities.<sup>92</sup>

Amnesty International also highlights the great difficulty it has asserting its rights in the face of a company like Facebook. This is due to the great opacity of the functioning of Facebook, the asymmetry of information and the misunderstanding of the issues on the part of the “simple” users. On the matter, Amnesty International notes:

*Access to information on how a company’s operations impact their rights is vital to enable people to claim their right to an effective remedy in cases of corporate human rights abuse. However, the asymmetry of information between Google and Facebook and internet users, and the opacity of the processes of how data is collected, processed and shared, means individuals are often unable to even find out details of whether and how their rights have been affected. An example is the Facebook data that was harvested by Cambridge Analytica: academic David Carroll has spent two years trying to recover his data from Cambridge Analytica but has been unable to do so; if the incident had not been uncovered by investigative journalists, Carroll would not even know his data had been misused. The UN Special Rapporteur on Freedom of Expression has highlighted how AI*

90 “Tribunal de première instance néerlandophone de Bruxelles, 24ème chambre, affaires civiles,” Autorité de protection des données, February 16, 2018, <https://www.autoriteprotectiondonnees.be/news/victoire-de-la-commission-vie-privée-dans-la-procedure-facebook>

91 Mathilde Ridole, “Amende record de 5 milliards de dollars pour Facebook pour violation de données privées,” *L’Echo*, July 24, 2019, <https://www.lecho.be/entreprises/technologie/Facebook-paie-une-amende-record-de-5-milliards-de-dollars/10147608.html>.

92 Le Monde with AFP, “Amende record pour Facebook : même pas mal,” *Le Monde*, April 24, 2019, [https://www.lemonde.fr/economie/article/2019/04/24/Facebook-prevoit-une-amende-record-de-3-a-5-milliards-de-dollars\\_5454497\\_3234.html](https://www.lemonde.fr/economie/article/2019/04/24/Facebook-prevoit-une-amende-record-de-3-a-5-milliards-de-dollars_5454497_3234.html).

systems in general often interfere with the right to remedy. There is an inherent challenge around informing, as ‘individuals are not aware of the scope, extent or even existence of algorithmic systems that are affecting their rights’. This opacity is exacerbated because companies’ algorithms are constantly adapting and changing, such that even the designers of the system may not be able to explain how they reached their outcomes. Finally, the inherently collective nature of the algorithmic impacts on the scale of Google and Facebook’s systems presents challenges to pursuing reparations at an individual level. Remedial systems are often not designed to manage impacts of such a large and diffuse scale. As digital rights and technology experts Lilian Edwards and Michael Veale stress, ‘data protection remedies are fundamentally based around individual rights . . . while algorithmic harms typically arise from how systems classify or stigmatise groups’.<sup>93</sup>

This information asymmetry stems first from the misunderstanding of the data stored. Our data taken in isolation may seem innocuous. It is only when aggregated that it allows precise targeting of a quality fundamentally different from what the data taken individually allows. Amnesty International further notes that:

*As a result, the initial harm caused by the surveillance-based model’s assault on privacy boomerangs back on people in a host of unforeseen ways. For example, at an individual level, a person may only give up some seemingly innocuous data such as what they ‘like’ on Facebook. But once aggregated, that data can be repurposed to deliver highly targeted advertising, political messages and propaganda, or to grab people’s attention and keep them on the platform. OHCHR has stated that the analytical power of data-driven technology has created an environment that ‘carries risks for individuals and societies that can hardly be overestimated’.<sup>94</sup>*

For example, US immigration and customs officials were able to use the Facebook posts of a Mexican immigrant to track him down and deport him.

Officials noted that he was “heartbroken” according to Facebook posts, and confirmed his identity with photos posted at his father’s birthday party.

He was finally arrested after “registering” at a Home Depot on Facebook.<sup>95</sup>

Certainly, the immigrant in question had no idea that these Facebook posts could serve such a purpose. Under these conditions, how can we imagine that he can monitor his data and how it is used?

A perfect example of this inability to properly regulate data harvests can be found in the General Data Protection Regulation (GDPR) adopted in 2016 by the European Union.<sup>96</sup>

This legislation is, in principle, one of the most protective in the world when it comes to online privacy.

However, a study conducted in France shows that one year after the regulation came into force, 47% of French consumers did not know what the GDPR was. And further still, 33% of them consider that this regulation law has not allowed them to better understand how companies harvest, store and use their data.

When companies comply with the law and give access to their terms of use, 77% of French internet users do not even read them.

<sup>93</sup> Amnesty International, “Surveillance Giants,” 47.

<sup>94</sup> Idem., 28.

<sup>95</sup> Max Rivlin-Nadler, “How ICE Uses Social Media to Surveil and Arrest Immigrants,” *The Intercept*, December 22, 2019, <https://theintercept.com/2019/12/22/ice-social-media-surveillance/>.

<sup>96</sup> The main objective of the GDPR is to increase both the protection of those affected by the processing of their personal data and the accountability of those involved in its treatment. This regulation ensures, for example, that companies and organizations give citizens more control over their private data, including over data collected through the acceptance of cookies on websites and data that internet users send in contact forms.



The length of these conditions is indeed discouraging, and it was thus calculated that it took eighty-six minutes to go through the general conditions of Instagram.<sup>97</sup>

Worse, given Facebook's influence, some studies tend to show that the GDPR would actually have strengthened the company's weight in the advertising market.<sup>98</sup> Indeed:

*The small players in the ecosystem are forced to be cautious: they do not have as much means to comply and cannot risk a fine. Google and Facebook, because of their popularity, would also more easily obtain the consent of Internet users than start-ups unknown to the general public.*<sup>99</sup>

#### Part 5: Plea for Collective Control Over Facebook

Above it was demonstrated that Facebook has a quasi-monopolistic position (partially shared with very few other giants, such as Google) in many aspects of the new data-driven economy. This has come to be through its efforts to control a major part of the "new oil" worldwide, through utilizing targeted advertisement campaigns on the scale of billions, by capturing data on the scale of billions through creating new forms of value generated by millions worldwide without financial remuneration and by proposing and potentially floating a private currency. From this emerges a dangerous infrastructural monopoly. Facebook has acquired decisive influence in the organization of our daily lives and on the political and social life of nations and peoples by controlling information flows.<sup>100</sup>

At this stage, the role effectively played by Facebook is only a pale foretaste of the potential Facebook possesses to control our daily lives. The gradual expansion of Facebook's sphere of influence, visible in the purchasing of other related social media, shows it does have hegemonic ambitions in the realm of data exchange and collection. Projects such as the libra currency—even if at this stage it only seems more likely to be a test balloon—give a clear indication that Facebook does have the drive to use its strong position in the data sector to control whole sections of other divisions of the world economy.

Such an evolution has a drastic influence on many aspects of our daily lives. As stated above it also comprises huge threats to the fundamental rights of peoples and individuals on a global scale.

The threat to privacy has been extensively discussed in public but is still underestimated. Many citizens express the feeling that they have "nothing to hide". However, they have only a very partial consciousness of what Facebook will build out of the information they provide. But when citizens accidentally find out what Facebook really knows about them, they are invariably shocked.

The awareness of the threat posed by Facebook to other fundamental rights is even less known. At best, people are vaguely aware that Facebook can (be used to) influence elections because of the Cambridge Analytica scandal.

The more profound influence Facebook (potentially) has on many aspects of daily life is mostly unknown.

Awareness needs to be created around the fact that Facebook (and other similar players of course), driven by corporate and private interests, is a threat to many fundamental rights, both individual and collective, of citizens and peoples around the world.

97 Marine Protais, "Un an après le RGPD : les Français n'y comprennent toujours rien," *L'ADN Innovation*, May 31, 2019, <https://www.ladn.eu/tech-a-suivre/data-big-et-smart/rgpd-etude-bilan-comportements-utilisateurs/>.

98 "Le RGPD, 1 an après," *BFM Business*, May 20, 2019, <https://bfmbusiness.bfmtv.com/entreprise/le-rgpd-1-an-apres-1693793.html>.

99 Ibid.

100 Such efforts have been analyzed as a form of "surveillance capitalism" by researchers such as Shoshana Zuboff. See further: Shoshana Zuboff, *Surveillance Capitalism: The Fight for a Human Future and the New Frontier of Power* (London: Profile Books, 2018).

As stated in the introduction, the most fundamental source and root of most individual and collective rights is the right to the self-determination of peoples. That is, the collective right of peoples to have control over their destiny.

In their Common Article 1, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights define self-determination as the right of peoples to freely determine their political status, to freely pursue their economic, social and cultural development, to freely dispose of their natural wealth and resources and to not be deprived of their own means of subsistence.

Above it was demonstrated that Facebook:

- Has decisive influence over information flows. Yet at the same time, people need access to information to be able to freely determine their political and economic choices.
- Can influence public opinion in a significant way while driven by its own corporate interests.
- Increasingly controls our ability to communicate. But people need to communicate to be able to organise as groups in society to weigh in on political and economic choices.
- Influences or is used to influence elections, referenda and so on, which are major channels through which people make political and economic choices.
- Confiscates the value created by billions of people around the world in the form of data extraction by placing this “resource” under private control, thus depriving people of the possibility to decide for themselves on the use of this wealth for the benefit of collective development.
- Expressed at least the ambition to rise to the same rank as central banks and to exercise control over monetary policies.
- Creates new forms of forced labor where people are compelled to create value without receiving a salary to do so.
- Enables hate campaigns that has led to severe violence imposed on religious and political minorities, advises dictatorial regimes, and shares data on dissidents and activists putting them in life threatening circumstances.

States cannot comply with their obligation to respect and to ensure to all individuals the rights recognized in the Covenants—without distinction of any kind such as those made along the lines of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status—if the main resource of the new data-driven economy is increasingly controlled by a very heavily-laden monopolistic hand full of corporate players that command the most sophisticated mechanisms ever to influence public opinion.

To a large extent, all other civil, political, economic, social and cultural rights precisely depend on the right to self-determination, on the degree of control individuals and communities have over the levers that allow them to decide on their destinies.

All labor rights, construed and defined in the context of an economy where labor force is exchanged against financial compensation, such as a wage, become meaningless when new forms of (forced) labor, similar to medieval serfdom, are spreading.

On the other hand, however, a worldwide instrument to exchange information, to communicate, to organise, to express and share opinions, to discuss the development of society, to create new forms of work distinct from wage slavery and to stimulate new forms of economy separate from the capitalist market economy has a tremendous emancipatory potential. Of course, such an instrument needs to be determined by one condition: that it is not driven by the corporate and private interests of a handful of shareholders.

Therefore, infrastructures like Facebook need to be in the public domain, owned and controlled collectively and democratically by their users. This will require creative work and thinking to develop such worldwide collective and democratic mechanisms of control. But that work cannot be avoided because traditional forms of state “regulation” or supposed “corporate accountability” have clearly proven to be ineffective.

It is only at that price that infrastructures like Facebook can become tools for emancipation, for the full realisation of peoples and human rights, and which can, through doing so, cease to be monstrous threats to those rights and to humanity itself. Only a collectivized Facebook—a cooperative of 2.5 billion people—can ensure that the right to self-determination is not only protected but also expanded.