

Transcript of Protecting Elections from Online Manipulation and Cyber Threats: The Experience of Israel's 2019 Elections featuring Justice Hanan Melcer, Supreme Court of Israel – October 23, 2019

So, welcome all. I'm Yochai Benkler I teach here. I do all of my research at Berkman Klein.

It's an incredible honor and pleasure to have the benefit of the insight and wisdom of Justice Hanan Melcer of the Israeli Supreme Court. Justice Melcer started as an academic, as a lecturer, had a major practice as a practitioner and has been a justice of the Supreme Court and now, the Deputy president of the Supreme Court of Israel.

He is also, for the last 2 and 1/2 years, the chairman of Israel's Central Election Commission, which runs very differently. But as a practical matter, it meant that he ran as an administrator a major election organization system. He was the [INAUDIBLE] prac-- No, full [INAUDIBLE]. He was the sole legal decider on questions of election law as things rolled out.

And as we'll hear today, Israel, which went through two election cycles in 2019, really saw everything we saw in all our election cycles and then some, and much that we will likely see in the next two years. And to have someone who was in the thick of it, to have someone who, as we'll hear, had the judicial courage to face a very powerful prime minister and a very powerful governing party, and not always gold for them, is an inspiration and a symbol to us year here doing law and thinking about the possibility of law offering a genuinely independent check on political systems.

So, we're enormously grateful that you made the trip, and are willing to speak to us, and help us learn to see a little bit into our own future through your recent past. And commenting on Justice Melcer's proposal and embellishing it, we have Professor Niva Elkin-Koren from Haifa University who, a former dean, one of the leading technology and law people I know and we all know, and who will give a little bit more background on detail on this whole system. And then we'll open up for conversation.

So again, Justice Melcer, thank you very much. And please give him a round.

[APPLAUSE]

Professor Benkler, distinguished participants, and esteemed guests, it is my honor to be here today and to speak to you. And I thank you very much for the invitation and for the attendance.

I decided to dedicate this lecture today in the memory of Chief Justice Meir Shamgar, who passed away on last Friday, and his funeral was held yesterday. Obviously, I could not attend,

but I cherish his legacy. He was a legal giant and the master of national security law, which is connected to the issues that we will discuss today. So, bless God and we cherish his memory.

Now, before I start my lecture, I have a warning point. Whatever I'll say here is not as a representative of the Supreme Court or of the Central Election Committee. And, as a matter of fact, whatever I'll tell you is not necessarily even binding me, and I'll tell you a story about that, a real story.

Before I was a justice of the Supreme Court, I had a law firm and I argued many cases before the Supreme Court. And once I heard the court case, it was before the Chief Justice Aharon Barak. And I told all my client that we are going, hopefully, to win the case, because I found an article of Professor Aharon Barak when he was in academia. And I based my argument on his article. And his article really was in our favor.

And then we came before the court, and Professor Barak who read all the written material that I presented to him, said, "You quote a lot a paragraph of my article. I wrote it about 15 years ago. And in the meantime, I have changed my mind."

[LAUGHING]

You can understand that I lost all the blood. It went from my head to my feet. And then he made another statement. He said, "You have the chance to persuade me that my previous understanding of the matter was right and not my existing view."

So, really, I tried and successfully, I succeeded. But you have to understand that if any issue will come before me and a new argument that I didn't think about will come up. I'm not by bound by my own ideas here.

Now, as a matter of fact, in 2019, about 50% of the democratic world and the quasi-democratic rule went for elections. Just take India, which is more than one billion people, a candidate that we had elections at the end of this weekend in Brazil, all the European countries for the European Parliament and Switzerland last week, and in Israel twice.

And as you know, in Israel, the first elections which were held on April were held on April because the prime minister decided to call for early elections. And then he couldn't form the government, so we called for another election. So, we had two election campaigns in the elections in Israel just in 2019.

Now, I have to tell you that due to the fact that in 2019 there was-- OK, I'm sorry. That due to the fact that in 2019-- if you don't hear, I will speak up. We had two elections, but the first one was in April. And all those issues that I speak today about, we were probably the first one to have those elections, and that is why all the world looked at what is going on our issues in Israel. And from then and whatever we did was the precedent for other countries in the world. So it just happened like that.

Now, as I see here, many familiar faces and in the closed session that we had for the morning, I have had to explain the electoral system in Israel. But I see that there are many, many Israelis here, so I don't have to describe the Israeli election system in Israel. And besides that, Professor Benkler has asked me to go right into the examples that I talked about in the closed session. So your request is my command. And I'll go just to the point, and I'll try to describe you part of my experience in handling two election campaigns in Israel.

By the way, it's a precedent that a Supreme Court Justice is handling two election campaigns. But because there was such a small difference in time between one election than the other one, I was re-elected by the justices of the Supreme Court to run the second elections as well as the first one.

And I declared after the elections that if there'll be a third round, I'm not going to do it anymore. So everyone has to know when to retire. So I made that declaration.

Now, what I do, I'll try to describe to you four decisions of me in my capacity as the chairman of the Central Election Committee of Israel. And as a matter of fact, you have to understand, as a chairman of the Central Election Committee, I have three basic functions.

One is to be the, let's say, the chairman of the committee. And it was decided by the founding fathers when the State of Israel was established that the Supreme Court Justice who will be chosen by all members of the Supreme Court will chair the Central Election Committee due to the fact that the founding fathers couldn't agree on any other person to ensure that election, Central Election Committee. And so it goes on from the moment the state of Israel was established in 1948.

So the first function is to be the chairman of the Central Election Committee and, in this capacity, I'm functioning as the chairman of a board. And the board is the committee which is composed of 34 representatives of all existing parties in the Knesset. Then, and I have also a CO and a very small staff that regularly is composed of about 30 people. But once elections are declared, it goes up.

And at the end of the day of the elections, we employ altogether 100,000 people. You have to understand, 100,000 people, if you compare it to any other action, there is not any other action so huge in the civil life of Israel. And you just can't compare it to the army. And it's very much like to operate about five divisions or three courts or five, six divisions and three courts.

So, and then, on this function, I'm doing the job of the chief of staff. Now the second function is to decide on all legal matters. And there, I have to decide on those matters exclusively, because all the other members of the committee are political members and they all represent parties. So on those matters, I decide exclusively. Of course, any decision that I make it can be attacked in the Supreme Court. And people and parties are using this possibility.

I hope, as a matter of fact, in those two elections, there were many petitions against me, but none of the petitions was accepted. Again, it's a precedent, because in all the previous elections, some of these petitions were accepted, so that's another precedent.

Then, the third function, which is a new function. And it is a lesson of what happened in the United States in the 2016 elections and in other places in the world is to try to stop a foreign intervention, and to deal with and to handle with propaganda over the social networks.

So, the third function was something that never, ever occurred in the past. And it was a new challenge that I had to struggle with. Now, I devoted my time, about 50% to the administrative functions, about 25% to the judicial functions, and 25% to the security methods. And you have to understand, at the beginning, I didn't even-- I couldn't even tell anyone that I'm working on the security matters.

So I was sitting in the court as regularly, and in the late afternoons, and in night, overnight, I sat with all the security and the intelligence agencies to prepare ourselves for the third mission. Just after the elections were declared, then in a mutual decision with the security agencies, we published a notice for to the public about it.

Now in any case, I'm not going to go into details about the security matters for obvious reasons, but what I will do, I'll give you-- I'll describe four decisions of the two elections, one in-- three of them from the first election campaign, and the first one of the last election campaign. And then I'll-- after, you will hear comments from Professor Niva Elkin-Koren which helped me a lot to understand the new era of social networks and the involvement of the security organizations.

And really, she is the expert in Israel. So I consulted many people, but she helped me a lot in those matters. And I thank her for that. So she will make comments, and Professor Benkler will make comments. And then it will be-- I'll take your questions.

I tell you right from the beginning that I'll listen to all your questions, but some of the questions I am not sure I'll be able to answer. Not that I will not be able to answer, but you can understand that. If you will ask me too delicate questions, I apologize, but you will have to understand that I can't answer those questions.

OK. Now, I'm coming to the first case. The first case was in the first election. You have to understand we have a propaganda law which was enacted in 1959, and it covers many, many topics which were very innovative in '90-- in the late '50s and '60s, but it doesn't cover at all the social networks. Then no one even read about the internet.

OK. So before the elections were declared, there was an initiative in the Knesset in the parliament to apply the Propaganda Law of 1959 to the social networks. Some of the parties really were willing to have this provision, to pass this provision. Some of them were neutral, but the Likud Party blocked the initiative.

So after the elections were declared, a lawyer and an NGO filed a petition to me, asking me to judicially decide that the election, the provisions of the existing law will apply to social networks. And in the existing law, there is a provision saying that in the period of the elections, no ad can be a published anonymously, but you should, in every ad, in billboards, and in the paper, newspapers, you should say who stands behind the ad. So, the petition said that I should apply this provision into all of the social networks.

Now, I made a hearing. And as a matter of fact, it was almost-- I was almost ready to dismiss it because it was theoretical. There was no-- any actual case before me. But then I say sometimes that everyone has to have his luck.

After the-- just a day after the hearing, and suddenly on all billboards in Israel, there was an anonymous ad saying that there, in the ad, there were four very famous journalists with their faces and their names saying, you, the voter have to decide. Who will decide for you, those four journalists or you, the voter? OK, and it was published anonymously.

Now, the same ad was published in the social networks. This was just the same ad. And then the petitioners who understood that in the hearing, they didn't have any hard facts to base on their petition, they asked to correct their original petition. And I decided to have another hearing. And in this hearing, the Likud Party said-- had raised two arguments.

First of all, they said, oh, in the meanwhile, the press tried to find out who stands behind the ads. And they found it behind the ads the reporters were standing. And then the Likud said in the second hearing, OK, we made a mistake. It was by mistake. It wasn't published. Who stands behind the ads? We will leave it on the billboards with the name of the Likud. But in the social networks, we will say in the social networks, we are allowed to go anonymously. This time and maybe out in the future occasions as well.

Then I heard all the arguments, and then I issued the decision saying that-- I issued an injunction saying that this special case is an example of the need to apply it also on social networks.

Now I gave, as a matter of fact, basically, four arguments. The first one was I based my decision on a theory or the principle of Defense of Democracy. Then I used the technique of a purpose of interpretation. I found another provision that, in the '95, '59 law that in the purpose of interpretation, I could apply it to such a situation.

And then I used what is called the-- we have a law that is not used so much. It's called the law for fundamentals of the Israeli law. And it says that if there is question that comes before a court or in other judicial form and there is no answer either in law or in the precedent of the Supreme Court, you can use either analogy. And if there is no analogy, you can go to the roots of the Jewish tradition and Jewish law, the ancient Jewish law.

So I said, OK, there is no specific law. There is no precedent, but the analogy here is very clear, because it's just the same ad in the billboards and in the social networks. And even if you will say that there is no analogy, I found roots in a very creative manner. I found roots in the Jewish, ancient Jewish law.

And so, I covered myself in all alternatives. And I did it because I was afraid that the Likud will try to attack my decision in the Supreme Court sitting as High Court of Justice, but they didn't. And then, so we had a decision that was binding on all the parties. And then my friends in the academia said, OK. It's a very sophisticated and very nice decision, but you not be able to go to implement it.

What they didn't know, that in parliament, in my administrative capacity, I spoke. Or OK, they asked me to say that they spoke with him, but as a matter of fact, I negotiated with Facebook. And I told them that in such cases they should do something. And the reason for them to do something is their declaration to the US Congress that they will apply, let's say, new techniques after what happened with Cambridge Analytica.

So, I called them for a meeting, and I asked them to show me what they would apply not just in the United States, but all over the world. So I called them for a meeting. They came over from the United States, very high ranking officials of Facebook.

And then at the beginning, they were very polite, but not responsive. And then I told them that there is another alternative, that if such a case would arise, well, we will go by the legal path. And I don't know whether it's advisable from their point of view.

OK. So they took another-- they asked for several days to think it over. And then they came with a proposed solution, saying that they are willing to apply their procedure of notice and fade out on such matters. And then I said, OK. I really appreciate your declaration, but it's not enough.

Why it's not enough? What will happen if someone will give a notice and you will not decide to take it down? So, they asked me, OK, what do you ask us for? So, I said, if such a person or party will use the procedure of notice and take down and you would refuse to take it down, then he can make a petition to our committee to me. And if I will issue an injunction, you will have to adhere to it. Took another several days, and then they said, OK, we agree.

And from then on, I must tell you that at the beginning, as I told you, they were not so responsive. But after those two weeks, they called it tops. And after that, again, it's not an agreement, but understanding. It went very well.

And you have to understand that after their decision and the procedure of notice and take down and, in some cases, appeal that was before me, about 70% of the anonymous material in the networks went down. Here, I have to emphasize another point. Our security organizations allowed me to put in the decision a provision saying that it will be much easier for them to monitor the possibility of foreign interference if a local party will use anonymous advertisement or any anonymous publication.

So, I put it in with their permission in the decision. And, as I tell you, it was a success because then we-- only security organizations could be with each other, the other 30%, and with some of the local parties or local initiatives where they didn't adhere to the decision, but the map made it much, much easier.

After I spoke with Facebook, I went to Google, and I went to Twitter, and I made this. I came to a similar understanding with them as well. So we covered most of the social networks. Not all of them, but most of them, and the major ones. So that was the first decision that I wanted to describe to you.

Then, just afterwards, we heard another petition. You know the prominent-- and again, here I want to add something to be students who are familiar with US legal work on those letters. I didn't know at that time that is a very similar idea was introduced by the late Senator John McCain in what is known as the Honest Ads Act. But it, again, it didn't become. It just was just a proposal. He made the proposal was to other senators. And at that time, I thought that I invented something. But then I didn't know that such a thing was being proposed in the United States.

Afterwards, I read the book of Professor Franklin, and he mentioned that there. So I said I saw that I wasn't the first one in the world to think about such an idea. But still, I was the first one to issue such an injunction, because, again, the law of the act that the late Senator John McCain proposed didn't become a law in the United States.

OK, now I'm coming to the second case. The second case came for me just after the first one. And the facts were like that. One of the parties, a small party-- then it was a small party, they [INAUDIBLE] the table. Then it was a small party. They said that over the cellular phones, a report is being distributed, and you have to understand regularly, polls are being distributed to 1000 or 2000 people who have to answer or are being asked to answer.

In this case, about 50,000, 40,000, 50,000 people go to the proposed or the poll, which was anonymous. And the main thing was it was anonymous. And in the possibilities to answer if there were a report, this party that swelled the table was not included.

And then they said, first of all, it's, first of all, it is against your decision because it is anonymous. Secondly, the idea to send it to 40,000 or 50,000 people, the idea, the main idea is to-- it was targeted to people who the initiative was targeted to those people who thought whether to vote for we celebrate it or not. And once, not including this party in the poll gives a hint as if they were not passed the threshold of 3.25% of the vote, which give you the chance to go into the parliament.

OK. I issued immediately, immediately an injunction. But then you he will begin to say it's not enough. We want to know who's stand who's stood beyond this poll? And I made another hearing. And then, you have to understand, it was with cellular companies. And according to the cellular companies, you should have license. And they are not allowed to permit anonymous-- according to the license, distribution of messages.

So, and if they breach or infringe this provision in the license, they could lose their license, but that is not enough. If they act according to the license, they have an immunity which is similar to paragraph 230 of the American Communication Decency Act. So, I told them, you should tell us who stood beyond the port. And then they understood that they might lose their license, and they might lose the very immunity. So, they said, OK. We are willing to disclose.

They asked the one that has initiated it. And he said, OK. I don't have any way not to disclose it. And he gave-- I don't know why, but he gave his acceptance to the disclosure. But then, probably that was the reason it was the first use. As a matter of fact, it took another two years to come to the rate of the original [INAUDIBLE].

And at the end of the day, you wouldn't believe who was standing before up behind this message and the port. It was one of the parties that I don't want to comment on that, but it was one of the parties that really, their claim to fame is they're the cleanest way of doing politics. And that was the fact. OK. So that was the second case.

The third case was-- never mind. Afterwards, I'll tell you, because you're so interested. It is great you are interested, but that was the case. The third case came before me after a joint venture between the New York Times and the most popular newspaper in Isreal, Yedioth Ahronoth. And it was a piece of a investigatory journalist investigation.

And they said that the Likud is behind a NetBot. and it's the whole investigation of the whole article was called "The Big Bot Network." OK. As a matter of fact, it wasn't-- by the way, it wasn't bought at all. It was, how do you call it, a sock puppet, a sock puppet.

OK. That is the way really well people who didn't disclose their names. And immediately after the publication of that piece in the papers, one of the big parties, [NON-ENGLISH SPEECH] which today, their leader got the formal mandate to try to form a government. They filed a petition without adding anything to what was in the paper but, just giving me the article and asking me to issue an injunction because it was-- they had two claims visible because it was an anonymous-- the network was anonymous in a way. And they claimed that there was a conspiracy.

Here, they didn't add anything to what was in the papers. And beside that, to basic a legal action on what is written in the papers is also a problem. So in that case, I decided in favor of the Likud, saying that they couldn't-- they didn't establish a conspiracy. And that is very similar to what a justice-- not justice-- the Mueller Report said about what happened in the United States, that no conspiracy had been proven in the level that is needed for a legal action.

However, I quoted a verse from the Prophet Amos say, came to walk together, except they agreed. We agreed. And had a [NON-ENGLISH SPEECH]. But still, they couldn't prove more than they-- they couldn't prove what they claimed, so I dismissed the case.

The forced decision was in the last elections. And here, there was the-- we have a provision in the existing law saying that in the last three days before the elections, no polls should be published in any media and by any party. Now, the court and that Prime Minister Netanyahu, they used chatbot. And in this chatbot-- the chatbot was activated by Facebook Messenger.

And in those, it was within the three days. And they published in this chatbot a poem saying that the Likud is going to lose the elections, and the liberals, and the leftists as they coordinate are going to win. So they called all Likud supporters to go in to vote.

Now, they put in the bot the poll that they wanted everybody to see. And it was within those three days. So a day before the elections, a petition was filed to me, and I gave it the night at 10 o'clock PM and interlock-- in a term injunction telling them that they should take down this publication up to seven o'clock in the morning on the day of the election.

And I issued the injunction against the Likud and against Facebook. Then, due to the fact that we got after what I described before, good connections with Facebook, Facebook called my legal department saying that they think that there was a mistake, that issued the injunction against them as well. And then I told my legal department that if they have any problem, they should file a petition to me. I'm not going to speak with them informally on this matter.

So in the morning, they filed a petition asking me to correct the decision, saying that it was probably-- I issued the injunction against them by mistake. Besides that, the Likud have issued a response, and they have raised two arguments. One was that it's not a poll, it's a fake poll. So if it's a fake poll, it's not a poll.

And the second argument was that they are willing-- they understand that if the first argument will not be accepted, they are willing to pay a fine according to contempt of court. But they're willing to pay fine, and even a very huge fine. OK.

And then, I-- while still the injunction was in force, and then while I was considering writing the-- it was, and you have to understand, in the election day, while I was writing the decision, suddenly the representative of the Likud in the election committee came over and said, "We have an idea."

And then I said, OK, you have to again. You have to put it out. And then Facebook came to me as well. And they said that the prime minister and the Likud are saying that they are willing to take it down, but there is a problem. They cannot differ between the illegal publication of the poll to the legal matter that is allowed to be published on the project.

So I said, if that is the case, just take down the whole project. And then I asked the Facebook if they are willing to get the decision or they want to withdraw their petition to change my decision. And then they said, OK. Now, we will do it by our initiative.

And then, suddenly, the Likud found a way to differ between the poles and the legal published and the other material. In the meanwhile, the bot was down for three hours. And then, when the Likud made the undertaking that they will differ, and they will take out the poll out of their chart, then the prime minister made an interview saying that he doesn't understand why I've decided, because I decided because he was willing to pay a very high fine in a contemptible of court, and how I dare to put it their bot down in the day of the elections.

And so then, it wasn't allowed to make any interview of the day, of the election. So I said, now you have to hear another provision, a new undertaking that you will not make any interviews anymore. And they accepted. And then I was really to allow them to put the body up again.

But then Facebook said, OK, we have to get directions from the United States whether to put it up again. So it took another hour, and then they came to me and asked for a formal decision. They give a formal decision, and then the vote went up, and there were no more interviews and no more posts. Those are the four decisions that O wanted to describe to you.

And I want to say at the end, before opening to comments and questions, that as you see in this case, in those matters, the light onto the nations came from the chosen. Thank you.

[APPLAUSE]

So, thank you so much. Thank you so much. As he now comes up and is preparing to speak, just in case you didn't notice through the extremely mild manner with which the justice presented, he described the situation where he pushed back and forth between his administrative capacity and judicial capacity to reach an accommodation with Facebook, and then Google, and Twitter to do informal one order implementation of order, essentially of order.

He's threatened to take away immunity from the cell companies if they didn't reveal enough to allow [INAUDIBLE] against the individual. And they ended up enjoining the sitting prime minister from using a chatbot over Facebook Messenger and target them. So there's a-- each of these three could occupy a seminar of controversial relations between private and public, between judicial and administrative. Let's not forget them. And Niva, let's hear from you more about what we are learning from this election system.

So we're learning about the virtues of law, but also, what could happen in the shadow of law. And I think that this is a story about what is happening with the law when the politicians, the legislators cannot regulate politics and elections before they're involved and they're engaged in it.

And I think that the question for me-- I think that should be the question for us is what does it take to save our democracy and our elections when politicians are not functioning? And I would say that it takes a village, and the is made of the judiciary, and the social media, and the media, and civil society. And our elected do, just to show you that very briefly by going back to the stories that we heard about, and just flesh out some of the reflections of each of the players in each of these stories, or facing three stories, three of the stories that we first heard.

So in the first one, it took [INAUDIBLE] justice to make this decision that would apply the law of the elections through the social media, or maybe not. But then it also took some work from the civil society, the media, and also social media. So we've heard about the corporation by social media that they undertook upon themselves to collaborate and to take down. But the other claims were as well.

So one of the players were the civil society. So we had groups of people working with a great coalition of NGOs that were actually looking for a [INAUDIBLE]. They called them the Public Support Laws, supporting them, tracking them, going through social media, and asking social media to take them down.

Some of these bots were actually bots. Some, we've heard, were actually real people. And what is amazing here is that you would think [INAUDIBLE] that this was important [INAUDIBLE]. It is a newspaper [INAUDIBLE] just, but this person, [INAUDIBLE] would turn to be a real person when it actually was a cabinet minister that actually turned this story into a story of success for the Likud Party where Netanyahu was actually turning it into a spin.

And on party lines, that the election day is the boss. We, the party, generally the common party, will go to poll to vote. And we're all boss. We are all going to vote and actually elect the right party. So it's not only about what you do on social media, but actually how you turn these stories sometimes in your favor.

So this was not the success story for a civil society or for journalists or investigative journalists, journalists that were doing this story. But in retrospect, I think that we were done like post-mortem for this and we're looking at what had happened between the Israeli society during the first elections. And I think that this is one lesson that we had that, even though once there was a spin. There was no success in terms of identifying what. But the bigger picture was that we have gained some digital literacy and the ability of the awareness of people over some of the dangers that you are facing in social media.

So when my 85 years old mother said to me, "I've seen this on social media. Is this a bot?" So I just thought, oh, this is great. This is a great success, and maybe this is something to be gained from that.

Second round of the elections. We had a story that did actually be knocking both with the judiciary. So we had social media civil society and the media. When our prime minister actually looked forward to hate, sharing hate speech online, and his checkbook was actually blocked by Facebook because this was a violation of Facebook community guidelines.

And that's an interesting story that actually did not involve the judiciary, but involved other courageous people in civil society. So here you had those of you interested in history, and it's documented here. You can just-- this is 10 pages. They're gradually describing-- but he was actually describing what was happening here.

But here you had an activist lawyer and an activist as we know as a scholar. And [INAUDIBLE] was actually studying the way in which the bot, the chatbot was actually working online and that it was doing something that was really interesting. And so, taking the vote resolute that you get from election's activity. All the parties get voter's lists.

Using social media, in this case, Facebook, through advertisements in order to classify that group of the list of the voters to those who are for us and those who are against us, who is going to vote for us. So the chatbot would do some games in the beginning and then engage people in a lot of activities. And at one point, would ask, are you going to vote for me, the prime minister, and so enabling this type of classification, and then using the chatbot in order to activate the group of supporters and actually recruiting them to engage more and more people in this type of debate.

This was something that was happening using the messenger, but the social side that was using a lot of fake accounts in order to document this type of activity managed to pretend to be an activist that is loyal, that is supporting. But a it could, a party, and therefore, receive that hate speech from the chatbot. The hate speech was not great, and it was not announced by the media. It was not announced on television. It was only communicated through the messenger of the people who were loyal, right, and received that message.

This was leaked to the media, public media. The media reported it. And only after it was reported by the media, so it made its own awareness in the general public. Facebook took action against this and actually blocked the chatbot for the first time for six hours. So this is a story that involved social media, civil society, the mass media, but no judiciary intervention.

The third story that we've heard about is actually quite remarkable. Right? I mean, this is a prime minister of a country and the chatbot is being blocked on election day by a company. And this is a chatbot that is actually being used the most intensively on election day in order to manage some of the activities on the ground during a very critical time

And here, as we've heard, we actually had, again, and we had, of course, the judiciary, but also some action by the civil society, social media, and the media. And the reason is that, again, these type of polls only showed up, only the legal polls only showed up on the messenger communicating the polls this select group that was the loyal-- the [INAUDIBLE] loyal group, and showed up on the screen of the researcher that was holding all these fake accounts and was collecting this information.

The petition was brought in by the activist lawyer. And this was-- and it took the creative innovation of both of these players in order to come up with this order. But this was also received in a political [INAUDIBLE] by the prime minister or the-- and his supporters as a form of stealing the elections, right, and trying to circumvent the fair play by actually taking an extreme action.

So, the last thing that I wanted to mention before I go break into my takeaways from this is that the use of the messenger, I think, is something that is really important and is really different from the type of misinformation that we've seen in the 2016 election. And that is something that is really taking us beyond misinformation and disinformation and to creating a new way of governing and communicating with people in a secretive way that is not open to the public.

So if we were talking about-- we normally talked about the public ordering on the one side, right? The governments are actually working as government or private ordering, going to do something that the type of governance that is being done by companies. Here, we start to think about some sort of mass personalized ordering, and that is the ability to activate people without a lot of people, like a lot of crowds. But to do that directly with each them individually, so we don't know, but we all get these directives or orders.

And again, those of you who are interested in that, those stories posted online how the messenger was working with, I guess, orders it was giving, and these were like, yeah, the prime minister. I'm ready. That was above and that didn't happen until you push whenever you got a new-- if you wanted to get your assignment.

So what are the takeaways? Civil society, the attitude to regain our democracy or protect our democracy requires some courageous activists, but also, some innovative methodology, such as methodologies that would tinker with the things that are being done by politicians using social media. And also, lawyers that would actually act as the undertakers, petitions, and lawsuits, and bring it to court.

It does take the involvement of the general media, mass media. Things that were kept secret, for instance, the hate speech that was communicated in the messenger did not get any attention before the media actually published that and created a lot of pressure on Facebook that eventually 48 hours after it was posted blocked the chatbot in the case that it did not involve the judiciary.

And of course, it requires a courageous judiciary that would use doctrine such as the defense of democracy to expand some of the laws that can be applied to mass media. And it's then that also the social media, thereby, creating a new regime. But I think that this is something that could also be dangerous in the sense that as those of us in the middle liberal democracy are facing a constitutional crisis anywhere, right?

I mean, it's like all of us are reading the newspapers and we see a constitutional crisis in the United Kingdom, in the United States. We also have our own part of this in Israel. This is a heavy burden on the judiciary. The judiciary cannot save us to the degree that we disagree on very fundamental issues. So to our activity and innovation is good enough in order to use an existing law and to send it to social media, but then someone has to work out the details of how it works, right? When do you remove things that are not in the [INAUDIBLE].

And so, I think that when we come to think about social media, I think that the two rounds of elections in terms of attacks and manipulation on social media were a big success, but I think in Israel-- but I think that self-regulation of social media is insufficient. I see on my space that we are running out of time, so I'll stop here. There are more questions than I thought about. [INAUDIBLE]

[APPLAUSE]

It would be quite circumspect to tell me.

So let's open up for questions. There's some genuinely and actually Justice Melcer, can we have him sit here and that sort of thing. [INAUDIBLE]

So, questions? Yeah.

I thank you guys so much for your talks earlier. Very, very interesting. I have two sort of small questions. Number one, just a question. When you were talking about your conversation with Facebook and sort of applying the notice of take down to Israel, to Israel, did the competition-- I know that Facebook policies in light of Cambridge Analytica are also included requirements for political ads to have a disclaimer who was-- that also part of the conversation that you were talking to Facebook about having that apply.

Yeah.

OK.

That's right.

Kind of those--

I didn't. I didn't describe all the talks, but it included.

OK. And the second thing is, in light of the instances and the examples that both of you gave, one thing that sort of came to mind is how WhatsApp is also sort of a political platform. It's not like a typical social media platform, but that's how information flows around as well through WhatsApp. So, for example, the photo you were talking about, how you could get the photo included on Facebook to say that it was them, but the photo could still be shared around--

OK. I'll just answer a very short answer. The fact that the groups in WhatsApp were limited, I have also a share in it. I don't know whether you're familiar with the fact that the groups in WhatsApp were limited now, are limited now, especially in an election period.

Right.

OK. So you have an answer.

As other people are raising hands, I'd actually like to ask you a question, Justice Melcer. You describe that process that is contact of a certain kind, a little bit of arm wrestling with the companies, but that the outcome, as you describe it, are using all this positive. Essentially, the firm said what they were good at. You did what you were good at. Do you have any thoughts if you are writing a new Honest Ads Act for us?

What's the lesson, because it's not private ordering or public ordering. It's a very distinct public-private partnership where you're taking certain responsibilities, the companies are the only ones who can take others. What would be an ideal model, from your experience, if we were writing an Honest Ads Act for ourselves, then?

First of all, to be quite frank with you, there is not an ideal model, but we went too far with all those big companies like Facebook and Google. So you have to cooperate with them, but still to supervise them. And more than oft, them taking measures in the first instance is OK, but then it's not the last word, because they want to have the last word. And now they think of an advisory board or a quasi-judicial board which will not-- will be outside Facebook but still, it will just give recommendations, and it will not be binding on Facebook.

So I think that the two-tier mechanism will work. But here, it's not just that you can do the Honest Ad Act, but you have to implement that, some mechanism of deciding on a judge that will decide on those methods very quickly. And here, because of your system, it's very difficult to find such a judge that is agreed upon between the two major parties.

So, but you can do it. Now Professor Kahneman wrote the book thinking slow, thinking slow and fast, or fast and slow, as a matter of fact. So you have to have, because the decisions still have to have to be very, very quick. So first of all, the let's say the basic, because I saw it later. The basic idea on the merits of the initiative of the late John McCain was good on the merits, but then you have to edit two more things.

First of all, a time limit. And secondly, you have to find, let's say judges in every state who will be agreed upon between the, first of all, the parties and then that they will be the Court of Appeal of the decisions of the companies like Facebook and Google. And whatever they will decide would be binding.

Of course, later on, ex post facto, you will be able to go to court in the bottom up on the, let's say, principle matters to the Supreme Court of the United States. But you have to add in this act proposes that the essence is OK, but you have to add the mechanism to decide.

Thank you. Thank you all very much for this. So some things you need to adjudicate are very visible, right? You can see if something comes out. But below the surface, there is a lot of that that could be fake profiles or even just ordering of the ads and the information in the posts that we see by other people that has a great impact. And that is sort of less visible and less easy to challenge, and we're sort of trusting Facebook to do that, just like they can block some hate speech.

And how do we trust them to make that decision or how do we look at how they're making that decision in a critical matter, right? So, we're talking about regulating the parties, which is a lot of what you did, but what about that more hidden activity or the activity that Facebook is actually regulating, maybe profiting or maybe has an agenda. Maybe Facebook supports one of the parties, so.

I want to do that.

Yeah.

OK. And I'll give you an answer. My main theme is that anonymity over social networks should not be allowed in times of elections. Now anonymity includes everything. It includes boards, it includes, how would you call it? A--

Fake profiles.

Fake profiles and so forth. But that is the distinction that I make. So if all those anonymity publication, they should not be allowed in times of elections as long as they are connected. And you can't prove that they are connected to any party or any candidate, or they are financed by any party or any candidate. Now, and that is one condition.

The other is, of course, if it is-- you can prove, and that you should not prove it. It's the job of the security agencies. If you can prove that it is made by you for a country, so that is not allowed at all. All the other alternatives, and even if it is in a publication that uses fake profiles, and it's not connected to any party, and it's not financed by any party, I would allow it, because I don't want to go to limit too much free speech and the First Amendment rules you have. In any case, it would not go through the Supreme Court of your country. So you have to adjust yourself to your culture, your bigger culture.

And, by the way, I am a believer of that concept, and you saw it as well. So there are two exceptions. One, if any such a publication is made by a party, or by someone, or any group that is connected to a party, or any candidate, or it is financed by them. And the second one, if it is initiated by any foreign government.

Now you have to improve your, let's say, reporting procedures as far as financing. Let's say elections, and you have to change the decision of a few court in Citizens United. I, here, I support the minority above the majority. And in Israel, we have laws governing those matters here, so you have to make a change in your decision of your Supreme Court. And the-- OK, I don't want to interfere too much here, but I personally prefer the minority, not the majority.

OK. Just to add to that, it's -- so bank accounts are allowed [INAUDIBLE] and votes. And I'm not allowed on Facebook. And once you have a decision of that sort, that would allow you also to prevent any kind of social media that are not implementing policies to prevent the use of false or fake accounts, and that is by using a [INAUDIBLE] situation.

I'm glad we got a drop of follow up in that form, because I want to push you a little bit on the role of a gay civil society.

Mm-hmm?

Even in the present system, let alone the system that we are-- messenger and WhatsApp are important. The civil society activists are going about providing in terms of service in order to get the information.

Yeah.

They have to pretend to be somebody else, exactly the things you want to get on. How sustainable is a strategy that depends on civil society that has to, with the case of academics quite possibly violate research methods In the case of some civil society acts or certain civil violated in terms of service? Do you really want that?

Absolutely. And the reason is that I think that the things I know. I think that is true not just for election time. I think that it's true in general. I think that we should have an exemption for these type of tests and tinkering, because we need access to data, and to technology, and to algorithms which are being-- that are regulating us. And if we are now going to have an exception for that, then we are doomed. I mean, we don't have any access. So--

So you want a specific legal exemption--

Absolutely.

--for what apps?

Yes. Yes, absolutely. And I think it's important not just in the context of elections, but definitely here, I think it was successful in the sense that if allowed the public to get information that we would never, ever discover otherwise.

And I would like to ask you how do we act to fake bots that are activated from another country from the world, even though Google, Facebook are growth op companies. It's just other thing to react to those fake news [INAUDIBLE].

OK. Here I'll answer your question with another case that came before me. As I told you, there was a quick procedure of notice and take down. And in one of the cases, there was an allegation against one of the members of the Knesset from an Arabic list. And the allegation came up anonymously from Qatar.

Now he used the notice and takedown procedure, but from their reasons, Facebook didn't take it down. And then he made a petition to me. And then I had also a problem because it was Qatar, so I told-- I made it again, an interim injunction. And I asked Facebook, who is active in Qatar, to tell the one that initiated the publication that he has the right to react on the injunction.

But in the meanwhile, I told them to take it down. And they took it down immediately. Five hours later, he opened a new account. OK. And then I ordered-- I initialed another injunction. And then I asked them again to let him know that something like this happened, and he had the right to react. His reaction was that he would sue me in many international forms. Till now, he didn't sue me, and they took it down. And then he made it for the third time.

And the third time that I issued the third injunction, and then I told Facebook that I want them to disclose who is behind that. Then it stopped. OK? So probably it gives you an answer.

I think we have time for one more.

Thank you so much for that. So, I'm visiting here. I am from away. And actually, last week we, in Georgetown University, we had the pleasure of hosting Mr. Zuckerberg in the capacity of a student club. I'm an Israeli lawyer. My name is [INAUDIBLE]. In the capacity of the students club that we founded there, the Georgetown Tech Policy Initiative, and I asked him in the closed conversation, I asked him, so, Mr. Zuckerberg, who should regulate the internet? Because right, all the questions they are all about who really have the ability to regulate the internet? And a lot of the feasible data and showing the algorithms.

And I was fascinated by the fact that you said that you have to negotiate with them, right? Not even in the common law way that we act as a state. So, what what's your response? Who do you think should regulate the internet? The government or it actually should be stayed the same way as today? Thank you.

OK. In the first place, I think that the government or the parliament should regulate the-- as it regulates other markets, but we went too far. And now, if you want to get to effective remedies, you should talk to all those companies, but you have to make it very clear that the decision, the final decision is not there. So, and they understand it.

And if they understand this simple fact, and then an injunction or other remedy is issued against them, then they understand it even better. So, that is the way to handle such a thing.

So thank you. I just-- I'm still reeling from the idea that you asked Facebook to create an appeal process for somebody in Qatar for an Israeli decision about take down. This is the sweet beyond belief. No, but seriously. Thank you for that kind of creativity, for the courage. We're not going to solve it all here, but thank you for taking the time to teach us, to talk to us. We all have a lot of learning to do together and from each other. Thank you.

Thank you.

[APPLAUSE]