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Tweeting to Topple Tyranny, Social Media and Corporate Social Responsibility: A Reply to Anupam Chander

Erika R. George*

Actually, I did the easiest thing, which was writing At the end of the day, it was about the power of the people.

-Wael Ghonim, Administrator of a Facebook page credited with organizing uprising in Egypt¹

I feel like I'm being scoped y'all.

-Jill Scott, Jazz and Neo Soul Singer Songwriter²

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1. Mike Giglio, *Google Executive Wael Ghonim Admits He Was El Shaheed*, THE DAILY BEAST (Feb. 7, 2011, 5:27 PM), <http://www.thedailybeast.com/blogs-and-stories/2011-02-07/google-executive-wael-ghonim-admits-he-was-el-shaheed/full/editorial@thedailybeast.commailto:editorial@thedailybeast.comlast> (quoting the thirty-year-old Google executive released from Egyptian detention on his role in organizing antigovernment protests).

2. JILL SCOTT, *Watching Me, on WHO IS JILL SCOTT?* (Hidden Beach Records 2000). First thing when I wake up and right before I close my eyes at night I think, sense, feel, man like I am under some kind of microscope satellites over my head transmitters in my dollars hawking, watching, scoping, jocking scrutinizing me checking to see what I am doing where I be who I see how and where and with whom I make my money

INTRODUCTION

Tunisia. Egypt. Jordan. Bahrain. Yemen. Algeria. Syria. Libya. Iran. As the winds of popular protest blow across North Africa and the Middle East, authoritarian autocratic regimes around the region are anxious.³ They face increasing risk of removal due to political revolutions. New media plays an important role in the revolutions occurring across the region as activists use various forms of it to register their opposition, organize protests, and expose state abuses.⁴ Images of the self-immolation of Mohamed Bouazizi, the young Tunisian man who set himself alight in protest before a local government office, circulated in cyberspace before being broadcast by Middle East media corporation al-Jazeera.⁵ Observers credit his act, witnessed around the world, with sparking the Jasmine Revolution and leading to the removal of President Zine el-Abidine Ben Ali after twenty-three years in power.⁶ In Egypt, a Facebook page administered by a Google marketing executive helped mobilize a march of thousands to Tahrir Square in Cairo.⁷ Despite the government's belated attempt to stop the protests by shutting off the Internet⁸ and using violence against protesters and journalists,⁹ Egyptian activists remained in the Square until President Hosni Mubarak resigned after thirty years in power.¹⁰ Syrian activists used Facebook to orchestrate opposition protests against the government of President Bashar al-Assad at the parliament in Damascus and at Syrian embassies around the world.¹¹ And most recently, in Libya, activists and

Id.

3. See *Mideast Rulers Watch Tunisia in Fear of Repeat*, AFP, Jan. 16, 2011, available at <http://www.dawn.com/2011/01/16/mideast-rulers-watch-tunisia-in-fear-of-repeat.html>.

4. See *id.*

5. See *Tunisia's Revolution: Watching and Waiting*, THE ECONOMIST ONLINE (Jan. 15, 2011 11:09 PM), http://www.economist.com/blogs/newsbook/2011/01/tunisia_revolution.

6. See Robert Worth, *How a Single Match Can Ignite a Revolution*, N.Y. TIMES, Jan. 21, 2011, <http://www.nytimes.com/2011/01/23/weekinreview/23worth.html>.

7. See David D. Kirkpatrick & David E. Sanger, *A Tunisian-Egyptian Link that Shook Arab History*, N.Y. TIMES, Feb. 13, 2011, <http://www.nytimes.com/2011/02/14/world/middleeast/14egypt-tunisia-protests.html> (explaining how opposition movements used the Internet to share strategies and educate would-be street protesters about democracy and non-violent protest methods).

8. See Tim Bradshaw, *Condemnation Over Egypt's Internet Shutdown*, FIN. TIMES, Jan. 28, 2011, <http://www.ft.com/intl/cms/s/0/08dbe398-2abb-11e0-a2f3-00144feab49a.html#axzz1Mum72naA> (registration required). Notably, Google's chief legal officer, David Drummond, referred to the Internet blackout as a rights violation: "We believe that [Internet] access is a fundamental right, and it's very sad if it's denied to citizens of Egypt or any country." *Id.*

9. See J. David Goodman, *More Attacks and Detentions for Journalists in Cairo*, N.Y. TIMES, Feb. 4, 2011, <http://www.nytimes.com/2011/02/05/world/middleeast/05journalists.html>; Ned Parker & Doha Al Zohairy, *Egypt Protesters Tell of Beatings While in Custody*, L.A. TIMES, Feb. 8, 2011, <http://articles.latimes.com/2011/feb/08/world/la-fg-egypt-prisoners-20110208>; *Egypt: Investigate Arrests of Activists, Journalists*, HUMAN RIGHTS WATCH (Feb. 9, 2011), <http://www.hrw.org/en/news/2011/02/09/egypt-investigate-arrests-activists-journalists>.

10. See David D. Kirkpatrick, *Egypt Erupts in Jubilation as Mubarak Steps Down*, N.Y. TIMES, Feb. 12, 2011, at A1.

11. Tom Finn & Mark Tran, *Spirit of Egypt Protest Spreads to Yemen, Algeria, Syria*,

amateur citizen journalists opposed to the rule of Col. Muammar el Quadafi used Twitter to expose Quadafi's violent acts of repression and the consequences of deepening conflict with the old regime.¹² The spread of such uprisings—dubbed “Revolution 2.0” to highlight the importance of new media both in coordinating protesters¹³ and in developing social networks¹⁴ and strategies¹⁵ in advance of the uprisings—demonstrates that new media can play a crucial role in empowering pro-democracy protesters to start and sustain their movements.

As evidenced by recent events in North Africa and the Middle East, Anupam Chander's *Googling Freedom*¹⁶ is important and timely. In the Article, he asks: “Does the responsibility of business change in an authoritarian state?”¹⁷ Chander answers this particularly pertinent question in the affirmative.¹⁸ Using insights from Foucault¹⁹ and Habermas,²⁰ *Googling Freedom* explains why new media corporations operating in “unfree” societies characterized by censorship and surveillance owe special obligations to the populations they serve. For Chander, “the special role of new media in empowering or oppressing individuals” makes its duties vastly different than those of other industries.²¹ He makes a persuasive case that the demonstrated role of new media as a democracy-supporting device requires the reconsideration of the conventional corporate social responsibility discussion, especially in the context of “unfreedom.”²² Chander's efforts to outline a theory of obligation and to offer a framework for a legal regime promoting global media freedom is largely effective and, in my view, especially important in light of the insufficient academic attention accorded to the social responsibility

GUARDIAN, Feb. 3, 2011, <http://www.guardian.co.uk/world/2011/feb/03/yemen-syria-algeria-arab-protests> (reporting the “Syrian Revolution” page as “liked” by over 13,000 people).

12. Emad Mekay, *One Libyan Battle is Fought in Social and News Media*, N.Y. TIMES, Feb. 23, 2011, <http://www.nytimes.com/2011/02/24/world/middleeast/24iht-m24libya.html>.

13. See generally John D. Sutter, *The Faces of Egypt's “Revolution 2.0,”* CNN (Feb. 21, 2011 12:25 PM) <http://www.cnn.com/2011/TECH/innovation/02/21/egypt.internet.revolution/index.html> (describing how Facebook and Gmail were utilized to coordinate protests in Egypt).

14. Charles Levinson & Margaret Coker, *The Secret Rally that Sparked an Uprising*, WALL ST. J., Feb. 11, 2011, <http://online.wsj.com/article/SB10001424052748704132204576135882356532702.html> (registration required) (explaining how organizing went from the Internet into the streets of Cairo: “The plotters say they knew that the demonstrations’ success would depend on the participation of ordinary Egyptians in working-class districts . . . where the Internet and Facebook aren’t as widely used. They distributed fliers around the city in the days leading up to the demonstration . . .”).

15. See Kirkpatrick & Sanger, *supra* note 7.

16. Anupam Chander, *Googling Freedom*, 99 CALIF. L. REV. 1 (2011).

17. *Id.* at 25.

18. *Id.* at 26 (“Milton Friedman’s mandate for corporate behavior indifferent to social consequence not internalized in corporate profits cannot be readily extended to unfree societies.”).

19. *Id.* at 9–10.

20. *Id.* at 10–14.

21. *Id.* at 27.

22. *Id.* at 5; see AMARTYA SEN, DEVELOPMENT AS FREEDOM 15 (1999) (offering an explanation of the “varieties of unfreedom”).

of new media.

Although *Googling Freedom* represents an important step towards articulating and assigning new media's obligations to users, I find a few small cracks in the firmament of his foundation that merit comment and may, if filled, further cement Chander's project. First, because the Internet may be used in a myriad of ways, there are possibilities beyond Chander's limited conception of the Internet's role as one of two seemingly divergent models: either enabling dissent to promote democracy or entrenching authoritarianism through the threat of surveillance. Second, even if Internet discourse promotes democracy, it may not protect equality—another democratic value. Third, even if it is accepted that obligations must attach to the Internet industry because it occupies a special role in ensuring freedom of expression, might not the same be said of other industries to the extent that they too may be associated with the enjoyment of other fundamental rights? Finally, the goals of maximizing profits and protecting individual rights may more closely coincide in the Internet industry sector than Chander acknowledges, because obligations could emanate from and evolve according to how consumers use online services.

This Essay offers critical reflections on the role of social media in social change and outlines how the obligation of corporations in the information communications technology sector to avoid complicity in rights violations may evolve over time. Part I explores the Internet's potential to further democratic discourse and inclusion or foster discrimination and exclusion. It also queries whether the Internet industry has an obligation to protect against hate propaganda. Part II examines whether other industry sectors can also be said to have special obligations based on the human rights consequences of their conduct. Part III explains the nature of the obligations new media corporations owe to their consumers.

I.

DISCOURSE IN THE DIGITAL ERA: DISSENT AND DISCRIMINATION

Chander presents two possible paths for the future of the Internet in authoritarian states. One direction leads to a surveillance state; the other to a system that supports democracy and human dignity through the vibrant discourse of civil society.²³ According to Chander, "in the optimistic scenario, the Internet might help topple dictators; in the pessimistic scenario, the Internet might cement their control."²⁴ However, he fails to adequately acknowledge two important dimensions of new media use: the role of the international audience and the issue of inequality.

A. *Social Networking and Democracy*

Chander posits two alternatives for the role of the Internet in authoritarian

23. Chander, *supra* note 16, at 9.

24. *Id.* at 5.

states, neither of which acknowledges the full range of possibility. He likens an authoritarian government's potential use of new technologies to Foucault's description of the "Panopticon" prison in which a prisoner constantly subject to surveillance by the sovereign comes to constrain his own conduct consistent with the sovereign's will, essentially "becom[ing] the principle of his own subjection."²⁵ Alternately, Chander presents a model in which the Internet is a device for enabling the ethics discourse that Habermas argued is essential to democracy.²⁶ According to Habermas, in "an ideal speech situation," free and deliberative discourse towards a common purpose under conditions of access and equality legitimizes governmental authority.²⁷

While the two future scenarios for the Internet in authoritarian states that Chander presents are both likely, there are other possibilities beyond the "perfection of the surveillance state" or "perfection of the public sphere of rational discourse and deliberation,"²⁸ which further support the special nature of new media. New media increasingly makes possible the promotion of a global civil society mobilized to counter authoritarian states and create greater guarantees for human security.²⁹ Instead of the image of a central prison watchtower, we might imagine the Internet as offering many windows through which the community of nations may witness the actions of autocrats. Communications technology allows a repositioning of the Panopticon, offering people the opportunity to subject the sovereign to scrutiny.

For example, throughout the revolutions rolling across North Africa and the Middle East, multiple media lenses, new and old, were aimed at the governments. Increased exposure of government conduct made it easier to mobilize public opposition to rights abuses.³⁰ Both internal and external rights advocates, those working inside the borders of a repressive regime and their allies outside of their jurisdictional boundaries, are better able to shame governments into changing their conduct by exposing their actions to a global audience.³¹ The prospect of being witnessed by the world may have instilled in

25. *Id.* at 10 (citing MICHEL FOUCAULT, *DISCIPLINE AND PUNISH* 202–03 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977)).

26. *Id.* at 10.

27. *Id.* at 11.

28. *Id.* at 9.

29. See Carol C. Gould, *Structuring Global Democracy: Political Communities, Universal Human Rights and Transnational Representation*, 40 *METAPHILOSOPHY* 24, 38 (2009).

30. See HUMAN RIGHTS WATCH, *WORLD REPORT* 1–2 (2010), available at <http://www.hrw.org/world-report-2010>; Deborah Asbrand, *Technology is Freedom for Amnesty International*, *INFOWORLD*, Nov. 28, 1994, at 81; see generally, INT'L COUNCIL ON HUMAN RIGHTS POLICY, *JOURNALISM, MEDIA AND THE CHALLENGE OF HUMAN RIGHTS REPORTING* 15 (2002), available at http://www.protectionline.org/IMG/pdf/journalism_media.pdf (examining the influence of new information trends on human rights reporting and the implications of government efforts to control information about rights abuses on public opinion and policy reform).

31. See, e.g., Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practices: Introduction*, in *THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE* 5 (Thomas Risse, et al. eds., 1999). Risse and Sikkink explain the role of human rights activists in exposing human rights abuses as follows:

some of these besieged sovereigns the self-discipline to refrain from further violent repression of peaceful protesters when such actions would likely be in plain view and thus capable of wide public dissemination through both old and new forms of media. New media may place the global public in the position normally occupied by the sovereign in the Panopticon, making it more difficult for the conduct of despotic governments to go unexamined.

Although Chander asserts that internal dissent may ultimately prove to be a more powerful driver of change in repressive societies than alternative external pressures,³² it is worth noting that internal dissent often has an important external audience. Protesters in Iran carried signs written in English.³³ Egyptian protestors inspired by activists in Tunisia chanted slogans of Tunisian activists.³⁴ New media not only enables internal dissidents to assemble (both physically and virtually), it also offers access to an external audience and a broader community that cares about human rights conditions.

Accordingly, the Internet provides governments with a device for disciplining the population,³⁵ but it also presents dangers. Not only do activists use online services to share dissenting ideas internally, they also expose damaging information about the abuses of authoritarian regimes to an external audience. The observation that new technology permits a repositioning of the Panopticon does not detract from Chander's central point. Rather, it reinforces the importance of access to new media technologies in promoting respect for human rights and creating communities that share an interest in enlarging freedom.

B. Anti-Social Networking and Discrimination

Chander identifies but dismisses "Balkanization" as one potential complication that cautions against putting too much faith in the Internet as an avenue for public discourse.³⁶ The Balkanization concern, as described by Cass

They put norm-violating states on the international agenda in terms of moral consciousness-raising. . . . They empower and legitimate the claims of domestic opposition groups against norm-violating governments, and they partially protect the physical integrity of such groups They challenge norm-violating governments by creating a transnational structure pressuring such regimes simultaneously "from above" and "from below."

Id.

32. See Chander, *supra* note 16, at 29 (for instance, military intervention costs are often high, while economic sanctions often harm those already hurting).

33. See THE GREEN WAVE (Dreamer Joint Venture 2010) (including film footage of pro-democracy protesters carrying posters with slogans written in English after the 2009 elections).

34. Anthony Shadid, *Uncharted Ground After End of Egypt's Regime*, N.Y. TIMES, Feb. 12, 2011, at A1.

35. See generally, REPORTERS WITHOUT BORDERS, ENEMIES OF THE INTERNET: COUNTRIES UNDER SURVEILLANCE (2010), available at http://en.rsf.org/IMG/pdf/Internet_enemies.pdf (listing the "worst" violators of freedom of expression on the Internet and reporting on imprisoned "cyberdissidents" and other "netizens" who are building mutual solidarity by mobilizing through information sharing over the Internet).

36. Chander, *supra* note 16, at 18–19.

Sunstein, is that individuals only seek information online that reaffirms their existing views such that the Internet, instead of expanding inquiry, actually allows a sort of insularity that could promote intolerance.³⁷ Absent the intermediaries of traditional mainstream media, a “Daily Me” sentiment could develop in such a closed information environment, which could more easily transform into extremism.³⁸

For Chander, however, “the possibility of nurturing a public discourse with political valance” via the Internet outweighs “Balkanization” concerns about the Internet’s darker dimension.³⁹ The Internet, Chander observes, offers an “inchoate public sphere” where like-minded dissenters locate one another and come together to question the “legitimacy of the existing power distribution.”⁴⁰ Chander gives voice to what I term “crowdsourcing” for social change. The “Daily We” sentiment of pro-democracy protestors that gathered in Cairo’s Tahrir Square and became a social movement offers an example of crowd-sourced social change.⁴¹

However, even if what Chander calls “a kind of Underground Railroad for information”⁴² were to reach the “destination” of democracy, it is far from clear that we would arrive at a place where equality, another democratic value, would be respected. My concern is perhaps a variant of the Balkanization anxiety that I call “Bias against the Bottom”: new media has the potential to promote private violence against disfavored or disempowered groups in a given society. Although this danger does not diminish the potential for democratic discourse to anchor the higher obligation Chander would impose on industry, it does raise questions as to whether or not special obligations to protect against hate and harassment directed against members of disfavored or disadvantaged groups might also be appropriate to the extent such activity endangers equal participation in democracy.⁴³

The Internet is filled with discourse that makes it distant from the ideal

37. *Id.*

38. See Cass R. Sunstein, *The Law of Group Polarization*, 10 J. POL. PHIL. 175, 176–77 (2002) (explaining the dangers of “enclave deliberation” where “members of a deliberating group predictably move toward a more extreme point in the direction indicated by the members’ predeliberation tendencies”).

39. Chander, *supra* note 16, at 14.

40. *Id.* at 16.

41. See, e.g., Kareem Fahim & Mona El-Naggar, *Some Fear a Street Movement’s Leaderless Status May Become a Liability*, N.Y. TIMES, Feb. 3, 2011, <http://www.nytimes.com/2011/02/04/world/middleeast/04opposition.html> (reporting on the shared sentiment of solidarity among the protestors interviewed in Tahrir Square who commented that “we also brought food and water” and “we don’t need a leader”).

42. Chander, *supra* note 16, at 9.

43. Chander’s other writings are quite cognizant of the consequences of exclusion, so it is conceivable that he has simply chosen not to explicitly address the ways in which Internet discourse can be undemocratic and how hate speech can deny freedom to disfavored groups. See, e.g., Anupam Chander, *Whose Republic?*, 69 U. CHI. L. REV. 1479, 1484 (2002); Anupam Chander, *Critical Corporate Law, Colorblind Constitutional Law*, 118 YALE L. J. POCKET PART 61 (2008), <http://thepocketpart.org/2008/10/28/chanderintro.html>.

communications community Habermas imagines as a precondition for democracy and conflict resolution without violence—where the “mechanism of self-organization is the instrument of discursive opinion and will-formation.”⁴⁴ Anonymity on the Internet can breed an incivility perhaps inconsistent with Habermas’s ideal communications community.⁴⁵ The privileged participate in the public sphere of cyberspace just as disproportionately as in other public fora; for example, participation in some cyber spheres remains predominantly male.⁴⁶ Although a variety of communities can come into existence both online and off-line,⁴⁷ some communities will form by appealing to human weaknesses such as bias, bigotry, or fear. Via the Internet, extreme elements intent on promoting hate may no longer remain on the margins of society, but be able to carry their messages mainstream.⁴⁸ In sum, the Internet also offers an expressive space in which those who would promote targeted hatred and harassment against a disfavored group can assemble, rather than just tolerance of diverse perspectives.⁴⁹

One example of this dynamic is the use of the Internet to promote homophobia. The murder of the Ugandan gay rights activist, David Kato, provides a case in point. Self-described American “pro-family,” faith-based organizations used new media to raise money to fund the dissemination of ideas that have been credited with contributing to Uganda’s consideration of

44. Chander, *supra* note 16, at 31 (citing JURGEN HABERMAS, *BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY* 323 (William Rehg trans., 1996)).

45. See, e.g., Jeff Pearlman, *Tracking Down My Online Haters*, CNN (Jan. 21, 2011), http://articles.cnn.com/2011-01-21/opinion/pearlman.online.civility_1_online-haters-twitter-online-behavior?_s=PM:OPINION. Yet, anonymity also allows dissidents to escape detection by autocratic regimes intent on silencing opposition.

46. Noam Cohen, *Define Gender Gap? Look Up Wikipedia’s Contributor List*, N.Y. TIMES, Jan. 30, 2011, <http://www.nytimes.com/2011/01/31/business/media/31link.html>.

47. See generally Gould, *supra* note 29, at 38–39 (advocating the inclusive use of Internet technology to enhance deliberation among individuals with divergent and diverse views, and to facilitate transnational discussions within “epistemic communities of experts”); Samuel M. Wilson & Leighton C. Peterson, *The Anthropology of Online Communities*, 31 ANN. REV. ANTHROPOLOGY 449, 449–50 (2002) (explaining how the Internet has enabled the emergence of new sorts of communities and communicative practices across dispersed groups that share interests, but qualifying that these new communities still remain embedded in existing practices and power relations).

48. See, e.g., Jessie Daniels, *Race, Civil Rights and Hate Speech in the Digital Era* in LEARNING RACE AND ETHNICITY: YOUTH AND DIGITAL MEDIA 129 (Anna Everett ed., 2008) (explaining “cloaked” hate sites that misdirect users to misinformation).

49. There is a growing literature on cyber hate and harassment. See, e.g., Danielle Keats Citron, *Law’s Expressive Value in Combating Cyber Gender Harassment*, 108 MICH. L. REV. 373, 377 (2009) (exploring the gendered nature of online harassment and its harms to women and society); Danielle Keats Citron, *Cyber Civil Rights*, 89 B.U. L. REV. 61, 84–91 (2009) (outlining the components of a cyber civil rights strategy); Alexander Tsesis, *Hate in Cyberspace: Regulating Hate Speech on the Internet*, 38 SAN DIEGO L. REV. 817, 853 (2001) (discussing the dangers to democracy posed by outgroup stereotypes); Peter J. Breckheimer II, *A Haven for Hate: The Foreign and Domestic Implications of Protecting Internet Hate Speech Under the First Amendment*, 75 S. CAL. L. REV. 1493, 1496 (2001) (reviewing the role of the Internet in fostering hate movements).

legislation that would criminalize and impose a death penalty on homosexuality.⁵⁰ Considered a “founding father of Uganda’s nascent gay rights movement,” Kato was killed shortly after an article including the names and addresses of several gay men and lesbians was published in a Ugandan newspaper under a banner reading “Hang Them.”⁵¹ In another example of hate speech online, prosecutors considered bringing criminal charges in connection with a suicide after an American college student’s intimate same-sex encounter was captured on a webcam by his roommate and exposed live over the Internet.⁵² Gay rights advocates argued the roommate’s motive was to intimidate and harass.⁵³

Disfavored minorities in unfree societies may be even more vulnerable to harassment campaigns than similar groups in democracies. For example, according to a recent report by Human Rights in China and Minority Rights Group International, while “[v]iolations of civil and political rights form a larger pattern of human rights abuse by the Chinese government,” the problem is especially acute for minorities:

Such violations are often more extreme in the minority context, given the increased level of sensitivity that the government ascribes to matters regarding nationalism, separatism, and state unity. This is exacerbated by the Party’s tendency to label the expression of cultural or religious identity or concern as political issues of ‘separatism.’ As a result, minorities . . . live under conditions of heightened repression and sharp restrictions on their civil and political freedoms, which further undermine their ability to participate in the political arena.⁵⁴

50. See Jeffrey Gettleman, *Americans’ Role Seen in Uganda Anti-Gay Push*, N.Y. TIMES, Jan. 3, 2010, <http://www.nytimes.com/2010/01/04/world/africa/04uganda.html>; see also Scott Lively, *Report from Kampala*, DEFEND THE FAMILY INTERNATIONAL (Mar. 17, 2009), <http://www.defendthefamily.com/pfrc/archives.php?id=2345952>. Dr. Lively, an American activist, reports on his mission to Uganda and meeting with members of the Ugandan Christian Lawyers Association:

[M]y host and ministry partner in Kampala, Stephen Langa, was overjoyed with the results of our efforts and predicted confidently that the coming weeks would see significant improvement in the moral climate of the nation, and a massive increase in pro-family activism in every social sphere. He said that a respected observer of society in Kampala had told him that our campaign was like a nuclear bomb against the “gay” agenda in Uganda. I pray that this, and the predictions, are [sic] true.

Id. Dr. Lively concludes his letter by appealing for donations to allow him to continue his work.

51. Jeffrey Gettleman, *Ugandan Who Spoke Up for Gays is Beaten to Death*, N.Y. TIMES, Jan. 27, 2011, <http://www.nytimes.com/2011/01/28/world/africa/28uganda.html>.

52. See Winnie Hu, *Legal Debate Swirls Over Charges in a Student’s Suicide*, N.Y. TIMES, Oct. 1, 2010, <http://www.nytimes.com/2010/10/02/nyregion/02suicide.html>; see generally Stacy M. Chaffin, *The New Playground Bullies of Cyberspace: Online Peer Sexual Harassment*, 51 HOW. L.J. 773, 784–85 (documenting deaths of students that committed suicide after cyber harassment and the nature of online dignitary injuries to youth).

53. Hu, *supra* note 52.

54. HUMAN RIGHTS IN CHINA, CHINA: MINORITY EXCLUSION, MARGINALIZATION AND RISING TENSIONS 16 (2007), available at <http://hrichina.org/public/PDFs/MRG-HRIC.China.Report.pdf>. Notably, China’s Internet censorship extends to its ethnic autonomous

To the extent that Chander rests his responsibility argument on the role industry plays in realizing rights to participatory democracy,⁵⁵ he should also argue that it is incumbent upon corporations operating in the Internet communications technology sector to assume responsibility for ensuring vulnerable populations are somehow protected from hatred and harassment. For example, YouTube has voluntarily assumed responsibility for prohibiting hate speech. The corporation's "community guidelines" warn: "we don't permit hate speech (speech which attacks or demeans a group based on race or ethnic origin, religion, disability, gender, age, veteran status, and sexual orientation/gender identity)."⁵⁶

Such an obligation would also be consistent with international and foreign laws. While the Supreme Court has determined that the First Amendment can protect racist speech,⁵⁷ many other free countries have, consistent with international human rights requirements, enacted legislation recognizing that hate propaganda threatens the equal protection of disfavored groups in democracy.⁵⁸ Further, international human rights law requires governments to adopt measures to eradicate incitement to discrimination and condemn "all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form"⁵⁹ Particularly in countries where the rule of law is weak, media companies have a special obligation to police their own compliance with laws against hate speech.

II.

RIGHTS AT RISK AND CORPORATE RESPONSIBILITY

Chander reminds us that from the age of the Enlightenment to the age of the Internet, the freedom to disseminate ideas has played a central role in challenging orthodoxy and ending authoritarian rule due to a long lineage of

regions where minorities reside and "websites and online discussion forums serving minorities are closed down by the central government, often for allegedly hosting 'separatist' content or content that carries messages that harm ethnic relations." *Id.*

55. Chander, *supra* note 16, at 9.

56. See *YouTube Community Guidelines*, YOUTUBE.COM, http://www.youtube.com/t/community_guidelines (last visited June 3, 2011). Notably, enforcement seems to depend on users reporting content that may violate the Terms of Use by flagging videos for YouTube staff to review and remove.

57. See, e.g., *R.A.V. v. City of St. Paul*, 505 U.S. 381, 392–96 (1992).

58. See Tsesis, *supra* note 49, at 858.

59. International Convention on the Elimination of All Forms of Racial Discrimination art. 4, adopted Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter CERD]; see also U.N. High Commissioner for Human Rights, CERD General Recommendation No. 15: Organized Violence Based on Ethnic Origin (Art. 4), para. 3, (Mar. 23, 1993) stating that:

Article 4 (a) requires States parties to penalize four categories of misconduct: (i) dissemination of ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another colour or ethnic origin; and (iv) incitement to such acts.

publishers willing to print the perspectives of dissidents.⁶⁰ In the Internet Age, private industry provides the platform for today's dissidents to disseminate their ideas.⁶¹ Indeed, today's dissident "mails—not nails" her thesis to the world, enabling others to propagate it virally⁶² with results that can be revolutionary, as the Egyptian example illustrates.⁶³ For Chander, the private industry actors who provide the platform for such expression have an obligation to protect the freedom of dissidents.⁶⁴ Indeed, the failure on the part of industry to protect the identity of dissidents in authoritarian states can have devastating consequences, as the case of Shi Tao illustrates. Tao is a journalist currently serving an eight-year prison sentence in China after Yahoo! helped Chinese authorities connect him to an email account used to communicate with a pro-democracy group based in the United States.⁶⁵

Chander's claim that the vulnerability of new media users in authoritarian regimes gives rise to a special responsibility,⁶⁶ and his praise of the incorporation of international legal principles in a set of voluntary guidelines,⁶⁷ suggests that corporations in other industries with power to influence the realization of fundamental rights might also play such a role. For example, the rights to food and health are also fundamental and enshrined in international law.⁶⁸ If information service providers essential to realizing the right to freedom of expression and assembly bear a special responsibility to unfree people, can agri-business be said to bear a special responsibility to starving people? Can the pharmaceutical industry be said to bear a special responsibility to sick people?

The rights to food and health are both codified in international human rights instruments. They were first expressed as international human rights law in Article 25 of the Universal Declaration of Human Rights (UDHR).⁶⁹ Subsequently, the right to food was codified by Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which contains

60. Chander, *supra* note 16, at 3–4.

61. Google provides the most significant platform for citizen-to-citizen information sharing. *See id.* at 5.

62. *Id.* at 4.

63. *See The Way Forward*, RANTINGS OF A SANDMONKEY BLOG (Feb. 6, 2011), <http://www.sandmonkey.org/2011/02/06/the-way-forward>, stating that:

Now, I am not a leader of this movement, and god knows I would be loathe to name myself as a spokesperson for the 5 million individuals nationwide who have joined these protests. If anything, I am simply a promoter and a participant who is way too proud of the fact that this is a movement with no leaders or representatives.

64. Chander, *supra* note 16, at 126–27.

65. *See* Robert Marquand, *A List Aids China's Political Prisoners*, CHRISTIAN SCI. MONITOR, Nov. 21, 2005, <http://www.csmonitor.com/2005/1121/p01s01-woap.html>.

66. Chander, *supra* note 16, at 27.

67. *Id.* at 40–41.

68. *See* Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art 25(1), (Dec. 10, 1948).

69. *Id.* ("Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food.").

two closely related concepts: the right to be free from hunger and the right to adequate food.⁷⁰ The ICESCR has been interpreted to require that governments “take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food.”⁷¹ The right to health was codified in Article 12 of the ICESCR.⁷² Satisfaction of the right to health requires states to, at a minimum, provide access to essential medicines.⁷³

Arguably, industry may influence whether and to what extent the rights to food and health are realized or placed at risk. In the agricultural context, multinational corporations may impact the level of food security for populations in poor countries.⁷⁴ The cultivation of commercial cash crops for export has replaced local staple foods, which has resulted in decreased access to affordable food, increased risk of food shortage, and ecosystem damage.⁷⁵ Additionally, large agri-business’ use of genetically modified seeds and chemical fertilizers and pesticides to increase crop yields increases the cost of agricultural production for farmers in poor countries.⁷⁶ In the public health context, access to medicines is intimately connected to the actions of the pharmaceutical industry. This has led to pressure on multinational pharmaceutical corporations to relax assertions of intellectual property rights that make medicines more expensive and unaffordable for many ailing people in poor countries.⁷⁷

Just as new media corporations must assume special responsibilities because of the special role the industry plays in rights-realization or repression, the food and drug industries also influence the extent to which citizens enjoy fundamental rights. By extending Chander’s logic about the responsibilities of the Internet industry to other sectors where there is a potential for industry to present a risk to rights, we can redefine concepts of corporate social responsibility to impose heightened responsibilities on those industries with the

70. International Covenant on Economic, Social and Cultural Rights art. 11, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter (ICESCR)] (“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”).

71. *Id.* at general cmt. 12, para. 27.

72. *Id.* at art. 12.

73. *Id.* at general cmt. 14, para. 43(d).

74. See Smita Narula, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 COLUM. J. TRANSNAT’L L. 691, 719 (2005–2006).

75. *Id.*; see also John Madeley, *BIG BUSINESS, POOR PEOPLES: THE IMPACT OF TRANSNATIONAL CORPORATIONS ON THE WORLD’S POOR* 39 (1999).

76. See generally Vandana Shiva, *STOLEN HARVEST: THE HIJACKING OF THE GLOBAL FOOD SUPPLY* (2000) (critiquing the agri-business model of food production). For further discussion, see ACTION AID INT’L, *POWER HUNGRY: SIX REASONS TO REGULATE GLOBAL FOOD CORPORATIONS* 13–14 (2006), available at http://www.actionaid.org.uk/_content/documents/power_hungry.pdf.

77. See Klaus M. Leisinger, *The Corporate Social Responsibility of the Pharmaceutical Industry: Idealism Without Illusion and Realism Without Resignation*, 15 BUS. ETHICS Q. 577, 578 (2005); see also Klaus M. Leisinger, *Corporate Responsibilities for Access to Medicines*, 83 J. BUS. ETHICS 3–4 (2009).

capacity to influence the realization of an enumerated fundamental human right recognized under international law. In such instances, at minimum, the concept of corporate social responsibility would suggest that a corporation (1) conduct due diligence to assess the risk to rights that its conduct may present to various communities, (2) communicate with community members who are likely to be affected by its actions, (3) consider the consequences of its different options, and (4) select a course of conduct that does not further contribute to exacerbating existing conditions of civil and political unfreedom or socioeconomic deprivation. Ideally, responsible corporations in industries with the potential to impact human rights would contribute to enlarging freedom and eradicating deprivation.

III.

ESCALATING EXPECTATIONS AND THE ORIGINS OF OBLIGATION: CORPORATE RESPONSIBILITY AND CYBER-CITIZEN CONSUMERS

Chander next turns his attention to the different conceptions of corporate social responsibility that may offer an account of the new media industry's obligations to its customers living under authoritarian regimes. He briefly describes, but dismisses, the "Global Citizen as Global Shareholder Wealth Maximization" position. This account views conducting business in a manner consistent with human rights as good for business, such that there is a "happy coincidence" between the goals of profit and rights protection where "respect for political freedoms . . . advanc[es] the corporate bottom line by improving the company's brand."⁷⁸

I believe that the "Global Citizen" model deserves more discussion as it may offer an accurate lens through which to understand why "[e]ven without a theory of obligation, new media enterprises have sought to improve their human rights practices, especially in China."⁷⁹ By voluntarily promulgating corporate codes of conduct such as The Global Network Initiative ("GNI"), certain industry actors present themselves as assuming the responsibility to respect rights.⁸⁰ That some actors in the Internet communications technology sector have taken actions to prevent rights abuses, absent an explicit legal requirement that their conduct respect rights, indicates that the obligations new media may owe to consumers are rooted in consumer expectations. Considering patterns of how consumers use new media technologies, the "Global Citizen" model offers the most compelling explanation of obligation as emanating from the demands of an emerging class of individuals who I call "cyber citizen consumers."⁸¹ Accordingly, this model merits more credit than Chander

78. Chander, *supra* note 16, at 24.

79. *Id.* at 7.

80. *Id.* at 8.

81. See generally Robert Reich, *SUPERCAPITALISM* (2009) (evoking the notion of a "citizen consumer" who is informed and active in making principled purchasing decisions). I adapt Reich's "citizen consumer" term and apply it to cyberspace.

accords it.

The “Global Citizen” account is more applicable than Chander concedes in the Internet context because of the convergence of the interests of corporations and consumers. For example, providing services that are good for consumers—services that promote the right to receive information and that do not put individual privacy at risk—will arguably attract more consumers. In turn, corporations earn more market share and ultimately, shareholders maximize their wealth. Assuming cyber citizen consumers do not prefer censorship, but rather want open access to information and prefer that their privacy be protected, the incentives of the industry should align to oppose censorship and surveillance consistent with consumer interest and shareholder profit.

The convergence of interests between users and shareholders may be particularly close in unfree countries. Even in free and open societies, governments attempt to assert control over the Internet and limit certain information deemed sensitive, but of interest, to the public.⁸² In unfree countries, governments have an even greater interest in limiting Internet access and information sharing. In contrast to the government’s interest in limiting access in the unfree country, consumers and corporations have an interest in promoting unlimited access to the extent that consumers want information, and corporations want to provide what consumers desire. Thus, in the absence of government will or ability to protect rights, the aligned interests of corporations and cyber citizen consumers may offer a better means of determining appropriate industry obligations than Chander concedes.

The substantive content of industry’s obligations could evolve through a co-creation process whereby consumers are knowledgeable about online privacy issues and corporations are responsive to consumer demands. Indeed, corporations may be more likely to comply with the sorts of rights-protective rules already contained in terms-of-use agreements and voluntary codes of conduct crafted in cooperation with other stakeholders, such as the GNI. Alternatively, new obligations could evolve from conflict between corporations and consumers. For example, Facebook users’ opposition to the site’s privacy policies demonstrates how expectations about corporate obligations are evolving through a continuous process of consumer protest and corporate repositioning.⁸³ Sophisticated cyber citizen consumers voice objections to the corporation’s conduct, and Facebook reacts by revising its privacy policies in

82. See, e.g., REPORTERS WITHOUT BORDERS, INTERNET ENEMIES 39–40 (2011), available at http://march12.rsf.org/i/Internet_Enemies.pdf (listing countries such as Australia, France, South Korea, and Thailand as “under surveillance”); see also *Civil Liberties: Freedom of Speech: The Tongue Twisters*, ECONOMIST, Oct. 11, 2007, <http://www.economist.com/node/9958346> (describing efforts in the United States and United Kingdom to expand classification and limit freedom of expression in the name of national security).

83. See David Coursey, *After Criticism, Facebook Tweaks Friends List Privacy Options*, PC WORLD (Dec. 10, 2009, 9:17 PM) http://www.pcworld.com/businesscenter/article/184418/after_criticism_facebook_tweaks_friends_list_privacy_options.html.

response to the pressures.⁸⁴

Admittedly, there may be areas where the interests of Internet industry actors and their consumers are not aligned or instances where consumers are not adequately informed of how their rights may be at risk.⁸⁵ Yet, even where corporate and consumer interests conflict, complaints from informed consumers may lead to changes in practices or policies, and consumers may change their conduct and alter the ways they interact with a technology.⁸⁶

Nevertheless, how corporations, as global citizens, see and present themselves to the public and potential consumers may not be inconsequential to the evolution of obligations and escalation of expectations.⁸⁷ Arguably, a corporate brand associated with the slogan “Don’t be Evil”⁸⁸ would appear to have little room for easy departure from a more ethical course of conduct. A stated commitment to respecting human rights could allow the corporation more room to evolve an ethical approach to operating across different contexts.⁸⁹ Here, cyber citizen consumers become guards in the Panopticon,

84. See, e.g., *Hackers Pick Up Where Facebook Privacy Leaves Off*, AFP, Aug. 3, 2010, available at <http://www.independent.co.uk/life-style/gadgets-and-tech/hackers-pick-up-where-facebook-privacy-leaves-off-2041847.html>; Miguel Helft, *Facebook Vows to Fix Flaw in Protection of User Data*, N.Y. TIMES, Oct. 19, 2010, <http://www.nytimes.com/2010/10/19/technology/19facebook.html>; Jon Swartz, *At Facebook It's Privacy vs. Profit*, USA TODAY, June 16, 2010, at 1B; Jenna Wortham, *Facebook and Privacy Clash Again*, N.Y. TIMES, Mar. 6, 2010, at B1; but see Tim Bradshaw et al., *Change the Rules and Watch Users Log Off*, FIN. TIMES, Dec. 12, 2009, <http://www.ft.com/cms/s/0/3bd2b7fe-e6bf-11de-98b1-00144feab49a.html#axzz1IXQuryJT>; Brad Stone, *Facebook at 5—Is it Growing up too Fast?*, N.Y. TIMES, Mar. 28, 2009, <http://www.nytimes.com/2009/03/29/technology/internet/29face.html>.

85. While users may want their privacy rights respected, many may not be sophisticated enough to appreciate the consequences of changes in corporate policy. See generally Kurt Opsahl, *Facebook's Eroding Privacy Policy: A Timeline*, ELECTRONIC FRONTIER FOUND. (Apr. 28, 2010), <http://www.eff.org/deeplinks/2010/04/facebook-timeline> (providing excerpts of Facebook's privacy policy changes over a number of years to illustrate Facebook's transition from a private space for communication into a public platform for targeted advertising).

86. See, e.g., *Hackers Pick Up*, *supra* note 84 (reporting on applications created by hackers to protect the public because “people don’t have control of their privacy and don’t really understand”).

87. ERIKA GEORGE, INCORPORATING RIGHTS: CORPORATE RESPONSIBILITY, HUMAN RIGHTS AND CONSCIOUS COMMUNITY 2 (2011) (unpublished manuscript) (on file with author); see also Erika George, *See No Evil? Revisiting Early Visions of the Social Responsibility of Business: Adolf A. Berle's Contribution to Contemporary Conversations*, 33 SEATTLE U. L. REV. 965, 979 (2010) (discussing the role of social constituencies beyond shareholders in shaping understandings of corporate social responsibility).

88. JOHN BATTELLE, *THE SEARCH: HOW GOOGLE AND ITS RIVALS REWROTE THE RULES OF BUSINESS AND TRANSFORMED OUR CULTURE* 138–39 (2005); Jessica Livingston, *FOUNDERS AT WORK: STORIES OF STARTUPS' EARLY DAYS* 169 (2007).

89. The Owner's Manual for Google Shareholders explains:

Google is not a conventional company. We do not intend to become one Our goal is to develop services that significantly improve the lives of as many people as possible. In pursuing this goal, we may do things that we believe have a positive impact on the world, even if the near term financial returns are not obvious We will live up to our “don’t be evil” principle.

Larry Page & Sergey Brin, *Letter from the Founders: “An Owner's Manual” For Google's Shareholders*, in AMENDMENT NO. 9 TO FORM S-1 REGISTRATION STATEMENT 27–33, available at <http://www.sec.gov/Archives/edgar/data/1288776/000119312504142742/>

with an eye trained on the very industry that empowers them to assemble in online communities.

That the obligations placed on industry are articulated by these cyber citizen consumers based on how they interface with new media platforms shows that the industry is important, not only due to its potential relationship to democracy promotion in the abstract, but also due to its actual relationship to users. Freedom of expression is not only about promoting democratic self-governance and allowing assembly; it is also about constituting the sovereign autonomous self.⁹⁰ Consequently, perhaps new media enterprises should be held to a higher standard, not only based on their role in promoting democracy, but also because of the nature of their relationships with their users and the uses consumers make of new media to attain personal autonomy.

The convergence of corporate and consumer interests does not necessarily mean that the sort of domestic regulatory reforms that Chander proposes are unnecessary. Regulation would serve to shore up industry's self-regulatory efforts and shield online companies from repression by dictators when they are operating in unfree societies in ways at variance with prevailing government practices.⁹¹

However, even in the absence of a legal mandate, through the interplay of interest convergence and information access, ethical corporations will necessarily seek the respect of the consumer community and wish to avoid reputational risk.⁹² Under these conditions, new norms of conduct consistent with respect for human rights could emerge and evolve to become binding, perhaps even in unfree areas of the world. Industry corporate social responsibility initiatives such as the GNI are essentially redemptive projects to restore the reputational interests of industry.⁹³ Notably, the GNI came about after new media actors were alleged to have been complicit in human rights violations such as Shi Tao's arrest.⁹⁴ The rational global corporate citizen interested in maximizing shareholder wealth must ask: when change comes to China, where would one most want to be situated—on the side of a failed surveillance state or standing with a newly free citizen consumer base?

ds1a.htm#toc59330_1.

90. See Richard H. Fallon, Jr., Essay, *Two Senses of Autonomy*, 46 STAN. L. REV. 875, 902 (1994) (explaining autonomy as a First Amendment value).

91. See Chander, *supra* note 16, at 39.

92. George, INCORPORATING RIGHTS, *supra* note 87, at 2.

93. *Id.* at 5.

94. See *supra* note 65 and accompanying text; see also HUMAN RIGHTS WATCH, *Internet Rights Protection Initiative Launches* (Oct. 29, 2008), <http://www.hrw.org/en/news/2008/10/30/internet-rights-protection-initiative-launches> (describing how Yahoo! identified Tao to the Chinese authorities after he shared state propaganda with an overseas website and the subsequent founding of GNI to "help combat these problems globally by setting out standards companies should follow to curtail censorship and protect user privacy").

CONCLUSION

Chander's proffered suggestions for closing the gap between the rights and responsibilities of corporations in the communications technology industry are promising. To ensure adherence to these responsibilities, a strong ethical construct of corporate social responsibility will be necessary. This is especially true with respect to those industries with the potential to pose risks to rights, regardless of whether obligations to respect rights appear listed in a voluntary initiative or are legislated by the United States and applied abroad. As global norms of corporate social responsibility gain traction,⁹⁵ perhaps greater protection of a fuller range of rights will result. The Internet is an important resource to foster freedom of expression and promote democratic participation in public discourse for individuals living in repressive societies and for their allies in open societies seeking to share information about human rights abuses. It is also an instrument deployed by dictators, and can replicate the discrimination and exclusion experienced by disfavored and disadvantaged groups. The myriad of ends new media may serve makes it all the more important that corporations operating in the Internet and communications technology sector recognize the special role they occupy, and assume responsibilities beyond those limited to maximizing shareholder profit. Until the political will emerges to ensure rights protection through regulation of the Internet, the interests of corporations and consumers will converge to shape the content of corporate social responsibility. In sum, *Googling Freedom* is a well-articulated assessment of the crucial role of corporate actors in promoting a fundamental right. It is my hope that Chander's call for more critical academic and advocacy attention to this set of issues will be heeded.

95. The UN Global Compact and recent reports of the Special Representative of the Secretary-General on the Issue of Human Rights and Corporations and Other Business Enterprises are efforts to articulate standards for corporate conduct to avoid complicity in rights abuses. See, e.g., Georg Kell, *The Global Compact: Origins, Operations, Progress, Challenges*, 11 J. CORP. CITIZENSHIP 35, 37–39 (2003); see generally Special Representative of the Sec'y-General, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, delivered to the Human Rights Council, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008) (prepared by John Ruggie) (proposing a framework to establish an authoritative focal point to set expectations for corporate social responsibility based on three pillars: the state duty to protect against human rights abuses by third parties; the corporate responsibility to respect human rights; and the access to remedy for victims of rights violations), available at <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>. For a discussion of the Special Representative's report, see generally Christiana Ochoa, *The 2008 Ruggie Report: A Framework for Business and Human Rights*, AM. SOC'Y INT'L L. (June 18, 2008), <http://www.asil.org/insights080618.cfm>.