

The Politics of Platform Governance

NetzDG, Democracy, and the Regulation of Content Moderation in Germany

An der Universität Hamburg eingereichte Dissertation

zur Erlangung des Grades Doktorin der Naturwissenschaften (Dr.rer.nat.)

Ethik in der Informationstechnologie

Fachbereich Informatik

Fakultät für Mathematik, Informatik und Naturwissenschaften

Universität Hamburg

Vorgelegt von Laura Fichtner

Hamburg, 2023

Datum der Disputation

09. Juni 2023

Vorsitzende des Prüfungsausschusses/
Erstgutachterin

Prof. Dr. Judith Simon

Zweitgutachter

Prof. Dr. Fred Turner

Drittgutachter

Prof. Dr. Michael Nagenborg

Table of Contents

Kurzfassung	i
Abstract	v
Acknowledgments	ix
Chapter 1: Introduction	1
Part 1—Setting the Stage: Research Background and Approach	16
Chapter 2: Content Moderation and its Problems	18
2.1. Content Moderation on Social Media Platforms	19
2.2. Governing Content Moderation Systems	22
2.3. Hate Speech and Fake News	33
Chapter 3: Regulating Content Moderation in Germany	42
3.1. Introducing the Network Enforcement Act	42
3.2. Existing Regulation of Speech in Germany	49
3.3. Other Related Laws and Regulations	55
Chapter 4: Investigating the Politics of Platform Governance	66
4.1. Technology and Social Order	68
4.2. Discourse Analysis	76

4.3. Framing Studies	87
4.4. Framing in Politics and Policy Analysis	102
4.5. My Frame Ontology	109
4.6. Media Analysis	116
Chapter 5: An Empirical Method to Study NetzDG	128
5.1. A Qualitative Approach to Framing Analysis	128
5.2. Developing a Coding Scheme for NetzDG	132
5.3. Analytical Process	137
5.4. Sources and Sample Selection	140
Part 2—Observing the Play: Results of the Framing Analysis	148
Chapter 6: Freedom of Speech	151
6.1. A Threat to Freedom of Speech	152
6.2. An Illegitimate Political Tool	169
6.3. State Engagement to Promote Democracy	179
Chapter 7: Hate Speech and Fake News	188
7.1. Overpolicing “Uncomfortable” Speech	190
7.2. Tackling the Serious Problems of Hate Speech and Fake News	195
7.3. The Wrong Approach	203

Chapter 8: The Rule of Law	211
8.1. A Threat to the Rule of Law	212
8.2. Creating Law and Order on the Internet	219
Chapter 9: Platform Transparency	227
9.1. Reinforcing Platforms' Opacity	228
9.2. Encouraging the Use of Automation	235
Chapter 10: Regulatory Control for Platforms	239
10.1. Overregulation and Undue State Interference	241
10.2. Holding Companies Accountable	249
10.3. An Inappropriate Regulation	254
10.4. Protecting Users from Economic Exploitation	258
Chapter 11: Legislative Quality	261
11.1. A Poorly Crafted Law	262
Chapter 12: Political Context	267
12.1. A Political Football	267
12.2. Maas's Personal Project	269
12.3. Positioning Germany in International Relations	272

Part 3—Behind the Scenes: Insights to the Politics of Platform Governance __ 276

Chapter 13: Democratic Legitimacy for Content Moderation _____ 278

13.1. A Discourse of Democracy _____ 279

13.2. The Democratic Importance of Legitimacy _____ 282

Chapter 14: Socio-Technical Imaginaries of Democracy _____ 287

14.1. Democratic Fears _____ 289

14.2. Bringing Together Political and Socio-Technical Imaginaries _____ 292

14.3. Two Socio-Technical Imaginaries of Democracy _____ 296

14.4. The Technological Imaginary _____ 299

14.5. The Regulatory Imaginary _____ 303

14.6. Some Observations on the Imaginaries' Discursive Role _____ 305

Chapter 15: Configuring Democracy on Platforms _____ 312

15.1. Constituting Platforms' Institutional Role _____ 315

15.2. Freedom of Speech and the State in Democratic Theory _____ 331

15.3. The State's Role for Platform Governance _____ 345

15.4. Making Citizens for Public Discourse _____ 355

15.5. Reflections upon the Constitution of Digital Democracy _____ 365

Chapter 16: The Discursive Politics around NetzDG _____ 375

16.1. Discursive Politics of Mainstream Media _____ 380

16.2. Discursive Politics of Political Blogs	389
Chapter 17: Conclusions and Outlook	399
17.1. Summary	399
17.2. Main Insights	404
17.3. Limitations and Future Research	408
Bibliography	413
Appendix A: List of Analyzed Articles	434
Appendix B: Publications	449
Appendix C: Eidesstattliche Versicherung	450

Kurzfassung

Die vorliegende Dissertation befasst sich mit den politischen Prozessen und demokratischen Fragen der Plattformregulierung und -Governance im Bereich der Inhaltsmoderation oder auch *Content Moderation* auf sozialen Netzwerken. Content Moderation umfasst die Richtlinien und Praktiken, mit denen Internetplattformen (nutzergenerierte) Inhalte kuratieren. Dieser Bereich der Plattformregulierung hat weitreichende Auswirkungen darauf, was Nutzer*innen sozialer Netzwerke sehen oder äußern können, wie Informationen verbreitet werden und wie öffentlicher Diskurs auf Plattformen stattfinden kann. Meine Analyse fokussiert sich insbesondere auf das Netzwerkdurchsetzungsgesetz in Deutschland, das auch *NetzDG* genannt wird. Ziel der Arbeit ist es, die Interaktionen zwischen politischen Strukturen und digitalen Infrastrukturen besser verstehen und demokratisch lenken zu können.

Das Netzwerkdurchsetzungsgesetz wurde 2017 eingeführt mit dem Ziel, Hassrede und sogenannte „Fake News“ im Internet zu bekämpfen. Es verpflichtet die Betreiber sozialer Netzwerke in Deutschland, „offensichtlich rechtswidrige“ Inhalte, also Inhalte, die gegen bereits bestehende Gesetze verstoßen, innerhalb von 24 Stunden nach Meldung zu löschen und unklare Fälle innerhalb von 7 Tagen zu klären, ggf. mit Hilfe einer Einrichtung der regulierten Selbstregulierung. Darüber hinaus enthält das Gesetz Vorgaben für die nationale Erreichbarkeit der Plattformen, die Erstellung von Transparenzberichten und das Beschwerdemanagement. Bei systematischen Verstößen können Bußgelder von bis zu 50 Millionen Euro für Unternehmen verhängt werden. Das NetzDG wurde also eingeführt, um bereits bestehende und weitestgehend akzeptierte Gesetze in sozialen Netzwerken durchzusetzen. Es löste dennoch eine öffentliche Kontroverse in Deutschland aus und fand weltweit Beachtung.

Meine Dissertation untersucht, wie dieses Gesetz öffentlich debattiert und legitimiert wurde, welche Annahmen verschiedene Positionen im öffentlichen Diskurs machten und welche

politischen Konsequenzen sie implizierten. Ich habe insbesondere analysiert, wie das NetzDG in der medialen Berichterstattung in Deutschland geframed, also „gerahmt,“ wurde. Solche eine Framing-Analyse untersucht, wie Informationen anhand zugrundeliegender Überzeugungs- und Wertestrukturen selektiert, geordnet und bewertet werden. In meiner Analyse des medialen Diskurses um das NetzDG habe ich konkurrierende Interpretationen der Herausforderungen, vor denen die Inhaltsmoderation auf sozialen Netzwerken und ihre Regulierung stehen, identifiziert. Anhand meiner Analyse der Berichterstattung und öffentlichen Rezeption des NetzDG diskutiere ich die Möglichkeiten und Grenzen der Plattformregulierung und die Notwendigkeit neuer Strukturen zur demokratischen Plattform-Governance.

In Teil 1 der Arbeit beschreibe ich den Hintergrund und konzeptuellen Rahmen der Studie. Ich erläutere den Bereich der Content Moderation auf sozialen Netzwerken, die Probleme, die sich ergeben und die regulatorische Lage zur Zeit der Forschung in Deutschland, insbesondere in Bezug auf das NetzDG. Außerdem skizziere ich das dynamische Verhältnis zwischen (digitalen) Technologien und gesellschaftlichen und politischen Strukturen. Hierzu nutze ich Konzepte aus den Science and Technology Studies, nämlich die der ‚Co-production,‘ der ‚Socio-technical Imaginaries,‘ und des ‚Technological Drama.‘ Weiterhin stelle ich die Ansätze der Diskurs-, Framing- und Medienanalyse vor, die meiner empirischen Studie zugrunde liegen. Abschließend erkläre ich meine Methodik sowie die Auswahl des analysierten Materials.

In Teil 2 präsentierte ich dann die Ergebnisse meiner Framing-Analyse. Dieser Teil ist in sieben Frames gegliedert, welche meinen Ergebnissen nach die Medienberichterstattung zum NetzDG strukturierten. Diese Frames sind 1) Meinungsfreiheit, 2) Hassrede und Fake News, 3) Rechtsstaatlichkeit, 4) Transparenz der Plattformen, 5) Regulatorische Kontrolle für Plattformen, 6) Qualität der Gesetzgebung und 7) politischer Kontext. In meiner Analyse fand ich heraus, dass die Medienartikel und ihre zitierten Sprecher*innen diese Frames unterschiedlich zur Analyse und Bewertung des NetzDG nutzten. So konnte das NetzDG zum Beispiel als Gefahr für oder als Verteidigung der Meinungsfreiheit oder Rechtsstaatlichkeit interpretiert

werden, wobei bei den jeweiligen Interpretationen unterschiedliche Aspekte, Beispiele und Sorgen im Mittelpunkt standen. In den Unterkapiteln des zweiten Teils skizziere ich diese unterschiedlichen Interpretationsmuster innerhalb der jeweiligen Frames als sogenannte *Framings*.

In Teil 3 interpretiere ich die Ergebnisse meiner Framing-Analyse. Ich argumentiere, dass die von mir identifizierten Framings je eine Form der Plattformregulierung und -steuerung als demokratisch legitim zu rechtfertigten suchten und ich untersuche ihre politischen Annahmen und zugrundeliegenden Demokratieverständnisse. Dazu konzeptualisiere ich zwei „*Socio-technical Imaginaries of Democracy*.“ Die beiden Imaginaries beschreiben unterschiedliche Vorstellungen davon, wie Demokratie im Internet und auf sozialen Netzwerken gefördert und umgesetzt werden kann. Innerhalb des ersten Imaginary, welches ich als „technologisches Imaginary“ bezeichne, erscheint das Internet als inhärent demokratisierendes Medium, dessen freie Informationsflüsse den Nutzer*innen die freie Meinungsbildung und -äußerung ermöglichen. Diese freien Informationsflüsse versprechen hier Schutz vor autoritären staatlichen Eingriffen, wobei Transparenz und Dezentralisierung als wichtige Ziele der Plattformregulierung erscheinen. Im zweiten Imaginary, welches ich das „regulatorische Imaginary“ nenne, erscheint das Internet hingegen als ein anarchistischer oder gar gesetzesloser Ort, an welchem erst die Implementierung demokratisch legitimer Gesetze, auch in der Inhaltsmoderation, Grundrechte und demokratische Diskursnormen sichert. Substanziellere staatliche Eingriffe versprechen hier, die Nutzer*innen und ihre Rechte als demokratische Bürger*innen zu schützen. Die beiden Imaginaries schreiben also den Plattformen, staatlichen Institutionen sowie Nutzer*innen/Bürger*innen unterschiedliche Rollen, Rechte und Verantwortlichkeiten zu. Diese Zuschreibungen fanden sich auch in den unterschiedlichen Interpretationen des NetzDG wieder.

In meiner Arbeit zeige ich, dass die Unterschiede in diesen Zuschreibungen auf Unterschiede zwischen liberalen, deliberativen und republikanisch/agonistischen Demokratievorstellungen zurückzuführen sind. Dies veranschaulicht, dass unterschiedliche Interpretationen der „richtigen“ Plattformregulierung nicht nur auf einem bestimmten Bild der

technologischen Beschaffenheiten basierten, sondern auch auf divergenten Demokratieverständnissen. Bestehende demokratische Strukturen und Gesetze können die Spannungen, die zwischen solchen Verständnissen existieren, temporär auflösen. Die Frage aber, wie diese Strukturen und Gesetze auf das Internet zu übertragen sind, eröffnet diese Spannungen erneut. Meine demokratie-theoretische Analyse der Framings, die im öffentlichen Diskurs um das NetzDG verwendet wurden, veranschaulicht so, dass die Kontroverse als Teil eines größeren politischen Diskurses um die Gestaltung unserer Demokratie in Zeiten des Internets fungierte. Hierbei ließ der mediale Diskurs ernsthafte Zweifel an der demokratischen Legitimität des Gesetzes aufkommen. Diese Zweifel waren nicht zuletzt durch die politische Struktur des Diskurses selbst geprägt, in dem sich starke Diskurskoalitionen gegen das NetzDG bildeten.

Bei der Kontroverse um das NetzDG ging es also nicht nur darum, wie bestehende Rechte adäquat auf sozialen Netzwerken durchgesetzt werden können, sondern auch um die viel größere Frage, wie sich Demokratie mit digitalen Technologien gestalten lässt. Meine Arbeit veranschaulicht, dass die technologischen und ökonomischen Gegebenheiten sozialer Netzwerke als Katalysator für eine Neuverhandlung grundlegender demokratischer Fragen nach der Rolle der Bürger*innen, nach Formen demokratischer Gemeinschaft und nach dem Aufgabenbereich des Staates wirkten. Eine nicht einfach regulatorisch aufzulösende Spannung lässt sich in dieser Neuverhandlung auch darauf zurückführen, dass Plattformen als privatwirtschaftliche Unternehmen einen wichtigen Raum für öffentlichen demokratischen Diskurses bereitstellen.

Meine Untersuchung zeigt, an welchen Stellen Gesetzgebung und Rechtsdurchsetzung nicht ausreichen, um Internet-Plattformen und soziale Netzwerke in demokratische Bahnen zu lenken oder den politischen Fragen zu begegnen, die der Umgang mit auf ihnen veröffentlichten Inhalten aufwirft. Abschließend betone ich deshalb den Bedarf, neue demokratische Strukturen für die Steuerung von Plattformen zu schaffen. Ich schlage die Entwicklung einer agonistischen Form der Plattform-Governance vor, die es Menschen ermöglicht, in demokratischer Gemeinschaft an der politischen Gestaltung digitaler Technologien teilzunehmen.

Abstract

This dissertation studies the political processes and democratic challenges of regulating and governing content moderation on social media platforms. Content moderation refers to the policies and practices by which internet platforms curate (user-generated) content. As an area of platform regulation, it has far-reaching implications for what social media users can see or say, how information is disseminated, and public discourse takes place online. My analysis focuses specifically on the so-called *Network Enforcement Act* or *NetzDG* in Germany. The aim of my work is to better understand and democratically govern the interactions between political structures and digital infrastructures.

The Network Enforcement Act was introduced in 2017, with the aim of combating hate speech and so-called “fake news” online. It obliges the providers of social media platforms to remove “manifestly unlawful” content, so content that violates existing laws, within 24 hours of notification and to clarify unclear cases within 7 days, possibly under reference to an institution of regulated self-regulation. Moreover, the law includes various stipulations for platforms’ reachability, transparency reports, and complaint management systems. Systematic failures to comply on behalf of the companies can result in fines of up to 50 million euros. Although introduced to enforce already existing and widely accepted laws on social media platforms, the law sparked a public controversy in Germany and attracted attention worldwide.

My dissertation examines how this law was publicly debated and legitimized, what assumptions different discursive positions were based on, and what political consequences they implied. To this end, I analyzed how the media reporting in Germany framed this law. Such a framing analysis studies how information is selected, organized, and evaluated based on underlying values and structures of belief. In my analysis of the media reporting on NetzDG, I identified competing interpretations of the challenges faced by content moderation and its

regulation. Based on this analysis of the reporting and public reception of NetzDG, I discuss the possibilities and limitations of platform regulation and the need for new structures of democratic platform governance.

In Part 1 of the thesis, I introduce my study's background and conceptual framework. I describe the area of content moderation, the problems that arise within it, and the regulatory situation in Germany at the time of research, particularly concerning NetzDG. Furthermore, I outline the dynamic interactions between (digital) technologies and social and political structures. To this end, I utilize concepts from Science and Technology Studies, namely 'co-production,' 'socio-technical imaginaries,' and 'technological dramas.' Moreover, I detail the approaches of discourse, framing, and media analysis, which built the basis for my empirical study. Finally, I explain my methodology and selection of the analyzed material.

In Part 2, I present the results of my framing analysis. This part is organized by seven frames which, according to my findings, structured the media coverage of NetzDG. These frames are 1) Freedom of Speech, 2) Hate Speech and Fake News, 3) The Rule of Law, 4) Platform Transparency, 5) Regulatory Control for Platforms, 6) Legislative Quality, and 7) Political Context. In my analysis of the reporting, I found that the media articles and the speakers they cited used these frames in different ways to analyze and evaluate NetzDG. For example, the new law could be interpreted as a threat or as a defense of freedom of speech or the rule of law. Different interpretations here centered distinct aspects, examples, and concerns. In the subchapters of this part, I outline the various patterns of interpretation under each frame as so-called *framings*.

In Part 3, I interpret the results of my framing analysis. I argue that the framings I have identified each sought to justify a particular form of platform regulation and governance as democratically legitimate, and I explore the political and democratic assumptions that underpinned them. For this, I conceptualize two "*socio-technical imaginaries of democracy*." The two imaginaries describe different visions of how democracy can be fostered and realized on the

internet and social media. Within the first imaginary, which I call the “technological imaginary,” the internet appears as an inherently democratizing medium, whose free information flows can be employed by users to freely form opinions and express themselves. These free information flows promise protection against authoritarian state interventions, while transparency and decentralization appear as important imperatives for platform regulation. Within the second imaginary, which I call the “regulatory imaginary,” the internet in contrast appears as an anarchistic or even lawless space, where democratically legitimate laws, also for moderating content, are considered necessary to secure fundamental rights and democratic norms. Accordingly, more substantial governmental interferences promise to protect users as democratic citizens. Hence, the two imaginaries ascribe different roles, rights, and responsibilities to platforms, state institutions, and users/citizens. Such ascriptions also resurfaced in different framings of NetzDG.

In my work, I trace such differences back to liberal, deliberative, and republican/agonistic conceptions of democracy. This means that different interpretations of how to “correctly” regulate platforms in the NetzDG controversy not only built on diverging views about technological affordances but also on diverging conceptions of democracy. Existing democratic structures and laws may temporarily settle the tensions between such differing conceptions. These tensions are, however, reopened when the question arises of how to implement such structures and laws on the internet. Thus, my theoretical analysis of the public discourse surrounding NetzDG illustrates that the controversy functioned as part of a larger political discourse on the shape of democracy in the age of the internet. The media reporting here raised serious concerns about the democratic legitimacy of NetzDG. The emergence of these concerns was not least shaped by the political structure of the discourse itself, where strong discourse coalitions formed against NetzDG.

Consequently, the NetzDG controversy was not only about the question of how to appropriately implement existing laws on social media platforms but also about the much larger

question of how to realize democracy with digital technologies. My work illuminates how the technological and economic conditions of social media platforms worked as a catalyst to renegotiate fundamental democratic concerns about the role of citizens, the shape of democratic community, and the appropriate realm of state power. A tension that could not easily be resolved by regulatory means here resulted from the role that platforms, as private corporations, take up in providing a space for public democratic discourse.

My research uncovers where regulation and law enforcement are insufficient to channel the internet and social media platforms into democratic forms or to address the political questions that arise from moderating content on them. In conclusion, I emphasize the need to create new democratic structures for platform governance and propose the development of an agonistic form of platform governance that would enable people to participate in the political shaping of digital technologies within a democratic community.

Acknowledgments

The best way to start a dissertation is with gratitude. First, I would like to thank Prof. Judith Simon, who offered me the chance to pursue this project, provided the space and time for me to explore my ideas, and gave me so much invaluable guidance and feedback, without which this work would not have been possible. Thank you for your support, for the great time, for the many conversations over TtM dinners, and for being both a mentor and a colleague.

As part of the EIT research group, I have had but incredible colleagues along my PhD journey. They have taken the time to listen to my project over and over again, they have been there for the ups and downs, and they have given me the best feedback, administrative support, and a lot of space to finish my PhD in the last months. I would like to thank Anja Peckmann, Prof. Ingrid Schneider, Mattis Jacobs, Dr. Pak Hang-Wong, Dr. Gernot Rieder, Catharina Rudschies, Dr. Jason Branford, Eloïse Soulier, and Dr. Jan-Philipp Kruse. Our many mensa gatherings and coffee breaks will always be some of the fondest memories of my PhD!

I would also like to thank Universität Hamburg, and everyone who makes this institution possible, for giving me the chance to pursue my very interdisciplinary work. Special acknowledgments go to the Fachbereich Informatik, who have welcomed us strange entities with so much openness, and to its student office, administration team, and technical support. Special thanks to Reinhard Zierke, who helped me get through a serious laptop crash shortly before submission. In addition, Margrit Obernesser and Christine Häusser from the library were vital to this project, literally telling me that there was no paper they could not get for me. I don't know how you do it! Moreover, I would like to thank Dirk Gödecke and his entire team for supplying the tasty calories which the writing of a PhD burns, and Ronald Kock and his team, who always made sure it was warm enough to think and that I could enter and leave the premises even in the crazy hours during which a PhD is sometimes best written or a block seminar taught. A sincere

thank you especially also to the facility crew that ensured our beloved Ikum remained a place we could always feel comfortable in.

Thank you to all my students, you have been an inspiration and taught me so much!

Moreover, I would like to thank: Prof. Katharina Kleinen-von KönigsLöw, for giving me such helpful advice for my empirical analysis; Jakob Ambsdorf, for helping me get started with the empirics and scout out the German media landscape; and the DAAD for funding my research stay with the Harvard STS program. I would like to thank Prof. Sheila Jasanoff and the Spring 2020 cohort for welcoming me to the program and providing valuable feedback on my project. Special comradery nods are directed at Dr. Noah Walker-Crawford, Luise Ruge, Sarah Carter, and Gijs van Maanen. In addition, I would like to thank Prof. Wolter Pieters and Prof. André Teixeira for getting me started in thinking about framing and supporting me with my early research. A big thank you also goes out to my two additional PhD examiners, Prof. Fred Turner and Prof. Michael Nagenborg, for their time, dedication, and interest in my work.

I would further like to express my love and gratitude to my family, especially to my mum, brother, stepmum, stepdad, grandma, and aunt. I am grateful for the support you have given me along the way, for helping me grow, and for always believing in me. This PhD was written in loving memory of my dad, which gave me strength.

Last, but certainly not least, loving and appreciating shout-outs go to my friends and partners along the way, especially to Eva, Luisa, and Marie. They have traveled this journey with me and provided the emotional support and excellent advice that I needed. You are great!

Chapter 1

Introduction

In one internet minute of 2021, Instagram users shared about 65,000 photos and Facebook users about 240,000.¹ In that same internet minute, users around the world watched about 167 million videos on TikTok, sent 2 million Snapchats, conducted 5.7 million Google searches, created 208 Clubhouse rooms, tweeted 575,000 times, and streamed 694,000 hours of video on YouTube. In this one internet minute, users' attention was captured by the content they were engaging with. However, what they could see, and share, was determined by something else: by the very thing they used—*platforms*. It was their functionalities, rules, and policies that made possible the vast information flows these numbers capture, shaping them into the specific forms they took on once they reached their users.

The numbers also indicate that for many people around the world, social media platforms have become dominant tools of communication and interaction with others near and far. What is more, these platforms provide a major source people around the world turn to for information and news. Because they enable communication and facilitate vast flows of content that—once they reach people and are processed by both humans and machines—can have consequential effects on the world, platforms can unfold immense social and political power. They have the capacity to shape our social lives, to *moderate how we see one another and the world*, and to define which information we receive. As constant companions in our always-on lives, social media can function as *world-making tools* that mediate the reality we perceive. Consequently, how we share and consume content on platforms can shape our overall social and political world.

¹ Statistics provided by Domo, a mobile, cloud-based operating system for businesses. Accessed on <https://www.domo.com/learn/infographic/data-never-sleeps-9>, March 14th, 2022

In the last decade, social media platforms have been implicated in various political and societal events and developments, attaining ever more public attention. For example, they have facilitated various social movements that developed as grassroots initiatives meant to tackle and topple unjust, oppressive, or potentially damaging social and political structures, practices, and norms. The *Arab Spring*, a widespread movement of political resistance in the Arab world that relied heavily on social media to organize, presented one of the early examples to demonstrate social media's democratic potential but also the political limitations that come with this potential (*Arab Spring*, 2021). Other movements that took on a global character through their use of the internet have been the *#MeToo* movement,² which battles against a culture that normalizes sexual harassment and abuse, or the *Black Lives Matter*³ movement that organizes against racist police brutality. A more recent member in this group is the *Fridays for Future*⁴ movement that advocates for radical political change and initiative to mitigate imminent environmental catastrophe. But aside from making it easier to organize for social and political change or even civil rights, social media platforms have also enabled the circulation of a heretofore unknown amount of misinformation. In extreme cases, such misinformation has even led to incidents like *Pizzagate*, where an armored man stormed and fired shots in a pizza restaurant in Washington DC (Lopez, 2016). The proclaimed purpose of this attack was to investigate the conspiracies circulated online about a world-wide child-sex trafficking organization which was said to operate out of the restaurant and to be in cahoots with high-profile politicians. And in Myanmar, the spread of hate speech and conspiracies, particularly on Facebook, has likely contributed to violence against a Muslim minority (The Associated Press, 2021). More recently, the spread of potential misinformation on Covid-19 and the vaccination against it have further nurtured distrust in both

² <https://metoomvmt.org/>

³ <https://blacklivesmatter.com/about/>

⁴ <https://fridaysforfuture.org/>

political and medical authorities and perhaps even negatively affected the health of many people (Hsu, 2022).

These examples already indicate that the use of social media platforms can have far-reaching effects and powerfully impact individuals as well as social and political life and that they can even influence or shape social and political order. These effects are especially pronounced for democracies because they accord a quintessential role to communicative processes and information flows in their political processes and the constitution of their political order. Social media platforms can facilitate and enable but also disturb and distort—in any case change—such information flows and communicative processes. Social media may, for instance, provide new avenues for, as well as pose new hindrances to, *public democratic discourses*, either way shaping or influencing their specific form. This is again of special political significance in democracies where public discourses and their outcomes take on a core function for political decision-making and for the legitimacy of governments and policies. A common democratic purpose of such public discourses is to allow people—citizens—to exchange arguments, viewpoints, and important information, something which is in turn deemed necessary for them to make informed political choices, vote, and control their government (Bhagwat & Weinstein, 2021; Restrepo, 2013). In addition, public discourses are also democratically indispensable in their task to facilitate the formation of a public opinion which is needed for the realization of democratic self-government and for giving people the opportunity to check upon those in power and control governments.

Thus, social media platforms can take on political and democratic significance through their ability to both enhance and compromise, in various ways, people's possibility to freely express themselves, access information, and communicate with one another. Ensuring people have this possibility is one of the core aims of democratic governance. It is not only central to the functioning of public discourse and democratic political processes but also fundamental to the realization of core democratic values and principles such as personal autonomy, equality, and self-governance. Ensuring this possibility plays an essential part in providing people with the

chance to develop themselves freely as individuals, take control of their lives, act autonomously, and judge information for themselves (Mackenzie & Meyerson, 2021; Restrepo, 2013; A. Stone & Schauer, 2021). Finally, the structures that are put into place to ensure this possibility are also meant to safeguard another important democratic ideal, namely the *equal political participation of all citizens in democratic processes and decision making*. This ideal implies that everybody has an equal chance to consume and judge information, express their point of view, make themselves heard, organize for joint causes, and participate in social processes (Bhagwat & Weinstein, 2021)

By promising to provide people with the possibility to access and share information, express themselves, exchange viewpoints, or jointly organize, the internet and particularly social media platforms can thus appear to bear great potential for democracy. They hold up the promise to enable information flows and communication in a decentralized manner and give people a chance to publicly express themselves without having to rely for instance on journalistic gatekeepers. This promise has brought the internet its widespread reputation as a radically democratizing, or at least fundamentally empowering, medium. This reputation has accompanied its trajectory as a public technology ever since its inception. In *The Net Delusion*, Evgeny Morozov has vividly described (but also forcefully criticized) a belief, widespread especially in the Western world, that the internet bears the kind of liberating powers which “naturally” bend toward democracy (Morozov, 2011). When protected from unduly interference, this belief holds, “free” communication on the web enables people to organize democratically and control their governments. Social media and other internet platforms here step in to sustain this belief. They augur to facilitate communication and the development of communities and mutual recognition beyond the confines of physical spaces, to nurture self-development outside rigid and potentially restricting social norms, and to allow for a free exchange of information and the free formation of opinions outside institutionalized and gatekept narratives. Moreover, they offer the opportunity to bring about the development of new political movements and make it possible to collectively control powerful actors and evade illegitimate (state) control and censorship.

At the same time, the examples I have named and other cases like them also contribute to an increasing sense that social media platforms pose a danger to democratic ideals and their realization. Such dangers include the possibly too great burdens that platforms may put on people to navigate, select, and judge sheer endless amounts of information and content on their own. They also include the possibilities that platforms offer for obscure, malicious, or antidemocratic actors to exploit practices of algorithmic ordering and to take advantage of the attention economy that drives much of social media. Together, such fears have led to growing concerns that the use of social media can trigger increasing societal and political fragmentation and polarization. These concerns surface as discerned phenomena titled, for example, “filter bubbles” and “echo-chambers.” They have further been aggravated by the intensity and volume with which hate speech seems to spread, which compromises equality and the autonomy and participation of those it is targeted at. An additional cause for worry is the circumstance that platforms, with hitherto unknown scale and depth, make possible the circulation of misinformation and propaganda. This kind of content may compromise democratic debates and provide people with false information, distorting their ability to make adequate judgments. Finally, this list of platforms’ detrimental effects is rounded off by the new technological possibilities for surveillance, control, and manipulation that social media can introduce to even the most private spheres of social life.

The more stories like those recounted in this introduction emerge, and the more social and political power, influence, and significance social media platforms seem to attain, the more urgent it appears to channel, reign in, or shape this power. Throughout the last few years, regulators and the public at large have therefore started to pay increasing attention to difficult issues of *platform governance*. At the same time, how precisely to interpret, address, and react to these issues has been the subject of profound political contentions and disagreements. These contentions trace back to disagreements over how societal values and norms, and particularly democratic ideals, can be realized or safeguarded by civil rights. Such democratic ideals include

public discourse, citizen autonomy, equal participation, and popular sovereignty. Further, fundamental contentions also emerge around disagreements over how social media platforms impact, can impact, or ought to impact the realization of these ideals. Thus, despite the shared public and political attention dedicated to platform governance, even on a global level, there is widespread disagreement over *what social media platforms' impact is on democracy* and over *how platforms should be governed and controlled in accordance with democratic values and principles*. My research built on this attention to *platform governance* and to the fundamental disagreements that surround it.

In general terms, *governance* refers to activities that systematically structure social interactions. It describes “processes of interaction and decision-making among the actors involved in a collective problem that lead to the creation, reinforcement, or reproduction of social norms and institutions” (Hufty, 2011, p. 405). While governance is often used to refer to a state or government’s ability to create and enact rules (Fukuyama, 2013), other entities and institutions can also govern, such as markets, internet platforms, or algorithms. They can use different tools for this, such as laws, rules, and social norms but also technological applications, standards, or scientific expertise. As a field of governance, *internet governance* is specifically concerned with the rules, regulations, and protocols *that order how we interact on and through the internet* (Hofmann et al., 2016). It includes many different actors such as service providers, platforms, nation states, international institutions, NGOs, and users. Finally, *platform governance*, as a subfield of internet governance, refers to how internet platforms, and particularly the interactions between them and their users (and customers) as well as amongst platform users themselves, are governed. Such governance can be exercised for example through terms of service, community policies, content moderation practices, and legal regulations.

The goal of my research project was to investigate the politics that shape such processes of platform governance. I did this specifically by studying the discursive processes that surrounded a particular problem of platform governance and its public perception. In political science, the concept of *politics* generally refers to how decisions, especially decisions on policies

and governance rules, are made and enacted (Jahn, 2006). I would also add that an important dimension of politics, at least in the way I understand them, refers to the consequences that decisions on how to best structure collective life have for social order, the distribution of social and political power, and the relationships between different actors. As a process-oriented concept, the concept of *politics* complements *policies*, a term which refers to the *content* of governance activities such as their particular societal or economic goals and the measures they take to reach such goals (Jahn, 2006). Moreover, politics also complements *polities*, which describe the structures that characterize political systems, such as parties, parliaments, and other political institutions.

I focused my study of the politics of platform governance on two aspects of platform governance. First, I studied the (*discursive*) *processes* that surrounded a certain approach to platform governance, which was infused with interests, values, and power struggles. Second, I investigated how to identify and reflect upon the *consequences* that different approaches to governing platforms have for collective life, political structures, and social order. Therefore, in my study, I uncovered what drives disagreements over the relationship between technological infrastructures and social and political order and over how to rightly govern social media platforms. I further discerned what the social and political consequences of settling these disagreements in one way or another are. My investigation built on the presupposition that such disagreements are not just “factual” disagreements over how democratic values and principles can be protected online or over how platforms impact democratic processes. Rather, they express fundamental differences in value judgements and worldviews. This difference is politically relevant because it implies that disagreements cannot (fully) be solved by recourse to facts or research but require normative decisions with impactful consequences for democratic order.

Such a desire to study the politics of platform governance can give rise to nearly uncountable questions and possibilities for research. In my work, I am particularly interested in investigating how, and with what political consequences, decisions on questions of platform

governance are debated, arrived at, and justified in public discourse. For this reason, I studied processes of public reasoning and deliberation that allowed different, competing positions, which were articulated in public discourse, to arrive at conclusions on questions of platform governance. Such processes of public reasoning and deliberation work to publicly justify the adoption of certain policies and practices. In studying such processes, I pay close attention to how different ideas about technological infrastructures and what they do, and about the democratic design of social and political order, interact to motivate and legitimize specific forms of platform governance. I also take a closer look at the values and democratic ideals that different positions evoke, the assumptions that underpin them, and their potential consequences for the distribution of agency, power, and responsibility. With this, I seek to contribute to a politically accountable form of platform governance that is clear about its assumptions and consequences and about its chances and risks. The point is to show that platform governance is not “just” about determining the right practices that democratic values and principles dictate. Rather, it is itself a political practice that shapes our democracies and political systems and impacts the agencies, rights, and responsibilities of different actors and institutions. In this capacity, platform governance requires political accountability and democratic legitimacy.

To investigate the politics of platform governance, I analyzed the public controversy that ensued over a particular attempt to regulate content moderation on social media platforms, namely the *Network Enforcement Act*, or short *NetzDG*, in Germany. This law presented an interesting case for the study of platform governance, as it provided a unique attempt to govern content moderation on social media platforms with the instruments of existing speech laws. It has therefore been internationally recognized and critiqued from within academia and beyond (Bernau, 2018; Douek, 2022, p. 48; Hülsen & Müller, 2018; Roberts, 2019, p. 213).

I researched how German media reporting on this new law framed its acceptability and desirability and how it discussed the problem of governing content moderation on social media platforms more broadly (*Q1*). This research included both how different media articles framed

NetzDG and its central problems and potential impacts, and how they cited different actors such as policymakers, civil society spokespeople, lobbyists, and politicians in explaining and justifying their stance publicly. In my analysis, I paid special attention to the values and conceptions of the public good that different positions on NetzDG evoked for representing and justifying their views. Based on this analysis, I can conceptualize and articulate the assumptions that different positions were built on, assumptions both about how democracy works and how social media platforms can work in its service (*Q2*). Finally, unraveling these assumptions allows me to conceptualize the socio-technical imaginaries that capture different positions' views on democracy online and to reflect upon the concrete political consequences of different positions (*Q3*). This means analyzing how different positions in the discourse justified and argued for certain societal and political power relationships and the distribution of roles, rights, and responsibilities.

In a recursive move, studying media discourse is a viable way to research the politics of platform governance precisely *because* democracies require politically impactful and collective decisions to be publicly debated and justified. The media discourse is one place where public discourse on platform governance decisions can take place. There, different positions and approaches can be articulated and debated; in such public discourses, political actors and decision- and policymakers further need to justify and seek public acceptance for their views and the policies they want to implement. Of course, public discourse on such matters can also take place elsewhere, such as on, unsurprisingly, social media platforms themselves but also inside, for instance, parliaments. The media discourse I analyzed therefore presented a specific kind of public discourse that was shaped and mediated by journalistic choices, which themselves enacted *discursive politics*. Such discursive politics describe how different voices and positions shape the course of public debates on platform governance, gain public dominance, and consequently exert political influence over decisions about platform governance and their public perception. At the end of my work, I also reflect upon the specific discursive politics that characterized the

controversy I studied (*Q4*). I take a critical look at the kind of influence different actors exerted over the public discourse on platform governance.

As just briefly explained, to make such an in-depth study of the politics of platform governance empirically feasible, it is necessary to narrow down the subject of study. The first step I took for my study was therefore to focus on a particular area of platform governance, namely *content moderation*. This term refers to how social media platforms like Twitter, Facebook, and YouTube decide what is and is not allowed on their sites, take down content, or regulate its visibility and perception. Content moderation is a highly impactful and central practice of social media platforms. It determines what people can see and say on social media, who and what gets heard online, what kind of information and communication is allowed, which content gets circulated and engaged with, and what is made visible or invisible and credible or incredible.

Therefore, social media platforms' systems and practices of content moderation exert strong influence on people's ability to express themselves. They also shape how people consume information, create a picture of the world, communicate about social and political issues, and participate in public discourse. In fact, the different cases and events that I have used for illustration in this introduction all, in multiple ways, involve problems of content moderation. There are a variety of societal and political actors, such as research institutions, non-governmental organizations, governments and regulators, civil society groups, and corporate initiatives, that have been and still are reacting to these complex issues. They are continuously searching for appropriate ways to govern content moderation in accordance with their values, beliefs, interests, and institutional structures. **Chapter 2** outlines content moderation as a field of platform governance and presents different ways in which scholars have sought to make sense of or normatively reflect upon it. Moreover, it also introduces two of its most hotly debated concerns—"hate speech" and "fake news"—which have received much attention in the NetzDG controversy.

But even the field of content moderation as a subfield of platform governance is vast and incorporates many different practices and types of platforms (Gillespie & Aufderheide, 2020). Moreover, there are many ways in which content moderation can be governed, such as by corporate practices, community-driven initiatives and practices, standardization, and governmental regulation. To further precision my investigation, I therefore chose to analyze a specific regulatory approach to governing content moderation, namely the *Network Enforcement Act* or short *NetzDG*. This law has been introduced in Germany with much controversy. It obliges social media platforms with more than 2 million users in the country to delete so-called “manifestly unlawful” content within 24 hours and clarify legally unclear or ambiguous cases within 7 days. When it comes to the lawfulness of content, NetzDG refers specifically to several speech laws that already long exist in German criminal law. The act also introduced several other obligations for platform providers, such as organized, easily accessible, and transparent complaint-management, the issuing of biannual transparency reports, and the establishment of points-of-contact in the country. In **Chapter 3**, I detail the content of this law as well as its genesis and I situate it in its the legal context that surrounded and surrounds it.

After having introduced content moderation as an important field of platform governance on which my work focuses and after having presented NetzDG and the regulation of content moderation in Germany as my case study, **Chapter 4** details the conceptual framework based on which I conducted my study. As explained above, I am particularly interested in dissecting the processes of reasoning, deliberation, and justification that take place in public discourses on issues of platform governance. Therefore, my work specifically zooms in on the heated public debate that surrounded the introduction of NetzDG. In Chapter 4, I outline the various conceptual approaches that I used for thinking through how such a debate could be studied to understand the politics of platform governance. The first part of this chapter presents three analytical lenses from Science and Technology Studies—co-production, socio-technical imaginaries, and technological dramas—which helped me to conceptualize the

interrelations of values and ideas, technological infrastructures, and social and political order. These lenses also allow me to describe how technological developments are politicized and why discourse analysis can be a viable way to study technology politics. The next part then explains the overall discourse-analytical approach that I take in my work as well as the framing studies approach on which my empirical study and methodology and the presentation of my empirical research results built. I argue why framing studies provide a suitable approach to trace processes of reasoning, sense-making, and argumentation, and I detail the role that such framing processes play in politics and policymaking. I also describe how I understand my own research results as the results of my framing analysis and why—and with what consequences—I specifically chose the media discourse as the basis for my work.

Based on this explanation of my conceptual framework for studying the politics of platform governance, and particularly the case of regulating content moderation in Germany, **Chapter 5** outlines my empirical method to study NetzDG. I describe how I transformed my conceptual framework into an empirical methodology with which I analyzed the media discourse on NetzDG. The chapter details my overall qualitative approach, my development of a coding scheme for the articles, my analytical process, and my sampling method and source selection.

Chapter 5 is followed by **Part 2** of my thesis. This part presents the empirical results from my framing analysis, for which I analyzed 235 articles from both mainstream media and journalistic blogs across the political spectrum. The chapter is divided into seven chapters, structured according to the overarching frames that I identified from the media reporting. The central concerns and terms by which the articles discussed and assessed NetzDG's acceptability and desirability, as well as the broader problems of content moderation and platform governance, characterize these seven frames. These central concerns refer to NetzDG's interaction with the right to *freedom of speech* (**Chapter 6**), its need and adequacy to react to problems with *hate speech and fake news* online (**Chapter 7**), and its impact on *the rule of law* (**Chapter 8**). Moreover, the frame presented in **Chapter 9** captures a variety of assessments concerning NetzDG's impact on *platform*

transparency, whereas **Chapter 10** describes the meta-frame of *regulatory control*, which unifies different assessments of which regulatory approach to use for platforms. Finally, **Chapter 11** focuses on different critiques of NetzDG's *legislative quality*, and **Chapter 12** locates the contentions around the new law in their *political context*.

However, what I also found in my analysis is that the articles described different assessments of NetzDG even under reference to the same frame. This meant that in the media discourse, there were intra-frame conflicts and contentions over how to interpret NetzDG within the terms of a particular frame. I describe these different interpretative patterns as *framings*, specific ways of making sense of and interpreting the problem at hand and of assessing NetzDG's acceptability and desirability. These framings were signified by certain overarching problem-setting stories, argumentative structures, and narratives about NetzDG and platform governance, which fit to the different arguments, examples, cases, and suggestions that the articles reported. It is then particularly interesting to see how these framing conflicts played out in the NetzDG controversy and to think about what explains the differences and similarities between them.

This is what I set out to do in **Part 3** of the thesis, where I interpret my research results and seek to uncover the assumptions on which the framings were built as well as the political consequences that the platform governance approaches, which they each legitimated, can have. The first thing I find in **Chapter 13** is that the NetzDG discourse was part of a *discourse of democracy*, where different positions struggled over what the democratic way to govern platforms was. I therefore propose that the framings included different legitimation strategies and different arguments for why this or that way of governing platforms was democratic.

I further suggest that, given that all framings drew from the idea that the right way to govern platforms is to do what democracy requires, the tensions between them can only be explained by different ideas of how to enact democracy on social media. To this end, **Chapter 14** describes two different *socio-technical imaginaries of democracy*, which I conceptualize based on the

results of my framing analysis. These imaginaries capture distinct visions of how democracy can be realized on social media, differ in where they locate the primary source of democratic discourse, and explain what holds together the NetzDG framings.

Based on this conceptualization, **Chapter 15** finally investigates the social order that these different imaginaries envision. To do this, I trace the framings' legitimation strategies and the different arguments about platform governance they included back to different kinds of democratic conceptions. I outline that these conceptions describe distinct ideas about how public discourse functions and about how to distribute rights, roles, and responsibilities between platforms, state institutions, and users/citizens. By tracing the framings' contents back to these conceptions, I then conceptualize the roles different ways of framing NetzDG described for platforms, state institutions, and users/citizens. This is insightful because it enables me to reflect upon what the NetzDG controversy and its framing processes show about the legitimacy of different platform governance approaches. Upon reflection, I find that the framings can demonstrate the democratic shortcomings of both liberal and deliberative approaches to governing speech on platforms and suggest that an agonistic approach can provide a path forward to more democratic and accountable platform governance. **Chapter 16** then reflects on the discursive politics that have shaped these insights and the lack of legitimacy that NetzDG enjoyed in the media discourse.

In **Chapter 17**, I close with a summary, a reflection on my main findings, and a discussion of research limitations and outlook. To foreshadow some of the results: I found that, when it came to the media controversy around it, NetzDG was unsuccessful in its attempt to “solve” the problems with speech on platforms through the “mere” application of existing laws while avoiding tackling the fundamental democratic questions that are usually implicated in setting speech rules (or not setting them). Even though the reporting generally did not question widely accepted speech rules, my analysis of the NetzDG controversy shows that the contentions over the new law's acceptability and desirability, over questions of how to uphold

these laws on platforms, and over how to integrate platforms into existing structures nevertheless concerned fundamental questions of democratic order and opened a new avenue to shape democracy anew. In this potential reshaping, platforms' affordances and characteristics play an important role—hence, how to interpret them is a matter of much contention.

In the media discourse on NetzDG, these political questions were not discussed as a theoretical analysis but through, for example, recounts of stories and arguments, examples of overblocked content, illustrations of the problem, a discussion of platforms' responsibilities, and the citation of politicians and lobbyists. While NetzDG could be implemented by a parliamentary majority, I found that overall, the media discourse seriously called into question the democratic legitimacy of NetzDG, against which strong discourse coalitions formed. These discourse coalitions could draw from the weaknesses of NetzDG's *deliberative-democracy style approach*, according to which platforms provide a private space in which democratically set laws should nevertheless guide interactions under the rule of law.

I conclude that my analysis of NetzDG and the media controversy around it has made visible the serious challenges that the legitimacy of both liberal and deliberative approaches to governing speech on social media face. Based on my analysis, I propose that an agonistic approach to platform governance can, in the future, provide a chance to close this gap of democratic legitimacy that exists for platform governance. This approach prompts us to think about how to create democratic structures for platform governance in a political sphere that exists beyond the legal, ethical, and economic realms.

Part 1—Setting the Stage

Research Background and Approach

This first part of the thesis sets the background for my empirical investigation of the media discourse that surrounded the introduction and implementation of NetzDG in Germany as one attempt to govern platforms and regulate content moderation on them. For one, this part sets the stage in terms of the field, problem, and case of platform governance that I investigate. The second chapter on *Content Moderation and its Problems* introduces content moderation. It presents several prominent scholarly approaches to conceptualizing and reflecting on content moderation as an activity and field of platform governance, and it outlines core issues that content moderation grapples with. The third chapter on *Regulating Content Moderation in Germany* then introduces NetzDG—the piece of platform regulation at the center of this thesis—and presents its genesis and regulatory stipulations. The chapter also outlines existing legal frameworks that regulate speech and the media landscape in Germany and that contextualize NetzDG and the discussion around it. This chapter thus draws up the cultural and legal background against which the controversy over NetzDG—and over its regulation of content moderation—took place.

In a second step, this first part also outlines the broader conceptual and analytical approach I take to analyzing the NetzDG controversy. In the fourth chapter, I thus outline and present my broader conceptual approach for studying the politics of platform governance and particularly the regulation of content moderation on social media platforms. In this chapter, I describe several concepts from Science and Technology Studies that help me understand the interactions between technological developments, political processes, and meaning-making. I further present the discourse-analytical approach I take in my work and introduce the field of framing studies, which I use to build my empirical research approach and methodology. I explain

my understanding of framing processes and how I study them, drawing particularly from two inspiring papers from the field. Moreover, I build on the field of argumentative policy analysis to explain the political function that framing processes take up in policymaking and policy controversies, and I outline how I interpret the status and agency of the results from my framing analysis. I further reflect upon what it means to specifically use the media discourse and its reporting for my analysis.

The final chapter of this first part then lays out my concrete methodological approach and way of conducting a framing study of the media reporting on the NetzDG controversy. Chapter 5 therefore describes an *Empirical Method to Study NetzDG*. It starts with explaining what taking a qualitative research approach means, further outlines the coding scheme I use for my analysis, explains the analytical process through which I identify and reconstruct the framings presented in Part 2, and describes the different sources I use for my analysis and the way in which I compile my sample.

Chapter 2

Content Moderation and its Problems

This chapter introduces *content moderation* as a particular kind of platform activity and important area of platform governance. The chapter starts out with explaining what content moderation is, illustrates its importance, and outlines the problems and political and societal challenges it can pose. It does so with the help of some prominent and exemplary cases that have been the subject of public controversy in recent years, both internationally and in Germany. The chapter further describes how content moderation practices and policies have developed over time and within cultural and legal contexts. This is followed by the presentation of two different approaches to conceptualizing content moderation and its governance—platforms as the “new governors” and “content moderation as administration” (Douek, 2022; Klonick, 2018). These approaches provide useful analogies for thinking through what platforms do when they moderate.

Such conceptualizations of content moderation as an activity are important for platform governance because they determine how problems of content moderation are understood, approached, and resolved; which governance measures are chosen; and where they are directed. The approaches presented in this chapter provide an important conceptual backdrop for analyzing NetzDG and the media controversy that surrounded it. In addition, I also present important research that has been conducted on the conditions of commercial content moderation work and the global economic structures that shape it. This work raises many important issues that arise when platforms are left to their own devices. It makes visible structures of exploitation that sit beneath the internet’s communicative freedoms. Finally, the chapter also discusses the contention around “hate speech” and “fake news” as problems that

often play a prominent role in discussion over how to moderate content on social media. How these problems are understood also shapes how content moderation is approached. All in all, the chapter builds a solid foundation and background for my further analysis of the politics that surrounded the regulation of content moderation in Germany.

2.1. Content Moderation on Social Media Platforms

Content moderation is a central part of platform governance and describes activities that determine which content is visible on social media and how such content is distributed.

According to Tarleton Gillespie and Patricia Aufderheide, content moderation includes:

the detection of, assessment of, and interventions taken on content or behaviour deemed unacceptable by platforms or other information intermediaries, including the rules they impose, the human labour and technologies required, and the institutional mechanisms of adjudication, enforcement, and appeal that support it. (Gillespie & Aufderheide, 2020, p. 2)

Content moderation hence encompasses the rules by which social media platforms such as Facebook, YouTube, and Twitter decide what is or is not allowed on their site, what can stay up, and what is deleted. It includes the practices by which platforms enforce and implement such rules and take down content as well as human and algorithmic activities of curation that order content and determine its visibility. As the service that platforms offer in curating and moderating content, content moderation allows us, as internet users, to navigate the vastness and chaos of the web, extract the information we need, and find the communication we seek while at the same time being kept safe from seeing some of the most terrible or violent content.

Therefore, it can be seen as a *core service* that social media platforms provide to their users *and* advertisers, and, as Gillespie suggests, even as the very *commodity they offer* (Gillespie, 2018, p. 13).

Despite the centrality that content moderation takes on for platforms, it has in the past often been seen as an undesirable side-effect of social media's sheer unlimited space of

communication or as a “custodial task” akin to “turning the lights on and off and sweeping the floors” (Gillespie, 2018, p. 13). In more recent years however, issues of content moderation have received increasing public attention, as the distribution of user-generated content on social media platforms has often featured center-stage in contentious political and societal debates. This attention started to grow for example during the 2016 leadup to the US national election. In this leadup, social media platforms and political campaigning on them stood at the center of serious allegations concerning potential collusion with foreign actors and efforts of targeted misinformation and voter manipulation (Borger & Ackerman, 2017; Mayer, 2018; Rosenberg et al., 2018). Debates about targeted political campaigning on social media, and their possible dangers, intensified in 2018 when the social media platform Facebook⁵ was implicated in a big scandal surrounding the company Cambridge Analytica. Using data of users and their friends gathered from the platform through an app for which Facebook had granted permission, the company provided targeted political campaign services, and even voter discouragement, based on users’ psychometric profiles (Dachwitz et al., 2018). This scandal publicly exemplified a close connection between targeted messaging and advertising on social media, commercial surveillance, and political structures. It forcefully demonstrated the power social media platforms, and their content moderation and curation practices, can exert even on electoral and political processes.

Next to election manipulation and targeted messaging, the possibly detrimental effects of hateful and inciting content on social media present another reason for growing concerns about social media platforms. They increase the perceived need for more proactive content

⁵ More recently, the parent company that runs the Facebook platform has renamed itself to *Meta*. However, the company will be referred to as *Facebook* in this dissertation, as this is how it was called for most of the analysis and writing. In the public discourse surrounding NetzDG, it was then not always clear when the name was used to refer to the company itself, which includes other services such as the messaging app WhatsApp or to the social media platform “Facebook” itself. However, it is likely that moderation problems discussed with regards to Facebook referred to the platform itself, as NetzDG did not apply to private messaging apps.

moderation. In Myanmar, Facebook for instance came under harsh critique for its role in inciting hatred and (physical) violence against (religious) minorities, particularly the Rohingya people (Mozur, 2018; Wong, 2019). While the platform was used for spreading inflammatory posts and false news allegedly fueling such violence, criticisms held that the company was doing too little to address the problem and lacked an appropriate number of Burmese-speaking content moderators (Stecklow, 2018). Against this background, the broader public debate on the rules and practices of online content moderation was fueled by reports leaked in 2017. These reports showed that social media companies', and again particularly Facebook's, moderation practices protected groups such as "White men" but not (more vulnerable) groups such as "Black children" (Angwin & Grassegger, 2017). The growing attention such practices received led Facebook, and other social media platforms, to be more proactive and open about their content moderation processes and allow for more transparency and public scrutiny (Wong & Solon, 2018; Zuckerberg, 2018b). Facebook, for instance, has initiated the installation of an oversight board which is staffed with experts from outside the company. To this board, users can appeal when disagreeing with a content moderation decision made by the company. The board has so far been tasked with difficult decisions such as whether to ban the account of Donald Trump (Clegg, 2019; Meta, n.d.; Oversight Board, 2021; Zuckerberg, 2018a).

In Germany, too, stories demonstrating the challenges social media platforms pose and the impact they can have on the distribution of information and the moderation of speech have made headlines. In 2016, the Turkish president sued German comedian Jan Böhmermann after the comedian published a potentially insulting poem titled *Schmähekritik* (English: *abusive criticism*) (NDR.de, 2019). The poem, according to its author, was meant to demonstrate the scope and limits of free speech and satire in Germany. The case was later dropped and eventually even led to the abolition of §103 of the German criminal code that previously forbade the "defamation of organs and representatives of foreign states" (Deutscher Bundestag, 2017). This case did not only concern online content but permissible speech more generally; it played into a broader

discussion on the limits of free speech and satire. Nevertheless, the internet's possibilities to circumvent traditional gatekeepers and share information and opinions in a distributed manner fueled its flaring up.

In another event in August 2017, the Federal Ministry of the Interior shut down a German subdomain of the Independent Media Center (IMC) *Indymedia*, on accounts of illegal and state-subversive activities (Bundesministerium des Inneren, 2017a; Bundesministerium des Innern, 2017b). According to its Wikipedia entry, the IMC is a heterogenous, left-wing, not-for-profit network that follows an open publishing system, allowing anyone to post reports without external editing (*Indymedia*, n.d.). The allegations leading to the German site's shutdown concerned illegal posts issued by some of the users on the site. These (allegedly) illegal posts included accounts of committed crimes, calls for criminal offenses for instance against police forces, manuals for how to build weapons, and generally inflammatory and hateful content. Finally, in January of 2018—just after the introduction of NetzDG—the Twitter account of Beatrix von Storch, a politician of Germany's right-wing populist party *Alternative für Deutschland* (short *AfD*), was also shut down for 12 hours. This followed a tweet issued from the politician's account, which the platform apparently considered as potential hate speech, given it condemned groups of Muslim men in a way that reproduced negative stereotypes and racist imagery of this group. The account had posted this tweet in reaction to an Arab language tweet previously sent out by a Cologne police account (Oltermann & Collins, 2018). But when, following the incident, the satire magazine *Titanic* impersonated von Storch with its own Twitter account and sent out parodic tweets making fun of her as a form of political critique, it too was blocked for 12 hours (Martin, 2018; "Twitter Sperrt 'Titanic'-Account Wegen Satire-Tweets," 2018).

2.2. Governing Content Moderation Systems

These highly politicized cases demonstrate the social and political significance that content moderation decisions on social media can attain. At stake in such decisions can be

fundamental aspects of political organization. Such aspects include the shape of public discourse, the structure of political decision-making processes, the operation of election campaigns, and perhaps even democracy itself. Decisions concern, for example, the boundaries of the acceptable, who can say what about whom, how speech should be regulated and opinions formed, what individual liberties and societal goods look like, and what freedom of information and freedom of the press mean. These questions are highly contentious because their answers affect how *power and responsibility are distributed online*. Their answers, for instance, define who gets to make decisions about the visibility, truthfulness, and flow of information; about the reliability of sources; about the content that stays up or is taken down; and about how algorithms mediate social media experiences. Content moderation and its regulation are highly contested, not least because their effects on the structure of information flows promise control over the social and political realities of millions of people around the world. Consequently, governance practices that regulate content moderation touch upon core social values and norms, the power structures of political and societal systems, and perhaps even the kind of world we can experience through the internet.

A diverse range of platforms engage in moderation practices. Their specific philosophy and use have historically shaped how they have done so. At the same time, platforms' moderation practices have in turn also shaped their own make-up and use, the audience they attract, and the mode of communication they enable. Content moderation policies evolved together with the platforms and their users and alongside everyday political developments. User activism against moderation practices and rules—perceived as unfair, unjust, arbitrary, or even as censorship—has often forced platforms to revise policies and practices or to be more transparent and explicit about them. But even though platforms could not exist without content moderation, they have in the past kept a low profile on their moderation activities. This has helped them to uphold an internet “fantasy of a truly “open” platform” (Gillespie, 2018, p. 5) that enables free and unlimited speech. This also meant that platforms often adjusted policies on

the go and devised rules in accordance with daily political developments and users' sentiments. In doing so, they sought to avoid damages to the company and loss of revenue. This circumstance has called for criticisms—Gillespie, for example, suggests that platforms should instead orient their moderation practices towards building “compassionate and just” forms of participation and put “real diversity” behind them (Gillespie, 2018, p. 201).

The approaches social media platforms take to content moderation have also often been—and still are—shaped by contextual and cultural norms and values. These values concern, for example, ideas of free speech, decency, safety, art, and truthfulness. Because platforms operate on a global level, the integration of cultural and contextual norms and values can lead to tensions with users and governments. At the same time, the standards platforms set play back on such values and norms, and they can challenge, distribute, or stabilize them. Spaces where moderation norms are determined and set but also broken and contested moreover also offer opportunities for societal debate and cultural negotiation. These spaces invite us to reflect upon what exactly the standards and norms are that we want and believe are necessary, for example when it comes to art, sexuality, discrimination, and violence. In these spaces, the economic power that undergirds users' choices can sometimes empower them to exercise a kind of “democratic participation,” even though social media platforms are privately owned and outside official government structures (Klonick, 2018, p. 1666).

Because many big and widely used social media platforms have been developed by a technological elite in the United States, they have been shaped and governed by a rather small and homogenous group of people who “share a particular worldview” and outlook on the world (Gillespie, 2018, p. 8). This has affected how these platforms' moderation systems operate: They have been—and often still are—shaped by US-American cultural and legal norms; thus, they are not “always well suited to those with different experiences, cultures or value systems” (Gillespie, 2018, p. 8). It was then also particularly a US-American notion and legal interpretation of freedom of speech that has traditionally influenced how many big social media companies

moderate content on their sites (Gillespie, 2018, p. 32; Klonick, 2018, p. 1621). This notion cherishes freedom of speech as a broad and absolutely protected first amendment right,⁶ where speech can only be limited if it leads to imminent danger.

In the US legislative context, companies have been widely exempted from legal responsibilities for content posted and shared on their sites: As Kate Klonick explains, the “Good Samaritan principle” of §230 of the US Communications Decency Act has protected platforms from having to take on legal responsibility for their users’ content (Klonick, 2018). An affinity for self-regulation and a tendency to shy away from regulating corporations, which characterizes the US-American context, contributes to a historical predominance of self-regulated forms of corporate content moderation. However, to operate globally, platforms have also incorporated more restrictive laws of other jurisdictions into their community guidelines, forbidding for example posts that depict the burning of the Turkish flag or insulting the king of Thailand (Klonick, 2018).

Despite these piecemeal accommodations of more restrictive speech norms, Klonick nevertheless finds that the “wide immunity granted by §230” has, for the most part, in the past allowed platforms to freely “choose which values they want to protect—or to protect no values at all” (Klonick, 2018). Platforms can then also have other than legal reasons for moderating content on their site. These may be their own values and ideals, a sense of corporate social responsibility, and an economic incentive to provide their users with a good experience and to keep them on the platform (Klonick, 2018, p. 1625 ff.). Nevertheless, platforms have at least initially tended to take down as little content as possible, following anarcho-liberal ideals of the early internet, which emphasize non-involvement of states and governments (Barlow, 1996), and

⁶ The first amendment of 1791 to the United States Constitution reads the following:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. (U.S. Const. amend. I)

of “free speech, individual liberty, and participation” (Klonick, 2018, p. 1616). Only more recently, platforms have come to recognize the necessity of more actively addressing content moderation and curation. One reason for this may be the enormous growth that content on social media has experienced and the wide employment of algorithms that this has made paramount: No matter how far one believes free speech extends, when operating a social media platform, one will still have to make decisions on how to curate, select, order, and display content.

Thus, specific local contexts have shaped a great part of corporate content moderation governance, especially when it comes to social media sites that have developed inside the US. Platform companies have over time come to increasingly moderate content and have faced the need to formulate universal and unambiguous rules for doing so. At the same time, they have enjoyed vast legal freedoms for how to do so under their main jurisdiction. As Klonick further observes, this has then led to quasi-governmental structures for content moderation within the companies (Klonick, 2018, p. 1630). According to Klonick’s paper, corporate content moderation structures mirror a state’s judicial system and the procedures that companies have put into place feature many characteristics of jurisprudence. These characteristics include the application of over- or underinclusive rules to achieve consistency and uniformity; analogical and rule-based reasoning; and trained, domain-specific judgment to avoid cultural biases and emotional reactions. Consequently, Klonick calls platforms *the new governors*: They have become governors not only by the power they exercise over what we see and over the norms of communication that count on their sites but also by the mechanisms they have put into place for governing content. These mechanisms determine their, partially algorithmic, rules of what is allowed to be said; of what stays up and what does not; but also, of how content is displayed, to whom, and in which order. According to Klonick, social media companies have become “architects of the governance structure that runs” speech online (Klonick, 2018, p. 1664). These

structures have mostly resulted from economic interests and users' (and advertisers') expectations rather than from forms of democratic governance.

Klonick's approach thus understands content moderation as a form of (speech) governance and quasi-judicial decision-making and it positions platforms as governors over their users' interactions. The paper hence presents one way in which the role of social media platforms and the kind of activity they engage in when moderating content can be conceptualized. This conceptualization is interesting for my analysis because it pays attention to the effects of national legal contexts on the governance and practice of content moderation. Moreover, describing platforms as governors draws attention to a contentious question that has, as I will show, also been central to the debate around NetzDG. This question concerns the capacity with which platforms act when they moderate and decide over users' speech and the parallels that emerge between platforms and governmental structures. In the case of public institutions and nation states, such governmental structures need to be constituted and enacted by politically legitimate mechanisms—if there are strong similarities between the two, this would give rise to the question of how corporate moderation systems can be governed in the same way. In addition, Klonick's paper suggests an interesting analogy between content moderation and judicial decision-making. This analogy will be of relevance for NetzDG, which was meant to *incorporate* existing speech laws into moderation policies and practices so that these laws were consequently upheld on platforms as well.

In contrast to Klonick's conceptualization, Evelyn Douek has more recently suggested to understand corporate content moderation as a system of *administration* (Douek, 2022). Douek's work introduces this suggestion to balance out some of the insufficiencies it identifies in Klonick's governance analogy. It criticizes that this governance analogy corresponds to a somewhat inaccurate and stylized picture of “content moderation as a process in which social media platforms write a set of legislative-style substantive rules and apply them in individual cases” (Douek, 2022, p. 529). This picture, Douek finds, directs the focus of debates on content

moderation towards the “correctness” of individual decisions on high profile cases, such as those outlined in this chapter. However, the critique is that this perspective is less able to do justice to the scale at which platforms moderate, the statistical effects on speech that large scale moderation has, and the complexity of moderation systems. This complexity includes a plethora of different actors such as “engineers, product managers, authorities outside platforms, teams monitoring behavioral signals, industry peers, and government partners” (Douek, 2022, p. 531).

Douek’s comparison of corporate moderation to an administrative system seeks to make up for these shortcomings. It suggests that content moderation is not about getting individual decisions right or about reaching a particular level of accuracy but rather about the large scale—statistical—administration of resources amongst a community. In the case of content moderation, such resources may be the resource to speak, be heard, or access information or, likewise, the “resource,” or the ability, to be shed from terrible content, hate, or misinformation. This administration analogy draws attention away from constitution-style considerations of the boundaries of individual instances of speech and towards the entirety of complex, multifaceted content moderation systems. It is these systems which ultimately govern how, and to whom, content becomes visible and is presented on globally operating social media. According to this conceptualization, accountable content moderation requires careful attention to the logics, incentives, and practices that govern it. These shape who gets heard and whose concerns count; which issues are prioritized; which errors tolerated or stringently avoided; how policies are written and workflows organized; and how competing interests, values, and policy goals are balanced. Such balances include delicate tradeoffs between security and freedom; urgency and thoroughness; consistency and context-sensitivity; efficiency, accuracy, and responsiveness to stakeholders; and procedural rule of law values and justice (Douek, 2022, p. 548 ff.).

According to this view, content moderation governance should therefore focus on institutional design. This “eschews comforting but illusory First Amendment-style analogies and instead adopts a systems thinking approach. This approach focuses on the need to look to

structural and procedural mechanisms that target the key ex ante and systemic decision-making that occurs upstream of any individual case” (Douek, 2022, p. 528). Ensuring free speech is here not about setting the right—if any—boundaries for speech. Instead, it is about guaranteeing “expressive equality” (Lakier, 2019, p. 2119 cited by Douek, 2022, p. 561) and “the design of the technological infrastructure that supports the system of free expression and secures widespread democratic participation” (Balkin, 2004, p. 5 cited by Douek, 2022, p. 562). For these reasons, Douek suggests separating economic incentives and content moderation decisions on the platform side. This means putting “a wall between those concerned with the enforcement of content moderation rules, on the one hand, and those whose job performance is measured against other metrics, such as product growth and political lobbying, on the other” (Douek, 2022, p. 587). The aim of this separation is to avoid that financial incentives and business considerations become the driving factor of moderation decisions.

NetzDG, for Douek, is part of the very old paradigm that the administration analogy wants to overcome (Douek, 2022, p. 574). This is because NetzDG focuses on individual takedowns, based on discrete complaints, and on how individual decisions to delete a piece of content are made and enforced. Nevertheless, I find that many aspects that Douek’s analysis makes visible also played an important role in the controversy surrounding NetzDG. I here foreshadow some of these aspects, which will be taken up again at a later point. For example, the NetzDG controversy drew attention to the underlying logics and incentive structures that govern—and should govern—moderation systems overall. In addition, under the header of overblocking, this controversy also included the problematization of overall statistical effects on speech which moderation logics can have. Moreover, *who* makes moderation decisions, and with what skills, in which capacity, and under what conditions, was a further central concern. Thus, both Douek’s approach to moderation and the media discussion of NetzDG center on the governance mechanisms that drive moderation systems and on the question of how to steer and control these mechanisms to safeguard democratic discourse and freedom of expression. At the

same time, it is also accurate that NetzDG's approach to regulating moderation did not pay much attention to many of the important aspects that Douek's paper emphasizes. These aspects include the algorithmic ordering of content, the ways in which content is presented and labeled, how platform-specific terms of service are devised, and the organization of platforms' own internal moderation systems. Thus, Douek's paper can already preempt important points for reflecting on the conceptual and practical strongpoints and shortcomings of NetzDG, as the controversy surrounding this new law did justice to these different aspects only to various degrees. Both Klonick's and Douek's paper build an interesting conceptual backdrop for my analysis because they already crystallize, in a scholarly manner, core questions that will surface again in my analysis of the NetzDG controversy.

The works just presented focus on conceptualizing the systems and logics that govern content moderation on platforms. However, other important academic and journalistic work has investigated how the moderation decisions which these systems generate are made and enacted in practice. This work scrutinizes a global content moderation economy and the concrete moderation labor that sustains platforms. It finds that it is the content moderators, who review the many flagged and reported posts, that carry the hidden costs of the internet's communicative freedoms. And while bearing the greatest emotional and psychological costs, they often make fewest of the dollars (Roberts, 2019, p. 134 ff.). In many ways, content moderators then function as the internet's "sin-eaters" (Roberts, 2019, p. 165). In line with this, several journalistic stories also report on more than precarious working conditions (Elliott & Parmar, 2020; Newton, 2019a, 2019b; Read, 2019). Aside from a low wage and little-to-no job security, these conditions even include a screeching lack of hygiene, sufficient break time or sick leave, and even very little employee safety.

In *Behind the Screen*, Sarah T. Roberts describes the often-invisible work of commercial content moderation and the economy behind it (Roberts, 2019). Robert's finds that social media companies often outsource content moderation to consulting firms and places of comparably

cheap labor, like Hyderabad in India or Manila in the Philippines (Roberts, 2019, p. 172). In these places, moderation can take place within particular kinds of economic or industrial zones, in which entire infrastructural systems are privatized to fit the needs of the technology companies while the reach of public infrastructures and the state, including taxation and labor protection, is limited (Roberts, 2019, pp. 60–67, 183 ff.). While dealing with the worst humanity has to offer, the workers in this global moderation economy often compete for the cheapest labor. They operate under the constant threat of losing their job to a lower bidder in a place with even more relaxed labor laws or little to no minimum wage (Roberts, 2019, p. 180).

Roberts thus critiques that platforms often give little value or credit to the people who moderate content on them, even though they are so crucial to making them functional, usable, and—more or less—safe places, thus ensuring brand protection and revenue (Roberts, 2019, p. 34 ff., p. 82). Nevertheless, such moderation work is devalued through, for instance, low wages—particularly in comparison to the salaries that the engineers and computer scientists of the same companies receive—and through a series of distancing and outsourcing measures. And even when working in-house or on-site for the big internet companies, Robert finds that content moderators are usually employed through third parties and as contractors. This prevents them not only from enjoying the perks of working at a tech company, such as free sushi or climbing walls, but also from getting social benefits or corporate health insurance (Roberts, 2019, p. 81 ff.).

Moreover, commercial moderators are often only allowed to hold their job for a maximum of two years and have little to no chances of receiving tenure or a full-time position. Finally, moderation work—which may involve the review of graphic depictions of brute violence, animal abuse, sexual abuse of children, and war scenes—can have a serious toll on mental health and well-being. Despite this, even though sporadically offered, the in-house counseling that companies provide to help employees in dealing with this toll on mental health is often insufficient to remedy this toll (Roberts, 2019, p. 116 ff.). As a result, Facebook faced a

lawsuit filed by 10,000 former and current content moderators in the US, which was resolved through a 52 million dollars settlement (Elliott & Parmar, 2020). For workers outside the US, and in places like the Philippines and India, such legal action is however much more difficult for a variety of reasons; hence, they did not receive such compensation.

Roberts' analysis draws attention to a global content moderation infrastructure, a hidden backbone of the internet, and to the often precarious and exploitative labor economy that sustains it. In this global moderation economy, cultural norms and cultural knowledge are of fundamental importance. For instance, a lot of moderation work for the US and Europe takes place in the Philippines (Roberts, 2019, pp. 65, 193 ff.). One reason is that people in the Philippines are intimately familiar with US-American religious and cultural values and with their norms of decency, acceptability of speech, nudity, and sexuality. This is due to a history of US-American and European colonialism and occupation. This circumstance again points to the role specific contexts play for content moderation but also to the structures of dominance and even exploitation that shape such contexts.

By making visible the vast infrastructures and global labor economies that are required for operating social media and curating the content on them, Robert's work deconstructs a view of the internet as a decentralized and anarchistic 'free speech zone.' Instead, Robert argues:

any discussion of the nature of the contemporary internet is fundamentally incomplete if it does not address the processes by which certain content created by users is allowed to remain visible and other content is removed, who makes these decisions, how they are made, and whom they benefit. (Roberts, 2019, p. 27)

This research then provides an important starting point for critically interrogating which injustices, (precarious) labor conditions, and global economic structures are implicated in large-scale content moderation on social media platforms.

These global labor conditions on which platforms build their businesses are an important and crucial part of any critical reflection on content moderation and its governance. They are,

however, not the focus of my work, as I look at a particular piece of regulation that is directed at the content of moderation policies and decisions rather than at corporate moderation labor. Nevertheless, the aspects this work highlights are still important to my research. First, the conditions of moderation labor contribute to the (lacking) quality of corporate moderation decisions, which was used to justify NetzDG. Second, as my empirical analysis unravels, these conditions provided an important reason for skepticism about NetzDG's feasibility and for widespread concerns over overblocking. Finally, both Robert's work and the media discourse on NetzDG direct attention to the logics and incentive structures that govern moderation decisions. Both concern the conditions and resources that need to be provided to those who make decisions.

2.3. Hate Speech and Fake News

The last section of this chapter is dedicated to another important part of any introduction to content moderation and its problems, namely the problems that surface with content on social media. After all, it is these problems that—amongst problems of sorting and ordering—require content moderation in the first place. Above, I have already mentioned that a lot of such problematic content concerns depictions of violence and abuse. However, in public debates over content moderation—such as the controversy over NetzDG—two terms enjoy special popularity: *fake news* and *hate speech*. This “popularity” stems from the high degree of politicization and contestation that surrounds the deletion of the kind of content these terms capture.

Both terms have been hotly contested and do not have a sharp legal or conceptual definition or a clear and unambiguous meaning. Rather, they function as umbrella terms for many problems on social media. In this role, they have made prominent appearances in the discussions surrounding NetzDG. While this debate often symbolically invoked these terms or referred to them when describing problems with content online, their meaning was not always

clarified or discussed in depth. To provide background to this discussion and close this chapter, the following sections describe the two terms, the problems they capture, and the conceptual discussions that take place around them.

While the term *hate speech* is often used to discuss problems with hatred and discrimination online, what the term exactly means and the extent to which it describes actual problems online are heavily debated. As its usage by the Council of Europe already in 1997 shows, hate speech is not a new phenomenon or term (Council of Europe, 1997). Nevertheless, the problem of hate speech has again gained new traction with the advent of widespread internet use and social media, which can enable and amplify hate speech and hateful, inhuman, and discriminatory comments in new and serious ways. The sheer amount of content constantly shared online, and its purposeful direction against people and groups, make hate speech particularly worrisome on the internet. A German campaign called *No Hate Speech*, which unifies different societal and political actors, proposes to define hate speech as a “speech act against individuals and/or groups with the goal of devaluing and threatening them based on their membership of a disadvantaged group in society. This person or group does not necessarily have to present a minority based on sheer numbers, at the same time not all minorities are disadvantaged” (*Was ist eigentlich Hate Speech?*, n.d., my translation). As the initiative further explains on their webpage, acts of hate speech may for example promote (anti-Muslim) racism, sexism, antisemitism, classism, ableism, and discrimination against members of the LGBTQIA+ community.

In its definition, the *No Hate Speech* initiative also refers to a recommendation by the Council of Europe that was issued on the 30th of October 1997 and states that “the term “hate speech” shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin” (Council of Europe, 1997,

p. 107). This corresponds to the Federal Agency for Civic Education's (German: *Bundeszentrale für politische Bildung*) description of group-based enmity that degrades certain groups of people and assigns them a lower value than others, ranking them lower within presupposed social hierarchies (Groß et al., 2012). This enmity assumes that different social groups are of unequal value, a circumstance that may also result in unequal treatment and discrimination.

In these definitions, hate speech concerns discriminatory speech based on group identity or the ascription of group membership, such as sexist or racist speech. It does, however, not refer to hateful speech that is independent of an individual's identity or group membership and may be targeted at individuals such as politicians. In this definition, hate speech as a term does not refer to all problematic or hateful content circulated on social media or to all violent language and gruesome depictions. In the detection of hate speech, cultural and historical contexts play a big role. The reason is that discriminatory, racist, or even potentially threatening expressions against certain groups, or incitement of hatred against them, often use words that belong to a certain language, dialect, or culture, such as Bengali words that may be used against the Rohingya in Myanmar or antisemitism that gestures to Nazi propaganda or uses coded references to the Third Reich. Such content may then reference certain contexts, cultural histories, and in-group codes and may not always seem like hateful content at first sight, but gesture at such content (so-called 'dog whistles').

This situatedness of hate speech is one reason why the content of the term can be hard to define and even harder to pour into universal rules. Whether an act of speech is an act of hate speech depends on the historical, linguistic, and cultural context in which phrases are used as well as on who is using them and with what intention or attitude. Instead of being blunt and straight-forward, hate speech can hide behind codes disguising as acceptable speech, so that it may not be recognized by content moderators, especially from a different cultural and linguistic background.

The role contextuality plays in making speech an act of hate speech complicates its identification. It may sometimes be difficult to decide on whether an isolated instance of speech presents hate speech, political criticism, or satire; whether it is the legitimate critique of a religious belief or the condemnation of its members; or whether it is discriminatory speech and purposeful hate or ignorance and misunderstanding. Moreover, the intention and identity of the speaker contributes to whether an instance of speech counts as hate speech. This concerns for example the reappropriation of racist or sexist slurs in new and empowering ways by those who such slurs were originally used to devalue or humiliate. Such contextuality makes the definition of universal rules for taking down hate speech challenging and can even lead to discriminatory content policies (Davidson et al., 2019; Sap et al., 2019). On social media, it can be difficult to define the context and intention of a statement or to determine the identity of an account.

Given these complexities, hate speech as a concept may be tricky to incorporate into lawmaking that aspires to be universal, count equally for everyone, and operate with precise terms applicable to clearly identifiable acts. Rather than being a legal category, hate speech functions as an umbrella term for describing different types of discriminatory, degrading, threatening, and potentially silencing speech online. As in other places, it is consequently not a recognized legal term or criminal offense in Germany. There are, however, laws that may apply to certain acts of hate speech, such as sedition laws against the incitement of hatred. Therefore, the speech laws that NetzDG aims to enforce encompass some acts of hate speech.

Like “hate speech,” “*fake news*” is another broad and relatively undefined term. It is nevertheless often evoked where content moderation and its regulation are discussed. The term was helped to unprecedented prominence by Donald Trump, who used it extensively during his presidency and especially on his Twitter account. However, as a term, “fake news” has been around for a longer time. As Axel Gelfert suggests, the term has in the past even had progressive connotations when used in relation to satirical TV formats such as *The Daily Show* and *The Colbert Report* (Gelfert, 2018, p. 92). In this context, it was used to refer to clearly identifiable satirical

imitations of real news formats. These formats played with and amplified the “biases, mistakes, and deficiencies” of real news formats, presenting and criticizing their flaws in a sometimes-exaggerated manner (Gelfert, 2018, p. 92; Gettings, 2007, pp. 26–27). Thus, the concept of “fake news” has historically been closely related to satirical formats and has always played with an ambivalence between seriousness and irony. This connection is still employed—and exploited—by those who perpetuate conspiracy theories, misinformation, or hate speech on social media (Marwick & Lewis, 2017).

Extrapolating from its history, Gelfert goes on to suggest that in the contemporary context, the term has changed its meaning. According to Gelfert, fake news is now to be defined as “the deliberate presentation of (typically) false or misleading claims *as news*, where the claims are misleading *by design*” (Gelfert, 2018). According to this definition, the term does not refer simply to false information circulated by news formats but to deliberately crafted, false, and misleading claims that masquerade as factual news and have been intentionally designed as such. This makes them different from the “honest mistake” an otherwise serious and reliable news outlet might make (Gelfert, 2018, p. 99). Moreover, according to Gelfert, they are issued by organizations that seek to closely resemble legitimate news organizations and they must be able to “*in fact* mislead a relevant audience;” they can do this by exploiting “systemic features inherent in the design of the sources and mechanisms that give rise to them” (Gelfert, 2018, p. 103). Fake news are created and shared for a variety of reasons, such as to pursue political goals, push for a political agenda, or create revenue through clickbait (Gelfert, 2018, p. 107).

Moreover, the term “fake news” does not describe one clearly delineated phenomenon but is a “cluster concept” (Gelfert, 2018, p. 100). It can for instance describe a piece of information that seems like news but entails “*fabricated content*,” but it can also be a piece of information that is presented in “*false context*,” makes a “*false connection*,” for example via a misleading headline, or appears as a piece of “*satire/parody*” (Gelfert, 2018, p. 100). Not everything about a piece of fake news must consequently be false and fake news often contain

some facts. They are however *misleading* because they create false beliefs in their audience and exploit cognitive biases to increase their effectiveness (Gelfert, 2018, pp. 104, 112).

Due to the term's fuzziness and overlap with other communication strategies, such as propaganda, gossip, rumor, hoaxes and urban legends, its usage has been criticized (Gelfert, 2018, pp. 94, 110). The term has also become a rhetorical device for political positioning and agitation. Labeling something as fake news presents an *allegation* that a story is false or misleading, and it can be used to undermine a "claim's authoritative status" or political opponent (Gelfert, 2018, p. 93). Consequently, Johan Farkas and Jannick Schou argue that "'fake news' has become a deeply political concept used to delegitimise political opponents and construct hegemony" (Farkas & Schou, 2018, p. 300). They find that the struggle over fake news is a politically significant struggle over how "society, democracy and truth "should" be defined" (Farkas & Schou, 2018, p. 309). In their study, the authors identify different hegemonic projects that seek to define fake news. These projects present competing attempts to determine "who obtains the power to define what is deemed as truthful, who can portray social reality accurately, and in what ways" (Farkas & Schou, 2018, p. 308). In this way, the discussion around fake news can even attain the capacity to "partially organise and reshape institutional practices and relations between the state and civil society" (Farkas & Schou, 2018, p. 307).

Further, Mike Ananny finds that the concept of fake news shifts the focus of discussions on political speech to questions about the "truth or falsity of information" and the quality of information; its use can therefore distract from other important and "longstanding political issues like race, class, and identity" (Ananny, 2020, p. 352). In a study of Facebook's collaborations with journalistic fact checkers, Ananny observes that platforms operationalize a particular understanding of fake news. They do so through "largely opaque and poorly understood processes" while remaining vague in their usage of the term and avoiding defining it (Ananny, 2020, p. 361). Ananny further finds that social media platforms' focus on fake news and the term's operationalization through countermeasures incorporates certain assumptions

about public life and its inhabitants. These assumptions rest on a “marketplace model of political speech” and uphold an “information ideal” of good citizenship, where citizens are consumers of information provided by platforms as information brokers (Ananny, 2020, pp. 358-359). In this capacity, citizens act as more or less rational information processors and publics present themselves as “information products” (Ananny, 2020, p. 353).

These works show that particularly the use of “fake news” is not always politically neutral but can frame the problem with speech, content, and democratic discourse in a specific way, focusing on the importance of conveying accurate information. Generally, it seems that the term’s usage implies that to distinguish truth from falsities is a central problem of contemporary digital democracies. Given fake news’ blurriness and thorough politicization, some authors hence suggest to rather speak of *mis-* or *disinformation*. Misinformation here refers to the intentional production and spreading of what is known to be inaccurate or misleading content.

Disinformation, on the other hand, refers to the sharing or circulation of such content by people or actors who are unaware of potential deceptions or distortions and who perhaps even hold the content to be true or accurate (Farkas & Schou, 2018, p. 299). In contrast to “fake news” as referring to a particular piece of content and its factuality, *mis-* and *disinformation* are also used to refer to broader, purpose-oriented strategies of circulating tailored content.

In their report on *Media Manipulation and Disinformation Online*, Alice Marwick and Rebecca Lewis describe misinformation efforts as forms of *media manipulation* (Marwick & Lewis, 2017).

The authors observe that such media manipulation efforts combine elements of internet culture with hate speech and fake news in the pursuit of political, cultural, or even economic agendas.

They further find that such manipulation efforts exploit the internet’s participatory culture and its subcultures for ideological purposes, monetary gains, or simply to gain fame and attention.

Marwick and Lewis identify different groups who employ these techniques and who combine false or misleading information with defamation and hate speech. These groups include anti-immigration, anti-Muslim, and White supremacy groups; conspiracy theorists; so-called men’s

rights activists; and anti-feminists. As the authors point out, the groups are loosely united by their anti-immigration, xenophobic, racist, and sexist views. They share a “[s]trong antipathy towards feminism and nonbinary gender identities” as well as towards multiculturalism, a “[b]elief in intrinsic differences between people of different races and genders,” and a “[t]endency to construct and spread conspiracy theories” (Marwick & Lewis, 2017, p. 28). Moreover, these actors employ irony and sarcasm to be able to make statements that are usually deemed unacceptable, by declaring them as not serious, as acts of trolling, or as exercises of free speech done purely for free speech’s sake. In this way, such strategies utilize the ambiguities that make the identification of fake news and hate speech difficult to manipulate “news frames, set agendas, and propagate ideas” (Marwick & Lewis, 2017, p. 1). The authors diagnose that this pushes the boundaries of the speakable or politically acceptable under the guise of promoting free speech.

To conclude, both hate speech and fake news can be difficult to define but are nevertheless used to describe the phenomena prominently discussed in debates on content moderation. Both terms are contested due to their high degree of politicization. Contentions stem from their inherent normativity, with content so labeled being labeled as discriminatory, unacceptable, undemocratic, or false. This normativity consequently justifies opposing or deleting such content. What is defined as hate speech and fake news is contested because it comes with a decision about what can be said and who can speak. Moreover, identifying hate speech and fake news often requires considering the context of speech and the identity and intentions of the speaker. These complexities make it difficult to pour the two terms into neatly defined moderation policies and unambiguous laws. But, once such policies and laws are defined, they consequently incorporate a particular approach to both hate speech and fake news and define how acceptable such speech is. At the same time, as Marwick and Lewis’ report shows, the effects of instances of hate speech and fake news unfold particularly where such instances of

speech are part of coordinated efforts to pursue a political agenda and exploit the algorithmic ordering of content.

One critique of NetzDG is that it focuses only on the rules for deleting individual posts and does not do sufficient justice to the structural aspects just outlined. Nevertheless, hate speech and fake news were *the* major problems with content on social media that were prominently discussed in the NetzDG controversy. For this reason, I have introduced them in this chapter. As later chapters show, how different positions on NetzDG defined problems with content on social media and identified their effects also impacted their view on democratic discourse and the right approach to content moderation that these positions promoted. Throughout my thesis, I use “fake news” as a term, despite some of the critiques described here. The reason is that the articles that discussed NetzDG, which were the subject of my analysis, very frequently used this term. The intention of this use is to reflect the language that I talk about but not to deny the political contentions that surround this term.

Chapter 3

Regulating Content Moderation in Germany

The previous chapter laid out some of the fundamental problems with content moderation on social media as well as its governance. The present chapter now discusses the regulatory situation in Germany as it pertains to content moderation and speech. It introduces the *Network Enforcement Act*, or *NetzDG*, which is the case I analyze in my work. The chapter describes the introduction of this law, the circumstances that have led to it, and its content. It further lays out existing laws regulating speech in Germany, which *NetzDG* was introduced to enforce. Moreover, the chapter describes several related media regulations and the broader legal landscape surrounding *NetzDG*'s introduction in Germany. These shaped the German debate on the governance of content moderation and set the regulatory background against which *NetzDG* developed. This legal landscape is complex and fast-changing—therefore, it should be noted that this chapter builds on the legal situation in March 2022 and does not present all legislation in detail, as this is not a piece of legal work.

3.1. Introducing the Network Enforcement Act

The previous chapter has explained many of the difficult questions and challenges that content moderation faces. These are partially addressed by the platforms themselves, who develop moderation rules and practices, and by users and organizations, who protest these rules and practices. At the same time, state institutions and regulatory bodies sometimes also see the necessity of intervening in the content moderation space. They may do so where either content on social media or content moderation practices seem to create problems for public discourse or

democratic politics, or where they might run the danger of violating laws and fundamental rights. Thus, following the boiling up of issues with content on social media during 2016's US presidential election, Germany has taken its own regulatory path towards governing speech and content online. This path is the focus of my work and will be introduced in this section.

In March 2017, Heiko Maas, then minister of the Federal Ministry of Justice and Consumer Protection (German: *Bundesministerium der Justiz und für Verbraucherschutz*), first proposed a new law aimed at regulating content on social media. This law was aimed at forcing platforms to delete illegal content on their sites more thoroughly and effectively. Germany's parliament, the *Bundestag*, approved this law in September 2017. It has consequently been in effect since January 2018. While its official full name is "*Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken*," which translates to "*Act to Improve Enforcement of the Law in Social Networks*," it is commonly known as the *Netzwerkdurchsetzungsgesetz*—or *Network Enforcement Act*—and by its abbreviation *NetzDG*.

NetzDG's introduction in Germany followed a series of non-legislative efforts that were meant to tackle hate speech on the internet and promote the deletion of illegal content posted on social media. These efforts trace back to September 2015, when Heiko Maas initiated a task force aimed at developing more sustainable and effective ways of dealing with hate crimes and illegal content on the internet (Phoenix, 2015; Reinbold, 2015). Led by the ministry, this task force included several industry associations⁷ as well as social media companies.⁸ In addition, NGOs,⁹ working on combating hate and discrimination, the protection of minors, and the

⁷ The Association of the Internet Industry (ECO), The German Association for Voluntary Self-Regulation of Digital Media Service Providers (FSM e. V.)

⁸ YouTube (Google), Facebook, Twitter

⁹ Gesicht zeigen!—a nationwide organization whose self-proclaimed mission it is “encourage people to become active against racism, antisemitism, and right-wing violence” (Gesicht Zeigen!, n.d.); jugendschutz.net—a joint competence center between federal institutions and states that is dedicated to protecting minors on the internet

promotion of media literacy, also participated in the task force. In September 2016 then, jugendschutz.net, the inter-state competence center for protecting minors online, issued a report that detailed the deletion of illegal hate posts online and that Maas and his colleagues used to evaluate the success of the task force. What they found was that platform companies were still not deleting illegal content sufficiently or in a timely manner (Bundesministerium der Justiz und für Verbraucherschutz, 2017).

A second evaluation in early 2017 again produced similar results (Fair im Netz, n.d.). This eventually led the ministry, and particularly Heiko Maas, to conclude that the voluntary task force had had a rather small effect. Consequently, together with his governing coalition, the minister proposed the introduction of a new law in March 2017 and presented a first draft for the new law in April of the same year (NetzDG Entwurf, 2017).

The presentation of this first draft was accompanied by a statement that described the new law as being aimed at combatting hate criminality and illegal false information (or “fake news”) on social media platforms in a more effective manner. Moreover, the new law would also introduce binding standards for managing complaints and oblige companies to publish quarterly reports on their management of complaints about criminally relevant content. Finally, failing to adhere to the law would result in substantial fines. To justify the proposed law, the accompanying statement referred to an increasingly aggressive, hurtful, and hateful debating culture on the internet. It criticized the growing presence of discriminatory hate speech and hate crimes online, which it found to threaten peaceful coexistence in a “free, open, and democratic society” (NetzDG Entwurf, 2017, p. 1) In addition, it called for making the combat of fake news

(Jugendschutz.net, n.d.); klicksafe—a German awareness initiative that is organized by state institutions but part of the EU and that is aimed at promoting media literacy and supporting everyone but especially in a safe, competent but self-determined internet use (klicksafe, n.d.); the Amadeu Antonio Stiftung—according to its own description, “one of Germany’s foremost independent non-governmental organizations working to strengthen democratic civic society and eliminate neo-Nazism, right-wing extremism, and antisemitism, racism and other forms of bigotry and hate in Germany” (Amadeu Antonio Stiftung, n.d.)

a priority in Germany, referring specifically to the experiences made during the 2016 US election. Further, the statement claimed that it was imperative to improve law enforcement on the internet and internet service providers' compliance with the law.

According to the statement, the proposition of this new law was a consequence of the insufficient success of the task force. The statement specifically cited social media platforms' lack of transparency in handling issues with content on their sites, their responsibility in nurturing a culture of debate and reflection, and their duty to do justice to these responsibilities. It stressed that regulatory interventions against illegal content were particularly necessary on the internet as unlawful situations could be much more easily perpetuated online than on traditional media. As a compliance regulation, the stated goal of the new law was thus to ensure the timely and effective crackdown on hate crimes and illegal content.

Content-wise, the new draft then introduced new legal obligations for “telemedia service providers who operate internet platforms for profit-making purposes” and that enable users to publish content or share with one another; these obligations would however only apply to services with 2 million or more users in the country (NetzDG Entwurf, 2017, p. 1, my translation). The same paragraph also clarified that platforms who curate and themselves offer editorial and journalistic content would not be concerned. As the draft further explained, the aim of the law was to force platforms to install “an effective and transparent procedure for handling user complaints about unlawful content” (NetzDG Entwurf, 2017, p. 19). This procedure should be easily accessible and recognizable to users. After receiving a complaint, the platform would have to act immediately and block or delete so-called “manifestly unlawful” content within 24 hours, unless agreed otherwise with law enforcement (NetzDG Entwurf, 2017, p. 13). The draft then listed several laws that regulate speech in Germany and defined unlawful content as any offense against them (NetzDG Entwurf, 2017, p. 1).

Additionally, it also stated that any other content which was not *manifestly* unlawful but unlawful nevertheless would have to be blocked or deleted within 7 days. In practice, this

implied that ambiguous cases needed to be resolved within a week. The same rules were to apply to copies of the identified illegal content. Both the party who had made the post and the party who had issued the complaint would then have to be informed of the decision; all decisions and procedures would have to be documented inside the country and monitored by management. As another of the law's new requirements, platforms would have to issue quarterly reports on their handling of reported and unlawful content on their site. These reports would have to include information on decisions, procedures, and mechanisms; statistics on reported and deleted content; and general explanations of the steps the company was taking to prevent illegal activities on their sites. Further, platforms would also have to name a person who was legally authorized to receive service within the federal republic of Germany and who law enforcement could turn to (NetzDG Entwurf, 2017, p. 4).

Finally, the draft also proposed amendments to the existing Telemedia Act. These amendments would allow platforms to disclose user data of potential perpetrators to claimants in civil law claims if these claims concerned the violation of absolutely protected rights (NetzDG Entwurf, 2017, pp. 26–27). This was an amendment because the existing Telemedia Act at the time already allowed such disclosure for the enforcement of intellectual property rights. As the new draft law stated, failure on behalf of platforms to comply with the new law's stipulation could, in extreme cases, result in fines **totaling up to 50 million euros** for platforms. In case such fines would be issued, due to a platform's failure to block or delete unlawful content, a judicial decision on this content's unlawfulness would need to be obtained.

After much criticism and debate, some amendments were made to the final draft. To exclude messaging services, it was now explicitly stated that the law would not apply to "platforms which are designed to enable individual communication or the dissemination of specific content" (Network Enforcement Act, 2017, sec. 1). Thus, only social media platforms would be concerned. Further, §90 on the "Defamation of the President of the Federation", §90a on the "Defamation of the state and its symbols", and §90b on "Anti-constitutional defamation

of constitutional organs” of the German criminal code were removed from the listed offenses. In addition, a phrase was added which stated that only offenses that were not “justified” would fall under NetzDG (Network Enforcement Act, 2017, sec. 1). Dropped as well was the obligation to remove any copies of unlawful content. Moreover, reporting obligations were now limited to companies that received more than 100 complaints per year, with reports being due only every 6 months instead of every 3 months.

Following concerns over potential abuse and data protection, the disclosure of user data for civil law cases now also required a prior court order. A further addition was that platforms would have to appoint and name a person in Germany who could receive requests by German law enforcement and who would have to respond within 48 hours (Network Enforcement Act, 2017, sec. 5). Finally, as perhaps the biggest change, the improved draft now enabled companies to transfer responsibilities to a *recognized institution of regulated self-regulation* (Network Enforcement Act, 2017, sec. 3). This institution of regulated self-regulation would be modeled after an already existing institution for the protection of minors. It was to be funded by platforms but overseen and approved of by the ministry. Requirements were that it would need to be independent from companies, open to other social media services, and possess the required expertise and equipment. On June 30th, 2017, the German Bundestag finally adopted the law in this improved version. It has been officially adopted since October 1st, 2017, with companies being obliged to comply since January 1st, 2018 (Bundesministerium der Justiz, 2017).

Timewise, NetzDG came into effect only shortly after the federal German elections on September 27th, 2017. This also means that the new law was proposed only shortly before these elections. Such timing may have been inspired by the wish to avoid, for example, the negative influence that illegitimate disinformation campaigns on social media could have on the elections. However, as we will see further on, this timing also led to the impression that the new law was rushed and not as thoroughly vetted as it should have been. For more conspiratorial

perspectives, this could even be read as an indication that a political agenda aimed at suppressing certain political voices to win votes was driving NetzDG.

The legal obligations that I have described above are the obligations that were written into the version of NetzDG finally adopted in 2017. These obligations are also the obligations that were in effect during the timespan encompassed by the articles I analyzed (March 1st, 2017–August 15th, 2018). Since this time however, NetzDG has undergone several adaptations. Significantly, this included the addition of a new paragraph to NetzDG that obliges platforms to report certain flagged content directly to the German Federal Criminal Office. This content concerns the possible breach of several laws concerning serious crimes, such as a threat to the democratic state under the rule of law; depictions of child sexual abuse; and threats against life, sexual self-determination, physical integrity, and personal freedoms. The usernames and potential IP address of the accounts that issue such content now also need to be reported. This amendment was made as part of another new law that was implemented to combat right-wing extremism and hate criminality and that has been in effect since February 2022 (“Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität,” 2021).

In addition, several other amendments to NetzDG were also made (“Gesetz zur Änderung des Netzwerkdurchsetzungsgesetzes,” 2021). These amendments oblige providers to improve their complaint management and make complaint forms more easily findable for users.¹⁰ Moreover, providers are also required to introduce a right to remonstrance that allows users whose posts have been deleted to request a revision of the decision. Moreover, platforms need to improve transparency reports so that these reports include information on the use of automated detection and decision techniques as well as statistics about the groups that are most

¹⁰ These amendments also followed the eventual fining of the platform provider Facebook to 5 million euros under NetzDG in 2021, which had followed a two-year court procedure with the company. The fines were imposed both for providing incomplete information in its required transparency reports and for a lack of compliance with NetzDG’s requirements for complaint management systems (“Hass im Netz,” 2021).

concerned by hate speech. Another point the amendments required providers to improve was their reachability inside the country. Further, the amendments also widened the tasks of the contact person in the country, who could be reached for requests and complaints. Finally, the sharing of user data for civil law claims, which had been voluntary in the past, was also made obligatory.

To close this section: What is most important to remember about NetzDG for my analysis is that the new law introduced an obligation for companies to delete clearly illegal content—illegal as defined according to several previous existing laws in the German criminal law—within 24 hours of it being flagged and to settle unclear cases of such content within 7 days, possibly under recourse to an institution of regulated self-regulation. A systematic failure to comply could—and still can—lead to fines of even up to 50 million euros.

3.2. Existing Regulation of Speech in Germany

A law like NetzDG was possible in Germany because there were already several laws in place that regulated speech, expression, and the dissemination of information. It is these laws that NetzDG was introduced to enforce on social media. In this section, I sketch the legal situation surrounding freedom of speech and its limitations in Germany and particularly describe how freedom of speech is understood and constitutionally enshrined in Germany. This will be important background information for future discussions of the NetzDG controversy. Second, I list several laws limiting expression in Germany. I here restrict myself to the laws that NetzDG specifically evokes and seeks to enforce.

Despite the existence of laws that limit some forms of expression, freedom of speech is generally guaranteed by the German basic law, which functions as the country's constitution. The country here legally subscribes to the *European Convention on Human Rights* that guarantees freedom of expression as a fundamental human right to everyone, as the “freedom to hold opinions and to receive and impart information and ideas without interference by public

authority and regardless of frontiers” (European Convention on Human Rights, 1970, para. 10.1.). However, this convention also states that this right to free expression can justifiably be limited:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. (European Convention on Human Rights, 1970, para. 10.2.)

Thus, according to the European Convention, freedom of expression is to be weighed against other rights and common goods, such as democracy, national security, public safety, personal rights, health, morality, and law and order.

In line with the European convention, Germany’s basic law—or *Grundgesetz*—guarantees freedom of speech (German: *Meinungsfreiheit*¹¹) in its Article 5 (§5GG). This article is titled *Freedom of Expression, Arts and Sciences* and reads:

(1) Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from

¹¹ *Meinungsfreiheit* is the most used German term for freedom of speech. It literally translates to *freedom of opinion*, which may differ from the English “freedom of speech” in its connotation. Because not everything that is considered speech – such as a hateful utterance – may be considered a (legitimate) opinion, this notion may leave more room for regulating speech than the English *freedom of speech*. In this work, *Meinungsfreiheit* is translated both as *freedom of speech* and *freedom of expression*. While in the English terminology, expression might be conceived broader than speech, and as encompassing all kinds of human expression whereas speech may be more narrowly focused on utterances, freedom of speech and freedom of expression are usually used interchangeably in political discourse. Thus, I also use them interchangeably in this work.

generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship.

(2) These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons, and in the right to personal honour.

(3) Arts and sciences, research and teaching shall be free. The freedom of teaching shall not release any person from allegiance to the constitution. (GG, 1949, para. 5)

The article follows Article 4 (§4GG), titled *Freedom of Faith and Conscience*, which states:

(1) Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.

(2) The undisturbed practice of religion shall be guaranteed.

(3) No person shall be compelled against his [sic] conscience to render military service involving the use of arms. Details shall be regulated by a federal law. (GG, 1949, para. 4)

In its evaluation of NetzDG, the German parliament's scientific service elaborates on this basic right to freedom of expression, as it is described in §5GG (Wissenschaftlicher Dienst des deutschen Bundestags, 2017, pp. 5–7, 9–10). The elaboration can help to understand the prevalent constitutional understanding of freedom of speech in Germany. It stresses freedom of speech as a fundamental component of a free and democratic state and defines it as a *defensive right* that guarantees individual self-determination in the realm of communication and the expression of individual personality (Wissenschaftlicher Dienst des deutschen Bundestags, 2017, p. 5). As its German term *Meinungsfreiheit* implies, this right to freedom of speech then concerns *opinions* as subjective positions of judgment and as perspectives, attitudes, convictions, values, and evaluations (Wissenschaftlicher Dienst des deutschen Bundestags, 2017, pp. 5–6). Such opinions do not have a truth value and are not subjected to verification by empirical evidence. Whether an opinion is to be protected, according to the right to *Meinungsfreiheit*, thus ought to be

independent of its value, rightfulness, danger, or emotionality. As the service lays out, if they do not violate the right to personal honor, even insulting remarks are part of this right's scope.

Because they are considered fundamental to the formation of opinion, factual statements also fall under its protection. However, this protection does not apply to (consciously made) false or untrue statements because they are not considered to contribute to opinion formation but are even seen as opposed to freedom of expression. As the statement finally goes on to explain, a state is generally seen to interfere with a fundamental right such as free expression if its actions partially or fully prevent the behavior that this right protects (Wissenschaftlicher Dienst des deutschen Bundestags, 2017, p. 7). When assessing the legitimacy of a state interference with the right to free expression, it is consequently important to evaluate whether this interference is conducive to the protection of another fundamental right or legal good. The protection of another social value may sometimes trump the right to freedom of speech. To decide this, different rights and goods must be weighed against one another. This presupposes that any acceptable intervention to the fundamental right to freedom of expression follows a legitimate aim and presents a suitable, necessary, and appropriate goal for reaching it.

In line with this understanding of freedom of speech, Article 18 of Germany's basic law therefore states that one can forfeit their right to freedom of speech, and to related rights, if they are endangering the basic liberal-democratic order.¹² In response to this, the German criminal code includes several laws that limit what is protected by the right to freedom of speech. Of these laws, NetzDG lists specific ones that it applies to content on social media. It seeks to

¹² Article 18 reads:

§18 [Forfeiture of basic rights]: Whoever abuses the freedom of expression, in particular the freedom of the press (paragraph (1) of Article 5), the freedom of teaching (paragraph (3) of Article 5), the freedom of assembly (Article 8), the freedom of association (Article 9), the privacy of correspondence, posts and telecommunications (Article 10), the rights of property (Article 14), or the right of asylum (Article 16a) in order to combat the free democratic basic order shall forfeit these basic rights. This forfeiture and its extent shall be declared by the Federal Constitutional Court (German Criminal Code, 1998, para. 18)

enforce these laws by obliging companies to delete content that violates them (German Criminal Code, 1998; Network Enforcement Act, 2017, sec. 1(3)). The laws that NetzDG lists are the following:

- §86: Dissemination of propaganda material of unconstitutional organisations
- §86a: Using symbols of unconstitutional organisations
- §89a: Preparation of a serious violent offence endangering the state
- §91: Encouraging the commission of a serious violent offence endangering the state
- §100a: Treasonous forgery¹³
- §111: Public incitement to crime
- §126: Breach of the public peace by threatening to commit offences
- §§129-129b: Forming criminal organisations; Forming terrorist organisations; Criminal and terrorist organisations abroad; extended confiscation and deprivation
- §130: Incitement to hatred¹⁴

¹³ As this article is quite interesting with regards to the regulation of fake news in Germany, I quote it here:

(1) Whosoever intentionally and knowingly allows falsified or altered objects, reports concerning them or untrue assertions of a factual nature to come to the attention of another or to become known to the public, which, if they were genuine or true, would be of significance for the external security of the Federal Republic of Germany or her relationships with a foreign power, in order to deceive a foreign power into believing them to be genuine objects or facts, and thereby causes the danger of serious prejudice to the external security of the Federal Republic of Germany or her relationship to a foreign power, shall be liable to imprisonment from six months to five years. (2) Whosoever produces such objects through falsification or alteration or procures them, in order to allow them in the manner indicated in subsection (1) above to come to the attention of another or to become known to the public in order to deceive a foreign power and thereby causes the danger of serious prejudice to the external security of the Federal Republic of Germany or her relationship to a foreign power, shall incur the same penalty. (3) The attempt shall be punishable. (4) In especially serious cases the penalty shall be imprisonment of not less than one year. An especially serious case typically occurs if the offender creates an especially serious prejudice to the external security of the Federal Republic of Germany or to her relations with a foreign power. (German Criminal Code, 1998, para. 100a)

¹⁴ This sedition law is the one most closely aimed specifically at hate speech. It reads the following:

- §131: Dissemination of depictions of violence
- §140: Rewarding and approving of offences
- §166: Defamation of religions, religious and ideological associations
- §184b: Distribution, acquisition, and possession of child pornography

In connection with:

- §184d: Distribution of pornographic performances by broadcasting, media services or telecommunications services

(1) Whosoever, in a manner capable of disturbing the public peace 1. incites hatred against a national, racial, religious group or a group defined by their ethnic origins, against segments of the population or individuals because of their belonging to one of the aforementioned groups or segments of the population or calls for violent or arbitrary measures against them; or 2. assaults the human dignity of others by insulting, maliciously maligning an aforementioned group, segments of the population or individuals because of their belonging to one of the aforementioned groups or segments of the population, or defaming segments of the population, shall be liable to imprisonment from three months to five years. (2) Whosoever 1. with respect to written materials (section 11(3)) which incite hatred against an aforementioned group, segments of the population or individuals because of their belonging to one of the aforementioned groups or segments of the population which call for violent or arbitrary measures against them, or which assault their human dignity by insulting, maliciously maligning or defaming them, (a) disseminates such written materials; (b) publicly displays, posts, presents, or otherwise makes them accessible; (c) offers, supplies or makes them accessible to a person under eighteen years; or (d) produces, obtains, stocks, offers, announces, commends, undertakes to import or export them, in order to use them or copies obtained from them within the meaning of Nos (a) to (c) or facilitate such use by another; or 2. disseminates a presentation of the content indicated in No 1 above by radio, media services, or telecommunication services shall be liable to imprisonment not exceeding three years or a fine. (3) Whosoever publicly or in a meeting approves of, denies or downplays an act committed under the rule of National Socialism of the kind indicated in section 6 (1) of the Code of International Criminal Law, in a manner capable of disturbing the public peace shall be liable to imprisonment not exceeding five years or a fine. (4) Whosoever publicly or in a meeting disturbs the public peace in a manner that violates the dignity of the victims by approving of, glorifying, or justifying National Socialist rule of arbitrary force shall be liable to imprisonment not exceeding three years or a fine. (5) Subsection (2) above shall also apply to written materials (section 11(3)) of a content such as is indicated in subsections (3) and (4) above. (6) In cases under subsection (2) above, also in conjunction with subsection (5) above, and in cases of subsections (3) and (4) above, section 86(3) shall apply mutatis mutandis. (German Criminal Code, 1998, para. 130)

- §§185-187: Insult; Defamation; Intentional defamation
- §201a: Violation of intimate privacy by taking photographs
- §241: Threatening the commission of a felony
- §269: Forgery of data intended to provide proof

3.3. Other Related Laws and Regulations

Thus, NetzDG refers to a plethora of laws that may limit what can be expressed or circulated and that apply to different contexts and different types of speech and content. These laws are part of Germany's broader legal landscape, to which NetzDG was tailored. As we will see further on, these laws also played a role in the NetzDG controversy. They could, for example, be used to identify potential conflicts with NetzDG, argue that sufficient legal regulation already exists, or inspire suggestions for alternative regulatory approaches. As I will discuss further on, debates on the applicability of different laws to the realm of content moderation hinge on different ways of categorizing social media platforms, with significant legal and political consequences. The NetzDG controversy therefore also tied into a broader debate about what kind of entity social media platforms are and which responsibilities they consequently ought to carry. One question brought up, for instance, was whether platforms were simply providers who offer services or whether they could also be considered publishers with liabilities established by broadcasting legislation. In the following, I present some additional regulatory frameworks that order the media landscape in Germany. These provide a background for understanding how media and information technologies are understood legally and politically in the German public and political discourse. They also capture the broader legal backdrop against which NetzDG was introduced and implemented.

One important regulation for the media landscape in Germany is the so-called *Telemediengesetz* (English *Telemedia Act*, or *TMG* abbreviated). This law regulates electronic information and communication services but excludes telecommunications services that merely

transmit signals over communication networks as well as broadcasters (TMG, 2007, para. 1).¹⁵

Besides regulating imprints and other disclosure duties, the act grants service providers *reliability privilege* (German: *Haftungsprivileg*) and does generally not hold them legally responsible for content posted by users or for information that third parties publish on and transmit via their platforms. This is however only the case insofar as providers have not commissioned the transmission, chosen the recipients, selected and edited the information, intentionally participated in an illegal act, or had knowledge about such an act (TMG, 2007, paras. 7–8). Further, they are not obliged to monitor transmitted or stored information or search for illegal activity (TMG, 2007, para. 7). However, providers *are* obliged to remove information and block access to content should they acquire knowledge of both its existence and illegality or should they receive a judicial or official order.

As indicated above, the introduction of NetzDG came with alterations to §14(2) of the Telemedia Act. This paragraph, which had been criticized in the past, formerly allowed companies to share personal data with competent authorities for purposes of law enforcement, national security, or enforcement of intellectual property rights (Änderung § 14 TMG vom 01.10.2017, 2017). NetzDG expanded this article by requiring platform companies to store user data and potentially share them for the purpose of civil rights claims that concern fundamental rights, such as personal rights protecting one's honor or one's own images. These rights concern absolutely protected rights that any one person holds against any other person. As recounted earlier, the final version of NetzDG also added a so-called *Richtervorbehalt*, a clause that requires a court order before the disclosure of any such personal data. More recently, in December 2021, the paragraphs of TMG that previously regulated such data protection issues and the disclosure

¹⁵ These have their own laws and regulations: the Telecommunications Act (TKG, 2004) and the Interstate Treaty on Broadcasting (RStV, 1991). For services that present a combination of different services, all applicable legislation applies simultaneously.

of data have been removed from the act (Änderung § 14 TMG vom 01.12.2021, 2021). Instead, these issues are now regulated in the new *Telekommunikation-Telemedien-Datenschutzgesetz* (English: *Telecommunications and Telemedia Data Protection Act*), or TTDSG, where §21 now allows for such disclosures under the requirement of a court order (TTDSG, 2021, para. 21).

According to German regulation, German press, media, and broadcasting laws remain in the legal competence of the individual states. To this end, the states have previously put into place so-called *state media authorities* (German: *Landesmedienanstalten*) that oversee private broadcasting and tele-media. In contrast, the federation holds the legal competence over telecommunications services that offer the transmission of signals over telecommunications networks (TKG, 2004, paras. 2–3). This enacts §30 of the German basic law, which gives the individual states broad legal competence over the realm of broadcasting; this decentralization, so to speak, is in fact also meant to support communicative freedoms (GG, 1949, para. 30; Wissenschaftlicher Dienst des deutschen Bundestags, 2007, pp. 3–4) The federation thus is responsible for transmission technology and infrastructure, while the states are responsible for programming content (GG, 1949, para. 73(7); Wissenschaftlicher Dienst des deutschen Bundestags, 2007, p. 4). However, all states have signed the *Interstate Treaty on Broadcasting* (German: *Staatsvertrag für Rundfunk und Telemedien* or *Rundfunkstaatsvertrag*).

This treaty was first introduced in 1991 and was in full effect during the time of NetzDG’s introduction and my analysis. It laid out basic and general rules, regulations, and obligations for broadcasters in Germany, which functioned as state law in the individual states. The treaty regulated public broadcasting—funded by a special tax—and private broadcasting, which both coexist in Germany’s dual system. According to the treaty, all broadcasts have a duty to ensure free individual and public opinion formation and a diversity of opinion (RStV, 1991, para. preamble). Moreover, all broadcast, but particularly public broadcasting stations, shall promote respect for life, freedom, physical integrity, beliefs and faiths, and the opinions of others (RStV, 1991, para. 3(1)). The task of public broadcasting is to fulfill society’s “democratic,

social, and cultural needs” (RStV, 1991, para. 11(1)). Public broadcasting should inform about national, regional, European, and international events to support international understanding, European integration, and solidarity in the states and federation. These tasks ought to be exercised based on principles of objectivity, impartiality, diversity of opinion, and balance. The treaty also requires the labeling of advertisements and product placements. Such advertising efforts shall not hurt human dignity; discriminate based on age, gender, race, religion, disability, and the like; deceive or hurt the interests of the consumers; or promote behavior that threatens health, security, or environmental protection (RStV, 1991, para. 7(1)). Commercials are also not allowed to promote political, ideological, or religious content (RStV, 1991, p. 7(7)). Further, as the same paragraph states, people who regularly present news or other programs on contemporary political events are not allowed to perform in commercials. Likewise, news and other programs for political information are not allowed to be sponsored (RStV, 1991, para. 8(6)).

The treaty further also states that if a private information and communication service is to be classified as a broadcaster, its provider needs to obtain authorization (RStV, 1991, para. 20). Amongst other restrictions, entities who have forfeited their right to free expression of opinion according to §18GG are not eligible for such authorization (RStV, 1991, para. 20(a)). Private broadcasters, too, have an obligation to express the concerns and views of significant political, ideological, and societal forces and groups; the opinions of minorities are to be considered (RStV, 1991, para. 25). This also includes the requirement that any individual program shall not lopsidedly influence the formation of public opinion in a partial manner to a great extent. If a private corporation reaches a yearly average of 30% of the total broadcasting audience with its programming, it acquires what is titled as a “*vorherrschende Meinungsmacht*”, the power to dominate public opinion (RStV, 1991, para. 26). In this case, it is banned from broadcasting any further programs. Instead, steps must be taken to limit its power of opinion, either in cooperation with the broadcaster or without it, if necessary.

While private tele-media services such as internet platforms generally do not require authorization; however, if they offer their own journalistic or editorially designed content, they too must adhere to journalistic principles and verify the content, origin, and truthfulness of their news (RStV, 1991, para. 54). In addition, they must also uphold a right of reply, as is common with media and journalistic products. This right allows the person or institution affected by a factual claim to provide their position and viewpoint in equal length and in direct connection to the claim (RStV, 1991, para. 56).

While this treaty was in effect during the introduction of NetzDG and the time of my analysis, it has since been replaced by a so-called *State Media Treaty*, the “Staatsvertrag zur Modernisierung der Medienordnung in Deutschland,” short *Medienstaatsvertrag* or the *MStV*. This treaty was first put into place in November 2020, has since been amended, and keeps up the former treaty’s diversity requirements for broadcasting programs (MStV, 2020; MStV, 2022). The rationale for this replacement was that the former broadcasting treaty, which stemmed from a time dominated by radio and television, had become outdated. A new treaty was deemed necessary to account for digital media, including video sharing services and intermediaries or platforms that provide access to user-generated and third-party content without providing or curating their own content.

A detailed discussion of this new act is outside the scope of my analysis. However, it is interesting to note that the act also introduced measures to ensure transparency and non-discrimination. These, for instance, oblige services to provide understandable information on the criteria used for selection, aggregation, weighing, and presentation of content as well as on algorithms employed for such purposes (MStV, 2022, para. 93). The treaty also forbids intermediaries from discriminating against journalistic and editorial media offers (MStV, 2022, para. 94). Such offers must be accessible through a search function in a non-discriminatory manner (MStV, 2022, para. 84). The new treaty also softened authorization requirements for broadcasting programs (Milker & Holtz, 2020). These requirements however only apply to

broadcasting and not to tele-media, and they exempt broadcasting programs that have limited significance for the formation of public opinion.

The so-called *Staatsvertrag über den Schutz der Menschenwürde und den Jugendschutz in Rundfunk und Telemedien*, or short *Jugendmedienschutz-Staatsvertrag*, is another significant interstate treaty signed by all states. Its aim is to protect children and young persons from publications in information and communication media that might impede or endanger their development and education or that violate human dignity and other rights the criminal code protects (JMStV, 2003, para. 1). Such publications include: propaganda threatening the liberal-democratic order or intercultural understanding; content calling for hatred, violence, or lawlessness against parts of the population or against national, religious, or racial groups; content that violates such groups' dignity, insults or denigrates them; content that denies, trivializes, glorifies, or justifies crimes against humanity, violence, and political arbitrariness committed under the regime of national-socialism; content that glorifies war; the real or virtual depiction of inhumane violence in a way that glorifies, trivializes, or violates human dignity; other depictions that violate human dignity, particularly of sick, suffering, or dying persons; real or virtual depictions that show children and youth in sexualized postures; child and youth pornography; pornography that includes violence or sexual activities with animals; otherwise pornographic content; and further content evidently suited to endanger children's and young persons' development and their education to responsible and sociable persons (JMStV, 2003, para. 4). These criteria are used to categorize media into different age groups for which these effects are likely to occur. Set age limits are 6, 12, 16, and 18 years. Only persons above these set age limits are allowed to consume the content thus categorized.

Under the treaty, state media authorities supervise media together with a special commission called *Kommission für Jugendmedienschutz* or short the KJM (JMStV, 2003, para. 14). The state-funded organization *jugendschutz.net*, which had also issued the report on which Maas's proposal of NetzDG built, supports those institutions in their work (JMStV, 2003, para. 18). The treaty pursues the idea of *regulated self-regulation*. This allows the installation of institutions

of voluntary self-regulation, which can support its members in monitoring their compliance with the treaty and which may assign age limits to individual content. One such institution is a voluntary, self-regulatory institution for multimedia service providers called *Freiwillige Selbstkontrolle Multimedia-Dienstleister* or FSM (FSM, n.d.). It offers support under the treaty to its members, which include for instance the German Telecom, Facebook, and Google. Together with the internet association *eco*, which played a prominent role in the discussion over NetzDG, FSM also runs an office that processes complaints over content online.

As we will see later, different voices in the controversy over NetzDG sometimes evoked this self-regulatory complaint management system as a feasible alternative to a regulatory intervention like NetzDG. Another such institution is *FSK*, short for *Freiwillige Selbstkontrolle der Filmwirtschaft GmbH*, to which movies can be submitted for the assignment of appropriate age limits (FSK, n.d.). FSK offers continuous support and consulting to its members on their compliance with legislation that is aimed at the protection of minors and with requirements made by the treaty. The institution also takes over required responsibilities and offers legal protection for its members. In addition, it issues a quality seal that members can put on their website to signal compliance and it offers complaint management. In the NetzDG controversy, this institution was likewise cited as a good example for self-regulation. It could thus work to demonstrate that regulated self-regulation presented a viable tool for content moderation online and for the combat of hate speech and fake news on social media.

Finally, the *European E-Commerce Directive* is an EU directive adopted in 2000 that aims at providing a regulatory framework for online services inside the EU market. More recently, discussions about this act and its content have again gained momentum in the context of the *Digital Services Act*, proposed in December 2020 and adopted in 2022 (European Commission, n.d.). This new act was introduced to modernize the former e-commerce directive and brought up issues that were already contested in the context of NetzDG. Discussion of the Digital Service Act is however outside the scope of this work, especially because its introduction took

place much later than the NetzDG controversy and because its introduction took place after the writing of most of this chapter and the thesis. Nevertheless, it could be an interesting subject for future research to investigate how contentions about the regulation of content moderation that played out over NetzDG were taken up in the controversy that surrounded this directive.

In any case, the E-commerce Directive's aim, which was in effect during NetzDG's introduction, was to proliferate the further integration of the EU's internal market with regards to "electronic commerce within the information society," which would "stimulate growth and investment in innovation by European companies" (preamble E-Commerce Directive, 2000, para. (2)). The directive mentions the central role the right to freedom of expression plays for information societies and the importance of this right's safeguarding (preamble E-Commerce Directive, 2000, para. (9)). The directive's main purpose was to enable the seamless flow of goods of the digital economy between the union's member states—as stated, it sought "to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between the Member States" (E-Commerce Directive, 2000, para. 1.1)). The directive sought to contribute to the unification of regulation and legislation within the EU, to prevent fragmentation of the internal market, and to promote economic growth and innovation. However, it acknowledged that member states are allowed to limit the free flow of "information society services" if this is for instance necessary for national security purposes; the investigation and prosecution of criminal offenses; or the "fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons" (E-Commerce Directive, 2000, para. 3.).

The directive also includes rules on general information to be provided by services of the information society, on information on commercial communication such as advertising, on regulated professions, on contracts concluded by electronic means, on liability of intermediary service providers, and on the implementation of these rules. In the European Union, issued directives describe goals that individual member states need to implement and interpret via

national laws (European Union, n.d.). Consequently, some of these guidelines have also been implemented by the German laws described above. As an example, the directive states that providers are not liable for illegal content from users if they have no knowledge of such illegal activity, but that they do have an obligation to block or remove such content should they acquire knowledge of its existence (E-Commerce Directive, 2000, paras. 12–14). It also states that providers have no duty to monitor users or search for illegal activity, and that they ought to provide information to authorities in case of users' illegal activity (E-Commerce Directive, 2000, para. 15). In Germany, the TMG for instance implemented such rules.

Some concerns over NetzDG then expressed worries over a potential conflict between NetzDG and the E-Commerce Directive. For instance, questions arose about whether the German state even possessed the legislative competence to regulate the issues NetzDG addressed, or whether there had been procedural mistakes under the directive that could end up rendering NetzDG invalid (Schulz, 2018, p. 6). Other questions concerned whether NetzDG's specific provisions would endanger the harmonization and promotion of “cross-border service provision in Europe” (Schulz, 2018, p. 7), which the directive pursued in various ways, or whether it conflicted for example with the limited liability of the provider (Schulz, 2018, p. 4). Further potential conflicts with EU regulations, which were pointed to, concerned the guarantee of freedom of speech in the EU's Convention of Human Rights and its Charter of Fundamental Rights, the rights it accorded to service providers, and the Council of Europe's *Recommendation on the Roles and Responsibilities of Internet Intermediaries* (Schulz, 2018, pp. 7–8). These latter recommendations ordered state authorities to “ensure that notice-based procedures are not designed in a manner that incentivizes the take-down of legal content, for example due to inappropriately short timeframes” (Schulz, 2018, p. 11). Despite these concerns, the European Union notified NetzDG, at least in its first version, without any further requirements. To request such EU notification was necessary for NetzDG, due to its potential impact on e-commerce and the free flow of information services within the union.

Sketching the legal landscape around (digital) media in Germany has been challenging, given its fast-changing nature. As the above elaborations have shown, some laws and regulations have significantly changed throughout the research conducted for this dissertation, sometimes even several times. I have here particularly focused on drawing out the stipulations that were in place during NetzDG's proposal and its initial implementation and during the timeframe in which the media discourse I have analyzed took place. The purpose of this exercise was not to provide an in-depth legal discussion of which rules precisely counted or count but to illustrate how media and telecommunication services are conceived of, ordered, tasked, and regulated by German laws and treaties. This is important because it illustrates the legal and cultural norms and tensions in which NetzDG emerged and to which both the law itself and the controversy surrounding it responded. This legal landscape has thus shaped both NetzDG's conception and makeup as well as the contentions that ensued over it.

As this chapter has shown, German media regulations place quite some responsibilities on broadcasting providers and are relatively strict and extensive in their regulation of what the media can and should do. Social media platforms and the problems of content moderation they bring raise important questions of how to integrate platforms into this set landscape or of how to apply existing laws and treaties to them. This observation already signals toward my thesis' overarching insight that the governance and regulation of content moderation on social media platforms, in the context of NetzDG, opened new avenues for renegotiating social and democratic order. While certain democratic values and principles are inscribed into existing laws and treaties that translate them to informational practices, the new questions that social media platforms pose allow for novel discussions about how to arrange public discourse and what the media's role is for and in it.

This provides one explanation for why NetzDG was so heavily contested: The discussion over how to apply existing laws and regulations to platforms provided a chance to change enshrined practices and regulatory and media principles. Thus, it presented an avenue,

especially for those who were discontent with the status quo, to exert influence and shift practices and regulatory frameworks towards how they envisioned them. On the other hand, it was also an opportunity for those who cherished certain existing practices and regulations to assert them on, or adjust them for, the internet and social media platforms. The NetzDG discussion then also connected to broader contentions over the media landscape in Germany, such as contentions over the value and desirability of its public broadcasting system.

Drawing out the existing legal and media landscape and the associated practices is also important here because they provided a certain preexisting structure for the public debate over NetzDG. For instance, this landscape and its practices determined the kinds of arguments that made sense in the public debate and they supplied the policy structures and processes that could meaningfully and legitimately be referred to. For example, this preexisting situation can explain why the option of regulated self-regulation—which companies themselves strongly embraced—caught on so well in the NetzDG discussion. Because self-regulation was already an established practice for the protection of minors, successful institutions existed that could be pointed to as role models. Thus, this section has provided important background information for understanding the structure and arguments of the controversy around NetzDG. Likewise, this section helps to drive home the point that the way in which social media platforms, content moderation practices, and their impacts are conceptualized, perceived, and reacted to does not only depend on the platforms themselves or how they are used. Instead, the sense-making that takes place in discussions over platform governance and content moderation needs to be understood in its broader cultural and legal contexts.

Chapter 4

Investigating the Politics of Platform Governance

The last two chapters have outlined the field of content moderation as an important area of platform governance and have introduced NetzDG both as one specific regulatory approach to content moderation and as the subject of my empirical investigation. This chapter now outlines the theoretical and conceptual approaches that provide the background for my empirical analysis of the public controversy around NetzDG. It explains why I study the NetzDG controversy in the way I do, why this is a suitable approach to investigating the politics of platform governance, and which conceptual frameworks shaped my study. Therefore, this chapter elucidates why conducting a framing analysis of the public discourse around NetzDG is the right way to investigate the questions I am interested in and what can be learned from this analysis.

Chapter 4.1. on *Technology and Social Order* first presents three conceptual lenses from the field of Science and Technology (STS). These lenses are very important to my work because they help me to understand the special role that technologies and technological infrastructures play in societal and political processes and how the development, use, and governance of technologies become the subject of political processes. Moreover, these lenses are particularly suited to conceptualize and understand the political role and function of the meaning-making processes that take place around scientific and technological developments, which is the focus of my analysis. The lenses hence help to explain why discourses—and the ideas that are articulated and discussed within them—are an interesting site for studying technology politics and for investigating the interactions between social and technological order.

Chapter 4.2. on *Discourse Analysis* then introduces the research approach of discourse analysis and its understanding of the performative and political function of language and meaning-

making. I describe how this approach inspired my empirical research on, and my interpretation of, the NetzDG controversy and the media reporting surrounding it. Further, I present *Critical Discourse Analysis* as one discourse-analytical approach particularly suited for investigating how politics and power struggles play out in discursive processes. Following this, Chapter 4.3. describes the field of *Framing Studies*, on which I build my concrete research approach and empirical methodology. I explain what framing processes are, how they can be conceptualized, and what discursive function they have, and I explicate a few critical distinctions. Moreover, I present two papers from the field of framing studies which are especially informative for my work. One of them describes framing as an interactive, dynamic process of sense-making and the other one explains the role values and ideas about morality play in the unfolding of framing processes (Schmidt, 2015; van Hulst & Yanow, 2016).

In Chapter 4.4. on *Framing in Politics and Policy Analysis*, I then explain the role that framing processes play in policymaking and policy controversies, such as the one around NetzDG. In this chapter, I describe how the framing processes, which I have laid out earlier, take on a political function in the development and implementation of policies. Further, this chapter helps me to explicate the fundamental questions of social order and collective life that are at stake in framing contests. Chapter 4.5. builds on this conceptual work to describe my own *Frame Ontology*, where I explain how I see the status of my research results and which kind of agency I ascribe to frames and framings. Finally, in 4.6. on *Media Analysis*, I reflect upon the specifics of media discourse as the kind of discourse I analyze, outline its function in democracies, and reflect upon the implications of using this kind of discourse for my analysis. Thus, overall, this chapter describes how I study meaning-making processes in the NetzDG controversy and how I understand the political function of discursive processes and their implications for interactions between technological and political order.

4.1. Technology and Social Order

The field of *Science and Technology Studies* provides a conceptual backdrop to account for the role technological infrastructures—social media platforms—play in my analysis. This backdrop allows me to conceptualize the interactions between concepts and ideas, such as values, democratic principles, and the meaning of technologies; technologies and technological infrastructures, such as social media platforms; and existing political and institutional structures, such as legal frameworks and political processes. The framework described in this chapter thus enables me to trace how existing societal and political structures and practices, held values and beliefs, and the affordances of technological infrastructures interact. These interactions are important to my study of the politics of platform governance because I am interested in understanding how technological infrastructures and their governance can enact certain politics, societal goods, and visions of collective life while being simultaneously shaped by them. In this interactive process, values play a particularly significant role: they embody certain ideas of social goods and desirable forms of collective life and function as a “glue” between technological and social structures by describing how the former ought to work in the service of the latter. Moreover, they can justify and legitimize platform governance policies and practices.

To empirically investigate the politics of platform governance under this perspective, I analyze how the relations between technological infrastructures and social and political order are conceptualized and disputed in the media discourse around NetzDG. As I explain in this chapter, the discourse-analytical approach I take to study this case of platform regulation is particularly suited for my core interest in how social and political meaning emerges around information technologies and how such meaning-making processes can be politicized. There are then two sides to studying these meaning-making processes. For one, I investigate how technological infrastructures, and particularly social media platforms, are made sense of as they are understood through existing frameworks, assessed by held beliefs, and embedded into societal and political structures. Moreover, I research how the affordances and functionalities of

these infrastructures *transform* existing social meanings and political structures and can *change* shared social and political ideals and values. In my analysis, I thus seek to find out and describe how values are interpreted in the context of platform governance as well as how—and with what political consequences—*social and political meaning for platforms* is created in such processes of interpretation.

Studying such processes of meaning-making is significant for the politics of platform governance because these processes provide justification and legitimation for the implementation of policies and governance structures. The implemented policies and governance structures in turn shape how infrastructures operate and how power and responsibility are distributed between different institutions and actors. This connection motivates my desire to study different ways in which the problem of content moderation, its solution, and its relationship to democracy were reasoned about. In studying these different ways of reasoning, I wish to unravel their assumptions, consequences, and discursive politics. Later in my analysis, I identify greater imaginaries, which structured reasoning about the social and political dimensions of social media platforms and their use within the NetzDG controversy. These imaginaries encompass broader visions of the simultaneous constitution of both technological *and* political order. I believe that describing these visions and identifying their assumptions and consequences opens an opportunity to reflect upon and create accountability and political awareness for platform governance.

The STS concept of *co-production*, which seeks to make “sense of the untidy [...] processes through which the production of science and technology becomes entangled with social norms and hierarchies,” offers a vocabulary for describing the simultaneous and interdependent constitution of both technological and social order (Jasanoff, 2004b, p. 2). It offers a conceptual approach for studying the interactions between technological and social structures that avoids both technological and social determinism. Instead, this approach stresses the “constant intertwining” of cognitive, material, social, institutional, and normative aspects in lived reality

(Jasanoff, 2004b, p. 6). Therefore, studying the relationships between values, technological infrastructure, and social order through a lens of co-production does not give primacy to any one of them but looks at their interdependencies and mutual constitution. In studying this, its analytic emphasis lies on “dimensions of meaning, discourse and textuality” (Jasanoff, 2004b, p. 4).

The conceptual approach of co-production is particularly suited to study certain kinds of questions. These concern for example the role of cultural contexts in the uptake of scientific and technological developments (Jasanoff, 2004a, p. 16). Such contexts provide resources with which these new developments can be made sense of. In the case of NetzDG and its regulation of content moderation, it is interesting to ask how cultural and political contexts played into the emergence of this regulatory intervention and influenced perceptions of its meaning and potential impacts. However, the lens of co-production suggests that technological developments are not just absorbed into cultural and political contexts but also shape them. They may, for instance, provoke a redefinition of “meanings of citizenship and civic responsibility, the solidarities of nationhood and interest groups, the boundaries of the public and the private, and possibilities of freedom and the necessity for control” (Jasanoff, 2004a, p. 14). In the case of content moderation and its regulation, we may ask how platforms’ practices influence how users are understood as citizens online, which limits and responsibilities are attributed to state engagement on the internet, and which institutional status is ascribed to platforms.

As Sheila Jasanoff suggests, the lens of co-production can be used to study a variety of processes (Jasanoff, 2004b, pp. 5–6). For one, there is the emergence and stabilization of new technologies. In the case of NetzDG, social media platforms as relatively new players on the political scene needed to be made sense of, fit within existing ways of categorizing, and be meaningfully integrated into existing social and political orders. A second process that a co-productive approach is well suited to study is “the framing and resolving of controversies” through which a competition between different ideas is settled (Jasanoff, 2004b, p. 5). In the case

of NetzDG, this meant for instance a struggle over what democracy means online and what its basic principles and values imply for the internet. Third, there are processes by which technologies are carried from one (institutional) context to another. In the case of NetzDG, US-American or global social media platforms and their content moderation practices met German political and regulatory contexts and legislations. Finally, there are *culturally specific* technological practices that create meaning and legitimacy. In the context of NetzDG, there were established political, cultural, and legal frameworks that could be drawn upon to respond to both problems on social media and with corporate content moderation practices and that could provide legitimacy and acceptability to certain responses.

The perspective of co-production further raises the question of how stability is created and maintained. It postulates that the maintenance of beliefs, values, and ideologies, which hold certain parts of reality as immutable and steady and put others up for debate, plays a crucial role for the creation of (political and technological) stability (Jasanoff, 2004a, pp. 19, 23). Nation states, for this approach, play a central role in the creation of such stability, as they sustain themselves through a shared imagination that allows citizens to recognize themselves and one another as such (Jasanoff, 2004a, pp. 25–26). In this search for stability, technologies provide powerful modes of governance and control. In the case of NetzDG, discussions about technological regulation and about the new law's impact and desirability built both on certain ideals of democracy *and* on the belief that social media platforms take up an important role for democracy. Co-production then invites questions about the emergence and interaction of political and technological systems and about how technologies can pacify political conflicts (Jasanoff, 2004a, p. 28 ff.). Such political conflicts for instance often face difficult challenges of societal and political authority for which science and technology can bear potential solutions (Jasanoff, 2004a, p. 29). My analysis uncovers that in the case of NetzDG, technological practices *re-opened* democratic questions that had previously been settled by legal frameworks and institutional practices while transforming the nature of these questions and calling for new types

of answers. Rather than resisting such transformations, I suggest taking them on and seeing them as opportunities to engage in the active design of our collective lives.

The conceptual approach of *sociotechnical imaginaries* builds on the perspective of co-production and strives to explain how technological and social systems—values and material infrastructures—are simultaneously created. Sociotechnical imaginaries connect scientific and technological innovations with the constitution of power and social order (Jasanoff, 2015, p. 10): They “encode not only visions of what is attainable through science and technology, but also how life ought to, or ought not, to be lived” (Jasanoff, 2015, p. 4). Imagination is here a collective endeavor that, according to the concept’s origin in works of social science such as those by Charles Taylor, unites “members of a social community in shared perceptions of futures that should or should not be realized” (Jasanoff, 2015, pp. 6–7). Sociotechnical imaginaries are however not just ideas held but also need to be *performed* through demonstrations of science and technology. For example, the internet may materially enact the political ideal of a democratic public sphere that depends on technological possibilities for transparency and communication.

Sociotechnical imaginaries are defined as “collectively held, institutionally stabilized, and publicly performed visions of desirable futures, animated by shared understandings of forms of social life and social order attainable through, and supportive of, advances in science and technology” (Jasanoff, 2015, p. 4). They can be studied well comparatively and by looking at how actors and institutions respond to certain events (Jasanoff, 2015, pp. 26, 28). Suggested as especially good sites for such studies are “policy discourses and processes of issue framing,” narratives that define public goods with regards to technology, and legal disputes that present contestations between competing notions of social good (Jasanoff, 2015, p. 25 ff.). In my work, the concept of sociotechnical imaginaries helps to make sense of the NetzDG controversy and to crystallize central questions at stake in the discussions on how to regulate content moderation in Germany.

Later on, I conceptualize two radically different *sociotechnical imaginaries of democracy* to explain the controversy that ensued over the NetzDG and to understand its different positions on *how democracy can be enacted on and with social media* platforms. I find that these different positions operationalize distinct understandings of democracy and of how democratic discourse can work out on social media. The imaginaries thus incorporate in interdependent ways ideas about what democracy means and what good collective and political life looks like *as well as* ideas about how social media platforms work. In my research, I critically reflect upon the political and societal assumptions of the different imaginaries, which in turn helps me to articulate the consequences different approaches to platform governance can have.

A final concept from STS that informs my study of platform politics is Bryan Pfaffenberger's description of *technological dramas* (Pfaffenberger, 1992). This concept refers to a process by which a technology's political meaning and its material facticity are constructed through reciprocal, discursive interactions that unfold like a drama. The concept builds on the observation that the political forces of technological artifacts present themselves in the form of *affordances*, which are inherently multiple. To exercise political power, Pfaffenberger argues, technologies thus require symbolic discourses that regulate their interpretation and legitimate their force ideologically (Pfaffenberger, 1992, p. 284). These discourses associate technological practices with social systems and forms of life, associations that consequently produce both *political authority and technological systems* (Pfaffenberger, 1992, p. 290). As Pfaffenberger finds, it is often elites who have the power to shape the political and societal connotations of technologies and thus their development and use.

To be successful and stable, technologies whose features are created to shape societal power relationships require the simultaneous creation of "myths, social contexts, and rituals to legitimate [...their] intention and constitute [...their] political impact" (Pfaffenberger, 1992, p. 282). When this works out, technologies can even be used to justify the *fabrication of certain social contexts*, as these appear as necessary to let the technology realize its (societal) potential

(Pfaffenberger, 1992, p. 291). In their unfolding, such technological dramas draw, Pfaffenberger suggests, from a culture's *root paradigms*. These root paradigms are “fundamental and axiomatic” —but also often inconsistent—“propositions about the nature of social life” (Pfaffenberger, 1992, p. 286). While they do not determine how a technology is developed and made sense of, they provide “maps for interpreting social relations in terms of cultural meanings,” and they can be used to fit a technology within a greater social and political order (Pfaffenberger, 1992, p. 298). For instance, my analysis shows that the vastly different views that existed about social media platforms' and NetzDG's impact on democracy were still all part of specific overarching paradigms that set the terms by which it even made sense to problematize and discuss NetzDG and content moderation.

A technological drama unfolds because what Pfaffenberger calls a *design constituency* seeks to create technologies with political intentions and to sustain them through discourse, while those negatively affected by this specific technology contest these efforts. In doing so, they push back and seek to change the technology and its political force and social meaning. Pfaffenberger describes a variety of strategies that can be used for such processes of *technological regularization*. These strategies work to enact social stratification through technological practices and regulate which aspects, effects, and concerns are made visible or invisible and who can legitimately access, use, and control a technology (Pfaffenberger, 1992, p. 291 ff.). As Pfaffenberger describes, processes of technological regularization and their associated forms of meaning-making include ambiguities and inconsistencies that can be used to contest them (Pfaffenberger, 1992, p. 297). Such contestations may lead to changes in the social meaning of a technology or to a reinterpretation of the dominant discourses that establish legitimacy for a particular form of technology (use) (Pfaffenberger, 1992, p. 299 ff.). Consequently, such contestations may even effectuate changes to the technology itself or lead to the creation of both *counter-artifacts* and *alternative social contexts*. Only once technological dramas are settled and technologies reach great

social distribution, they become taken-for-granted, routine parts of social life and eventually lose their meaning, falling into the background of everyday reality (Pfaffenberger, 1992, pp. 308–309).

Pfaffenberger's approach provides an interesting perspective for situating the controversy over NetzDG in a broader drama that is continuously unfolding over the shape of democracy and alongside technological developments. As we can see in the NetzDG controversy, the role that the internet—and especially social media platforms—play for democracy is heavily contested. This also leads to diverging perspectives on what kind of regulatory interventions are necessary and what impacts they may have. The contestation over how to make sense of the political dimensions of social media platforms and the communication that takes place on them, and consequently over how to govern them, is accompanied by contestations over what legitimizes corporate and regulatory practices. My research shows that in the controversy over content moderation, different views on social media's potential for democracy—both positive and negative—called for the fabrication of particular social contexts, which are then meant to bring forth the internet's democratic potential. These contexts include economic, political, and educational measures that work to create the right circumstances so that democracy can be upheld and realized online.

Together, the approaches of co-production, sociotechnical imaginaries, and technological dramas offer inroads for understanding the joint emergence of technological structures and social and political order. All three approaches address the role that processes of interpretation and meaning-making play in constituting a technology's politics and in regulating its governance (and even physical form and functionality). They also all acknowledge that the features of a technology or technological infrastructure shape how this technology or infrastructure is understood and incorporated into social and political life. The concept of co-production is helpful for approaching questions about the mutual constitution of—and interactions between—technological developments, social and political structures, and shared values and beliefs. The concept of sociotechnical imaginaries complements this and describes how technological

practices become imbued with societal and political ideals. Finally, the concept of technological dramas provides a lens for thinking through the politics of the meaning-making processes that take place around information technologies and for understanding the political control and social stratification that are at stake in struggles over the meaning of technologies.

To summarize, the three conceptual approaches provide a generative theoretical backdrop for my investigations into the politics of platform governance and the regulation of content moderation. The internet here is a particularly rich technological object for studying the processes these approaches conceptualize because it is a particularly flexible, widespread, open, and always evolving system. Further, it has always not only been seen as merely a technological infrastructure but as the instrument of a specific kind of economic, social, and political system, as for instance Fred Turner's account of the emergence of cyberculture illustrates (Turner, 2006). Right from its onset, the internet's development was deeply influenced by social and political ideals and came with the promise of potential social and political revolutions. More recently, it has also become the object of widespread social and political concerns, evoking fears over its adversarial impact on dearly held societal values and even democracy itself. The controversy over NetzDG here provides an interesting avenue for studying struggles over the internet's social and political meaning and the questions of social order that accompany the governance of its technological infrastructure.

4.2. Discourse Analysis

The conceptual approaches just described highlight the role technologies and technological infrastructures play in the constitution of social and political order and in the unfolding and potential settling of political controversies. The approaches conceptualize this role in an interactional manner. They emphasize the mutually constitutive interactions between technologies and their affordances; political and societal structures; and values, ideologies, and processes of meaning-making. The approaches further direct special attention to the ideas held

about and associated with technologies and to the discursive practices and interpretative processes around them. This is also the focus of my study on the politics of platform governance, where I am interested in how the media reporting on NetzDG made sense of, reasoned about, and presented the problems posed by the regulation of content moderation. The goal of my analysis is to investigate which ideas about social order and technological infrastructures underpinned this reasoning and to make visible the societal and political consequences of adopting a particular perspective for platform governance.

In my empirical investigations of the NetzDG controversy, I build on a specific approach to studying discourse and meaning—*the framing studies approach*. As I describe in more detail in the next sections, the goal of framing analysis is to uncover different ways in which one and the same issue can be made sense of and problematized, and to investigate the interpretive patterns that shape different problematizations. In my study, I draw from the broader research approach to studying and analyzing discourses and texts that the field of *discourse analysis* provides. This field supplies a suitable empirical research approach for studying media articles with the aim of unraveling broader societal controversies over the relationship between technological infrastructures and social order.

This is because, under the discourse analytical approach, instances of language—“such as talk or written text”—are studied as evidence of social phenomena, of broader social practices “*beyond the individual person*” (S. Taylor, 2013, p. 2). According to this approach, instances of language are not just expressions of a particular person’s opinion or unique, individual experience but statements that are situated on a social level and that express broader, inter- and transpersonal societal realities. In discourse analysis, language is studied to build a picture of how society functions and to assess the “collective, though not necessarily coherent, ‘world view’ of a society” (S. Taylor, 2013, p. 3). According to discourse analysis, things (and people) function within larger systems of meaning; words and language are intimately linked to, and inseparable from, the social world and societal activities; thus, instances of language are inherently connected

to larger social questions (S. Taylor, 2013, pp. 78–79). Discourses can structure reality and enable subjectivities because they make certain interpretations available to us. Language, in this approach, is a productive and performative activity and practice in which people engage “as part of their ongoing social lives and relationships” (S. Taylor, 2013, p. 3).

Discourse analysis hence postulates that there is a certain order to discourse, which shapes what is sayable, thinkable, or experienceable and how things are talked about or known. This also implies that such discursive orders shape what we think of technological developments, how we perceive their impacts, and how we evaluate their desirability. At the same time, discourses are also always contingent and ambiguous. Discursive practices are signified by ambivalence, heterogeneity, and fragility; they are situated and subjected to transformations. Therefore, technological developments that come with new affordances or that trouble established ways of meaning-making also have the potential to transform discourses. Moreover, the ambiguities of discourses enable different, even contradictory, discursive positions. Hence, contestations over the meaning and effects of technological developments and over the interpretation of political values and principles can ensue even within one overarching discursive order.

Michel Foucault’s work has had a substantial influence on the field of discourse analysis. According to Foucault, a discourse describes a set of rules and procedures which “make objects thinkable and governable” and shape “what can be known, said, or practiced” (Arribas-Ayllon & Walkerdine, 2017, p. 120). It consists of the “rules, divisions and systems” that characterize a historically situated body of knowledge and that determine what the “limits of thought and language [... are] within a given historical period” (Arribas-Ayllon & Walkerdine, 2017, p. 114). A discourse presents a broader conglomeration of instances of language, practices, institutions, technologies, and so forth that describe a social object or paradigm. For Foucault, a discourse does not only include spoken or written text or talk but for example also subjects, social and political practices, institutions, institutional practices, and technologies. The study of such a

discourse may include statements that convey knowledge about these objects, the rules that govern ways of talking about them, the roles different subjects take on in the discourse, and the fashion in which truth is established and in which ways of knowing acquire authority or are institutionalized (Hall, 2001, pp. 73–74).

A Foucauldian “discursive formation” refers to the collection or aggregate of statements, ideas, “discursive events,” meanings, and so forth that pertain to a particular object; share a strategy or style; and have common institutional, administrative, or political trajectories (Hall, 2001, p. 73; Schiffrin et al., 2001, p. 9). In this approach, discourses and their specific forms of knowledge are always historically and contextually situated so that new discursive formations with new ways of knowing and establishing power, authority, and truth may develop over time (Hall, 2001, p. 74). Discursive formations therefore embody forms of knowledge that are linked to a specific society’s working or social order (Schiffrin et al., 2001, p. 9).

Consequently, much of Foucault’s attention was dedicated to how “historically specific ‘discourses’” produce certain individual (Arribas-Ayllon & Walkerdine, 2017, pp. 111–112). Subjects, in this view, are not autonomous, stable entities but subjected to and dependent on discursive rules and regimes of truth (Hall, 2001, p. 79). Following Stuart Hall’s presentation, discourses, for Foucault, produce “figures who personify” historically situated forms of knowledge and offer subject positions for individuals to take on (Hall, 2001, p. 80). Such positions are delimited by what is historically “sayable, thinkable and practicable” and describe locations “within a structure of rights and duties” (Arribas-Ayllon & Walkerdine, 2017, pp. 111, 117). Individual subjects can only make meaning once they have identified with discursive positions (Hall, 2001, p. 80). These subject positions may however be multiple, discontinuous, and sometimes even contradictory (Arribas-Ayllon & Walkerdine, 2017, p. 112).

In Foucauldian discourse analysis, power is a central analytical concept and always implicated in questions of knowledge and truth (Hall, 2001, p. 76). It operates within discourses through regulating what can and cannot be said, what counts as true, how subjects emerge, and

different kinds of authority become established and accepted. Forms of knowledge become powerful because they have societal effects and are “put to work” through technologies, strategies, applications, institutions, and the like (Hall, 2001, p. 76). This notion of power does not see power as a monopoly owned by particular people, institutions, or other kinds of centralized entities but as a productive force that permeates all social relations and practices. In this conception, power is not only inhibitory in that it constrains or limits individuals, but it is also *productive* by bringing forth specific forms of subjectivity, interaction, and social order.

Foucault’s work has then contributed to discourse analysis a rather explicit focus on dimensions of power that are enacted in and through discourses. Power relations may shape the conditions of language use, determining for instance who is allowed to speak. But they may also appear as the *effects* of language use, for instance where discourses endow institutions with legitimacy. Discourses exercise power by providing models for how legitimate and meaningful thinking and doing looks like and by exerting social control over what counts as logical, legitimate, and rightful. Being sensitive to such relations of power, discourse analysis seeks to identify “how language is used to reinforce norms, legitimate existing social structures, subtly obscure or rationalize inequalities, play down problems and perpetuate an interpretation of society which supports some interests and obscures others” (S. Taylor, 2013, p. 77).

Critical Discourse Analysis (CDA) is one prominent approach to discourse analysis that is aimed at taking such relations of power head-on and specifically unmasking them where they are unjust, with the explicit goal of achieving an “equitable social order” (Kress, 1996, p. 15; Wodak, 2014, p. 305). CDA is oriented at making hidden, apparently neutral, and often unchallenged, dominant ideologies visible. Such ideologies describe “cultural ideas, presumptions and presuppositions,” which structure processes of communication and issue framing (Gal, 2006, p. 13; Wodak, 2014, p. 306). Because discourses are social practices in which discursive events, situations, and institutional and social structures co-shape one another, they can work to maintain a status quo but also change it (Wodak, 2014, p. 303). In seeking to unmask and

potentially change unequal power relations, the focus of CDA is on the ways in which discourses (re)produce social domination and reproduce or resist relations of dominance and inequality (van Dijk, 1996, p. 18).

Following CDA's approach, power struggles *in* discourses express themselves as struggles over different interpretations and meaning, whereas power struggles *over* discourses play out in struggles over *access to the discourse*, so over who can participate, speak, or be heard (Wodak, 2014, p. 306). Here, elites may have control over, or preferential access to, important discourse arenas (van Dijk, 1996, p. 20). Power *of* discourse then refers to the *effects* discourses have on actors and society at large (Wodak, 2014, p. 306). Discourses can unfold their power by exerting influence over the minds of discourse recipients, for instance through manipulation, but also through strategies of legitimation or the establishment of consent (van Dijk, 1996, pp. 18, 21 ff.). By creating meaning, visions, and conceptions of social and political order, but also by creating identities and group membership and constructing mechanisms of sameness and social exclusion, discourses can influence what people think and consequently how they act (van Dijk, 1996, p. 21 ff; Wodak, 2014, p. 310).

CDA is a special field of discourse analysis signified by its explicit focus on structures of social domination and inequality and by its explicitly stated political goal of dissolving such inequalities. This falls in line with the more general approach of discourse analysis, where researchers work to critically examine what is taken for granted and which values and priorities underlie statements. Moreover, researchers in discourse analysis are interested in the rules that structure discourses and the contexts in which terms are used, the topics they use evokes or suppresses, and in changes in the use of terms and concepts over time (Traue et al., 2019, pp. 571–573). Further, they investigate the discursive emergence and conservation of particular “norms, institutional setups, and social roles” (Traue et al., 2019, p. 566, my translation).

Discourse analysis' broader research program can encompass a wide array of projects and approaches. These may range from linguistics and the analysis of grammar to the broader

social context of language use; they may study for example media discourse, political speech, everyday situations, or legal documents (Schiffrin et al., 2001). There are no uniform or obligatory methods, procedures, terms, or objectives that characterize all types and instances of discourse analysis, and terms and concepts may be contested within disciplines or between approaches (Kiefl, 2014, p. 432). Each project of discourse analysis therefore presents a unique combination of theoretical assumptions about the (social) world, the problem or topic under investigation, the data chosen for the analysis, and the aspects of this data selected for study (S. Taylor, 2013, p. 1).

Where a discourse analysis is carried out, its aim is to build a particular chain of argument that links a certain “theory of how the social world works” with a second (methodological) theory of how the collected material can be “treated as evidence of the workings of that world” and with a selection of particular material and data, which is presented as evidence to support the claims the analysis makes (S. Taylor, 2013, p. 68). The analysis itself is not a linear process but an exploratory and iterative endeavor where the researcher must “do the hard work” of creating “connections between different pieces of material”, of exploring and thinking about the data at hand, and of making difficult decisions about how to interpret it (S. Taylor, 2013, p. 69).

Coding software such as MaxQDA can provide a tool for data management and analysis but it cannot carry out the analysis on behalf of the researcher (S. Taylor, 2013, pp. 68–69). The assumption of discourse analysis here is that any given analysis is shaped by the researchers who conduct it; different researchers may label things differently or differently interpret data (S. Taylor, 2013, p. 71). And while they may be able to take a step back, reframe, or unravel new discursive possibilities, they are never themselves outside discursive practices. Their analysis is a situated, interpretative enterprise on which their own knowledge and perspective comes to bear (S. Taylor, 2013, p. 82). Thus, discourse analysis as a form of qualitative analysis recognizes that the researcher’s own perspective shapes what is being investigated and found. In their analysis, researchers do not interpret documents or texts as closed units of meaning but as composed of

different fragments (Keller, 2013, p. 46). It is their task to split up data, dissolve connections and interrelations, and create new ones (Keller, 2013, pp. 44–45). Here, they look for example for interpretive schemata, classifications of phenomena, structures that relate different phenomena, and narratives that weave elements together (Keller, 2013, pp. 46–49). In all of this, however, the researchers ought to strive towards making their processes of understanding transparent and comprehensible and making visible moments of de- and reconstruction as crucial parts of the analytical process (Keller, 2013, p. 44).

For my project, I conducted a *framing analysis*. This analysis draws from the field of *framing studies*, a field that is particularly suited for investigating the questions I was interested in. Framing analysis, which I present in more depth in the next section, is a specific type of discourse analysis. Therefore, my analysis built on the propositions that language has a performative character and that discourses have the power to create realities and structure perceptions of the world. I studied the public discourse around NetzDG with regards to the different legible ways it offered up for making sense of the problems of platform governance and content moderation. This analysis took up discourse analysis's proposal that the discursive orders in which we find ourselves shape how we make sense of what is going on and, hence, of new questions and challenges that arise from technologies and platform governance. At the same time, my work also looks at how such new technological developments may themselves transform discourse.

I did, however, not conduct a comprehensive study of a discursive formation in the sense of Foucault or start from the point of capturing a particular discourse. One reason for this is that the Foucauldian notion of discourse is very broad and all-encompassing and hence difficult to delineate, capture, and operationalize in research practice. Moreover, I analyzed the *contentions around a concrete case* rather than a broader but much more vague discourse. Therefore, in my research, I analyzed media reports on a particular issue of platform governance and on a

specific piece of regulation, and I conducted a content analysis—a framing analysis, to be precise—of this media sample.

Nevertheless, the discourse-analytical approach underpinned my methodological and interpretative approach; in addition, its notion of discourse sensitized me to ask what the overarching discourses were that structured the public debate on NetzDG. This sensitivity allowed me to discover that the NetzDG controversy was structured by an overarching discourse of democracy and how democracy can be realized on and with social media. I found that different positions in this discourse expressed certain ideas about how to enact democratic values and principles—like freedom of speech, the rule of law, and platform transparency—through social, political, institutional, and technological practices; moreover, they also expressed different ideas of what democracy is and looks like. Thus, my conceptualization of an overarching discourse of (digital) democracy explains what held together and distinguished different understandings of the problem of regulating content moderation in the NetzDG controversy and on what source of legitimacy different positions built.

Moreover, I also describe the kinds of roles that these different positions in the NetzDG controversy envisioned for different actors. This description draws from the postulation of discourse analysis that discourses construct different societal positions and subjectivities. And while I did not take up CDA's explicit focus on, and political activism to combat, unjust structures of dominance, produced and maintained by discourses, CDA's approach nevertheless informed my analysis by drawing attention to the power relations that different ideological stances reinforce. I understand the struggles over the meaning of democratic values and principles and over how to uphold them, which took place in the NetzDG controversy, as power struggles whose outcomes have political consequences.

The questions of power that discourse analysis and particularly CDA address also appear in my work. For one, the debate over how to govern platforms, which played out in the NetzDG controversy, concerns how to set up relations of power through appropriate structures of

authority, rights, and responsibilities. Different positions in the controversy disagreed over who *acted* and was *acted upon*, who could and should *control* technological infrastructures, and who has the *right and ability to set and enforce norms and rules*. Moreover, there were also discursive relations of power at play within the controversy, which were, for instance, characterized by who was given a voice and by the positions that were articulated and appeared sensible. Different positions in the NetzDG controversy sought to discursively legitimize—and even depoliticize—certain power relations by making them appear as the “natural” order of things, for example by describing them as accurately capturing how the internet worked or as being warranted by democratic values and principles. When a position is adopted or comes to dominate, the power relations it envisions are baked into governance mechanisms, policies, and technologies.

I believe that when developing a responsible and politically accountable approach to platform governance, one needs to pay close attention to the legitimation strategies that characterize different approaches, to the ways of thinking about technology governance that appear sensible, and to what is made invisible. In the spirit of CDA, it is critical to ask *who* legitimation strategies speak and work for and how they affect the distribution of power. In line with the productive force Foucault’s work attributes to discursive power, the legitimation strategies that were used in the NetzDG controversy also created positions that individuals could take on, for example, as users—or as citizens—with rights and responsibilities, and from which they could hence act. Interestingly, discursive power then featured on two distinct levels of my analysis. For one, I analyzed a public discourse within which discursive power operated as just described. Second, the public discourse I analyzed was itself *also* about discursive power and about how to govern and regulate it in a democratic manner.

In my work, the term “discourse” appears in two ways: as “public/democratic discourse” and as “media discourse.” In both cases, the term refers to a broader, abstract social institution, similar to the Foucauldian notion. However, the first version—“public/democratic discourse”—is usually used to discuss a central subject matter of *the NetzDG controversy*: public discourse as a

central *democratic institution* whose functioning and shape were heavily contested. This public or democratic discourse encompasses many different communicative processes that take place in society and politics. The second version—“media discourse”—refers to the subject of *my* study: the communicative processes that the media, as an institution, facilitate in society. When I speak of the media discourse surrounding NetzDG, I refer to this institution’s processing of NetzDG as a matter of public policy, a processing I saw expressed in the different media reports I inspected. Of course, on a meta-level, this media discourse was itself part of a broader public and democratic discourse.

When referring to the contestations over NetzDG, I also often use the term “controversy,” in particular in the formulation of “the NetzDG controversy.” As Linda Monsees describes, this concept has long been a central term in STS (Monsees, 2020). Its use signifies that the societal and political struggles and processes that take place around scientific and technological developments are not just “debate[s] about the best technological solution” (Monsees, 2020, p. 119). Instead, these struggles are broader societal contestations over values and identities, power and control, morality, and problem definitions; and over what matters and how to make legitimate claims (Monsees, 2020, pp. 118–120). My use of the term therefore indicates that what was going on in the media discourse surrounding NetzDG was not just a disagreement over which technical or regulatory measure to best use for content moderation on social media platforms. Rather, surrounding NetzDG’s introduction was a broader societal contention over how to design collective life and its institutions, relate to one another, and understand and live democracy.

For stylistic reasons, I sometimes use this formulation interchangeably with “the NetzDG discussion” and the “NetzDG debate.” It should, however, be noted that these terms are used on an abstract and metaphorical level. They are hence not used literally to refer to a (structured) debate between two set opponents or to a discussion between several well-defined participants but to have more stylistic variety. As is the case with “controversy,” in conjunction

with NetzDG, I use these terms to refer to broader, societal debates and discussions that played out in the policy controversy over NetzDG.

4.3. Framing Studies

In my discourse analysis of the public controversy that surrounded NetzDG, I drew specifically from the research field of *framing studies*. This field offers a fruitful approach for analyzing how meaning is established and contested in discourses and how different voices make sense of a situation or governance issue. Framing analysis provided me with a useful analytical lens and methodological basis for studying how the different positions articulated in the media discourse conceptualized the problem of regulating content moderation, made sense of NetzDG, and reached conclusions on how to best govern platforms.

According to Dennis Chong and James N. Druckman, framing studies build on the premise

that an issue can be viewed from a variety of perspectives and be construed as having implications for multiple values or considerations. Framing refers to the process by which people develop a particular conceptualization of an issue or reorient their thinking about an issue. (Chong & Druckman, 2007, p. 104)

Inquiries in the field of framing studies seek to conceptualize and analyze *framing processes*, which are processes of reasoning that organize “everyday reality” (Tuchman & Tuchman, 1978, p. 193 cited by Chong & Druckman, 2007, p. 106). They are processes of sense- and meaning-making by which we organize our “knowledge and experience” and make sense of everyday experiences (Schneider, 2010, p. 76, my translation). During such processes of sense-making, different pieces of information are selected, ordered, related, and interpreted so that an understanding of what is going on can be formed. Framing processes allow us to process incoming information, make sense of a situation, and develop a particular attitude towards an issue; they provide “meaning to an unfolding strip of events” (Gamson & Modigliani, 1987, p. 143 cited by Chong & Druckman,

2007, p. 106). Thus, framing processes describe processes of reasoning by which people perceive the world, make meaning of observed phenomena, and understand the societal and political problems that policy and political action address.

How people process incoming information during framing processes is shaped by their prior knowledge of the world, by what they have learned and value, and by the frames—the cognitive schema and interpretive patterns—they already possess in their heads. Such cognitive frames provide “constructs of knowledge” that can be applied when making sense of a situation (Schneider, 2010, p. 76, my translation). Different available frames provide “latent systems of reference” and “interpretive patterns [...] equipped with claims of validity” (Schneider, 2010, p. 78, my translation). There can be different types of hierarchically organized frames, with lower-level frames integrated within higher-level or “master” frames (I. Schneider, 2010, p. 80 ff.). High-level frames present basic cognitive structures (or schemata) according to which incoming information and new experience are made sense of and categorized. They describe someone’s “core beliefs” or overarching “meta-narratives,” which they apply to different issues (I. Schneider, 2010, p. 85). “Surface” frames on the other hand apply specifically to the characteristics of a concrete issue or controversy. “Issue defining” frames are situated in-between these and shape how we debate about a particular political controversy.

Studying framing processes thus means to investigate how people draw from learned, practiced, and contextual techniques of sense-making and from available tools of interpretation and meaning construction when understanding their world and the place of technologies in it. Cultures provide a backdrop of known interpretive frames from which both communicators and receivers may draw when making sense of and interpreting an issue. It presents a “stock of commonly invoked frames” and “set of common frames exhibited in the discourse and thinking of most people in a social grouping” (Entman, 1993, p. 53). Therefore, cultures equip people with frame repertoires that hold readily available ways of making sense and interpreting a

situation, issue, or phenomenon. Thus, framing processes can often be traced back to historical and cultural contexts that shape how people see the world and the beliefs they hold.

The framing processes that I have so far described correspond to unconscious and unintentional processes of information processing and sense-making. How people process information—which framing processes they engage in—does not only depend on the (unconscious) cognitive frames they already hold or on the ways of processing information they already have acquired but also on how the information is presented to them. For instance, Amos Tversky and Daniel Kahneman, in their infamous study, have shown that people come to different conclusions, depending on how the same statistical fact is communicated (Tversky & Kahneman, 1986): In an experimental set-up, people chose different medical procedures depending on whether risks were described as survival or mortality rates.

Thus, how information is perceived and processed on the receiver side also depends on how it is presented. Different ways of framing an issue create different understandings of the problem at hand (Chong & Druckman, 2007, p. 106). For example, if certain aspects of an issue or situation are rhetorically emphasized, they may trigger the audience to assess the situation in a particular way and to reach a certain conclusion. This is because, as Edelman describes:

The character, causes, and consequences of any phenomenon [...appear] radically different as changes are made in what is prominently displayed, what is repressed and especially in how observations are classified. ... [T]he social world is ... a kaleidoscope of potential realities, any of which can be readily evoked by altering the ways in which observations are framed and categorized. (Edelman, 1993, p. 232 cited by Entman, 1993, p. 54)

Using this, speakers and communicators can also engage in *intentional* framing processes. To elicit a particular view or response in an audience, speakers can purposefully present and highlight certain aspects in a particular way while leaving out others. In doing so, they might even shape the cognitive frames people consequently adopt to respond to an issue and the terms in which

they subsequently think of this issue. As an *intentional act of communication*, framing describes a *purposeful choice* of how to present a certain issue in alignment with a particular view or position and with the aim of speaking to or persuading an audience. The effects that different framings can have on an audience are called *framing effects*.¹⁶ Framing effects depend on both how information is communicated and presented and on the (cognitive) frames that are at play on the audience's side. The example that Tversky and Kahneman provided was a case of equivalency framing, where one and the same piece of information or statistical fact is conveyed in different ways. However, purposeful framing may also include the conscious selection of some aspects while leaving out others; it may purposefully evoke values, emotions, or images; or it may utilize metaphors and other rhetorical devices suited to elicit a particular reaction and sway an audience.

Intentional framing processes are most common if speakers seek to *convince* an audience of something or encourage them to adopt a particular attitude. In democracies, where policies and political actions require public deliberation and their acceptance by a democratic public, political activists, policymakers, and politicians, as well as corporate spokespeople, may utilize framing purposefully to convince the public or at least a constituency of their view. Of course, the framing processes such actors engage in may nevertheless include unintentional or unconscious components, for example, when they are “thinking out loud” or jointly deliberating with the goal of creating a shared understanding of what is at stake. The intentionality and purposefulness that are likely to motivate a framing process further depend on *who* is doing the communicating and in what context. While politicians, activists, or lobbyists might be very intentional in choosing the frame they promote, journalists might consciously work to avoid one-sided frames and present a balanced view and different, even contradictory, arguments.

¹⁶ In my work, I did not investigate framing effects but focused on the speaker side, looking at the framing processes which the media articles described. Analytically, I am then interested in unraveling the assumptions and beliefs that underpin these framings processes as well as the political consequences they have when their conclusions are adopted in governance practices.

When people, as private persons, form their opinion or discuss a new event or issue, say over dinner, they are more likely to be guided by unintentional framing processes.

In any case, what is clear is that frames *can convince an audience* and can hence be used strategically. This is because, as Entman describes, they make “an argument about problems and their causation, evaluation, and/or solution” (Entman, 1993, p. 53). To frame then means “to select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation for the item described” (Entman, 1993, p. 52).

Entman then suggests that framing processes

[1.] define problems—determine what a causal agent is doing with what costs and benefits, usually measured in terms of common cultural values; [2.] diagnose causes—identify the forces creating the problem; [3] make moral judgments—evaluate causal agents and their effects; and [4.] suggest remedies—offer and justify treatments for the problems and predict their likely effects. (Entman, 1993, p. 52)

Not all four framing elements are always present in framing processes or where frames are being evoked (Entman, 1993, p. 52). In practice, they are also not always neatly distinguished from one another but overlap, relate to one another, and intertwine (I. Schneider, 2010, p. 79). In any case, they are the parts of the story a specific frame tells. This story promotes a certain hypothesis and narrates how a problem came to be.

Texts, such as reports, statements, speeches, or media articles, are places where framing processes manifest and can be studied. Texts can be investigated with regards to how issues are framed, what is included and excluded, how something is said, which sources of information and values are evoked, and so forth. They may display unintentional framing processes as the author recounts their experiences or struggles to make sense of a situation, but they may also be strategically devised for a certain purpose. It can, of course, be difficult to determine how intentional or unconscious the framing processes are that characterize a text. On the one hand,

the author may have told the story as they experienced it or presented their process of reasoning; on the other hand, they may have purposefully framed the content of the text with a purpose in mind and with the goal of eliciting a particular response in its audience. In most cases, these two aspects will be intertwined because speakers come to conclusions on what they want to communicate or for which policy they wish to advocate based on their own reasoning about an issue, which in turn is shaped by unconscious framing processes.

The journalistic texts I have analyzed combined both unintentional and intentional framing processes. As I studied media reports, the authors of the texts might have even sought to reduce framing processes by presenting information as “objectively” as possible. They may have done so by using neutral language, giving attention to many different sides and perspectives, or letting a diverse range of speakers have a voice. The desire to avoid strong framing might have been the reason why so many different concerns were discussed in the NetzDG controversy. But, while they could strive for diversity and neutrality, the journalists nevertheless also had to engage in framing processes by deciding what matters and what does not, who to cite and who not to cite, which examples to use, and how to present information. How they did this was guided by their internal (unconscious) framing processes, which shaped how they went about their investigation and articles; at the same time, as journalists, it is likely that they also thought carefully about their choices and about how they presented the issue.

Most strongly, perhaps, intentional and politically purposeful framing can be assumed to have taken place where certain voices, such as, for instance, different political actors or representatives, were cited. This shows that the framing processes I have analyzed in my work took place on different levels, including the level of my own analysis. First, framing processes took place on the level of the articles that framed the issue—and the speakers’ statements—in a particular way. Second, the speakers and the voices that the articles cited also engaged in framing processes. Third, framing also happened on the level of my own analysis, as I—as the analyst—ordered, organized, and present my results in a particular way.

How intentional and purposeful one holds the articles' framing processes to have been also depends on the role one attributes to the media. If journalists are believed to not report in a self-interested manner, to strive towards presenting issues and facts 'objectively,' and to present and compare a variety of different views, their framing may be interpreted as less purposeful and less strong. If a more critical or distrusting view of the media is adopted, which sees the media as in cahoots with the powerful, as not doing due diligence to present all sides of an issue, or as following a "hidden" agenda or goal to influence public opinion, they may be suspected to have framed information more purposefully and strongly.

Given the notorious difficulty and level of judgment involved in deducing the author's intention from a written journalistic text, I did not center the intention behind different framing processes in my analysis. Instead, I studied how the reporting framed NetzDG and related issues, whether intentionally and purposefully or not. What interested me were the *assumptions, consequences, and correlations* that could be identified for different framings. Here, the perspective of discourse analysis helps me to distill the overarching discourses of democracy that structured the NetzDG controversy and to search for different positions that emerged for authors and audiences to take on. This enables me to reflect upon the structures of authority and legitimacy that signified the discourse around NetzDG, so for instance, on the kinds of arguments and positions that appeared as sensible and legitimate and on who was understood as authoritative to speak. Particularly, CDA's power-sensitive perspective also prompts me to ask which social hierarchies and even inequalities were reproduced in this discourse. Based on the results of my framing analysis, I later on reflect upon the discursive politics and function of the different framings that were used and correlate them with certain contexts, events, and political agendas, but I do so without attributing a particular attention to certain speech acts, statements, or texts.

Instead of asking which intention motivated speakers or authors, I seek to establish accountability and build a basis for responsible platform governance by uncovering the "baggage" that comes with different ways of framing the problem at hand. For instance, I reflect

upon which view of democracy was represented by different framings, analyze what they made visible and invisible, and pinpoint the costs at which their perspective on platform governance comes. I also take a critical look at who sponsored or spoke to different framings, so, for instance, which kinds of articles were likely to present certain positions or which actors were cited in doing so. In the last part of the thesis, this allows me to discuss the politics of the framing processes that took place in the NetzDG controversy. Moreover, I also reflect upon how different sources' framing tendencies correlated with their positioning in the political landscape. Thus, in my work, I seek to create accountability and political responsibility without needing to identify the (exact) intentions that stood behind any framing process.

In my empirical analysis of the media discourse that surrounded NetzDG, I carefully traced the framing processes manifested in the different texts. For this work, Merlijn van Hulst and Dvora Yanow's paper titled *From Policy "Frames" to "Framing": Theorizing a More Dynamic, Political Approach* provided a great inspiration for me (van Hulst & Yanow, 2016). This paper provides a phenomenal basis for thinking through the processes that go into framing an issue or governance challenge. The approach is oriented at *studying framing processes as dynamic and interactional processes of sense-making* that take place within a particular context and situation and in interaction with both things and people involved.

For my work, van Hulst and Yanow's paper supplied a helpful source for understanding the processes of reasoning, reflecting, and exemplifying that went into the framing processes that took place around the NetzDG controversy. Following this approach to framing, I analyzed the media articles as being part of a public "conversation." In such a conversation, I see framing processes play out as dynamic and interactional processes of reasoning about the problem at hand, such as the regulation of content moderation and NetzDG's desirability. I read the articles and the arguments, examples, and assessments they provided, as well as the different voices they cited, as part of this kind of conversation and as contributions to a discourse that represents a process of collective reasoning.

Van Hulst and Yanow distinguish this kind of dynamic, interactional framing analysis from an *actor-focused* form of frame analysis that studies how political actors, such as politicians or activists, strategically employ frames, as overarching and stable entities, to sway an audience. In this actor-focused approach, actors are held to employ frames purposefully to influence public opinion and pursue their political goals and agenda (I. Schneider, 2010, p. 81). Studies under this approach focus on static and strategically employed frames and often look at framing effects, at how successful frames are in influencing public opinion and persuading an audience. Thus, the actor-focused frame analysis is used to investigate how frames, as static, taxonomical “objects people possess in their heads”, are deliberately chosen and strategically employed (van Hulst & Yanow, 2016, p. 93). Van Hulst and Yanow suggest that particularly the field of social movement studies looks at this intentional use of frames in political discourse and activism (van Hulst & Yanow, 2016, p. 95).

In contrast, the kind of analysis they propose is directed at studying framing as the dynamic processes of meaning- and sense-making that actors necessarily engage in when reasoning about a (policy) issue. Here, framing is investigated as rather unintentional, and perhaps even subconscious, processes of sense-making that people engage in when processing new information or seeking to understand a situation or problem. This corresponds to a *structure-focused* approach to framing. This approach echoes discourse-analytical assumptions and studies frames not so much as consciously constructed tools in the pursuit of a political agenda but rather as “ensembles of convictions, worldviews, norms, and judgments” (Schneider, 2010, p. 81, my translation). This falls in line with my approach to “puzzle together” different statements about, and assessments of, NetzDG into coherent ensembles. In the dynamic, open-ended, and tacit framing processes that van Hulst and Yanow focus on, framing techniques like selection, naming, and storytelling turn an ambiguous situation into a set problem to be addressed by appropriate means. During policy controversies, such dynamical framing processes may lead to

transitions and transformations; changes in how framings align, accommodate, and interact with one another; and shifts within individual frames and their subframes (I. Schneider, 2010, p. 93).

This approach therefore focuses on different ways of framing that *emerge* from a situational, interactional, intersubjective, and communicative process (van Hulst & Yanow, 2016, p. 95). For such an analysis, struggles between competing ways of framing an issue play out as struggles over “shared meaning” rather than as “contests over individual preferences” or as calculated and applied techniques for influencing public opinion (Abolafia, 2004, p. 349). This is based on the idea of framing as a tacit, dynamical process that unfolds in interaction with others and the situation at hand. During this process, actors develop a particular understanding of what is going on and consequently of what to do about a situation, which is shaped by their preexisting thinking, experiences, and knowledge of the world.

Things, events, and acts attain *meaning* during such framing processes. Culture here again offers a repertoire from which sense-makers can draw but it is not a strictly determining factor because different, even conflicting, interpretations may coexist within one cultural setting or environment. For van Hulst and Yanow, these processes of sense-making happen both through communication and (other) action: “talk and action are not completely separable” (van Hulst & Yanow, 2016, p. 98). According to this interactionist approach, the particulars of the situation, and its events and *things*, also influence how meaning is established; at the same time, things *acquire* meaning in the process of sense-making and interpretation that framing facilitates (van Hulst & Yanow, 2016, p. 98). Thus, “the sense-making work of framing can be seen to unfold as actors engage in a conversation with the situation, where “the situation” intermingles persons, acts, events, language, and/or objects (van Hulst & Yanow, 2016, p. 98).

Leaning on prior work from framing studies, the authors further describe that framing processes involve selecting, naming, and categorizing (van Hulst & Yanow, 2016, p. 99).

Moreover, framing processes include *storytelling* as part of the sense-making work of framing,

where stories provide arches that tie together different framing elements and give meaning to policy controversies. As the paper outlines, stories weave together different elements

into a text that makes sense as a whole: sketching out the situation in which actors find themselves, establishing a situation's beginnings, tracing its development from something unnoticed or perceived as normal to something perceived as worrisome and/or experienced as problematic, and suggesting or pointing to a possible resolution or "end."
(van Hulst & Yanow, 2016, p. 101)

They can offer narratives about what is going on and integrate unfolding events into a plotline that reaches across time and connects the past, present, and future. They invoke a sense of history, telling for example of something good that used to be, declined, and now needs restoration. Such stories can also involve judgments, attribute "blame or praise," or suggest "causes of harm or success" (van Hulst & Yanow, 2016, p. 101). They can be especially powerful where they function as persuasive devices in conflicts over interpretations and meanings.

Further, van Hulst and Yanow point out that different aspects can be framed in policy discourses. While framing analysis traditionally focuses on how the substance of a policy issue is framed, policy-relevant actors' identities and relationships and the policy process itself can also be the subject of framing processes (van Hulst & Yanow, 2016, pp. 102–103). These processes establish actors' identities and relationships in ways that are often deeply intertwined with the issue at hand: An actor's political identity might come to depend on their perspective on a policy issue. This entanglement makes the resolution of *framing conflicts* more difficult because actors are motivated to hold on to their framing as part of their identity. How the policy process is framed also shapes the perception of a policy issue and which political or institutional measures appear appropriate. Moreover, the way in which the policy process is framed implies what *kind* of policy issue is concerned and hence at least partially shapes what is identified as the adequate response.

Framing processes and the sense-making work they perform also include *normative leaps*, where ideas of what *is* are co-produced with ideas of what *ought* to be. As van Hulst and Yanow put it:

What gets produced in the framing process is both a model of the world—reflecting prior sense-making—and a model for subsequent action in that world. Framing, then, does two kinds of work: It organizes prior knowledge (including that derived from experience) and values held, and it guides emergent action [...]. (van Hulst & Yanow, 2016, p. 98)

As a necessary part of sense-making, framing processes always operate upon a potentially contingent reality from which they carve out one such reality amongst different alternatives—how they do this has implications for the actions and policies that follow and consequently for the establishment of social and political order. As van Hulst and Yanow put it, “framing lays the conceptual groundwork for possible future courses of action, and actors intersubjectively, interactively construct the socio-political world in and on which they act” (van Hulst & Yanow, 2016, p. 99). Here, they emphasize the *political* character of these processes: They draw attention to how selecting, naming, and categorizing *include* and *exclude*, prompt particular policy reactions by evoking similarities and differences, establish actionable binaries such as “natives and immigrants, friends and enemies, victims and perpetrators, normal and abnormal,” create valences through terms such as “problematic” and “worrisome,” and work for certain groups rather than for others (van Hulst & Yanow, 2016, pp. 99–100).

In my framing analysis of the NetzDG controversy, which was heavily inspired by van Hulst and Yanow’s paper, I was particularly interested in the role that different values and value judgments play for how issues of internet governance are made sense of. Moreover, I was also particularly interested in how such value judgments can be *politicized* in technology governance. Values play an important and integral role in the framing processes I have just described because they include normative judgements and evaluations and characterize a problem’s *moral character*.

The normative judgements that emerge from framing processes correspond to views about how the world works, what the causes or roots of a problem are, and which responses are warranted. This correspondence describes the mutual influence between people's views about how the world works and their normative judgments of what is right and wrong and of what a good society looks like. Within framing processes, values can provide reasons for *why* and *how* a particular situation is problematic and directions for what to do about a problem.

In line with this observation, Andreas Schmidt suggests giving more attention to, and more explicitly analyzing, the role values and moral reasoning play in the public discourses that surround policy questions (Schmidt, 2015). Because courses of action need to be subjected to a “regime of justification,” values and moral reasoning play an important part in political communication and the policy arena (Boltanski & Thévenot, 1999, p. 360 cited by Schmidt, 2015, p. 78). Values can be called upon to explain *why* a policy measure is a problem, important, or the right one to solve an issue. Proposed policy measures need to be publicly justified and defended. To be acceptable and accepted, they need to demonstrate that they can bridge a perceived “gap between the existing and a normatively valued situation” (Hisschemöller & Hoppe, 1995, p. 43). Because policies are understood as a matter of public interest, at least in democracies, favored policy solutions need (moral) justifications that appeal to communal values, common goods, or shared societal or public interest. Actors that propose or defend a policy must explain why this policy is in the overall societal interest, favorably shapes social interactions, or leads to a desirable social order. Values evoked may for example be liberty, equality, or democracy and justifications can include a weighing or balancing of potentially conflicting values (Schmidt, 2015, p. 79). Thus, values and moral reasoning may lend justifications to problem definitions and policy measures as well as *authority* to institutions or actors.

Within controversies of public policy, there are then substantial disagreements over which values are important, how they relate to one another, or how they should be interpreted.

Because values and their various conceptualizations incorporate ideals of social order and organization, so visions of how a “‘just’ and ‘good’ society” looks like, these disagreements and their resolution have great political implications (Mau, 2004, p. 187 cited by Schmidt, 2015, p. 77, my translation). Values and moral reasoning are closely related to questions of power because they evoke or justify certain societal configurations and forms of social order. These are for example expressed in ideas about who should be able to make decisions, who should be in control of processes or held responsible for them, and how resources should be distributed. Values and moral reasoning may also operate as vehicles to exercise discursive power in public discourses through their domination, hegemony, and persuasive force. By appealing to a public interest, shared social values, often referring to common goods, can lend legitimacy to claims and policy interventions and help certain frames, and the policies they promote, to gain acceptance. Because they shape the moral repertoires from which audiences draw, values and moral reasons articulated in public discourses influence how people interpret and make sense of issues and policy questions and how they think about the world more broadly. Further, they influence by which moral dimensions people come to think of an issue, how they understand certain values, and what they believe is at stake (Schmidt, 2015, p. 70).

Schmidt then suggests investigating three different aspects of the role values and moral reasoning play in policy debates. The first one is the establishment of a *moral community*, which may be a particular group, national community, or even transnational collective. This aspect addresses the question of who is concerned by a particular problematization, or framing, and which groups or communities are affected, disadvantaged, or understood as in need of special protection (Schmidt, 2015, pp. 101–102, 107–108). Both entitlement and responsibility can be attributed to established moral communities. The second aspect looks at how the value of goods and rights is defined in policy discourse. These definitions can be based on consequentialist arguments about policies or actions resulting in certain benefits or harms or follow deontological arguments about for example the protection of certain inherently important rights (Schmidt,

2015, pp. 101, 104). Such goods and rights can be different things like natural and material resources; physical integrity; cultural goods; economic values; human rights; and other social, civil, cultural, or political rights (Schmidt, 2015, p. 107). The third aspect looks at which principles (of legitimacy) are applied to courses of actions as well as to actors, institutions, decision-making processes, and the effectiveness of measures (Schmidt, 2015, p. 101). These principles describe how to deal with valued rights and goods. They may describe broader social values, procedural principles, or principles of distribution and justice and they may include things like responsibility, efficiency, solidarity, transparency, neutrality, or participation (Schmidt, 2015, pp. 108–110).

As I have found, despite their central role in morality and ethical reasoning, definitions of the concept of “values” are elusive and difficult to find. Perhaps for this reason, Schmidt speaks of “ideas of morality” (German: *Moralvorstellungen*) rather than of values. Such ideas of morality may be broader than individual values and capture greater visions of right and wrong and of good and bad to which values speak. Interestingly, the field of psychology can offer some insight on how to define what a value is. Shalom H. Schwartz, who has developed a well-known theory of values, for instance understands values as what we think “is important to us in life” (Schwartz, 2012, p. 3). Moreover, values are “linked inextricably to affect,” meaning that they can trigger a particular feeling of approval or despair, depending on how we see them affected; further, values describe “desirable goals that motivate action” and are often broad and universally held, “transcend[ing] specific actions and situations” (Schwartz, 2012, pp. 3–4).

In my work, *democratic values and principles play a central role*. I understand values as recurring concepts that motivate and justify positions or arguments, endow them with a moral character, and imply wrong or right. In this capacity, values have a normative character and are evoked to imply that a situation, effect, practice, or course of action is desirable or undesirable. I usually refer to “values and principles” as a pair. This is due to the specific discourse I analyzed, which concerned how to govern social media platforms in an appropriate, i.e., democratic, way. In the

NetzDG controversy, I found that values were evoked in correspondence to certain ideas about the collective good of democracy and to provide normative assessments of policies and practices. These values, such as freedom of expression and the rule of law, have also always appeared as principles to guide governance activities and to be promoted by institutional practices and laws.

In the NetzDG controversy, legal instruments, policies, and technological practices were variously perceived as tools to translate the evoked values and principles into rights and procedures. For example, freedom of speech presented a value that described a desirable situation and that motivated and justified assessments of NetzDG; at the same time, it also stood in as a principle meant to guide moderation activities and to be respected by the implementation of laws, policies, and practices. Moreover, given its inscription into laws, freedom of speech also presented a right that needed to be guaranteed to people. Similar was the case with the rule of law, which likewise describes an overarching value that can function as a guiding principle for laws and legal procedures but also encompasses rights people have when they are being violated or face persecution.

4.4. Framing in Politics and Policy Analysis

Thus far, I have described my overall approach to studying the relationship between platform governance, technological infrastructures, and social and political order. I have also described the discourse-analytical approach I took to analyzing the NetzDG controversy, and I have presented the more specific framing studies approach on which I built my study of the media reporting around NetzDG. In this section, I explain why this framing studies approach is a suitable discourse-analytical approach for investigating the politics of platform governance. To this end, I outline the *argumentative* strand of policy analysis, which developed out of policy analysis's linguistic turn and has long recognized the complexities framing problems pose to

polymaking. This literature helps me to conceptualize the role framing processes play in polymaking and in the politics surrounding it.

Traditionally, policy analysis focuses on how policies are assessed and written in institutional settings and by policymakers. However, the observations that the field offers about how the goals and effects of policies are determined and evaluated are also very informative for understanding the public controversy that developed around NetzDG. Ultimately, NetzDG even presents one—disputed—policy solution to a particular policy problem. This policy problem was the problem of how to appropriately govern social media platforms, the content moderation that takes place on them, and how to apply existing speech laws to platforms.

Policy analysis' linguistic turn developed as a reaction to a form of policy analysis that built on the idea of “instrumental rationality” and saw policymakers as “rational actors who chose the means—policy positions, strategies of political actions, or negotiating ploys—that they believe to be best suited to the achievement of their ends, which are rooted in their interests” (Schön & Rein, 1994, p. 10). In this view, policy analysis appears as a neutral and rational tool that can be applied to a given policy problem and whose task it is to determine by which measures a policy goal could best be reached (Hisschemöller & Hoppe, 1995; Schön & Rein, 1994, p. 8). According to this view of polymaking, the goals of policies are set outside the polymaking process, for example in political processes where different societal interest groups and stakeholders negotiate. Policies then “simply” need to enact these set goals and hence face the challenge of rationally identifying the appropriate and effective way to do so.

In their work on *Frame Reflection*, Donald A. Schön and Martin Rein push back on this view of policy analysis by describing so-called *intractable policy controversies* that cannot be resolved or settled through rational argumentation, research, or appeal to facts (Schön & Rein, 1994, pp. 4–5). This is because, so they argue, different actors in intractable controversies fundamentally disagree over which facts are *relevant*, how information ought to be *interpreted*, what *counts* as evidence, what criteria should be used to evaluate a policy measure, or how fundamental values

and rights should be understood (Schön & Rein, 1994, pp. 12–13, 18, 30). Different actors' positions in such a controversy build on conflicting *frames*, which in turn rest on different “underlying structures of belief, perception, and appreciation” (Schön & Rein, 1994, p. 23). Consequently, there is no “objective” or neutral position from which the intractable competition between different frames could be resolved (Schön & Rein, 1994, p. 30). Different positions in such controversies rest on distinct policy *stories* that construct certain social realities “through a complementary process of naming and framing;” “[f]rom a problematic situation that is vague, ambiguous, and indeterminate [...], each story selects and names different features and relations that become the “things” of the story—what the story is about” (Schön & Rein, 1994, p. 26).

According to argumentative policy analysis, policy controversies are not just about factual or rational disagreements over what the best way is to reach policy goals, such as the protection of speech laws and rights online. Instead, they present struggles over which categories to use to evaluate both problems and solutions, as well as struggles over how to interpret these categories. These struggles have a normative character: Different positions in the controversy build on subjective structures of appreciation and value systems. Thus, policy analysis's linguistic turn understands policymaking as

a constant discursive struggle over the criteria of social classification, the boundaries of problem categories, the intersubjective interpretation of common experiences, the conceptual framing of problems, and the definitions of ideas which guide the way people create the shared meanings which motivate them to act. (Fischer & Forester, 1993, pp. 1–2 cited by Schneider, 2010, p. 72)

Its focus is on the role communication plays in the creation of policies, where language does not just mirror what is going on elsewhere but attains a performative character and shapes politics (I. Schneider, 2010, pp. 71–75).

Framing analysis then provides a viable tool for studying the discursive struggles that play out in policy controversies. Their outcomes and potential resolutions are also politically

consequential in a material sense because they inform the creation of policies and governance responses. Even institutions may adopt certain frames, which are then called *institutional actions frames*. In contrast to rhetorical frames, which are articulated in communication and explain, persuade, or justify, institutional frames describe paradigmatic institutionalized responses to policy issues, such as “laws, regulations, allocation decisions, institutional mechanisms, sanctions, incentives, [and] procedures” (Schön & Rein, 1994, p. 32).

Thus, framing processes in policy controversies are normatively relevant and unfold political power because they shape not only how we interpret a situation but also what we decide to do about it. The institutional settings in which a discourse takes place can also shape how issues are framed, for example, by offering up or foreclosing ways of problematizing, responding, or acting. For example, in the case of NetzDG, we find that the enforcement of speech regulations on platforms offered itself as a viable solution to the problems with content online due to the specific regulatory situation in Germany. In my discourse-analytical study of the politics of platform governance, this close relationship between discourses and political processes, which framing studies capture, is of central importance.

In *The Policy Paradox*, Deborah Stone has likewise developed a model of policy analysis that accounts for the role of framing processes in policymaking and the political processes that surround it (D. Stone, 2012). In line with policy analysis’ linguistic turn, this model pushes back on what Stone calls the *rationality project*. This project describes a conception of policy analysis and policymaking as a “science” that can solve political issues through a well-defined methodology. In the rationality project, the methodology of policy analysis promises to identify objectives and different courses of action, evaluate them, and choose possible courses of action amongst them, based on their capacity to reach identified objectives best (D. Stone, 2012, p. 9 ff.). The goal of this rationality project, as Stone sees it, is to do away with the messiness, volatility, and inexplicability of politics (D. Stone, 2012, p. 10). It is based on a *market* model of society in which individuals compete in a marketplace-like structure, pursue their interests,

interact with one another, or organize to maximize their own objectives. For Stone, this market model however excludes some of the most crucial features of the political processes that surround and play out in policy analysis and policymaking.

As an alternative to this model, Stone therefore proposes the *polis* model of political society. According to this model, political reasoning does not only function through rationality and negotiation but employs for instance also metaphors and analogies. In line with the above-cited authors, this model builds on the assumption that “the very categories underlying rational analysis are defined in political struggle” (D. Stone, 2012, p. 10). It therefore proposes “a mode of policy analysis that recognizes analytical concepts, problem definitions, and policy instruments as political claims themselves, instead of granting them privileged status as universal truths” (D. Stone, 2012, p. 10). Political struggles are again understood as *struggles over ideas*, as struggles over defining the situation at hand and over seeing it “as one thing rather than another” (D. Stone, 2012, pp. 11–12). In this view, an essential part of politics is the “constant struggle over the criteria of classification, the boundaries of categories, and the definition of ideals that guide the way people behave” (D. Stone, 2012, p. 13).

In contrast to the market model that is concerned with individuals, Stone suggests that the polis model starts with the idea of a political *community* that is “trying to achieve something together” (D. Stone, 2012, p. 20). It finds that through the establishment of membership, which can itself be subjected to political fights, people find themselves in communities governed by rules. In these communities, people form communal goals, a shared will, and collective interests. Communities also account for the nurturing of altruistic behavior and the emergence of a public interest which people might support although it stands in conflict with their private ones. Members of communities influence one another with their ideas, cooperate, and form shared interests and opinions (D. Stone, 2012, p. 29). Community members are driven by the resource of passion, which is not depleted but rather exponentiated when used, and they experience loyalty as a motivating factor. In this way, policy goals for Stone are “not the specific goals of

particular policy issues” but “the enduring values of community life that give rise to controversy over particular policies: equity, efficiency, welfare [...], liberty, and security” (D. Stone, 2012, p. 14).

According to Stone, the problems that policies react to do not present themselves “naturally” or unambiguously but need to be proposed and constructed. How they are defined sets the scope of a problem and provokes normative implications (D. Stone, 2012, p. 171). Problem definitions often imply causal relations that offer a point of entry for control. Such causal theories may challenge or reinforce social order, create alliances, identify agents, and attribute responsibility. Inherent in the definition of a problem is then also an idea of how it can be solved. In this way, problem definitions may preempt which mechanisms of problem-solving can later be applied. Problem definitions often construct interests and group membership that people identify with or to which they are ascribed. According to Stone’s model, problem setting in policymaking includes stories that even employ literary tools such as *symbols*, invested with meaning, *synecdoche*, where certain instances come to stand in for and provide interpretable patterns to a larger problem, and *metaphors*, which draw comparisons to concepts that evoke associations, emotions, and reactions, and to things like organisms, natural laws, machines, containers, disease, or war.

For Stone, the ambiguity that characterizes language, concepts, and ideals is an important part of politics because it allows people and groups to unite and different perspectives to join. Different policy instruments, such as incentives, rulemaking, creation of facts and rights, and the distribution of powers, function exactly because of such ambiguity and vagueness and are never fully settled or clarified (D. Stone, 2012, p. 293). In the case of NetzDG, for instance, different groups rallied around ideas of freedom of speech, the rule of law, and democracy while disagreeing in their overall political views. Even where different groups saw themselves as politically opposed to one another, this ambiguity nevertheless sometimes allowed them to form

(inadvertent) discourse coalitions. According to the polis model, political problems “are never “solved” in the way that economic needs are met in the market model” (D. Stone, 2012, p. 36) as

[p]olitical conflict is never simply over material conditions and choices but also over what is legitimate and right. The passion in politics comes from conflicting senses of fairness, justice, rightness, and goodness. Moreover, people fight *with* ideas as well as about them. The different sides in a conflict create different portrayals of the battle—who is affected, how are they affected, and what is at stake. (D. Stone, 2012, p. 36)

This understanding of politics and of what happens in policy controversies is crucial to my work and well attuned to my framing studies approach. It helps me to think of the NetzDG controversy not only as a debate over how to rightly apply existing laws and protect democratic values and principles on social media but also as a political struggle over shared forms of collective life and political organization. This insight will be important to my critical reflection on the results of my framing analysis. Part of the struggle that played out in the NetzDG controversy was the question of what precisely the problem was that content moderation and its regulation faced. At least partially, disagreements over NetzDG could not be resolved through argumentation or “facts,” because, as Schön and Rein point out, they depended on different structures of belief and appreciation and because they were based on differing visions of what a desirable society looked like. The disagreements over NetzDG’s impact on democracy hinged on diverging understandings of democratic values and principles *and* of how human interactions take place. Such disagreements are difficult to resolve through rational argumentation. Stone’s work further inspires me to pay attention to the role that the formation and recognition of communities play in policy controversies and to understand how this is tied to struggles over shared values and visions of good collective life. Stories and rhetorical devices can help to drive home different positions and demonstrate their applicability and feasibility.

In my work, I make visible how framing processes play out in the context of platform governance and uncover their assumptions and consequences. This is inspired by Schön and

Rein's suggestion for *frame reflection*, where policymakers and analysts ought to step out of their frame, reflect upon it, put themselves in others' shoes, and eventually find consensus and resolve framing conflicts by adjusting and merging competing frames (Schön & Rein, 1994, p. 165 ff). Likewise, my study was motivated by the belief that framing analysis assists us in stepping outside of dominant ways of sense-making and in reflecting on their contingencies, on how we come to acquire them, and on their political consequences. However, I go beyond frame reflection as a method of resolving policy controversies and utilize framing analysis for teasing out ideals of democracy and social order that stand behind different views on platform governance. Beyond trying to find an agreeable political compromise between different policymakers and analysts, my work seeks to unearth the social order, and its relations of power, that come with certain views on platform governance. This can help to reframe the discussion so that the fundamental social, political, and normative questions to be collectively addressed become explicit.

4.5. My Frame Ontology

By now, I have explained my approach to studying the NetzDG controversy via a framing analysis, and I have explained what this analysis is and why it is an interesting perspective for investigating the politics of platform governance. This section now details how I conceptually operationalized the framing studies approach for my empirical analysis and how I understand its results. As detailed above, framing processes can be studied as the intentional employment of frames. In this kind of frame analysis, frames appear as static objects or tools that speakers can use to play to an audience's cognitive structures and persuade or sway them; this approach is used to study frames as preexisting cognitive and linguistic repertoires that different texts or speech acts employ to reach a certain effect in an audience. This kind of frame analysis often focuses on how political or strategic actors intentionally frame their communication to effectuate a particular *reaction in an audience* and how successful they are in

doing so. On the other hand, as van Hulst and Yanow argue, framing processes can also be studied as interactional, contextualized processes of sense-making that different actors (unintentionally and necessarily) engage in together to make sense of a situation and its different aspects. Frames here simultaneously guide and *emerge* from dynamic sense-making processes. Above, I have also explained why, in practice, it can be difficult to separate these two types of framing processes.

Any actual framing process is likely situated on a continuum between the two poles of strategic and unintentional, dynamic framing. For one, as framing studies generally propose, both intentional and unintentional framing processes draw from a preexisting structure—frames—that make certain views legible and sensible in the first place. At the same time, the particulars of the situation, actors, and things involved, such as new technological infrastructures, also shape framing processes. In my analysis, I study framing processes as processes of meaning-making that revolve around the social and political dimensions of social media platforms.

These processes are, as co-production has it, shaped by shared ideas and values, particular social and political contexts, and by the affordances and capacities of the technology itself. Thus, my work takes the dynamic, interactional approach to framing that van Hulst and Yanow describe. I studied framing processes as discursive processes of selecting, assessing, describing, and narrating, which offered up different ways to make sense of the situation at hand, assess and reason about NetzDG, and come to conclusions on how to govern platforms. As this would have involved the notoriously difficult attribution of internal mental states to different actors, I refrained from assigning intentions to the articles and speakers that expressed their views in line with certain framings. However, in the final part of the thesis, I reflect upon who used different framings and with what effects.

In my analysis, I understood the media reports as artifacts that displayed the framing processes that took place around NetzDG. Entman's influential definition and conceptualization of frames, which I have cited earlier, provided me with a general, fundamental understanding of

what constitutes a framing process and of the different elements that define and construct it. This definition helped me to understand the different aspects that were defined and related within the framing processes, and, importantly, it shaped my coding scheme. However, it was specifically van Hulst and Yanow's approach that influenced my analytical and interpretive processes. My research results thus describe different *framings*, which describe the various ways in which different aspects of NetzDG and platform governance were made sense of, ordered, interpreted, and related. These framings structured different statements on, assessments of, and stories around NetzDG, which the articles described in a collective effort to make sense of the problem at hand. In Part 2, I describe these framings as public and collective processes of reasoning and sense-making, which the media articles engaged in when discussing NetzDG.

Taking this qualitative, process-oriented approach allowed me to keep as part of my analysis interesting ambiguities, where certain positions and statements spoke in line with various framing that complemented one another and where different framings overlapped and interrelated. The chapters of Part 2 detail such framing processes, as they were articulated both by different articles and the people and organizations they cited, and I provide ample examples of such framing processes. As the results of my analysis show, these framing processes revolved around specific values and concerns, which were determined by overarching frames.

So, while my analytical focus was on tracing *dynamic framing processes*, I nevertheless identified seven *overarching frames* that structured these framings of NetzDG. The chapters of Part 2 are organized according to these frames. Each of these chapters is characterized by a central concern—a frame—to which the framings' different assessments of NetzDG correspond. These frames define certain terms according to which the media reporting and its speakers talked about and assessed the problem of governing speech on social media and NetzDG specifically. The frames set the general terms by which the articles and the speakers they cited identified, discussed, and evaluated problems and potential solutions. However, I found that there were different ways in which they could do so, which led to different conclusions on both NetzDG

and platform governance. Hence, the articles displayed different interpretations of NetzDG under the same frame, which I have called *framings*. These framings resemble the surface frames Schneider has described, as they provided different ways of making sense of a specific situation or issue under one frame. So, while the overarching *frames* capture the main concerns that the articles discussed and the central terms by which they assessed and talked about the problems of NetzDG and content moderation, the subchapters spell out different ways in which the articles and their speakers problematized or interpreted these concerns as *framings*. While these interpretations structurally resembled subframes, I titled them framings because I identified them as different *ways of reasoning* about the same problem. I find that different framings of NetzDG differed both with regards to normative aspects, which concern why something *ought* to be seen as a problem, and to causal aspects, which concern *the circumstances that ostensibly led to the identified problem*.

I would now like to address the question of how I understand the different frames and framings that I identified in my analysis. Are they entities that already existed in a (discursive) realm of ideas before the NetzDG dispute took place, were they created by the discourse participants, or were they constructed by my own analytical process? According to the methodological presuppositions of qualitative discourse analysis, these three aspects intertwine. On the one hand, the approach presupposes that there are broader discourses that transcend individual discourse participants and define and circulate certain ideas; on the other hand, such discursive structures only unfold when discourses are enacted, and they can only be identified through interpretation. Hence, the analyst's subjectivity and interpretative processes always shape the results of a discourse analysis, which nevertheless claim to describe structures that characterize the discourse that has been analyzed. Due to the interpretive nature of discourse analysis, it is therefore important to be careful in the analytical process and to make it as explicit as possible, even though there will always be an element of obscurity that characterizes the interpretive moment.

For my work, I understand my research results as my interpretation of what ordered and shaped the article's different assessments of NetzDG and of the problem of content moderation. This first part of the thesis has outlined the conceptual and methodological presuppositions on which this observation and interpretation built. My analysis built on the idea that different statements, descriptions, and assessments of the problems around NetzDG were part of different discourse structures and interpretations, which were in turn jointly determined by the situation at hand, discursive rules, conventions of reasoning, available interpretive schemata, and collectively shared ideas. In my empirical analysis, I have identified these structures and interpretations by analyzing what has been said.

Thus, I understand such frames as presenting a selection of available discursive structures, as tools that could be used to process information, and the framings as describing different kinds of uses, different ways in which speakers used these tools to interpret information and reach conclusions on NetzDG. However, in contrast to physical tools and structures, they are "invisible."¹⁷ Framing analysis bases on the presumptions that both frames and framing processes structure discourses and information processing and that framing analysis reconstructs such framing processes from their results. Hence, I understand my interpretative work of the framing analysis as reconstructing the framing processes that structured the NetzDG controversy and its different positions. I identified the framings by capturing the structures that fit together and made sensible different statements and descriptions of NetzDG's effects, illustration, examples, and cases.

Of course, such framing processes only take place when actors try to make sense of and reason about a situation. There would have been no framing of NetzDG in the media discourse if the journalists would not have decided to write about NetzDG. But despite the dependence of

¹⁷ For some areas of framing studies that are not part of this work, frames indeed do have such physical manifestations in the way that brain circuits and signal processing react to incoming information.

their existence on actors' engagement in discourses, I nevertheless understand framings to carry some agency similar to way that the mediation theory of technology and STS ascribes agency to technological artifacts or even concepts (Kudina & Verbeek, 2019; Latour, 1994; Law, 2009; Verbeek, 2005). This is because, just as physical objects, the frames and their framings come with affordances, which are determined by the structures and conventions of language, reasoning, and discourse. They *do* something by shaping the outcomes of their use when reasoning about a certain problem. I describe these affordances as the framings' problem-setting stories, overarching narratives, and argumentative structures by which they describe NetzDG. So, when I talk about what the framings "did," I talk about the discursive function they unfolded in the NetzDG controversy and the reasoning and conclusions about NetzDG they implied.

In a way, the framings were like specific glasses that revealed a certain picture of the situation at hand. However, instead of being able to see the glasses themselves, what I see are only excerpts from a variety of different pictures, and framing theory postulates that what holds together and differentiates these excerpts are different glasses. My framing analysis reconstructed the different kinds of glasses that held the pictures together. As the analyst, I therefore saw myself as observing the overall conversation and trying to make sense of and structure what was said. With my framing analysis, I traced what held together different views and assessments of NetzDG, as if I were reconstructing from a picture the glasses that were used to observe the scene. This process of reconstruction was also shaped by my own perspective—as if I, myself, were also wearing a particular kind of glasses while trying to see different pictures. So: This first part describes the glasses I, myself, put on; the second part describes the different glasses that I observed different statements and assessments of NetzDG to have resulted from; and the third part analyzes the pictures I reconstructed with the aim of identifying the choices that come with each of these glasses.

This research approach comes with limitations, which have been leveled against both discourse theory and framing analysis (Aydın-Düzgüt & Rumelili, 2019; Koenig, 2006; Matthes &

Kohring, 2008; S. Taylor, 2013, pp. 77–86; Widdowson, 1995). These limitations for one result from the conceptual openness of both the concepts of discourse and frames, which give a rather great freedom to the researchers in drawing the boundaries of both; hence, there can be contentions over these boundaries, as they are a matter of interpretation. Second, another, related critique is that the research results are strongly shaped by the researcher's own subjectivity and interpretation. This can make them hard to validate through measures such as intercoder reliability—instead, it is therefore essential for the researcher to work with care, openness, and honesty.

Given that framing analysis involved interpretation, it was difficult to separate the empirical data, the methodology, and the research results from one another. To what extent such clearcut separation is ever possible in research is a matter of fundamental disagreement, philosophy, and ideology. In line with the above-cited approaches, I hold the view that any description of the world is always the result of an interpretation. While there is a world out there that has certain affordances that we experience when interacting with it, knowing the world is always facilitated by a process of interpretation (this is also the fundamental tenet of framing theory). Nevertheless, the close intertwinement between data and interpretation and the interpretative nature of my research made it challenging to capture the ontological status of the framings, especially given that they are “invisible” entities, which I assumed to have structured different statements and positions on NetzDG but which I only identified through my own interpretation.

As such “invisible” entities that first need to be conceptualized and described to come into existence, the discursive structures I studied can be compared to physical laws and rules as regularities whose existence researchers postulate based on their observation of individual events and data. Again, the exact status of such entities is a matter of great contention and philosophical difference. But it should be noted that I take a pragmatist approach to my research, which means the settling of the framings' ontological status was not an essential question to me; rather, what I

was interested in was their explanatory power and their usefulness for analyzing and understanding the contentions around NetzDG.

A further difficulty in my research was that I conducted my analysis very much in a bottom-up manner, starting with the media reporting and my conceptual framework and asking the relatively open question of how the media reporting framed NetzDG and the problem of content moderation. This again gave a strong role to interpretation, more than if, for example, I had looked for certain preset and already well-defined frames. For this reason, I see my research as *exploratory* and hypothesis-building rather than a more quantitative approach of assigning and counting framings. It is a first exploration of an idea and approach of how to think about platform governance and the discursive processes around them, of how to reflect upon and judge them, and of how to learn from them to find a way forward for platform governance. However, this exploratory research then comes with challenges of validity and, hence, will require future research and development. As I will discuss at the end of this thesis, my research limitations also provide ample opportunities for future research.

4.6. Media Analysis

In the previous sections, I have outlined the conceptual framework that informed my study of the politics of platform governance and specifically my analysis of NetzDG. As already indicated, NetzDG's introduction in Germany has been a controversial issue that has sparked vigorous public debate. For my work, I conducted a framing analysis of the German media discourse surrounding NetzDG's introduction and implementation. This meant that I analyzed the media reporting on NetzDG in both mainstream media and political blogs from across the political spectrum. The details and political positions of the sources I have analyzed will be explained in the next chapter. Before doing so, however, this section closes the present chapter—which outlines my conceptual framework—by discussing what characterizes media discourse as a specific type of discourse. This is important because it is these characteristics of

media discourse that have shaped the texts I analyzed and their meaning, and because these characteristics influenced my research findings and their interpretation and contextualization. This section also outlines what makes studying the media discourse especially interesting and insightful but also particularly challenging.

As Teun A. van Dijk describes, media discourse is a certain *kind* of discourse that is signified both as a specific use of language and sociocultural practice (van Dijk, 1988, p. 2). Media discourse is produced under specific circumstances, by specific people, with a specific political function, and with a certain aim and audience in mind. All these influences shape the results of media production, so both media content and the way in which it is distributed and perceived. Van Dijk further points out that, like any other functioning discourse, media discourses are contextualized and work only because they presuppose that their audience has access to certain, predefined systems of meaning (van Dijk, 1988, p. 13 ff). This means that media discourses operate on the assumption that the audience possesses a certain kind of knowledge and particular reference points and that it shares certain assumptions. Such assumptions, as van Dijk exemplifies, may be as simple as that bombs are dropped from airplanes and that this usually is an act of attack (van Dijk, 1988, p. 14).

News production is shaped by the cognitive schemata of journalists—and their values, standards, or interests—as well as by the economic, legal, and political context of media production. When it comes to media discourse, van Dijk suggests that there are many different discursive levels that are interesting to analyze, ranging from grammatical structure to the presupposed systems of knowledge and (cultural and linguistic) macrostructures (van Dijk, 1988).¹⁸ Particularly from a CDA perspective, it is interesting to ask who and what is represented

¹⁸ Of course, as this chapter explains, my analysis studied the framing processes that took place in the NetzDG controversy and the way they can inform an investigation and conceptualization of the politics of platform governance. To this end, I focused on the different assessments that the articles described as being made about NetzDG, both by the journalists themselves and the actors they cited.

in media discourse and how they are presented. This includes who is given a voice and how people, groups, events, or things are described. Depending on how this happens, media discourse can for instance legitimate or question policies, actors, and actions; it can perpetuate, create, or fight stereotypes.

Depending on how they are consumed, the media at least contribute to—if not create—the picture that (many) people have of the world. Building such a picture of the world, of course, does not happen through one individual piece of media but through continuous media consumption. Hence, while it may seem as if they are “merely” reporting, the media engage in speech acts such as “accusations, defenses, [and] recommendations” (van Dijk, 1988, p. 17). Therefore, it is significant to pay attention to how information is selected and framed as well as what is *not* said in media discourses. The media may engage in agenda setting, define which topics are discussed or become politically relevant, and exercise framing effects by influencing how an audience thinks about an issue; moreover, journalists make consequential decisions on who has the authority to speak on an issue. As Jesper Strömbäck points out, media “have the power to set the agenda for public discussion” (Strömbäck, 2005, p. 338). Through the decisions that media outlets and journalists make, media products not only convey information but also communicate values, priorities, and principles (Grass, 2018, p. 347). The influence that the media can have on people and on their worldview of course also depends on the authority and trustworthiness people assign to the media or the assumptions they make about journalists.

In line with this, Michael A. Cacciatore, Dietram A. Scheufele, and Shanto Iyengar criticize that framing studies are an outdated way to study media reporting (Cacciatore et al., 2016). Their main argument is that the framing processes that individual media sources engage in, for instance in accordance with their political stance or view of their target audience, no longer have a strong influence on people’s perception of the world. Whereas people in the past consumed a low number of certain kinds of news sources, they now consume a variety of sources and information that is curated on their newsfeed. Thus, the determining factor for how

people view the world, as mediated by the media, is not the framing that is being done by certain media sources anymore but the content curation that takes place on social media: Algorithmic curation seems to have replaced the framing effects of individual news outlets. This critique, of course, also counts for my work but does not make it obsolete. This is because I did *not* investigate framing *effects*, which meant I did not study how successfully individual sources, speakers, or framings were in convincing an audience of their position. Rather, I studied the media discourse as a site of public discourse, where different viewpoints and speakers came together and interacted with one another.

Using media reporting in this way, I sought to identify and critically reflect upon the different interpretations and positions that were discursively made available in the NetzDG controversy. I traced the media discourse as a place of public reasoning and deliberation. However, the reasoning and framing that I uncovered were, of course, determined by journalistic choices. The results of my analysis do not give insight into media consumption or audience effects, which can provide a site for future research. For instance, it would be interesting to investigate how NetzDG was discussed on social media and how audiences perceived the reports and the positions they described. However, my work still provides insights into how the media picked up on the NetzDG controversy and on the problem of content moderation. It allows for inferences about the function that media reports played in the political processes that surrounded the introduction of this law.

The media discourse, whose shape I have now introduced, is particularly important and politically significant for democracies. In democracies, the media are part of—and help to create—a public sphere, which provides the space for public discourse, debates on matters of public interest, shared will-formation, and oversight over the government and powerful actors. According to Strömbäck as well as Mark Eisenegger and Linards Udris, the media and democracy mutually depend on each other (Eisenegger & Udris, 2019, pp. 93–94; Strömbäck,

2005, p. 332). Journalism can only truly function in democracies that guarantee freedom of expression, press, and information and that allow the media to operate separately from the state.

At the same time, the media themselves are also democratically necessary and provide the information that citizens need to be free and self-governing (Strömbäck, 2005). Given that pluralism is a fundamental principle of democracy, democratic media also need to be pluralistic and represent diverse perspectives and groups (Stark et al., 2021, pp. 4–5). In their democratic capacity, they ought to fulfill several functions for democracy. First, they have an *integrating function* and *create a public sphere* in which citizens come together to recognize themselves as part of a shared political community (Eisenegger & Udris, 2019, p. 93). The media are hence tasked with constructing a socially shared reality and provide people with orientation in a complex world (Grass, 2018, p. 346). This means they must select information and reduce complexity while still presenting the world accurately. Second, the media have an *informing function*: They ought to provide citizens with the information that is crucial to the fulfillment of their democratic duties and the exercise of their democratic rights (Grass, 2018, p. 346; Strömbäck, 2005, pp. 332–333). Moreover, the media have a *controlling function* where their job is to hold constitutional institutions and powerful actors accountable and make them transparent to the public and to act as a watchdog against abuses of power (Strömbäck, 2005, p. 332). Third, the media also ought to enable *political participation*, to give people a voice, articulate their interests, and provide the government with the information it needs to *make decisions in the public* (Beaufort, 2021, p. 69; Strömbäck, 2005, p. 332). Thus, the media take up a *mediating function* between citizens—and the broader public—and political elites or other powerful actors. Finally, they also have a *deliberative function* that is meant to facilitate the collective discovery and treatment of common concerns and problems (Eisenegger & Udris, 2019, p. 93). In this capacity, the media ought to enable public discourse and common deliberation, the exchange of (rational) argumentation and of different viewpoints, and eventually the finding of (a certain level of) public consensus.

The quality of existing media systems is often measured against their fulfillment of these specifications. So, while the media can of course fulfill a variety of other functions, such as entertainment and cultural or artistic exchange, the focus of discussions on requirements for the media and of assessments of their quality is frequently put on their democratic functions. This is also the case for my discussion, especially because my analysis centered on politics and policy controversies and because it focused on the media in their democratic function and as the facilitators of the policy controversy that surrounded NetzDG's regulatory intervention. But while the democratic functions described above are always attributed to the media to some extent, how exactly the media is understood to function democratically depends on which conception of democracy is adopted. Different understandings of democracy come with different ideas about crucial democratic components and decision-making procedures, differences that also result in different qualitative requirements for the media. To illustrate this, I now describe three common models of democracy and explicate the demands they make of citizens and of the media.

The first model is what Strömbäck describes as the model of *competitive democracy*, which is similar to the *liberal model* that Eisenegger and Udris describe and to the *liberal-representative model* that Maren Beaufort outlines (Beaufort, 2021, p. 72 ff. Eisenegger & Udris, 2019, p. 97 ff. Strömbäck, 2005, p. 334 ff.). According to this democratic model, citizens choose between different political alternatives; their main political act is their vote and with this vote, they grant political power to certain parties. Hence, in this model, political elites compete for acceptance, support, and votes in a public sphere. This model accounts for large-scale, differentiated societies and works through *representatives* who are publicly legitimated and controlled and who negotiate conflicts of interests on behalf of their constituency for whose support—and vote—they fight in the public sphere (Beaufort, 2021, p. 72).

According to this model, citizens need to be well informed and form sound and reasoned opinions so they can make the right decision. As, for instance, Beaufort describes, the function

of public discourse is to create an “informed citizen” (Beaufort, 2021, p. 72; Patterson & Seib, 2005). This requires the media to predominantly take on an informing function and ensure that citizens have access to accurate, true, and comprehensive information. It also requires them to report in a well-proportioned manner and to present different perspectives, positions, and political alternatives. Moreover, they need to take up a controlling function and create transparency and accountability for political elites. They need to be impartial and fact-oriented (Beaufort, 2021, p. 72). Finally, as Eisenegger and Udris point out, experts can play an important role in such media discourses, as they “translate” between citizens and the actions of political elites (Eisenegger & Udris, 2019, p. 98). In this kind democratic model, the media should create a *marketplace of ideas*, a unified public sphere where different ideas compete for acceptance (Eisenegger & Udris, 2019, p. 98).

As the name already tells, the *deliberative model* of democracy centers *deliberation* as a fundamental function of public discourse, which means that problems are collectively processed and that decisions made through the exchange of rational arguments. Public justification for arguments, positions, and political decisions are central to this model (Eisenegger & Udris, 2019, p. 95). Moreover, different positions and discourse participants must be willing to engage with one another and even change their view. As Strömbäck describes, such deliberative processes should be “committed to the values of rationality, impartiality, intellectual honesty and equality among the [discourse] participants” (Strömbäck, 2005, p. 336). For the deliberative model, citizens must bring the willingness to inform themselves but also to engage in politics, public discourse, and deliberation. Thus, they must subscribe to the rational, deliberative standard of communication and political will-formation and actively bring their perspective to the discourse. The media then ought to facilitate this public discourse, not only by providing information, but also by circulating different opinions, creating diversity of opinions, and giving elite, civil society, and activists a voice (Eisenegger & Udris, 2019, pp. 96–97). Hence, they take on a mediating and deliberative function. They must seek to further an exchange of opinions and rational arguments

in line with deliberative criteria, work to nourish deliberative processes, and enable political participation for citizens (Strömbäck, 2005, pp. 340–341).

In contrast to these two models stands the *participatory model*, according to which democracy is a lived, cultural practice that operates *bottom-up*. It is conceived of as “the result of the attitudes and the actions in ordinary life among ordinary people. It is not only a system for political decision making, it is also a spirit” (Strömbäck, 2005, p. 336). Democracy, under this model, hence requires people to actively engage in politics, take over responsibility, connect, organize, and seek to effectuate changes (Strömbäck, 2005, p. 339). At its center stand empowered citizens who take over political responsibility (Beaufort, 2021, p. 73). In this model, all aspects of human life and its diversity ought to be integrated into public and democratic processes; this includes emotions and, at least a partial, dissolution of the boundaries between public and private spheres (Beaufort, 2021, p. 73). In the participatory model of democracy, a core function of the media is “popular inclusion,” to integrate and give a voice to many different people and especially to marginalized groups (Beaufort, 2021, p. 73; Eisenegger & Udris, 2019, p. 99; Ferree et al., 2002, p. 300). The media ought to make sure that many different people can participate politically and make their voices heard. Moreover, they must mobilize people, connect them, and provide them with access to the public sphere so that they can voice their own concerns (Beaufort, 2021; Strömbäck, 2005). Additionally, the media ought to offer up a myriad of different interpretations and depict a diversity of life realities, which may even include the collision of emotions and controversies (Beaufort, 2021, p. 74).

The fact that different models of democracy come with different expectations for democratic media already indicates that different *kinds of media* promise to work particularly well for *certain kinds of democracy*. For example, *liberal-representative* and *deliberative approaches* tend to work particularly well with mass media, whereas the internet, platforms, and social media invite especially *participatory* forms of democracy as they allow everyone to have a public voice and participate in the discourse. The internet and platformization enable participatory democracy in

unprecedented ways but also pose severe challenges to, for instance, creating a unified public sphere, a shared reality, or ensuring the integrity of information. Thus, democratic models and media changes continuously interact with each other and jointly shape social and political power relations.

At the same time, different democratic models and forms of media models must not necessarily compete but can also complement one another, which often seems to be the case (Grass, 2018, pp. 348–349). As for example Julia Grass finds, new technological possibilities and the internet have also *changed the role that journalists* and the media take on: They no longer function as gate-keepers—deciding who can be heard and what is discussed—but as *gate-watchers* who (fact-)check already published information or select and connect it (Grass, 2018). Moreover, journalists can use new technological possibilities to improve their work, for example to allow the personalization of media products so that they can reach different audiences and their lives or to investigate and sustain claims with data (from the internet). This observation that journalistic work, democratic discourse, and information technologies interact connects to a central theme emerging from the NetzDG controversy: the question of how discourses need to be governed and media systems regulated to ensure democratic values and principles. For example, the discussion about fake news, and about who gets to decide what counts as legitimate information, connects to questions over journalistic standards and points to, for instance, increasingly difficult differentiations between journalists and bloggers (Grass, 2018).

In my empirical analysis, I did not take a strong normative stance on the democratic function of (journalistic) media. Rather, my investigation was more open-ended, and my research results allow a descriptive reflection on which journalistic styles were represented in NetzDG reporting. However, my approach to studying the NetzDG controversy with a discourse analytical approach and to conducting a framing analysis nevertheless came with certain assumptions, especially about the political function of language and ideas. First, I decided to study journalistic media, such as institutionalized and structured media, rather than citizen

reporting or social media discourse. This meant that the sources I analyzed have a particular format and arise from a journalistic context. In this chapter overall, I have explained how I understand framing processes to play out in this kind of reporting and the role I attribute to framing processes in politics and policymaking and for the constitution of technological and social order.

My analytical approach implied that I not so much focused on the media's informing function and on how they informed about NetzDG. Rather, implicit in my analysis was the assumption that the media discourse presented a public sphere and articulated processes of collective reasoning and deliberation, where different positions were articulated, interacted, competed, and were made available to a broader audience via the journalists and their work. Moreover, I approached the media discourse as a public discourse in which different stakeholders and policymakers needed to justify and seek public acceptance and legitimation for their views and suggested policies. This allowed me to study the legitimation strategies in which different framings of NetzDG engaged, as they were expressed in the media reports. This kind of analysis extrapolates from journalistic work and sees it as working in the service of broader, publicly shared reasoning. My analysis also operated on the assumption that media discourse does something for its audience, so that it makes certain positions and interpretations available, legitimates or questions them, and hence influences how different members of the public think about NetzDG and the regulation of content moderation. As said, empirically, the shape and extent of this presupposed influence will have to be investigated separately. These assumptions, of course, beg the question of the extent to which such extrapolation is feasible. Inspired by this question, I will reflect upon *whose* viewpoint was represented and how it was represented after my analysis.

To close this section, I now explain why I specifically chose the media discourse for my study, and I describe the merits and drawbacks of this decision. I chose to study media discourse for various reasons, some of which were of a practical nature. Such practical reasons were that,

compared to, for instance, posts on social media, media discourse was relatively easy to contain and delineate. By using databases and keyword searches, it was relatively unproblematic to find and chronologically order articles that discussed NetzDG. Moreover, the speakers—so the sources and authors—were also easily and unambiguously identifiable for media articles. Second, choosing media outlets whose political leanings or affinities were known made it possible to estimate the political positioning of different articles and interpret their context. At the same time, studying media discourse allowed me to capture a wide variety of different viewpoints and ways of reasoning about platform governance, content moderation, and NetzDG. Further, I was able to rather precisely pinpoint the context in which this reasoning took place and connect it to particular social and political circumstances.

Studying the media discourse also allowed me to study framing as the dynamic sense-making processes outlined earlier. This would have been more difficult to do with, for instance, parliamentary debates or stakeholder statements, as these strategically frame rather than engage in discursively open processes of reasoning. For instance, in the media reporting, it was interesting to find out how NetzDG was discussed in relation to other cultural, contextual, and political events, or how it was connected to different concerns. In contrast to the strategically formulated statements of prominent actors, the media discourse included a myriad of different arguments and assessments on and around NetzDG. By analyzing the media discourse and a great number of articles whose styles range from short reports to columns, commentaries, and interviews, I could best capture the complexity of the public discussion on content moderation and its regulation. In this way, my analysis encompassed many different voices—different types of media outlets and different types of actors that the articles cited—as well as a breadth of discussions and concerns. Moreover, media reporting provided a fruitful source for identifying the many different stories told around NetzDG and the diverse examples used to illustrate problems. Particularly, the articles from the mainstream media also covered a wide array of

political positions and speakers, so they provided a broad overview of the public discussion and its different voices.

However, studying media discourse also came with its own unique challenges. For example, given the above-mentioned complexity, it was sometimes difficult to disentangle different aspects. A challenge in my analytical work was, for instance, to differentiate between the framing work done by the journalists themselves and by the speakers they cited. Moreover, my interpretation was complicated by the breadth of articles and types of texts. Many of the articles I analyzed were reports on current events or on different actors' statements; others were commentaries, and a few were interviews. In the presentation of my research results, I thus indicate which speakers or commentaries were particularly prominent in articulating certain framings. A second challenge arose from the interaction of my analytical method—qualitative framing analysis—and the type of discourse I studied. I found that many articles in the media discourse sought to take up a deliberative, comparative function and followed a journalistic dedication to balance. This meant that many articles—especially those that took on a reporting function and originated from mainstream media sources—presented different, often incompatible or contradictory, views on NetzDG. Thus, individual articles often mixed different types of framings in a comparative or complementary fashion, which made the identification of different framings more challenging.

Chapter 5

An Empirical Method to Study NetzDG

The previous chapter described my overall conceptual and analytical framework for studying the public controversy around NetzDG as one case of platform politics. The present chapter explains the empirical methodology I used for analyzing the NetzDG articles, which bases on my conceptual approach. This chapter describes how I generated the empirical results of my framing analysis, which are described in Part 2. First, I briefly describe what qualitative research is and why I took a qualitative approach to framing analysis. Second, I explain the structure of my coding scheme, which I used as a tool to analyze the articles and which I developed based on the framing approach and particularly Entman's description of different framing elements. I then outline the analytical process which I used to analyze the media articles and to identify different ways of framing NetzDG. Finally, I present the different sources that I included in my empirical analysis and describe how I created my sample.

5.1. A Qualitative Approach to Framing Analysis

Based on my discourse-analytical approach, I used a *qualitative* research approach for identifying how NetzDG was framed in the media reporting. Whereas *quantitative* research seeks to capture research results in reproducible numbers and to eliminate the influence of the researcher in the study, *qualitative* analysis makes space for the researcher's own interpretative and ordering work. This kind of analysis builds on the assumption that the researcher's own perspective always shapes the question that is asked and how it is subsequently answered. In qualitative research, the researcher's subjectivity functions as a research instrument rather than a nuisance to be eliminated (Maxwell, 2013, p. 88). By allowing space for the researcher's

interpretive work, qualitative approaches enable a more fine-grained and detailed analysis. Therefore, a qualitative approach may for instance be able to detect rarely occurring but strong and laden framings. Qualitative research makes it possible to discover results from the material that require careful interpretation and that cannot be expressed in quantities or correlations.

Quantitative techniques are often used for framing studies that identify preset frames and their frequency and distribution. Such approaches use the calculation of *intercoder reliability* to measure the reproducibility of research results (Hayes & Krippendorff, 2007). This requires that the codes and coding methods used to analyze the material are clear cut and distinct and that they pose straight-forward “yes-or-no” questions, which need little interpretation or prior knowledge to be answered. Qualitative analyses on the other hand do not allow for such calculations but instead are used to discover unanticipated phenomena, generate new theories, and develop local causal explanations. They are used to study process-oriented questions about how activities and events, and their outcomes, occur, about how these attain meaning for people, and what influence contexts have; they ask “why and how” rather than “yes or no” (Maxwell, 2013, pp. 82–83).

For my research question and interest, a quantitative approach would not have been suitable. First, a quantitative methodology would have resulted in the loss of a lot of nuances, spaces of interpretation, and argumentative threads that run through the material. It would also have led to a loss of the interrelations, crisscrossing, and interactions between framings. However, I was especially interested in these aspects, as they helped me pinpoint the major points of contention within the NetzDG controversy. Such interrelations between different framings pointed to interesting discourse coalitions and to places where the same arguments and ideas appeared in different framings or contexts. These interrelations also connected framings that were used on different levels, such as those that centered on specific aspects of NetzDG and those that embedded the debate in broader discourses about platform regulation and online democracy.

Qualitative analyses are generally focused on *reconstructing and understanding the emergence of meaning*, on “discovering meaning within texts and analyzing their communicative content” (Kuckartz, 2014, p. 31). This focus was useful for my study of framing processes as dynamic processes of sense- and meaning-making. It presented a suitable approach for my research and material because the arguments that were made in the NetzDG controversy, and the framings that the articles employed, were often fractured, and needed interpretation based on prior knowledge of the topic and discourse. Therefore, I did not identify different framings as entities articulated per article but as threads of interpretation and reasoning that structured the media discourse.

Qualitative research design is reflexive and responsive rather than fixed; goals, conceptual frameworks, research questions, methods, and validity considerations interact in an integrated whole (Maxwell, 2013, pp. 4–5). In qualitative research, the research design and the content of the research influence each other, and the research question is developed in an iterative process throughout the research (Maxwell, 2013, pp. 3, 73). Throughout the process of working with the material, which generated my research results, my research question and conceptual approach also evolved. For instance, my coding scheme and analytical approach resulted from developments during the research process and based on insights from the material. My thesis’ overall research focus and my conceptual work were likewise shaped by knowledge gained from the empirical analysis. This knowledge helped me to concretize the questions I will discuss with regards to my analytical results. These questions concern for example how public discourse and democracy were conceptualized and taken to operate and the role that ideas about, for instance, citizenship, the rule of law, or transparency played.

Different analytical strategies can be employed for qualitative research (Maxwell, 2013, p. 105 ff.). One is writing *memos*, which was important to my empirical analysis. I included memos both in a structured way, by writing memos for codes, coded sections, and articles, and in an unstructured way, by documenting observations and ideas. Further, when developing my coding

scheme, coding my data, and analyzing what I have coded, I employed *categorizing* strategies which structure, label, and identify similarities in the material. Finally, I utilized *connecting* strategies. Such strategies connect different categories and the data coded with them and create narrative structure and contextual relationships. In my research, connecting strategies were central to reconstructing how the different coded elements connected within the distinct framings that organized the reasoning which took place within the NetzDG controversy. They were also central to interpreting the results of my analysis.

In qualitative research, research *validity* describes the credibility of the research results and requires the researcher to carefully reflect upon their work (Maxwell, 2013, p. 123). For my research, I ensured validity through several measures: I immersed myself deeply and for a long time in the problem field and the public and academic discussion around it. Further, I included many different sources and utilized intensive, long-term involvement; rich data; and triangulation (Maxwell, 2013, p. 125 ff.). I also drew from quantitative research elements: First, I looked at a high number of articles, which I sampled from all articles published on the topic within a given time span. While qualitative approaches usually engage in more purposeful sampling rather than probability-based methods, in my case this sampling strategy allowed me to gain a comprehensive overview over the NetzDG controversy. This prevented me from missing out on important threads and framings. Following Matthes and Kohring's suggestion, initially meant for the quantitative coding of frames, I did not code for entire framings but instead for individual framing elements (Matthes & Kohring, 2008). This ensured a careful, bottom-up analysis that reduced the effects of preset research expectations in shaping the results.

The framings that I will describe in the following chapters resulted from a careful reconstruction of the connecting lines between different framing elements, a reconstruction that was based on a second iteration of reviewing the articles and on what I learned throughout the analytical processes. This reconstruction was also again checked against the material. This procedure made the analytical process more structured and iterative and enabled the care and

openness required of qualitative work. It also allows for a traceable description of how the presented framings were identified.

5.2. Developing a Coding Scheme for NetzDG

In qualitative analysis, the coding of texts or other data is not used to count and calculate things but as a means of *fracturing* that organizes “the data into broader themes and issues” and allows for comparisons and the development of theoretical concepts (Maxwell, 2013, p. 107). Coding is a process of working with the data and interpreting it, of “analyzing, naming, categorizing, and theoretically organizing” (Kuckartz, 2014, p. 43). The coding scheme I used for my research was inspired by the framing elements that Entman suggests but it was adapted in interaction with the material and my research approach. As a reminder: The framing elements Entman describes are 1) problem definition, 2) causal diagnoses, 3) moral judgment, 4) potential remedy (Entman, 1993). In practice, it can be quite difficult to distinguish these framing elements in texts, and their identification requires interpretative work. This was particularly the case for my study, as I operated bottom-up, starting out from the discourse on NetzDG itself rather than looking for predefined discursive structures such as particular frames.

I found that Entman’s clear-cut framing elements could not neatly be separated and coded as different parts in the articles; instead, their identification often required interpretation and inferences. While my coding scheme was inspired by them, it thus needed to be adapted to fit the actual discourse. It was, for example, difficult to clearly separate causal diagnoses from problem definitions or potential remedies, as the first was often implied in the latter. I also found that causal diagnoses were sometimes part of contextualizing discussions. These contextualizing discussions provided reference points for assessing NetzDG, and they invoked certain associations. Likewise, moral judgments were often not described explicitly but implied and could, for instance, be inferred from the evocation of certain values and principles. In my qualitative and analytical work, I therefore used Entman’s framing elements not as definite

entities but as guidance for my coding process and for identifying and reconstructing different ways of framing NetzDG in the media discourse. After presenting the outline of my coding scheme, the next subchapter describes how I used the scheme as a tool to analyze the media reporting on NetzDG and to identify the frames and framings used.

The initial development of my coding scheme was done together with a student assistant (Jakob Ambsdorf) and based on a first random sample from all sources. During this process, we worked with “consensual coding”, as common in qualitative analysis, and discussed the codes and their application amongst us (Kuckartz, 2014, pp. 46–47). Naturally, we faced many challenges in this interpretative work, for instance making difficult decisions about which aspects to include, how to categorize them, and how to distinguish them as different framing elements. These decisions require intense interpretative work, such as when deciding what presents a problem definition or solution, which contextual discussions to include, how to interpret and categorize them, or what to understand as a value or moral judgement. The latter is especially challenging because moral judgments are often implied within problem definitions or solutions and need to be extracted from the material. When developing the coding scheme, we therefore continuously developed, adjusted, and added new categories in conversation with the material.

In the following, I describe the coding categories that emerged from this process and which I used for my empirical analysis and identification of the framings. The description of the categories includes a summary of different issues that were coded with this category, which presented different types of sub-codes identified from the material. All categories also include an “others” category used for coding sections that did not fit within the established scheme.

1. Problems

I used the overarching coding category of “problems” to categorize different problems and problematizations that appeared in the media reporting on NetzDG. I found that this category could be used to identify two different types of problems. The first type concerned *problems described with content on social media and with social media platforms*, which were presented as the kinds

of problems NetzDG sought to address. This sub-category was used to code a vast number of different problems that were discussed during the NetzDG controversy. These included problems posed by potentially illegal or problematic posts such as hate speech, hate criminality, fake news, false information, mis- and disinformation, threats, incitements to murder and violence, defamations, smear campaigns, insults, the spreading of (terroristic) propaganda, and constitutionally subversive material. An additional part of this sub-category were problematizations of the negative consequences such content may have, especially for (political) discourse online. Further, it was also used to code discussions of the serious shortcomings that were seen to exist with law enforcement online, which were sometimes attributed to lacking resources for law enforcement agencies. Additionally, this sub-category included reports on problems that stemmed from platforms' own practices and underlying business models, such as a lack of cooperation in law enforcement, irresponsible behavior, bad notice-and-take-down procedures, and lack of transparency. More rarely, I also included the articulation of problems that stem from the use of algorithms, artificial intelligence, and upload filters. Finally, problematizations of censorship and control exercised over content online, both by states and governmental institutions and by private corporations and platforms, were also coded in this sub-category.

The second type of problem that I identified in the NetzDG discourse referred to *problems that NetzDG itself was seen to pose*. This category was used to classify statements that were made to alert people to problems *caused* by NetzDG rather than being solved by it. I used this category to describe problems that NetzDG ostensibly caused for freedom of speech: potential state censorship and undue political influence; chilling effects; or infringements on other rights like freedom of information, arts, press, and broadcasting. Additionally, this sub-category was also used for expressions of concerns over NetzDG's potential conflict with other legislation and laws, law enforcement, legal persecution, the rule of law, the constitution, and basic rights. Other issues coded with this sub-category were the abuse of disclosure responsibilities; the low quality

of NetzDG's sanctioning procedure; the potential surveillance of individual communication; NetzDG's lack of transparency and of possibilities to object to decisions; and legal uncertainties pertaining to implementation, scope, and legal terms used. Additionally, this also included problems mentioned with regards to NetzDG's legislative processes and the law's implementation.

2. Solutions

I used the second category of "solutions" to code a) potential solutions that were debated as alternatives to NetzDG and b) positive effects that were attributed to NetzDG, which let the new law itself appear as a solution to certain preexisting problems. Thus, I again divided this category into two different sub-categories. The first type was used for statements that highlighted NetzDG as a solution to problems online and described its potentially positive effects and intentions. Such statements presented NetzDG as an attempt to: regulate the internet; exercise control; bring about the deletion of illegal content; prevent threats, manipulation, and agitation; fulfill governmental and political tasks online; ensure law enforcement on the internet; protect freedom of speech; and create transparent rules to prevent corporate control. Other positive effects of NetzDG, which were discussed and coded with this category, were: its introduction of a regulatory regime, a framework for regulated self-regulation, reporting requirements, the need for a judge order before disclosure of personal information, and the duty to disclose information for lawsuits; its implementation of structured complaint management; and its establishment of responsibility for content moderation decisions.

The second sub-category was used to code other solutions that were suggested for solving problems with platforms and content moderation and that stood in as alternatives to NetzDG. However, such alternative solutions were often not discussed in detail or remained vague. They included calls for a thorough evaluation of alternatives, a broad societal debate on the subject matter, paying more attention to issues with content online, and a holistic societal and political solution. Further, I also used this category to code demands for the creation of more awareness

and support for civil initiatives, the strengthening of counter-speech, scientific research on problems with speech on social media, and public education. Moreover, coded with this sub-category were also: calls for other rules and regulations such as EU legislation; voluntary self-regulation; market-oriented regulatory policies; labeling requirements for bots; the installation of new governmental and advisory institutions; and the implementation of strategies to improve law enforcement online; internal mechanisms on platforms such as regulation through corporate rules, moderators, and reporting systems; the amping up of platform transparency; and the supply of corporate resources for combating hate speech and fake news.

3. *Values*

I included the category “values” in my coding scheme to do justice to the moral dimension of the NetzDG debate and to identify specific values that were evoked in the NetzDG reporting. In this category, I coded reoccurring concepts that were used to motivate and justify positions or arguments and endowed them with a moral character. In the previous chapter, I already discussed how I understood values, why they were difficult to define, and why I found that the values featured in the NetzDG controversy also functioned as democratic principles. This insight partially stemmed from the analytical use of the “values” category. I also employed this category to ensure that I included the moral dimension which both Entman’s framing elements and Andreas Schmidt’s work highlight. In fact, I found that democratic values and principles played a *central role* for the NetzDG controversy and its different positions, and that they even captured overarching, contested frames. However, my understanding of the role that values and principles played in the framing processes around NetzDG predominantly emerged from my interpretation of problematizations and solutions but was complemented by insights from this category.

I used the “values” category rather broadly to capture all important, value-laden concepts that were frequently used to discuss NetzDG. Therefore, this category included the normatively connotated properties of a system (e.g., democracy), valued personal or legal rights (e.g., privacy, civil rights, basic rights, human rights), but also characteristics that were attributed to actors,

such as responsibility and dutifulness. Further concepts that I categorized as values included, for instance, plurality, diversity, openness, a good debating culture, public discourse, truthfulness, transparency, security, constitutionality, the rule of law, neutrality, and, of course, freedoms of speech, press, and information. Finally, this category was extended by additional codes to mark where values were not only named but—rarely—also defined or weighed against one another.

4. Contextualization

Finally, I used the category of “contextualization” to code different ways in which NetzDG was embedded into broader social developments or contexts or connected to other topics. This included discussions of other social and political aspects of digitization, such as the establishment of a surveillance society, broader governance issues with information technologies and the internet, general discursive and communicative norms online, and social sensibilities for hate speech. Other contextualizing topics, which I coded with this category, were the role of media in contemporary digital society, the role of satire, election manipulations, German politics, the internet economy, the content practices of social media platforms, the working conditions of moderators, platform monopolization, and platforms’ economic and financial interests. Finally, this category also included codes to mark other contextualizing statements, such as definitions of terms (e.g., hate speech, fake news), examples (e.g., of justly or unjustly deleted posts and blocked accounts), comparisons made (e.g., between NetzDG and the GDR’s secret surveillance service Stasi, between the analog and the digital world), and references to numbers (e.g., number of deleted or reported posts).

5.3. Analytical Process

The aim of my framing analysis was to identify different ways in which NetzDG and the problem of content moderation were framed in the media reporting surrounding the introduction of this new piece of platform regulation. I understand these framings as providing insights into how different aspects of platform politics and platform regulation were discussed

and reasoned about in the context of NetzDG. As I explain in this section, the above-described coding scheme was an important tool for my analytical process. I started my analysis with the articles sampled from the mainstream media sources that were included in my study (see next section). The first analytical step was to read each article. Then, I read the article again and coded the different statements that were made or cited. This means that my unit of coding was on the statement-level and not on the article-level—I coded exactly those sections to which the code applied, which were either individual sentences, descriptions, or paragraphs. As I have explained earlier, the reason for this was that the articles often included different positions, statements, and arguments, and that individual articles often did not subscribe to one determinate framing. After having coded each article, I read it again to check if the coding had been done appropriately.

In this way, I reviewed each article three times at the initial stage. I also wrote a memo for each article, summarizing its topic and main points. Further, I added memos to sections that I found especially remarkable or that specifically framed the policy substance, actors' identities and relationships, and the policy process. In this way, I coded 128 articles from the mainstream media, which provided me with a thorough first overview of the media controversy on NetzDG. (This built on the discursive knowledge gathered during the first step, which was the development of the coding scheme.) The next step was to identify framings as structures that held together different framing elements and the sections coded with them. I reconstructed the framings by reviewing the coded sections and ordering and clustering them in an iterative process. Thus, I did not use the coding scheme to directly identify the research results or to calculate correlations but as an analytical and interpretative tool that helped me gain oversight over the discourse and its different elements and to structure what was said into different threads held together by particular framings.

To reconstruct the framings that structured the NetzDG controversy and characterized different ways of reasoning about the problem at hand, I differentiated and ordered the coded statements and framing elements according to: a) the issues that were being problematized, e.g.,

problems with content online, with platforms and corporate moderation, with NetzDG, or with other regulatory interventions; b) the kind of reasoning or justification that was used to present something as a problem (i.e., the *problem-setting story*); c) the attitude that was articulated towards NetzDG, such as approving or critical; and d) the main principles and values that were evoked to motivate a positions, such as freedom of speech, the rule of law, and transparency. Further, I also identified alternative solutions and contextualizing examples, stories, and references that were used to speak to different framings. In this process, I reconstructed different framings of NetzDG. They were distinguished by different central concerns, different problem-setting stories, and different conclusions about its democratic acceptability and desirability and about how to best govern platforms and content moderation on them. Based on my initial results, I also found that different framings of NetzDG and the problem at hand often shared overarching frames that were characterized by shared values, principles, and overarching concerns. The details of these results will be described in the next part.

The different frames and framings, which I will introduce and describe in the next part, were thus identified through a careful and interactive analytical process. After carrying out this analytical process, I also reviewed and adjusted my results by checking their feasibility against the material. In this iterative process, I identified which significant reference points and problem-setting stories characterized different framings, which examples were used to illustrate them, which arguments were made in line with them, and who the sources and cited speakers were that reproduced such framings or made statements and assessments which fell in line with them. While I started my analytical process with the mainstream media, I later added the web-political and other political blogs through the same process, finding where articles from these sources fell in line and reiterated previously identified framings or where they warranted the addition of new ones.

Thus, my framing analysis and identification of the different framings of NetzDG which were used in media reporting were the results of an interpretive, open, and iterative process.

Given the complexity of the NetzDG debate, the many issues discussed, and the interrelations between different ways of framing the problems at hand, this was highly interpretive work based on my own knowledge and understanding of the issue and my research interest. This research interest was to understand how the media reporting framed NetzDG's acceptability, desirability, and legitimacy, how it discussed the problem of governing content moderation on social media platforms more broadly, and which role different values and value interpretations played. I found three different ways in which such questions were addressed and their answers framed: 1. by assessing NetzDG in terms of its impact on democratic values and principles; 2. by examining its appropriateness to match the origin and causes of particularly pressing problems; and 3. by relating it to assessments of broader regulatory challenges on the internet.

5.4. Sources and Sample Selection

The articles I analyzed were taken from a corpus that was first developed with the help of the student assistant named above. Included in this corpus were articles from the time span between March 1st, 2017, when NetzDG was first proposed and brought into public discourse, and August 15th, 2018, which was the time we started compiling the sources and by which NetzDG had been implemented. In this way, the analyzed time span encompassed the first introduction of NetzDG and the discussion that surrounded it, its adoption and implementation, and nearly the first 8 months of its being in effect. We found the articles by using the following search terms: "Netzwerkdurchsetzungsgesetz," "NetzDG," "Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken," and "Facebook-Gesetz" (a commonly used term for NetzDG).

From the articles that we found in this way, we sampled every third article from each source according to their order by publication date. Through this compilation method, we collected articles of different lengths that all referred to NetzDG but did not necessarily center on it. Thus, my corpus included a broad variety of articles, many of which discussed NetzDG in

detail but some of which also described broader contextualizing discussions or connected NetzDG to other issues or events. This provided me with a broad overview of the NetzDG discussion across sources, time, and topics. Included in my analysis were only the written text but no imagery, image captions, or reader comments.

Below, I describe the details of the sources from which we collected and sampled the articles. They include major mainstream media, relatively popular blogs from the right-wing and left-wing political spectrums, and a prominent technology-politics blog. I also point to approximate reader numbers for both newspapers and blogs. While the numbers are more recent than the articles in the analysis, they still provide some orientation. In my source selection, I sought to cover a broad range of different political and ideological orientations:¹⁹ This was challenging, as there was no definite categorization or determination for different media outlets' political orientations, which may even be contested. I nevertheless situated them within a certain political spectrum; of course, the blogs are only exemplary for this spectrum but do not cover it entirely. All sources also featured different authors, who could take different positions or even disagree with one another, and they cited diverse actors. While this allowed me to cover a broad range of viewpoints in my analysis, the media reports still did not encompass all viewpoints, political positions, or voices. For future research, it may be interesting to compare my research results to framings used by other sources or even discussions of NetzDG on social media. In Part 3 of the dissertation, I also reflect upon whose perspective the different media sources and

¹⁹ The choice on which voices to include was made based on their role and representation in existing public discourse and political discussions, not based on an assessment of their democratic legitimacy and standing. Rather, my analysis aims to build the *basis* for such a critical reflection on the democratic legitimacy of different discursive positions; their relationship to values such as justice, equality, and liberty; and their implications for social and political order. While the results of my framing analysis in Part 2 describe the different voices' position and assessment of NetzDG, Part 3 critically analyzes the normative and democratic assumptions, chances, and critiques of these positions and assessments.

their articles took on. In total, my sample encompassed **235 articles**. The individual articles are listed in the appendix.

Mainstream Media

Frankfurter Allgemeine Zeitung (the *FAZ*), 28 articles in sample:

The *Frankfurter Allgemeine Zeitung*, short the *FAZ*, is one of the most prominent national, center-right to liberal-conservative newspapers in Germany (Bartels, 2021, p. 91; Maurer & Reinemann, 2006, p. 130; Pointner, 2010, pp. 152–153; Spohn, 2015, p. 26). The newspaper is known to often take a market-friendly or corporate position. It has a daily printed edition, a Sunday edition, and an online edition at *faz.net*, which publishes articles daily, sometimes identical to those in the printed edition. For our sample, we chose the online edition at *faz.net*, which we could access through the Factiva database. According to Statista, *faz.net* had approximately 16,28 million unique users in October 2021.²⁰

Welt Online, 22 articles in sample:

Die Welt is another popular ‘middle-class’ newspaper that is slightly more conservative than the *FAZ* and takes a more populist or tabloid-oriented style of writing (Maurer & Reinemann, 2006, p. 130; Spohn, 2015, p. 26). The newspaper takes a market-liberal position and is part of the controversial Axel Springer SE publishing group (Pointner, 2010, pp. 153–154). Like the *FAZ*, the newspaper has a daily printed edition, a Sunday edition, and an online news portal. For our sample, we utilized the online news format, accessed through the Nexis database. In October 2021, Statista reported 24 million unique users to its online portal *welt.de*.²¹

Zeit Online, 22 articles in sample:

The newspaper *Die Zeit* is one of the most popular national liberal to center-left newspapers (Bartels, 2021, p. 91; Maurer & Reinemann, 2006, p. 130). The newspaper has a

²⁰ <https://de.statista.com/statistik/daten/studie/382236/umfrage/besucher-von-faznet/>, accessed 01/27/2022

²¹ <https://de.statista.com/statistik/daten/studie/382245/umfrage/besucher-von-faznet/>, accessed 01/27/2022

printed weekly edition issued on Thursdays and an online news portal *Zeit Online* at *zeit.de*, which issues daily articles. For our sample, we utilized the online news format, accessed through the Nexis database. According to Statista, *Zeit Online* had approximately 19,99 million unique users in September 2021.²²

Die Tageszeitung (TAZ), 17 articles in sample:

Die Tageszeitung, mostly known as *TAZ*, is a popular left or left-liberal newspaper in Germany (Bartels, 2021, p. 91; Maurer & Reinemann, 2006, p. 130). It has also been titled a “Green-alternative” newspaper (Spohn, 2015, p. 26). The newspaper is cooperatively owned and has a daily printed edition as well as an online portal. For our sample, we used the digitized newspaper version, accessed through the university’s Nexis license. In October 2021, Statista reported 3,68 million unique users to its online portal *taz.de*.²³ In the last quarter of 2021, the printed edition amounted to 49.900 copies.²⁴

Süddeutsche Zeitung (the SZ), 39 articles in sample:

The *Süddeutsche Zeitung*, abbreviated as the *SZ*, is a very popular liberal, center to left-leaning newspaper (Bartels, 2021, p. 91; Pointner, 2010, p. 2010; Spohn, 2015, p. 26). It has a daily version accessible both as print and digital. For our sample, we used digitized articles from the daily issues, accessed through the university’s Factiva license. According to Statista, the printed edition amounted to 314.200 copies and the digital one to 96.600 in 2021’s last quarter.²⁵

²²<https://de.statista.com/statistik/daten/studie/418045/umfrage/online-besucherschahlen-von-zeit-online-als-zeitreihe/>, accessed 01/27/2022

²³ <https://de.statista.com/statistik/daten/studie/382265/umfrage/besucher-von-tazde/>, accessed 01/27/2022

²⁴ <https://de.statista.com/statistik/daten/studie/382337/umfrage/aufgabe-der-tageszeitung/>, accessed 01/27/2022

²⁵ <https://de.statista.com/statistik/daten/studie/382110/umfrage/aufgabe-der-sueddeutschen-zeitung/>, accessed 01/27/2022

Political blogs

Netzpolitik.org, 49 articles in sample:

Netzpolitik.org is a popular web-political²⁶ blog that covers topics around information technology and digital culture. It has, in the past, extensively covered issues of mass surveillance, taking a stance against it and favoring privacy protections. The blog explicitly centers on digital rights and seeks to defend civil liberties on the internet and their political implementation and protection.²⁷ While I could not find numbers on its visitors, the blog has long risen to popularity, not least because of its engagement against website blocking and its being subjected to a federal investigation on possible accounts of treason, which were later dropped (Tomik, 2015). The blog publishes articles online on its website which we accessed through the university's Faktiva license.

Tichys Einblick (TE), 37 articles in sample:

Tichys Einblick is a political blog founded by journalist and publisher Roland Tichy. The blog positions itself as a “liberal-conservative” medium meant for people who are fed up with “state paternalism.”²⁸ The blog’s self-stated principles emphasize the defense of civil liberties, the importance of innovation and economic progress and of Western democratic and Christian values, and of acknowledging national cultures and histories.²⁹ Commentators and critics have described the blog as a right-wing anti-establishment medium close to right-wing populism and

²⁶ This is my translation of the German term “netzpolitisch,” which is a term commonly used to describe the politics that surround new media, the internet, and digital technologies. This may refer to the governance of such technologies, e.g., regulations like NetzDG, but also to politics executed with and through such technologies. The term is also commonly used to denote a specific community that is concerned with the relationship between politics and technology and with the social and political dimensions of information technologies, represented perhaps most prominently by the Chaos Computer Club community (Ganz, 2018). As the name already indicates, the *Netzpolitik* blog emerged from this community and seeks to take on its voice.

²⁷ <https://netzpolitik.org/about-this-blog/>, accessed 01/27/2022

²⁸ <https://www.finanzenverlag.de/inhalt/printmedien/tichys-einblick.php>, accessed 01/28/2022

²⁹ <https://www.tichyseinblick.de/grundsaeetze/>, accessed 01/28/2022

even likened it to the US-American Breitbart (Henley & Oltermann, 2016; Somaskanda, 2017). While the blog is generally on the conservative-to-right-wing spectrum, its articles are written by different authors and contributors who take different political positions along this spectrum. *Tichys Einblick* publishes articles on its website open-access and has a monthly printed edition. For our sample, we used the online articles. A business AD report from September 2022 counted 420.000 “uniques” (most likely unique website visitors per month).³⁰

Neues Deutschland (ND), 15 articles in sample:

Neues Deutschland is a left-wing political blog and newspaper, which is especially popular in Eastern-German states. During the GDR, the newspaper was the official newspaper of the socialist party and has since changed its position to a democratic socialist stance. Until its rebranding to simply *nd* and its conversion to a cooperatively owned model in 2022, the newspaper was partially owned by Germany’s left-wing party *Die Linke*, who however claims to have had no influence on its content.³¹ The daily newspaper has a printed edition and published articles open-access on its online portal *nd-aktuell.de*. For our sample, we used the online articles. In 2021, the newspaper reported 197.246 monthly users.³²

Der Freitag (DF), 6 articles in sample:

Finally, *der Freitag* is a left-wing or left-liberal weekly newspaper, which also publishes daily, open-access articles to its online portal. The outlet collaborates with the British *Guardian*, of whose articles it sometimes publishes translations. The blog finds itself to represent courageous and independent journalism.³³ Having started out as an “East-West weekly paper” in 1990, it is now published by its editor in chief Jakob Augstein.³⁴ For my analysis, I used the articles that

³⁰ http://www.businessad.de/sites/default/files/import/current/pdf/media_TichysEinblick.pdf, accessed 01/22/2023

³¹ <https://www.nd-aktuell.de/kontakt/9>, accessed 01/28/2022

³² <https://www.nd-aktuell.de/kontakt/9>, accessed 01/28/2022

³³ <https://www.freitag.de/>, accessed 01/28/2022

³⁴ <https://www.freitag.de/ueber>, accessed 01/28/2022

published online; however, out of all sources, I found the least content on NetzDG. According to an Urban Media factsheet from 2020, the site has approximately 1,03 million unique visitors but it is not specified over which time span.³⁵ According to Statista, the paper edition had 25.600 copies in 2021's fourth quarter and its digitized version 3.700.³⁶

Before describing the results of my framing analysis in the next part, the table below gives an overview of the different German parties that were featured in the NetzDG reporting:

Table 1: German Political Party Landscape

Acronym	Name	Political orientation	Votes 2017 ³⁷	Votes 2021 ³⁸
SPD	Sozialdemokratische Partei Deutschlands	Center-left/social-democrat	20.5 %	25.7 %
CDU	Christlich Demokratische Union Deutschlands	Center-conservative	26.8 %	18.9 %
CSU	Christlich-Soziale Union in Bayern e.V	Center-conservative (Bavarian arm of CDU)	6.2 %	5.2 %
-	Bündnis 90/Grüne ("the Greens")	Center-left/environmental	8.9 %	14.8 %
-	Die Linke ("the Left")	Left-wing	9.2 %	4.9 %
AfD	Alternative für Deutschland	Right-wing populist	12.6 %	10.3 %

³⁵ https://www.urban-media.com/wp-content/uploads/2018/03/Der-Freitag_Factsheet-1.pdf, accessed 01/28/2022

³⁶ <https://de.statista.com/statistik/daten/studie/1248361/umfrage/verkaufte-auflage-von-der-freitag/>, accessed 01/28/2022

³⁷ https://www.bundeswahlleiter.de/info/presse/mitteilungen/bundestagswahl-2017/34_17_endgueltiges_ergebnis.html, accessed 01/28/2022

³⁸ <https://www.bundeswahlleiter.de/bundestagswahlen/2021/ergebnisse/bund-99.html#zweitstimmen-prozente12>, accessed 01/28/2022

Piraten	Piratenpartei	Focused on internet politics, civil rights, democratic participation	0.4 %	0.4 %
FDP	Freie Demokratische Partei	Liberal/market-liberal	10.7 %	11.5 %

Part 2—Observing the Play

Results of the Framing Analysis

Part 1 has described NetzDG as my case study as well as content moderation as the area of platform governance, whose politics I study in my work. This first part also detailed my conceptualization of how technological infrastructures, social and political order, and discourses relate as well as my conceptual approach to studying the framing processes that took place around NetzDG. Further, I explained the empirical method I used to analyze the media reporting on NetzDG.

In the second part of my thesis, I now present the results from this framing analysis.³⁹ I describe seven overarching frames, which also structure this second part's individual chapters. These frames capture the broader terms according to which the articles and their speakers evaluated NetzDG and reasoned about the governance of content moderation on social media platforms. Each frame is characterized by one central concern according to which NetzDG's impacts, necessity, and desirability were assessed.

The subchapters of the individual chapters further describe different *framings* as different interpretative patterns that different voices in the reporting used to make sense of NetzDG and to reach conclusions on how to govern content moderation and social media platforms. These framings of NetzDG drew from certain problem-setting stories (Schön & Rein, 1994), which the articles and their speakers used for describing what the problem with NetzDG and/or content

³⁹ First results from my framing study of the media reporting on NetzDG in mainstream media sources and *netzpolitik.org* have previously been published in a journal article (Fichtner, 2022). The publication describes 9 different framings of NetzDG. The results presented in this part built on this first analysis. They include further sources, a refinement and extension of the framings, and their ordering under overarching frames.

moderation on platforms was. The framings were further characterized by overarching narratives of how the identified problem came to be and by argumentative structures of how NetzDG should be assessed and platform governance thought about. They structured the article's different arguments, cases, and examples and were illustrated by stories, metaphors, and comparisons. They therefore describe different ways of reasoning about the issue at hand, which played out in the NetzDG controversy, and which created sense for different assessments and statements. I find that there were both *intra-frame* conflicts as disagreements over how to interpret NetzDG in the context of a specific frame and overlaps between framings within different frames. When describing each framing, I first detail its main problematization, storyline, and position on NetzDG. I then describe illustrations and examples of this framing from the media reporting, such as particular recounts of certain stories or comparisons. Finally, I discuss which articles and speakers used each framing.⁴⁰

The first chapter of this part, Chapter 6, presents the frame of *Freedom of Speech*, which was a very dominant frame overall. This is followed by Chapter 7 on *Hate Speech and Fake News*, a frame used to center on NetzDG's necessity and its appropriateness for these problems. Chapter 8 presents *The Rule of Law* frame, under different interpretations of NetzDG's impact on the rule of law were united. Next, Chapter 9 describes how the reporting framed NetzDG with regards to the issue of *Platform Transparency*. Last, the final three chapters describe contextualizing frames. The articles used such contextualizing frames to discuss a) what the right regulatory framework should be for platforms, as Chapter 10 on the *Regulatory Control* frame outlines, b) whether NetzDG was adequate for a democratic law, as Chapter 11 on the *Legislative Quality* of NetzDG

⁴⁰ I have assigned a unique ID to each article, composed of publication source and order number in the data set. When citing or referring to an article or articles, I refer to their ID in a footnote. The articles' sources, publication and access dates, as well as titles can be found under their ID in the appendix. Direct quotes are my own translation.

explicates, and c) how its genesis played out in political contexts, as Chapter 12's *Political Context* frame captures.

Chapter 6

Freedom of Speech

This first chapter of Part 2 describes one of the most dominant frames I identified in my framing analysis of the media reporting on NetzDG—*Freedom of Speech*. All assessments of NetzDG that fell under this frame referred to the new law’s impact on freedom of speech and consequently on public democratic discourse and revolved around the question of whether NetzDG would endanger or protect freedom of speech and democratic discourse on social media platforms. However, the articles described and cited different interpretations of NetzDG’s impact on freedom of speech, and hence its democratic desirability, which I describe as part of the different framings below.

Interestingly, I found that all framings within this frame of freedom of speech built on the assumption that speech on social media was *politically and publicly important* and an essential part of public discourse. This assumption is necessary both for seeing content moderation practices as endangering or as nurturing public discourse. Thus, all framings implied that social media platforms were potential vehicles of democracy and powerful regulatory actors with authority reminiscent of state power, whose actions could potentially endanger free speech and democratic discourse. The different framings then describe different ways of understanding what it meant to protect and secure freedom of speech on social media and, hence, how NetzDG’s acceptability and desirability should be assessed. These contentions over NetzDG’s impact on freedom of speech presented a discursive struggle over freedom of speech on social media that played out in disagreements over how to *apply* existing laws *to* platforms.

Chapter 6.1. first describes how the articles and speakers framed NetzDG as a *Threat to Freedom of Speech*. This framing centered around the concern that NetzDG’s lopsided incentive

structure would cause platforms to overblock content and hence diminish freedom of expression through their content moderation. Second, Chapter 6.2 outlines the framing of NetzDG as an *Illegitimate Political Tool*. Concerns over overblocking and potential infringements on freedom of expression were also part of this framing. However, within this framing, platforms' agency and economic incentives receded into the background. Instead, the framing was focused on the relationship between an ostensibly corrupt and undemocratic political elite and citizens, who here appeared as those users whose speech could be deleted under NetzDG. In contrast, the framing presented in Chapter 6.3. describes a generally more positive outlook on NetzDG, according to which the new law presented an important *State Engagement to Promote Democracy Online*. Within framing, freedom of speech appeared as a collective right that needed to be put within limits to be protected; descriptions of NetzDG that took up this framing described it as an act of the state stepping in to enforce this right against social media platforms.

6.1. A Threat to Freedom of Speech

A very prominent—and perhaps *the* most prominent—way to frame NetzDG in terms of freedom of speech was to frame—and criticize—it as a *threat* to freedom of speech: According to this framing, NetzDG presented a threat to the fundamental, democratic right to freedom of expression (German: *Meinungsfreiheit*). This right is guaranteed by the German *Grundgesetz*, which equals the constitution. Therefore, the claim that NetzDG was a potentially *unconstitutional law*, or at least a law in conflict with the constitution and the basic rights it seeks to protect, was part of this framing of NetzDG. Moreover, this framing also included concerns over NetzDG being at odds with the European Charter of Human Rights.

NetzDG's potential to incentivize *overblocking* then presented a central cause of concern over its negative impacts on freedom of expression. Overblocking refers to a process by which social media companies block and delete more posts and content than they would need to or are legally obliged to. In line with this framing's problem-setting story, the reporting described the

fear that NetzDG would motivate platforms to engage in overblocking in order to be “on the safe side” and to err on the side of deleting too much rather than too little. NetzDG, according to this framing, could animate such overblocking through its lopsided incentive structure: While it imposed huge fines for the failure to delete illegal content, it imposed no fines for deleting legitimate or legal content or for erroneous deletions.

Specific language used illustrated this framing and underlined the concerns it centered on: Several articles described the concern that companies would engage in “preemptive deletion” in a kind of “anticipatory obedience” towards the state, follow mottos like “when in doubt [decide] against free speech” or “when in doubt [decide for] deletion,” or even engage in downright “deletion orgies.”⁴¹ The circumstance that those affected by take-downs had little possibilities to appeal decisions reportedly compounded the problem of overblocking.⁴² In addition, the short time—of as little as 8 seconds per post—that corporate content moderators had for deciding on the legality of speech, a decision difficult and tricky even for judicial courts, was cited across sources as another part of this problem.⁴³

Moreover, this framing also included concerns over NetzDG’s negative effects on other democratic rights and a variety of civil liberties, including freedom of press, broadcasting, information, communication, art, and even connection, which resulted from its infringement on freedom of speech. Thus, it seemed that NetzDG also more broadly posed a danger to expression, to fundamental civil rights and liberties,⁴⁴ and to democracy itself. As the *FAZ* for

⁴¹ e.g., FAZ_13; FAZ_15; NP_5; SZ_8; SZ_17; SZ_21; TE_12; TE_36; DF_1

⁴² FAZ_6; Welt_6; ND_2

⁴³ SZ_14; Welt_2; Welt_4; TE_28; DF_2

⁴⁴ A note on terminology (*Grundrechte in Deutschland - Definition & Grundrechtsarten Im Grundgesetz*, 2022; Pötzsch, 2009): Generally speaking, civil liberties are considered fundamental liberties under the rule of law that are afforded (or should be afforded) to individuals under a given national rule and jurisdiction. Their purpose is to limit the power a state under the rule of law can exercise over its subjects and they include rights such as freedom of expression, freedom of press, freedom of information, freedom of religion, freedom of science, freedom of

instance described, especially the automated techniques that NetzDG incentivized would have difficulties in detecting irony, a task challenging even to human moderators, and would fail to capture “context and developments in constitutional law” as well as *Zeitgeist* and culture.⁴⁵ As a result, this article warned, such discursive elements would become invisible online.

Different examples of (potentially) overblocked content illustrated the dangers that NetzDG allegedly posed to free expression and, by proxy, to democratic discourse and political participation. Such examples were often situated in the “gray areas” of freedom of speech and the borderlands of legality. They described “borderline” cases that referred to statements or posts whose legality and compliance with German law were not easily determinable. Such borderline speech included statements that could be judged both as political speech and opinion or as perpetuating hate, group-based hostility, and sedition. The use of these examples created the impression that NetzDG underestimated the complexities of speech regulations, speech rights, and the difficulty and contextuality of judging the legality of speech. At the same time, the new law also seemed to *overestimate* the capacities of algorithmic moderation techniques that

assembly and association, the right to privacy, the secrecy of telecommunications, privacy of correspondence, etc. Civil liberties or liberty rights—in German *Freiheitsrechte*—are often thought together with civil rights – in German *Gleichheitsrechte*. Such civil rights guarantee, or ought to guarantee, freedom from discrimination and equal chances and treatment for all individuals independent of their race, religion, gender, sexual orientation, social status and so forth. Civil rights and civil liberties together form the *basic rights* that are generally considered the foundation of a state under the rule of law, and which are often laid out in a constitution or a basic law. This is also the case in Germany, where these basic rights make up the first 19 paragraphs of the basic law’s 146 paragraphs. Such basic rights can also not be changed very easily. While some of these rights are only afforded to citizens or those with a particular status in the country (such as EU citizens), some of these fundamental rights and liberties are considered *human rights* and guaranteed for *everyone*, at least by the law. The right to freedom of speech guaranteed in article 5 of the German basic law, which was explicated in chapter 2, is such a right that is guaranteed to *every person*. Throughout my text I will be focusing on civil liberties/liberty rights as the right to freedom of expression is such a civil liberty (German: *Freiheitsrecht*). However, as the phrasing already says, it is guaranteed by a basic right, the right to free expression, so I will also be talking about “fundamental” or “basic rights” of which freedom of expression and related liberties and liberty rights are part.

⁴⁵ FAZ_9

platforms would, according to this view, inevitably employ to meet its requirements. The cited cases of potentially overblocked content and “gray area” speech showed that NetzDG could only inadequately address the difficult delineations between hate speech and disinformation and between politically and socially relevant speech. This appeared dangerous because it ran the risk of falsifying public discourse and ridding it of critical viewpoints.

In the reporting on NetzDG, satire, reporting, and testimonies were used as such cases to exemplify potential overblocking and “gray area” speech. One concern over overblocking was, for instance, that documentation of hate crimes and testimonies of experienced assaults, such as racist abuse, could be blocked in an effort to take down hate crimes or racist abuse. This could lead, so the concern, to the censorship of politically and socially important speech and make it difficult for those affected to speak up about their experiences. By far, however, satire and satirical content provided the most discussed and *symbolic* examples for such fears over NetzDG’s curtailing of civil liberties and democracy. One reason for this prominent role of satirical cases may be that, by masking political or societal critique as serious political content or even as hate speech or fake news, satire provided a textbook example of notoriously difficult-to-classify content. Another reason may be that satire is often meant explicitly as political critique that has an important political function and holds the government or other politically relevant actors accountable. In the NetzDG debate, accidentally blocking satirical content thus often appeared as highly problematic for freedom of expression and democratic discourse.

One of the most prominent examples to illustrate this problem, which many articles cited, was the temporary take-down of the satire magazine *Titanic*’s Twitter account.⁴⁶ This take down, which has been sketched in an earlier chapter, followed the magazine’s satirical impersonation of AfD politician von Storch. The politician’s account had itself previously been blocked for issuing tweets that potentially violated rules against hate content. Comedian Jan

⁴⁶ E.g., FAZ_15; FAZ_28; Zeit_13; Zeit_14; Welt_14; SZ_17; SZ_21; ND_10; ND_11

Böhmermann's "poem" and the conflict it created with Turkish president Tayyip Erdoğan, which has also been described earlier, presented another example for such difficult to judge, satirical speech.⁴⁷

An additional story that presented a particularly interesting case to illustrate concerns over NetzDG as a threat to freedom of speech and worries over the dangers of overblocking was an anonymous, artistic Facebook account called "Barbara." This popular account regularly posted innocent and funny pieces of social and political critique. As some articles described, the account demonstrated that political critique could be formulated softly and humorously, and that such critique did not have to be presented as a "declaration of war."⁴⁸ Because this account was so powerful in showing satire's potential to counter and ridicule hate, and because it presented a playful and humorous counterpoint to fascist and hateful content, its blocking seemed especially critical. After Facebook had removed several photos posted by the account that satirically mocked Nazi-content, the account itself published a long reaction post.⁴⁹ This post stated that companies and their employees did not possess the skills required for understanding satire as a format and as a form of social critique or for distinguishing it from hate speech. The post went on to call out that satirists were delivered to the judgment of companies that did not understand internet satire, potentially leading to the genre's disappearance. Thus, the post concluded that platforms' practices destroyed essential freedoms on the internet and led artists to face difficult and impossible decisions between bending their art or not putting it online at all. Barbara then shared with both FDP politicians and the OSZE's spokeswoman for media freedom the concern that NetzDG may not only impede the right to freedom of speech by having posts deleted but also by chilling speech and leading people to self-censor.⁵⁰

⁴⁷ Welt_4; SZ_7

⁴⁸ FAZ_18; Zeit_13

⁴⁹ FAZ_18; SZ_23

⁵⁰ FAZ_18; FAZ_25; NP_25

What is interesting to note is that discussions about overblocked content often lumped together deletions that took place under platform’s own moderation practices and community standards and those that were the legally obligated, state-mandated takedowns under NetzDG. One reason for this conflation was that, from the outside, it could be difficult to determine what had caused platforms to delete. For example, Barbara’s posts had been deleted according to Facebook’s own moderation policies: As the *SZ* reported, the platform later apologized and reinstated them.⁵¹ This conflation indicates that critiques of NetzDG as threatening free expression fit into a more general discussion about overblocking practices on social media, both as the result of corporate practices and of governmental action. NetzDG then appeared to *encourage* the problematic takedowns platforms were *already* engaging in and to contribute to further limitations of expressive freedoms online. Consequently, an *SZ* article concluded that the line between “civilizing and restricting a debate, between moderating and censoring,” was thin.⁵² It called for the more careful balancing of the persecution of undemocratic speech with the democratic right to freedom of speech.

Many articles across different sources articulated the critiques of NetzDG that were part of this framing or recounted stories that spoke to it framing.⁵³ Its prominence made this framing appear particularly dominant in the NetzDG controversy and let upholding and *guaranteeing* the right to freedom of expression appear as paramount to public democratic discourse on social media platforms. One reported case perhaps most strongly exemplified this framing’s

⁵¹ SZ_23

⁵² SZ_39

⁵³ e.g., FAZ_3; FAZ_6; FAZ_8; FAZ_9; FAZ_13; FAZ_16; FAZ_17; FAZ_18; FAZ_24; FAZ_25; FAZ_28; Zeit_1; Zeit_2; Zeit_5; Zeit_7; Zeit_11; Zeit_12; Zeit_13; Zeit_14; TAZ_1; TAZ_4; TAZ_5; TAZ_15; NP_4; NP_7; NP_5; NP_8; NP_13; NP_14; NP_19; NP_25; NP_32; NP_36; NP_46; Welt_3; Welt_6; Welt_9; Welt_12; Welt_14; SZ_4; SZ_7; SZ_8; SZ_14; SZ_21; SZ_22; SZ_23; SZ_27; TE_5; TE_11; TE_15; TE_19; ND_2; ND_3; ND_15; DF_2; DF_5

implications.⁵⁴ This case was a court order that had been issued to prohibit Facebook from deleting a post one user had written about a so-called “left-wing system media” that was allegedly spreading fake news in Germany. The claimant argued this take-down had violated their right to freedom of speech. In the aftermath, the *FAZ* described this order as a case where the “new comment-deletion-politics of social media” had met its limits.⁵⁵ This argument tied into a broader discussion about the potential obligation of social media platforms to not only delete illegal content but also to keep up legal content.

Thus, overall, this framing of NetzDG as a threat to freedom of speech described its regulatory intervention on platforms as leading to undesirable effects and, in the end, to infringements on free expression. These effects, according to this framing, presented a skewing of public discourse towards avoiding any “false negatives”—failures to delete illegal speech—at the cost of accepting high rates of false positives—deletions of posts that were, in fact, legal. The cases of potentially overblocked content that were discussed highlighted the important role interpretation and context play in judging the (legal) acceptability of speech. They illustrated difficulties that arise where the situatedness, interpretative openness, and contextuality of speech and communication meet general, decontextualized, and perhaps even aspiringly algorithmic, moderation rules, which are optimized for speed, universality, and efficiency.

In the NetzDG reporting, this framing thus foregrounded the complexity of making decisions on the legality of speech under German law as well as a critique that platforms’ moderation practices could not do justice to this complexity. Within this framing, the risks that NetzDG’s regulatory intervention posed to freedom of speech and democratic discourse on social media just seemed too great. NetzDG’s likely infringement on free expression then even seemed to further endanger other democratic rights and principles and to inhibit civil liberties

⁵⁴ TAZ_15; SZ_34

⁵⁵ FAZ_24

and political participation. As a result, so this framing, public democratic discourse and the control of state actors and other powerful actors would be compromised. The presence of this framing therefore had the discursive effect of directing the focus towards the importance of keeping up legal speech. This also implied that the “gray area” speech that NetzDG potentially infringed upon appeared as democratically important social commentary and political critique, which was not to be taken lightly as collateral damage.⁵⁶ The examples that were used seemed to suggest that this speech included the speech of “regular” citizens but also especially of public and political actors such as artists, journalists, satirists, and activists.

Thus, the frequent critique that NetzDG’s interaction with and impact on platforms’ moderation practices undermined respect for freedom of speech characterized this framing. This critique built on the view that platforms as corporate actors did not have the motivation to carefully protect freedom of speech but followed economic incentives. In the NetzDG controversy, such critiques did mostly not deny that there were problems with content online, such as hate speech, and that these problems warranted the need for action. Consequently, several articles also described alternative suggestions to tackle hate speech and the like. The most significant suggestion for such an alternative was to implement an institution of *regulated self-regulation*. This institution would ensure, as a *Neues Deutschland* article suggested, a proper legal examination of potential deletions, something which was not always happening.⁵⁷

On a side note: This idea of self-regulation seemed to also have developed some political force inside the parliament, as it was incorporated into the adopted draft. This institution of regulated self-regulation enables social media companies to submit cases, especially borderline

⁵⁶ It should be noted that the concerns over the potential overblocking of satirical pieces mostly did not address the other side of this: Whereas satire may masquerade as serious content to criticize something or lead it ad absurdum, serious content circulated with a political agenda may also masquerade as satire or jokes to escape substantial critique or even deletion. Therefore, framing for instance racisms as satire or “trolling” can protect such speech from having to engage with serious critiques of and pushbacks against such speech (Marwick & Lewis, 2017, p. 7).

⁵⁷ ND_15

cases, to an officially approved oversight board staffed with independent experts. Some articles then even exemplified why suggestions to implement such self-regulatory measures were so successful: These measures could be imagined working like already existing institutions such as the self-regulatory body of the German movie industry, *Freiwillige Selbstkontrolle der Filmwirtschaft* or FSK.⁵⁸ This institution is dedicated to the protection of children and young persons and issues age restrictions for movies and video games. Moreover, as *Zeit Online* reported, regulated self-regulation promised to hit two birds with one stone:⁵⁹ It provided an instrument for addressing problems with hate speech, fake news and illegal content but could simultaneously keep the state away from policing or prohibiting speech. Further, in an interview with *Welt Online*, a media law professor described that, for the companies themselves, regulated self-regulation presented a “miracle bag:” While it allowed them to forward difficult cases and shed responsibility for take-downs, it also enabled them to avoid fines or appear careless.⁶⁰

Some articles then suggested that the implementation of such regulated self-regulation could be combined with other measures like the effective and timely implementation of “good” laws and the raising of social awareness for speech issues online.⁶¹ In line with this, others presented *counter-speech* (German: *Gegenrede*) as another alternative for reacting to hate speech that could avoid overblocking.⁶² Rather than taking down problematic speech, counter-speech refers to the idea to react to such speech with counter arguments, critical reflection, humor, or contrary evidence. One example the media reporting used to illustrate how this could look like was the

⁵⁸ FAZ_9; Zeit_2; Zeit_5

⁵⁹ Zeit_5

⁶⁰ Professor Tobias Gostomzyk, Technical University of Dortmund—Welt_6; Note: In this interview, the professor however remained critical of the potential regulated self-regulation, modeled after existing institutions, held to solve problems with content moderation. For instance, Gostomzyk pointed out that content moderation on social media platforms was different from the traditional protection of minors with regards to the volume of content and that the status of platforms in-between public and private spaces still remained unclear.

⁶¹ Zeit_2; NP_6

⁶² Taz_15; Welt_12; DF_2

initiative #ichbinhier, meaning “I am here,” which actively engages in counter-speech online.⁶³ This suggestion united the support of different actors such as leftist politicians, the declaration for freedom of speech that will be discussed below, journalists targeted by hate speech, and Facebook itself.⁶⁴ Finally, *Der Freitag* also called for additional measures such as fostering digital competence through education, implementing a rating system on the trustworthiness of sources, and paying attention to the underlying social problems that caused people to follow such content.⁶⁵

There are several reasons that may explain why framing NetzDG as a threat to freedom of speech was so popular amongst different sources and the speakers they cited. For one, this critique concerned a concrete governance practice and NetzDG’s specific stipulations. In contrast to other, more abstract framings of NetzDG, this framing was characterized by a high degree of specificity and detail, consequently providing different avenues for concrete, practice-specific criticisms. Second, this framing united different actors’ concerns over being somehow negatively impacted by NetzDG or having their speech taken down. Thus, there were many different groups and actors that drew from this framing to speak out against NetzDG. Many articles picked up on this: Across the political spectrum, they often articulated this framing as the concerns of “many critics” who warned against NetzDG.

Another reason for the prominence of this framing is that it united both concerns over giving too much power and control *to companies* and over giving too much power and control *to the state*. On the one hand, NetzDG could threaten freedom of expression by exerting undue power over speech online and telling platforms what to delete and to censor in its name, a threat that resulted from *the state*. Hence, the view that the government was interfering too much with

⁶³ SZ_27

⁶⁴ SZ_4; SZ_27; NP_5

⁶⁵ DF_2

speech online was one argument in this framing. For example, a commentary in the *FAZ* criticized that with NetzDG, the Department of Justice exerted the kind of influence over the content of communication, and over “the giant space of communication,” provided by Facebook and other platforms, that a state ought not to have.⁶⁶ In line with this, even an EU spokesperson involved in NetzDG’s evaluation worried that a “ministry of truth” could emerge from such efforts.⁶⁷ On the other hand, the reporting⁶⁸ also described NetzDG as threatening freedom of speech by giving too much power to *platform providers* as private corporations. According to this view, NetzDG strengthened platforms’ ability to yield this power and decide on the boundaries of the constitutional rights to freedom of speech and press. This wrongly endowed platforms with fundamental legal and governmental responsibilities that they could not live up to appropriately and that hence endangered free expression.

On the one hand, especially articles from the right-wing and conservative spectrum, such as from *Tichys Einblick* and *Welt Online*, used this framing to articulate a strong opposition to NetzDG. *Tichys Einblick* was generally very outspoken in its animosity towards NetzDG. Demonstrating its conviction of NetzDG illegitimacy, several articles in the venue predicted that NetzDG would be overturned by the constitutional court.⁶⁹ The articles also cited different actors that shared the blog’s overall concerns and could demonstrate their justification. Like *Welt Online* and *Neues Deutschland*, they for instance recounted that most experts heard in front of the parliament had judged the law to be unconstitutional.⁷⁰ Further, they reminded the readers that even the parliament’s scientific service had criticized the draft.⁷¹

⁶⁶ FAZ_9

⁶⁷ Zeit_2

⁶⁸ E.g., Zeit_13; NP_6; Welt_3; SZ_16; ND_11; ND_12

⁶⁹ TE_1; TE_3; TE_11

⁷⁰ Welt_6; Welt_7; TE_11; ND_3

⁷¹ Welt_4; TE_19

A big concern articles on this spectrum also described was that the threat NetzDG posed to free expression would bring forth an exaggerated form of *political correctness* and lead to the prevalence of only “mainstream” opinions and an illiberal limitation of the spectrum of acceptable opinions. *Tichys Einblick* for instance reportedly shared this fear with the AfD and the Pirate Party.⁷² One of its articles quoted the Pirate Party in worrying over self-censorship and the suppression of controversial speech that would only allow for “mainstream opinions.”⁷³ To protest this, AfD politician Alexander Gauland reportedly called upon people to repost statements that had been taken down as a strategy of resistance against deletions.⁷⁴

Echoing these concerns, *Welt Online* also worried that leaving decisions about content up to companies was particularly problematic where ambiguous cases were concerned.⁷⁵ This was aggravated by the observation that, within the boundaries of legality, companies already had the right to delete as they pleased.⁷⁶ The newspaper then for example used a potentially discriminatory joke tweeted by a German moderator to ask whether one could now be imprisoned for a joke, as used to be custom in the GDR.⁷⁷ This already points to the suggestion that, as another *Welt Online* article warned, NetzDG’s perceived cuts into expressive freedoms could present *harbingers of undesirable and undemocratic political changes* and potentially authoritarian regimes.⁷⁸ Taking a nod at such authoritarian regimes elsewhere, the article stressed that both art and press should not be in the hands of the state. This article articulated the view that expressive freedoms like freedom of speech, freedom of press, and freedom of art functioned as guarantors of liberty and democracy and as tools for keeping powerful actors such as governmental

⁷² Zeit_12; TE_5; TE_20

⁷³ TE_5

⁷⁴ Zeit_12

⁷⁵ Welt_18

⁷⁶ Welt_12

⁷⁷ Welt_15; Welt_16

⁷⁸ Welt_21

politicians in check. Because it did not treat these freedom rights with due diligence and the caution they required, NetzDG was consequently diagnosed to bear a threat to democracy.

This kind of opposition to NetzDG also often riled up the support of the market-liberal party FDP, which had been heavily opposed to NetzDG, also as part of its election campaign. As *Welt Online* reported, FDP politician Herbet Mertin had explicitly cautioned against turning the Ministry of Justice into a censorship agency.⁷⁹ Further, *Tichys Einblick* cited the party's Nicola Beer in describing NetzDG as “hostile towards democracy and citizens” and as pushing populism on the left and right.⁸⁰ Moreover, the venue also reported that, following a personal experience of an unjustified take-down, FDP politician Tobias Huch worried that through overblocking and lack of context, NetzDG's fight against hate would in the end suppress the very posts that were trying to fight such hate themselves.⁸¹ In line with this, the *FAZ* quoted Jimmy Schulz, an FDP politician who even took legal action against NetzDG, as holding up freedom of expression as an essential right and describing it as “the highest good of liberal democracy”.⁸² Threats posed to this freedom thus appeared as part of a greater danger to civil liberties and democracy.

However, the view that NetzDG endangered freedom of speech was also be shared by sources on the left-wing or web-political spectrum, such as *der Freitag*, *Neues Deutschland*, or *Netzpolitik*. The latter for example suggested that NetzDG could suppress the “sharp thesis” and “polemic formulations” that gave life to public debates, consequently destroying them.⁸³ Moreover, in a commentary published in the *FAZ*, one internet activist found that NetzDG could pose a threat to political participation.⁸⁴ One reason mentioned for this kind of concern

⁷⁹ Welt_4

⁸⁰ TE_5

⁸¹ TE_12

⁸² FAZ_25

⁸³ NP_36

⁸⁴ FAZ_2

was that *appeals* to content being taken down could only be filed in a court of law while companies could take down content as they pleased.⁸⁵ Instead of a law like NetzDG, *Netzpolitik* therefore suggested, platforms ought to guarantee non-discriminatory access to all legal content.⁸⁶ (There was however little specification of what this would look like.) Likewise, *Der Freitag* warned that the overblocking NetzDG could unleash would endanger the open and controversial debate which the internet enabled and present an incision into its potential to further freedom and democracy.⁸⁷ *Neues Deutschland* further pointed out that few instances of hate speech would resemble easily decidable textbook cases, given how fine the line between statements protected by freedom of speech and punishable offenses was.⁸⁸

These sources also articulated worries that NetzDG could be abused or present a pretext to silence left-wing political opposition. They described for example a risk that NetzDG's required complaint management systems came with the potential of calculated complaint strategies and abuses which could silence or harass individuals.⁸⁹ Thus, there was a concern that NetzDG could be abused and utilized to silence voices of which users did not approve.⁹⁰ As an illustration, *Der Freitag* interviewed an initiative that is dedicated to keeping up memories of incidences of right-wing violence on social media. In the interview, the initiative recounted how several of their posts had been flagged under NetzDG but not taken down.⁹¹ Likewise, *Netzpolitik* reported on the Twitter ban of a (leftwing) website documenting incidents of police brutality in 2017's G20 demonstrations.⁹² While the article acknowledged that NetzDG was not

⁸⁵ NP_13

⁸⁶ NP_6

⁸⁷ DF_2

⁸⁸ ND_2

⁸⁹ Zeit_13; NP_13

⁹⁰ DF_5

⁹¹ DF_6

⁹² NP_20

responsible, given it had not yet been in effect, it nevertheless connected this blocking to the NetzDG discussion.

Moreover, articles from sources from left-wing or web-political spectrum also warned that it was wrong—and democratically dangerous—to give private corporations so much sovereignty over deciding on acceptable speech. Such concerns were again underwritten by fears over potential overblocking, given companies would base their decisions not on well-founded legal analysis but on a fear of governmental fines. One *Neues Deutschland* article for example asked why a *private corporation* should be allowed, and even obliged, to draw what was described as a fine line between freedom of speech and punishable offenses.⁹³ The *SZ* further quoted the head of the Green party at the time, Simon Peter, who found it unacceptable for American corporations to exert such influence on German civil rights.⁹⁴ In conclusion, as both *Zeit Online* and *Netzpolitik* made clear, this implied that “quasi-monopolies” like Facebook should not get to decide on the visibility of posts based on their own whim.⁹⁵

These concerns over NetzDG as a potential threat to freedom of expression were also shared by journalistic organizations who feared their content might be concerned or freedom of press negatively impacted. The German Journalists Association went as far as calling NetzDG a straight-up “gaga regulation.”⁹⁶ Reportedly, the organization collectively worried that NetzDG could turn private corporations into a “private opinion police,” despite not having the resources nor the authorizations necessary to check the truthfulness of statements.⁹⁷ Similarly, *Reporters without Borders* feared that, to avoid running into problems with NetzDG, companies would now delete more posts under their own moderation policies.⁹⁸

⁹³ ND_2

⁹⁴ SZ_20

⁹⁵ Zeit_19; NP_6

⁹⁶ SZ_21

⁹⁷ TAZ_1; NP_4

⁹⁸ SZ_39

But it was not only journalistic associations that framed NetzDG in this way. Interestingly, in their opposition to NetzDG, social media platforms also echoed this critique. For example, Google feared that NetzDG let speed of deletions take precedence over the careful examination of posts and Facebook raised questions concerning NetzDG's constitutional and European rights compliance.⁹⁹ The platform also stated that it would not want to act as a “guardian of *the debate*” or an arbiter over what was true and false.¹⁰⁰ Instead, the platforms advocated for self-regulation in the field of content moderation. YouTube's CEO Susan Wojcicki, for instance, was quoted in finding this to be a proven model.¹⁰¹ Elsewhere, spokespeople for the same platform reaffirmed that self-regulation had worked well in its case.¹⁰²

Thus, many different voices that reported on or that were cited in speaking about NetzDG articulated concerns that framed the new law as a threat to freedom of expression in one way or another. A variety of actors were cited that cautioned against NetzDG in this way, such as civil rights activists, political activists, writers across the political spectrum, legal and technological experts from a diversity of backgrounds, opposition parties, social media companies, different industry and sector associations, particularly from the internet economy, as well as journalists and representatives from the media.¹⁰³

The so-called *Declaration on Freedom of Expression*, which had been issued and signed by several professors and legal experts, civil society, and media organizations such as the Wikimedia Foundation or the Amadeu Antonio Foundation, journalistic organizations such as Reporters Without Borders and economic associations such as the German Startup Association and

⁹⁹ SZ_39; ND_4

¹⁰⁰ FAZ_21; SZ_2

¹⁰¹ NP_3

¹⁰² ND_7

¹⁰³ FAZ_5; FAZ_9; NP_4; NP_9; NP_19; NP_25; NP_33; Welt_3; Welt_6

bitkom, featured notably in this broad opposition.¹⁰⁴ This declaration was even cited in its entirety in *Netzpolitik*;¹⁰⁵ moreover, for instance the *SZ* reported that the alliance warned NetzDG could endanger the free exchange of opinions online.¹⁰⁶ The declaration spoke out against NetzDG and emphasized the need to protect freedom of speech and freedom of press in a way that found “its limits only where the rights and dignity of others are violated” (see Footnote No. 104; NP_5). While it recognized the need to regulate content online to a certain extent, it also concluded that governmental tasks should not be entrusted to companies. Further, it stated that democracy required the guarantee of a plurality of views and that overblocking and the outsourcing of legal decision-making to private companies should be avoided more strongly than NetzDG foresaw. It instead called “for a cross-societal approach which intensifies criminal prosecution and law enforcement while also strengthening counter-speech, fostering media literacy, and preserving a regulatory framework that respects freedom of expression in the deletion or blocking of unlawful content” (see Footnote No. 104; NP_5). Many articles across sources then mentioned that such a “broad alliance” had been built in opposition to NetzDG and had been successful in unifying a variety of very different actors.¹⁰⁷ This helped to create the impression that there generally was a stark opposition to the law. Thus, independent of which stance was taken on NetzDG, the new law was at least widely characterized as a heavily disputed law. This worked to underwrite potential doubts articulated on its legitimacy and acceptability.

¹⁰⁴ While writing the thesis, this declaration has been available under the following link <https://deklaration-fuer-meinungsfreiheit.de/en/>. As of recently, it is not available anymore (Feb 13th, 2023). The last date it can be found on the internet archive is Dec 7th, 2022: <https://web.archive.org/web/20221207142153/http://deklaration-fuer-meinungsfreiheit.de/en/>. The declaration has also been cited in its entirety in German in NP_5.

¹⁰⁵ NP_5

¹⁰⁶ SZ_3

¹⁰⁷ e.g., FAZ_6; FAZ_9; NP_6; NP_7; NP_8; Welt_3; SZ_3; SZ_7; SZ_8; TE_1

6.2. An Illegitimate Political Tool

This section presents a framing of NetzDG that overlapped with the previous one but also had significant differences. According to this framing, NetzDG did not only threaten freedom of speech by incentivizing overblocking but even presented an *illegitimate political tool*. This framing described NetzDG as a purposeful political tool meant to maintain the ruling elites' power and suppress “uncomfortable” truths and unfavorable political opposition. The criticisms that were part of this framing shared concerns with framings of NetzDG as a threat to the rule of law and a threat to freedom of speech and public discourse. I nevertheless distinguished this framing from the previous one because I observed some significant qualitative and evaluative differences. A main difference that distinguished this framing was its focus on *the intention and agenda of mainstream political actors* and its characterization of NetzDG as a tool of anti-democratic action. Moreover, this framing's critique of NetzDG and the political situation around it often took on a populist tone and used strong and suggestive language.

According to the previously presented framings, the risks and potentially adverse effects that NetzDG posed resulted from a misguided and poorly crafted law or false political priorities and poor judgements. The criticisms that were part of these framings however did not question the overall democratic legitimacy of political and governmental actors nor did they describe them as actors who pursued a calculated anti-democratic agenda and purposefully enforced full-blown censorship in the interest of their own power. In these previously described framings, rather than being targeted purposefully, freedom of speech and legitimate voices appeared as collateral damage in (misguided) attempts to solve other problems or protect other significant and legitimate values such as security.¹⁰⁸

In contrast to these previous framings, the present section describes an interpretation of NetzDG's supposed violation of freedom of speech as a *purposeful* and even calculated strategy

¹⁰⁸ e.g., FAZ_9

that mainstream political actors pursued for their own political goals. According to the framing described here, these actors pursued this strategy to suppress unwanted or “uncomfortable” opinions and to consolidate their power, grossly violating and impeding freedom of speech as a result. Thus, within the framing presented here, NetzDG appeared as an illegitimate political tool that undermined democracy and the constitutional state or even installed a “dictatorship of opinion.” This framing included the suggestion that the concerns over hate speech and the like, which were used to publicly justify NetzDG, presented an excuse to suppress a plurality of opinions or “real” societal problems. Therefore, the framing did not center on worries over potential incentives for overblocking but over a political elite’s effort to maintain its power, suppress dissident voices, hide its own political failings, and even encourage *denunciation*.

Critiques of NetzDG that can be classified within this framing were predominantly articulated on the right-wing political spectrum, such as by the blog *Tichys Einblick* as well as by AfD politicians that different sources cited.¹⁰⁹ What signified this framing beyond its content was the often strong and suggestive wording used to illustrate points made. For example, AfD politician Beatrix von Storch suggested that NetzDG was Heiko Maas’s “assault on the basic liberal-democratic order” (German: *freiheitlich-demokratische Grundordnung/FDGO*) and wondered why he had not been imprisoned on account of his attack on freedom of speech.¹¹⁰ In line with this, *Tichys Einblick* as well as AfD politicians cited in various (mainstream) sources described NetzDG as part of “censorship-war” against voices critical of those in power or titled it a “censorship law.”¹¹¹ Moreover, some articles referred to the law as installing an “opinion muzzle” and treat the “most important human right on earth” (freedom of speech) like a

¹⁰⁹ e.g., Welt_1; Welt_5; TE_6; TE_11; TE_25; TE_27; TE_31; TE_34

¹¹⁰ FAZ_11, Welt_8

¹¹¹ TE_4; FAZ_15; Zeit_12; Zeit_13; SZ_18; SZ_22; Welt_11; TE_9; TE_11; TE_23; TE_24; ND_8

doormat.¹¹² In contrast, those opposed to NetzDG were referred to as the “friends of freedom of speech.”¹¹³

Tichys Einblick, AfD politicians, and right-wing protesters often compared NetzDG to the GDR’s secret surveillance police *Stasi* and the Third Reich, or at least discussed it in relation to these regimes.¹¹⁴ These comparisons were used to illustrate the dangers, illegitimacy, and encouragement of civil denunciations that this framing attributed to NetzDG. The comparisons evoked negatively-connotated cultural memories of previous undemocratic and fascist regimes in Germany. One *Tichys Einblick* article, for instance, likened NetzDG to the Nazis’ introduction of a censorship law in 1934 which had suppressed and persecuted voices oppositional to NSDAP.¹¹⁵ Another one implied that SPD politician Katarina Barley’s proposition of a pluralism duty, which would oblige social media platforms to display a plurality of sources, presented an extension of NetzDG that was reminiscent of the Nazis’ state-run broadcasting system.¹¹⁶ Others compared NetzDG to former chancellor Konrad Adenauer’s contested attempt to introduce state-run television.¹¹⁷

Finally, the Antonio-Amadeu-Stiftung, a foundation whose self-declared goal is “to reinforce a democratic civil society that promotes pluralism and human rights while opposing right-wing extremism, racism and antisemitism,” featured prominently.¹¹⁸ *TE* therefore presented this institutions as both incompetent and illegitimate and likened it to an uncontrollable, Stasi-like “mind-police” that engaged in spying and denunciation.¹¹⁹ This accusation was fueled by the

¹¹² TE_1; TE_15; TE_20

¹¹³ TE_4

¹¹⁴ TE_15; TE_28; TE_32; ND_1; ND_8

¹¹⁵ TE_14

¹¹⁶ TE_33

¹¹⁷ TE_3; TE_19

¹¹⁸ Statement from the foundations ‘About us’ webpage, <https://www.amadeu-antonio-stiftung.de/en/about-us/>, accessed on 11/01/2021

¹¹⁹ TE_6; TE_20; TE_27

circumstance that its leader at the time, Anetta Kahane, had worked for the Stasi during GDR times. The venue further suspected that the foundation, which is publicly funded by the government and collaborated with Twitter, worked closely with Maas to discredit critical voices as fascist or right-wing extremism.¹²⁰

Other articles applied similarly strong language to Angela Merkel and Heiko Maas, who often starred in the lead role of what was here framed as NetzDG's illegitimate pursuits. Such pursuits included for instance efforts to pass the law without much attention.¹²¹ These descriptions, for instance, characterized Maas as a "minister of censorship" and a "little despot".¹²² Hence, the two politicians appeared as part of a covert effort to install an authoritarian *nanny state*, an effort to which NetzDG was also seen to contribute.¹²³ One article therefore even suggested that, to ensure citizens followed what this state and specifically Merkel expected, political elites even employed "publicly funded thugs" or were supported by the "Antifa."¹²⁴ The Green party was also said to join in this effort. For example, one article warned that the party displayed a hostile and even dangerous attitude towards political liberties and democratic structures, which was hidden under the banner of fighting against hate and right-wing extremism.¹²⁵ Moreover, mainstream media, who were allegedly scared of losing power to platforms and the internet, were positioned as complicit in this state's disciplinary efforts and as part of a "cast of patronizers."¹²⁶ Even the state's scientific service, which was giving advice to parliamentarians, was seen as having to increasingly succumb to such enforced conformity.¹²⁷

¹²⁰ TE_6; TE_12

¹²¹ TE_3; TE_13; TE_18

¹²² TE_6; TE_18; TE_22

¹²³ TE_21

¹²⁴ TE_32

¹²⁵ TE_34

¹²⁶ TE_19; TE_21; TE_25

¹²⁷ TE_35

This kind of nanny state then appeared as a symptom of the political left's "allergy" to social media platforms. This featured a story of decline according to which the left had in the past dreamed of the internet's counter-publics and its ability to oppose mandated mainstream opinion but was now joining the CDU/CSU in their dismissal of citizens' anger and concerns.¹²⁸

According to this framing, *political correctness* was another important part of the antidemocratic pursuits that NetzDG was used for. Within this framing, "political correctness" seemed like an absurd warping of language that twisted reality and perpetuated an ideological delusion where dreams were taken for reality and eyes closed before what was really going on.¹²⁹ According to this view, "political correctness" could be abused to pass major changes to the country's basic law without much consideration.¹³⁰ This resonated with descriptions of political correctness as a cultish and toxic movement that endangered freedom of speech, science, and the market; led to social division and the suppression of open but respectful debate; and functioned as a tool for self-censorship.¹³¹ Thus, framing NetzDG as an illegitimate tool implied that political correctness was a method used by the state and political elites to *manipulate* citizens into conforming with prescribed ideals.¹³² This view suggested that, together with the hollowing out of long-standing values and traditions and the politically-willed negligence of the state, the breaking of democratic and constitutional principles was the price to pay.¹³³ Moreover, one article even warned that measures of political correctness would affect especially socially weaker groups who might not possess the intellectual skills to use codes and formulations that avoided being flagged or prosecuted.¹³⁴

¹²⁸ TE_36

¹²⁹ E.g., TE_25; TE_16

¹³⁰ TE_2; TE_24; TE_25; TE_27

¹³¹ TE_27

¹³² TE_1

¹³³ TE_25

¹³⁴ TE_37

This framing presented discussions of a “*liberal*” ideal that cherished an “*open debate*,” in which different positions and arguments could play out against one another, as the best alternative for tackling political and social problems.¹³⁵ This suggestion in part built on the belief that there was a difference between *agreeing* with an opinion and acknowledging its *legitimacy to be expressed*. In line with this, AfD politicians von Storch and Meuthen for example advocated for returning to a public debate where problems could be “called by their name again” and emphasized that “bold” statements and “strong language” would have to be allowed in political discourse.¹³⁶ In a rare event, one article even wondered if German regulations prohibiting for instance insults were already too far-reaching.¹³⁷ This view drew support from the argument that limitations of anti-democratic speech would in fact hurt democracy but do little to fight the acceptance of for instance racist views. Instead, such limitations would allow, so it proposed, those who held such views to see themselves as victims and push them into the underground.¹³⁸ Overall, this framing suggested that prohibiting speech had more anti-democratic effects than benefits. This encouraged the view that the “self-healing” capacities of freedom of speech would work to ostracize those who engaged in silencing tactics.¹³⁹

What is interesting to note is that, in contrast to the previous section, framing NetzDG as an illegitimate political tool made the agency of social media platforms and problems with content moderation on them *invisible*. Instead, the use of this framing directed the discursive focus to mainstream political actors and mainstream media and towards their alleged agendas, intentions, and misdeeds. This critique—and framing of—NetzDG was then not focused so much on the challenges of content moderation as on a state that was perceived as acting against

¹³⁵ TE_7; TE_27; TE_28; TE_37

¹³⁶ Zeit_12

¹³⁷ TE_7; TE_37

¹³⁸ TE_28

¹³⁹ TE_7

its citizens or as misleading, unduly restricting, and controlling them. Thus, the use of this framing discursive highlighted the relationship between the state and its citizens and the (il)legitimacy of the state and of governmental and other political actors. Voices that used this framing often presented as speaking for Germany's democratic citizens and positioned the state and mainstream political actors in opposition to these citizens. According to this view, NetzDG represented an illegitimate political elite's attempt at political dominance and democratic decline.

This was exemplified for example by describing NetzDG as fulfilling the purpose of keeping “notorious democrats” and those wanting to participate in political debate at bay.¹⁴⁰ This implied that a gap existed between citizens and political and state actors. To demonstrate this, one article used a first-person perspective to take the reader on board. It described a difference between people's everyday lived experiences and the decisions taken by political and economic actors and emphasized the *alienation* that efforts like NetzDG and political correctness reportedly caused. According to the article, there was a gap, which Merkel's alleged manipulation techniques were seeking to make invisible, between “*how “I” actually feel and want to live*” and “*how the state wants me to be.*”¹⁴¹ It seemed that citizens—and, with exception of few party functionaries, even their elected parliament members—were being broadly excluded from politics.¹⁴² In the same breadth, efforts like NetzDG were also criticized as *discrediting* citizens: One *TE* article for example stated that those who mainstream media called “right-wing hooligans” were actually “common citizens” and legitimate political initiatives.¹⁴³ In an act of political positioning that prompted those “common citizens” against left-wing protestors, it cited the police's finding that those “citizens” exercise of freedom of expression actually caused relatively little trouble compared to left-leaning demonstrations.

¹⁴⁰ TE_21

¹⁴¹ TE_16, emphasis mine

¹⁴² TE_21; TE_24

¹⁴³ TE_15

Consequently, in this framing, those people whose speech was potentially impacted, and who shared in on the opposition to NetzDG and the alleged installation of “nanny state,” appeared as the *real* citizens: One article for instance described such opponents as upright and conservative citizens organizing to create a civic counterculture (German: “*biedere Bürgersleut*”).¹⁴⁴ In accordance with this, another one suggested reframing the debate on freedom of speech so that it did justice to mature and self-responsible (German: *mündig*) citizens.¹⁴⁵ Consequently, *Tichys Einblick* called on citizens to recollect the power they had and recognize that *they* were the state.¹⁴⁶ One *Welt Online* article then likewise referred to NetzDG when discussing individual people’s responsibility for their use of technology.¹⁴⁷ While this article acknowledged the necessity for governmental consumer protection efforts, it highlighted individual responsibility and risk-taking as a part of life and warned that governmental protection could be a dangerous convenience that led people to exchange their freedom for total protection and undermined their status as citizens. Such individual responsibility to deal and cope with all content is particularly necessary if any kind of interference with speech is dismissed as too much of a censorship risk. In line with this, some *TE* articles even expressed frustration with a lack of resistance on behalf of the German citizenry, a citizenry they perceived as too passive, cowardly, or lazy.¹⁴⁸

This framing also included elements of anti-immigration sentiments and even ethno-nationalist or anti-Muslim identity politics: According to leading AfD politician Alice Weidel, who was cited in *Welt Online*, NetzDG signified the government’s submission to what she described as violent “mobs of immigrants.”¹⁴⁹ Further, one article in *Tichys Einblick* likened the

¹⁴⁴ TE_32

¹⁴⁵ TE_37

¹⁴⁶ TE_25

¹⁴⁷ Welt_19

¹⁴⁸ TE_15; TE_16; TE_32

¹⁴⁹ Welt_11

SPD to a “Sharia party.”¹⁵⁰ In addition, another portrayed NetzDG as destroying the freedoms “our” forefathers, as the article put it, had fought for and as working to suppress voices critical of Islam and of the government’s immigration policies.¹⁵¹ In line with this, the venue described a “nanny state” that forced “indigenous people and taxpayers” to adapt to “immigrants.”¹⁵² These descriptions implied that NetzDG was part of the government’s efforts to work against its “own” people as “indigenous,” so likely White or Caucasian, Germans and in favor of “immigrants.” This all again seemed to happen under the accepting eyes of Angela Merkel, who allegedly applied NetzDG for silencing critics of her (immigration) politics.¹⁵³ In contrast to this discursive differentiation from especially Muslim people, this political positioning sought to form discursive *alliances* with Jewish people: Some articles for example critically discussed the take-down of a Jewish author’s post or the closing of a Jewish bookstore, allegedly under “Antifa pressure.”¹⁵⁴ Another one criticized that antisemitism was (falsely) attributed to the political right while Muslim antisemitism was being ignored.¹⁵⁵

As described throughout this section, it was especially the blog *Tichys Einblick* and AfD politicians who expressed concerns in line with this framing. However, other voices and articles also articulated assessments of NetzDG that resonated with this framing by sharing its concern over the skewing of political debate, authoritarianism, and censorship. These voices included the Pirate Party, a politician from the CDU, a *FAZ* commentary and a lawyer cited in the *SZ*.¹⁵⁶ Critiques of NetzDG as an illegitimate tool also came from the left-wing or web-political spectrum. These sources feared NetzDG could normalize and widen censorship or function as a

¹⁵⁰ TE_10

¹⁵¹ TE_6; TE_10; TE_21

¹⁵² TE_21

¹⁵³ TE_29

¹⁵⁴ TE_12; TE_16

¹⁵⁵ TE_34

¹⁵⁶ FAZ_3; SZ_15; TE_5

pretext for suppressing left-wing politics and for promoting liberalism. The concern was further that, while being directed at right-wing speech at first, NetzDG and other moderation efforts would eventually be expanded to left-wing content. Moreover, they also worried that actors on the political right could make use of NetzDG to denunciate or silence critical left-wing voices.¹⁵⁷ *Neues Deutschland* for example warned that the label of “right-wing hate speech” could be used to make governmental and corporate censorship acceptable.¹⁵⁸ It went on to suggest that the concept of “fake news” was left deliberately vague so that it could function as a “trojan horse” that introduced state-private censorship outside of jurisdiction and courts. Likewise, Netzpolitik also worried over the ongoing erosion of constitutionally anchored rights, which were in fact meant to *safeguard* against right-wing authoritarianism, and hence over “making the country more authoritarian step-by-step.”¹⁵⁹ This included distrust of mainstream political actors and particularly Angela Merkel, who was said to have a well-established network that protected her from too much scrutiny.¹⁶⁰

To highlight these risks, articles in *Neues Deutschland* also brought up examples of overblocked or unjustly taken down left-wing political critique. These take-downs included an interview about a book on gamergate, the Indymedia website, *Neues Deutschland* articles, content by a popular critical blogger in Egypt and a group of leftwing skinheads from Frankfurt, and an artistic activist group’s video that displayed how followers of AfD politician Björn Höcke attacked journalists at a protest.¹⁶¹ In line with this, the articles also discussed platforms’ own efforts to delete more “hate speech” and act against right-wing extremists, not only in Germany but also in the US, Greece, and the UK.¹⁶²

¹⁵⁷ DF_3

¹⁵⁸ ND_6

¹⁵⁹ NP_10

¹⁶⁰ ND_13

¹⁶¹ ND_6; ND_7; ND_11

¹⁶² ND_8; ND_9; ND_11

6.3. State Engagement to Promote Democracy

In contrast to the previous sections' framings of NetzDG as having a negative impact on free expression and democracy, this section describes a framing of NetzDG as the protection of freedom of speech and an important form of *state engagement to promote democracy*. According to this framing, NetzDG's regulatory engagement on the internet was an important part of *defending and nourishing democracy*, freedom of speech, and democratic debate culture online. This framing presented NetzDG as an important step towards protecting democratic values and principles against anti-democratic tendencies and content. This framing's assessment then built on several reasons, namely that a democratically important discourse was taking place on social media, that platform companies were unable to do justice to the public and political nature of this discourse, and that freedom of speech as a democratic value and principle required certain limitations and regulatory boundaries, also on social media.

This framing therefore refers to an interpretation of NetzDG as attempting to hold platforms accountable and shape discourse on them into democratic forms. A focus on the problems that existed with platforms and justified interventions characterized this framing. Instead of NetzDG's regulatory intervention, it was these platforms that posed a threat to freedom of speech and democratic discourse. Hence, this framing provided a justification for regulation that was needed to create and protect democratic discourse online. Accordingly, it was the duty of governmental institutions to counter undemocratic developments and shape public discourse into democratic forms. Consequently, this framing implied that democratic communication and public discourse happened through the state, not away from it.

This framing proposed that an important public and potentially democratic discourse was taking place on social media but that platforms were inapt to deal appropriately with the responsibility this discourse brought. The reporting exemplified this failure of platforms with recounts of the polarization, toxic debating culture, (verbal) violence, hate speech, and fake news that seemed to grow and spread on social media and threaten democracy. Platforms' problematic

use of algorithms, which was sometimes cited, further compounded this failure. This framing therefore presented platforms' own (moderation) practices—which often appeared to be absent or reactionary—as detrimental to public discourse, a democratic debating culture, and balanced media reporting. According to this framing's assessment, the risks that platforms, when left to their own devices, posed to accountability and democracy were too great. Regulation thus seemed required to rectify this. Consequently, this framing favored a certain level of state control, which compared positively with companies' ability to shape public discourse. State intervention in content moderation on social media here did not appear as endangering but as *defending* and *promoting* freedom of speech and democracy.

This framing then included the view that such intervention—and stricter forms of control—were necessary because social media platforms provided *quasi-public spaces for democratic politics* or at least needed to take over responsibility for the public discourse on them. However, as several articles illustrated, their efforts in this sphere appeared as rather weak or even as strategies to avoid regulation rather than as sincere considerations. Some articles also criticized the poor working conditions of corporate human moderators, which they described as “cleaning crews” essential for responsible content moderation.¹⁶³ As corporations, this framing implied, platforms were unaccountable to their public character. Moreover, according to this framing, it seemed undemocratic to endow corporate platforms with the authority to make decisions over what was publicly accessible or to give private corporations, with nearly monopolistic positions, so much power over public discourse and speech.

Therefore, this framing provided a justification for why state regulation needed to step in to set and control moderation rules, as such regulation would ensure that clear rules were devised in a democratic and constitutional manner and that the public space of the internet did not decline into a space at the graces of big corporations. Thus, this kind of framing interpreted

¹⁶³ FAZ_16

regulations rooted in democratic procedures and laws as implementing democratic accountability for content moderation and as bringing democratic norm-setting processes to the internet. Some articles then even recounted the view that, with social media, *American companies* were operating in the *German public sphere* and hence needed to be subjected to German rules and values. Thus, this framing suggested that by creating and enforcing moderation rules, the state was acting to get corporations under control, contribute to the *establishment of a democratic discursive space* online, and protect its citizens as the targets of hate speech. State intervention therefore appeared to act *on behalf of citizens* as users online. Governmental intervention in platforms' moderation practices, according to this framing, would consequently help to guarantee the defense of free expression and to create a safe, open, and public discourse online.

This framing therefore described a general support for some level of regulation for speech online and referred to an understanding of freedom of speech as needing certain *limitations to unfold its democratic potential*. It captured a notion of freedom of speech as a collective right which could only work democratically if put within bounds that acknowledged fundamental equality and human dignity. This also meant that this framing (implicitly) centered on those who might be silenced or whose rights might be attacked by unrestricted speech online. According to this framing, untethered information flows did not per se appear to channel communication into democratic forms. Thus, this framing carried an understanding of freedom of speech which built on the assumption that democracy and collective freedom sometimes necessitated limitations on individuals' liberty to post whatever they wanted. For instance, one *Zeit Online* article argued that dangerous geopolitical developments required liberal democracy to defend itself, if necessary, “with clearly delimited, illiberal means.”¹⁶⁴ Further, a *FAZ* article refuted comparisons made by AfD members when stating that—in contrast to the former German Democratic Republic—

¹⁶⁴ Zeit_20

freedom of speech in Germany was a fundamental constitutional right which found its validity within limits.¹⁶⁵

Thus, this framing also drew from freedom of speech as a central concern and value in its assessment of NetzDG, which is why it is classified as falling under the freedom of speech frame. However, this framing problematized freedom of speech not so much in the context of individual instances of speech that were deleted or overblocked but rather within the context of the democratic rules and boundaries of *public discourse* that existing laws encoded and that also needed to be upheld online. This framing therefore implied that freedom of speech resulted from a public discourse shaped into democratic forms. According to this framing, NetzDG was protecting freedom of speech by ensuring that unaccountable private corporations took up the responsibility that came with hosting this discourse.

Within this framing, stories about a decline of the internet at the hands of large corporations provided discursive support for state interventions in the name of democracy. For example, an article in *TAZ*¹⁶⁶ told the story of a past internet utopia that had been characterized by ideals of unrestricted communication and information flows, an opposition to regulation and governmental control, and the promise of a liberal-anarchistic paradise. It went on to point out that this utopia had been crumbling under the emergence of internet giants such as Facebook, who centralized information flows, and under the factual end of net neutrality in the United States. Despite its rather critical view on NetzDG, a *Welt Online* article¹⁶⁷ also echoed this kind of story. It portrayed the internet and information technologies as initially having come with liberating and disruptive powers, but as now having their potential increasingly abused, with “bad communication” coming to replace “good communication” more and more.

¹⁶⁵ FAZ_14

¹⁶⁶ TAZ_16

¹⁶⁷ Welt_12

Assessments of NetzDG and arguments about its desirability that fell within this framing could appear in diverse sources or be articulated by a variety of actors.¹⁶⁸ However, news outlets from the center-to-political-left, such as the *SZ* and *Zeit Online*, were particularly likely to frame or cite framings of NetzDG as this kind of democratically necessary and desirable intervention. Moreover, this framing was also described by *FAZ* articles, which for instance cited Maas’s defense of NetzDG, or in *Netzpolitik*, which shared the view that some action was needed to counter the internet’s increasing privatization.¹⁶⁹ As an individual voice, a high-profile tech entrepreneur was also quoted in defending the position that democratically accountable state institutions, and not corporations, should hold the immense power of controlling information flows and access online.¹⁷⁰ Likewise, a representative of the digital civil rights organization *Digitale Gesellschaft* suggested something similar.¹⁷¹ And notably, despite its opposition to NetzDG, even Facebook at times was cited in acknowledging the need for at least some kind of legal provisions, for example when emphasizing that it did not want to act as an “arbiter of truth.”¹⁷²

Interestingly, the recognition that NetzDG had problems and shortcomings often accompanied this framing. Nevertheless however, the law was still described as at least a good *starting point* for a societal conversation on exactly how to delineate freedom of expression. For example, one *Zeit Online* article described NetzDG as putting foul remarks in “quarantine” until courts decided and as sparking a societal discussion on such content.¹⁷³ And while articles that used this framing displayed varying degrees of support specifically for NetzDG, they generally expressed approval for the law’s overall aim and emphasized it as a first necessary step in the

¹⁶⁸ FAZ_14; FAZ_16; FAZ_19; FAZ_21; SZ_10; SZ_21; Zeit_8; Zeit_9; Zeit_17; Zeit_19; TAZ_15

¹⁶⁹ e.g., NP_19

¹⁷⁰ Zeit_8

¹⁷¹ Zeit_8

¹⁷² FAZ_21

¹⁷³ Zeit_14

right direction.¹⁷⁴ While it was not perfect, it seemed better than having no intervention to problems with content online. As the *FAZ* poignantly put it, the belief that discourse online would sort itself out in the absence of any state regulation was here considered “an illusion.”¹⁷⁵

Along with his party, the SPD, and some allies from the CDU/CSU, it was particularly Heiko Maas who the articles cited in using this framing most strongly and in expressing the greatest support for NetzDG. In doing so, Maas heavily drew from and advocated for the above-described understanding of freedom of speech. While conceding that this right also protected “repulsive and ugly expressions,”¹⁷⁶ he for instance defended NetzDG against the AfD and others by stating that freedom of expression did not function as a “carte blanche” for committing crimes.¹⁷⁷ He further emphasized that the perpetrators of such crimes would have to be brought to justice.¹⁷⁸ Moreover, he was quoted in pointing out that calls to murder, threats, insults, hate speech, and the “Auschwitz lie”¹⁷⁹ were not expressions of freedom of speech but *attacks on the freedom of speech of others*.¹⁸⁰ According to Maas, hate online was the “true enemy of freedom of speech,” not NetzDG.¹⁸¹ In addition, the politician was cited in the *SZ*, where he cautioned that hate speech created a “climate of fear” that caused many people to retreat from public discourse online.¹⁸² Finally, as the *FAZ* reported, the minister suggested that whoever was

¹⁷⁴ FAZ_16; SZ_10; Zeit_1; NP_19; NP_32

¹⁷⁵ FAZ_16

¹⁷⁶ SZ_18

¹⁷⁷ Zeit_13

¹⁷⁸ FAZ_15

¹⁷⁹ This term is often used in Germany to refer to the (illegal) denial, or downplaying, of the Shoa (also referred to as the Holocaust) and of the genocide and crimes committed against Jewish people and other minorities in Nazi-concentration camps such as Auschwitz.

¹⁸⁰ FAZ_15; SZ_18

¹⁸¹ FAZ_4

¹⁸² SZ_3

concerned with the protection of free expression could not idly watch how illegal hate speech and threats inhibited an open exchange of opinions.¹⁸³

Maas's fellow party member Thomas Oppermann supported this view when emphasizing that—while freedom of expression reigned—the fundamental principle that “human dignity shall be inviolable” also needed to be ensured.¹⁸⁴ As the politician suggested, the protection of this fundamental principle and the conception of freedom of expression it implied guaranteed that the “internet belongs to everyone.”¹⁸² This statement evoked the first sentence and first law of the German constitution, which puts a duty on all state authorities to respect and protect human dignity (GG, 1949, para. 1). A legacy of the horrors of the Third Reich and its Nazi-regime, this principle ought to guarantee the fundamental equality and intrinsic value of *all* people. The central status of this principle in German politics then even led politicians who were otherwise opposed to NetzDG to express some sympathies for this framing. For example, FDP politician Herbert Mertin pointed out that some regulatory intervention to hate speech online was necessary as freedom of speech was not limitless in Germany.¹⁸⁵ Similarly, CSU politician Dorothee Bär found that someone who insulted others or perpetuated hate against minorities could not hope to evoke “our” freedoms to make their case.¹⁸⁶

This framing generally presented state interventions to speech on platforms as democratically necessary. Consequently, part of this framing was not only the view that platforms' content moderation practices needed to delete illegal speech but also that they needed to *defend* free expression. Overall, this framing concerned a general question about how freely platforms should be able to act. Of course, the idea that it was essential to guarantee free expression on platforms was also part of the previous framing of NetzDG as a threat to freedom

¹⁸³ FAZ_15

¹⁸⁴ Welt_6

¹⁸⁵ Welt_4

¹⁸⁶ NP_36

of speech: For example, *Reporters without Borders*, which had been critical of NetzDG, stated that platforms had become part of the modern public sphere where people should be able to say what they wanted as long as it did not violate any laws.¹⁸⁷ Further, an activist organization, who was suing YouTube over a take-down, declared “that no democracy existed on the internet if a [legal] video could not just “run”.”¹⁸⁸

The framing the present section describes then also included discussions about platforms’ obligation to actively uphold speech and it directed attention to problems that arose when private corporations set rules for public discourse. As one *FAZ* article for example pointed out, platforms *already* deleted a vast amount of (legal) content under their own internal standards, which often went beyond what speech legislation required.¹⁸⁹ A discussion in *TAZ*¹⁹⁰ here brought up a specifically interesting case. This was the case of a past legal ruling that had obliged privatized airports to allow political demonstrations, against for example deportations, based on an argument that considered them as public infrastructure. This case was interesting because the verdict assumed that the *public character* of a privatized infrastructure legitimized the defense of certain civil rights despite private ownership. This could prompt the comparison that platforms’ public function could justify certain state interventions that were usually impermissible for private ownership. Such a view on platforms may then not only mean that state engagement was called for to ensure moderation practices enforced speech laws but it may even invite more far-reaching interventions to platforms.

A final, important observation is that defenses of NetzDG against the allegation that it presented a *threat* to free expression framed the new law as *defending freedom of speech and promoting democracy*. Defending NetzDG, a governmental spokesperson cited in *Netzpolitik* for example

¹⁸⁷ FAZ_27

¹⁸⁸ Zeit_19

¹⁸⁹ FAZ_27

¹⁹⁰ TAZ_15

emphasized that freedom of speech was one of the government's most dearly held values.¹⁹¹ Moreover, Maas himself pushed back on concerns over overblocking, suggesting that companies' business model would incentivize them to leave up as much content as possible.¹⁹² As an additional measure to prevent overblocking, the governing coalition also referred to the possibility, included in the second draft, to delegate ambiguous cases to an institution of regulated self-regulation.¹⁹³ This institution, so SPD politician Eva Högl, ensured that decision-making remained independent from the state.¹⁹⁴ Nadine Schön from the CDU further hoped that this institution would make possible “neutral” judgments without leaving things up to private corporations *or* introducing governmental surveillance.¹⁹⁵

¹⁹¹ NP_33

¹⁹² FAZ_8 (The Ministry of Justice later stated that the relatively low number of reports and complaints that were issued under NetzDG confirmed this [NP_46].)

¹⁹³ SZ_22

¹⁹⁴ Zeit_5

¹⁹⁵ SZ_22

Chapter 7

Hate Speech and Fake News

This chapter describes the *Hate Speech and Fake News* frame, which unites different assessments of the nature of problems with content, speech, and posts online, and particularly with *hate speech and fake news*. The different framings of this frame then assessed NetzDG not in terms of its impact on democratic values and principles but in terms of its necessity and appropriateness to react to these problems. Different interpretations of these problems, their causes, and consequences then presented NetzDG as either necessary, unnecessary, a pretext, or beside the point. Overall, the articles however frequently used hate speech and fake news to qualify NetzDG: Across sources, it was regularly labeled as an “anti-hate-speech law” or referred to as a law against hate, hate speech, or fake news.¹⁹⁶

Between the framings within this overarching frame, tensions emerged over how exactly to understand *hate speech and fake news* as problems and evaluate NetzDG’s use in addressing them. In the NetzDG controversy, there was no unity in judgments of what was going on online; of what the nature, causes, consequences, and implications of problematic speech were; and of whether such problems were even endemic or serious enough to warrant a strong response. Thus, in the spirit of framing theory, this chapter demonstrates that how the problems to be addressed by a policy measure or solution are understood also shapes how the measure is evaluated. The different framings within this frame correlated with other framings of NetzDG in various ways. For example, voices critical of the law and its impact on free expression tended to conclude that problems with hate speech and fake news were not as serious or not the kinds of

¹⁹⁶ SZ_1; SZ_3; SZ_6; SZ_8; SZ_18; SZ_21; SZ_38; FAZ_3; FAZ_5; FAZ_6; FAZ_8; FAZ_12; Welt_4; Welt_5; Welt_7; Welt_10; TAZ_5; Zeit_5; Zeit_11; Zeit_12; TE_1; TE_28; ND_4; DF_2

problems a tool like NetzDG could solve. Those who saw such problems as more endemic or serious and as a lack of substantive moderation online often took a positive outlook on the law's legitimacy and its impact on democratic values and principles.

Cases and examples were central to framings of NetzDG under this frame and functioned as framing devices that worked through storytelling and illustrated problems. The discursive use of these cases provides interesting insight into whose perspective characterized the concerns on different assessments of the problem at hand. Further, different interpretations of the problems with hate speech and fake news and of the necessity for regulation implied responsibilities for users to cope with problematic speech and process information.

Subchapter 7.1. then first describes a framing of NetzDG as *Overpolicing "Uncomfortable" Speech*. According to this framing, problems with hate speech and fake news were not particularly novel or endemic. Rather than present serious breaches of the law, this framing suggested that the problem with speech online was the discomfort it caused. It included the verdict that NetzDG was overblown or a pretense and that people had—or needed to develop—the ability to deal with even terrible content. Subchapter 7.2. stands in contrast to this and describes a framing of NetzDG as *Tackling the Serious Problems of Hate Speech and Fake News*. According to this framing, both hate speech and fake news appeared as very serious problems online—with each having its own unique characteristics—and hence as requiring a strong, governmental approach. This framing generally conveyed a positive attitude towards NetzDG, seeing it at least as an important step towards tackling such problems; however, it also included some critiques of NetzDG's concrete ability to mitigate such problems.

Finally, subchapter 7.3 describes a framing of NetzDG as *The Wrong Approach* for problems with hate speech and fake news. This framing included a variety of assessments of the situation at hand, which all concluded that NetzDG was not the right tool to tackle the most pressing problems because these problems were not the kind of problems that could be successfully mitigated by a law like NetzDG. A central theme that emerged from this framing

was that hate speech and fake news were only the (digital) signs of deeper societal, political, and even technical issues that could not easily be solved by mandating substantive moderation rules.

7.1. Overpolicing “Uncomfortable” Speech

One way in which NetzDG was framed through a Hate Speech and Fake News frame was as an act of *Overpolicing “Uncomfortable” Speech*. The interpretation that problems with hate speech and fake news were not serious or endemic enough to warrant a law like NetzDG characterized this framing. This included the perception that the problems NetzDG was aimed at tackling, or that were used to justify it, were relatively harmless, non-existent, or not in need of an intervention like NetzDG. Different expressions of this framing of NetzDG resonated with other, previously presented framings of NetzDG as a *threat to freedom of speech* and even as an *illegitimate tool*. On the one hand, the suggestion that NetzDG carried too much risk for freedom of speech was underwritten by the view that users had the ability to cope with even problematic or horrible content. On the other hand, this framing also included the argument that terms like “hate speech” and “fake news” were used as tools to install governmental censorship.

This framing was used especially to counter arguments *for* NetzDG in various ways. It suggested that a lot of the speech potentially deleted under NetzDG was not illegal or problematic speech but rather a sort of *uncomfortable* speech protected by the right to freedom of speech. Framing the problem in this way implied that the issue with potential “hate speech” was that it caused discomfort and contradicted people’s sense of decency. According to this view, however, this did not warrant its deletion. Within this framing, the problem appeared to be a problem of personal sensibilities rather than of democratic discourse. Hate speech and the like therefore did not appear to be the kind of endemic problems on social media that called for extensive regulations or governmental intervention.

Descriptions of problems with hate speech and fake news as “nothing new,” as not more prevalent online than elsewhere, and as problems that humanity had always dealt with illustrated

this framing. Prefixing phrases like “hate,” “hate speech,” or “hate criminality” with a “so-called” or putting them in quotation marks signaled these terms’ vagueness or cast doubt on their seriousness and urgency.¹⁹⁷ Likewise, referring to “illegal misinformation” in quotes and adding a “whatever this may be” made this label appear as a questionable and vague category.¹⁹⁸ In line with this, one *Tichys Einblick* article therefore suggested that, because the problem was vague and not very serious, fighting against hate speech was a waste of energy and governmental resources while “real” crimes needed to be prosecuted.¹⁹⁹

As said, some articles or cited speakers used this framing to support a framing of NetzDG as a tool for suppressing politically undesirable but democratically legitimate—and even important—opinions: A *TE* article for example alleged that hate speech was used as a “battle cry”²⁰⁰ to suppress politically undesired speech or cover-up for truly existing social and political problems. Yet another accused Maas of employing a “rhetorical trick” to (falsely) make opponents to NetzDG look like they favored hate on Facebook.²⁰¹ In line with this, the AfD was also quoted in *Zeit Online*, criticizing that NetzDG used vague and undefined legal terminology such as “hate criminality” or “illegal false information” to suppress “divergent” opinions.²⁰²

Thus, this framing presented problems with content online as uncomfortable but not too serious and hence implied that NetzDG’s measures against such speech were disproportionate, and even unnecessary or dangerous. Elements of this framing could predominantly be found in *Tichys Einblick*.²⁰³ This framing supported the blog’s strong stance against NetzDG. As one of its articles for example warned, it seemed that NetzDG—and EU efforts—favored simply

¹⁹⁷ e.g., TE_12; TE_13; TE_18; TE_19; TE_28

¹⁹⁸ TE_7

¹⁹⁹ TE_37

²⁰⁰ TE_27

²⁰¹ TE_19

²⁰² Zeit_11

²⁰³ TE_7; TE_9; TE_25; TE_28; TE_31; TE_34

increasing the numbers of deletions over the protection of speech but remained ignorant to the fact that, while they may contradict a sense of decency, reported posts may not be illegal.²⁰⁴

Another article described the blog's own experience with moderating comments on its Facebook site to argue that hate speech was not a serious problem.²⁰⁵ The article reported that the blog's own Facebook site did not contain any hate speech and suggested that where it appeared, page administrators could simply delete it. It went on to conclude that when someone explicitly looked for illegal things, they would find them. In a rare event, this article even described existing speech regulation as *too far-reaching*, a circumstance it suggested was worsened by NetzDG's inappropriate delegation of (legal) judgments to private companies.

Interestingly, this framing was also partially shared by articles in *Neues Deutschland*. One of its articles for example pointed out that hate comments were not new but had long existed.²⁰⁶ This article expressed an opposition to NetzDG as unduly delegating the decision over the "fine line" between freedom of speech and illegal speech to private corporations. Another article from the venue also cautioned that terms like "hate speech" and "fake news" could provide *excuses* for expanding or justifying censorship and corporate content moderation.²⁰⁷

According to this framing, the problems with content on platforms were not serious enough to warrant democratically dangerous regulatory interventions and, moreover, social media users needed to bring the ability—and had the capacity—to deal with content on their own and endure the repulsion it may cause. An article in *Zeit Online* took up this point in an interesting way.²⁰⁸ The article acknowledged that a lot of problematic speech, such as defamatory and racist speech, existed online and described NetzDG as having emerged from the desire "for

²⁰⁴ TE_9

²⁰⁵ TE_13

²⁰⁶ ND_2

²⁰⁷ ND_6

²⁰⁸ Zeit_14

a new, effective weapon” against such problems. It referred to the new law as an important first step and conversation starter, which however had several shortcomings. Therefore, the article suggested that, perhaps, “we” would have to learn to live with the constant transgressions on the internet, a circumstance that, so the article, also presented progress. This argument was set against Germany’s history of Nazism, genocide, and antisemitism. The article explained how, in the post-Nazi era, speech regulations had presented a “cleansing mechanism” meant to combat the fascist attitudes that still existed in people’s heads and ostracized such attitudes from the public stage. It however concluded that the internet had signified the loss of this cleansing mechanism. There were simply too many people engaging in problematic speech online, which made it politically undesirable and technically difficult to suppress. However, it suggested, German society had now transformed and could hence tolerate more politically problematic speech without democracy immediately being threatened.

The difficulties in making accurate moderation decisions and deciding on “gray area” speech that were previously discussed in relation to concerns over overblocking also played a part in this framing and its discussion over the necessity to endure “uncomfortable” speech. To illustrate this, *Tichys Einblick* discussed some cases of overblocking that included a post discussing the obligation to kill murderers within a Jewish theological context and an FDP politician’s criticism of Anti-Israel demonstration where antisemitic slogans had been allegedly cited.²⁰⁹ The *SZ* also reported on cases of false decision-making.²¹⁰ However, AfD politician Beatrix von Storch’s new-years–tweet,²¹¹ which had led to the temporary blockage of her account, was the most central case that articles across sources referenced.²¹² A “solidarity” tweet

²⁰⁹ TE_12

²¹⁰ SZ_39

²¹¹ This was the same tweet that has already been discussed earlier, in which the politician condemned groups of Muslim men, and which had led to *Titani’s* satirical impersonation of her account.

²¹² E.g., FAZ_13; FAZ_15; Zeit_12; Zeit_13; Zeit_14; Welt_11; Welt_12; Welt_14; SZ_15; ND_8

issued by von Storch's colleague Alice Weidel, which reproduced the content of the original tweet, similarly sparked some discussion.²¹³ While it remained unclear whether the tweet had been deleted due to NetzDG or due to Twitter's own content policies, some articles used the example to illustrate how difficult it was to draw the line between illegal speech and legitimate political speech.²¹⁴ Von Storch herself was reported in finding such a blockage to impose a massive restriction on her "political work as a member of the German parliament."²¹⁵ This was however not the first time that the politician's tweeting behavior had made headlines: Already in 2016, as the *FAZ* reported, von Storch had sent out a tweet demanding to also shoot at women and children who were illegally trying to cross the German border, only to later attribute the tweet incident to a "technical error" and claim to have slipped on her computer mouse.²¹⁶

Posts made by AfD members therefore featured prominently in the debate around NetzDG and around the problems with both content and content moderation. These—polemically formulated—posts often concerned ongoing political debates such as disputes over immigration politics or anti-Muslim sentiments. When it comes to von Storch's new-years-tweet, it stands to reason whether this post, issued on the first day of NetzDG taking full effect, had been aimed at "testing" the new law or influencing the discussion around it. With von Storch being a trained lawyer, it at least seems unlikely that the statement had been formulated without awareness of the difficulties in determining its legal status.

What is finally noteworthy to mention is that terrorism-related content was generally excluded from discussions about overblocking and the endurance of problematic speech. This indicates that there was relatively broad consent on the deletion of such content. One Facebook representative for instance stated that, while taking action against social media propaganda by the

²¹³ FAZ_13; FAZ_15; Zeit_12; Welt_11; ND_8

²¹⁴ FAZ_13; FAZ_21

²¹⁵ FAZ_13

²¹⁶ FAZ_11

so-called “Islamic State” was uncontroversial, taking down hate speech might be more difficult given that it might be closer to political speech worthy of protection.²¹⁷ Given this absence of controversy, this content presented a fitting area for automated content moderation.²¹⁸ Reportedly, it was also a realm in which the otherwise restrained European Union was not hesitant in issuing stricter regulations and where different platforms were already collaborating with one another and governmental bodies.²¹⁹ Nevertheless, some articles cautioned that the label of counter-terrorism could be used to justify governmental surveillance and censorship, both of which would pose a threat to the open internet and citizens’ civil rights.²²⁰

7.3. Tackling the Serious Problems of Hate Speech and Fake News

In opposition to the preceding framing, many reports also framed problematic speech on social media, such as hate speech and fake news, *as more serious issues* that require action and *regulatory intervention*. This framing described the position that hate speech and fake news are real problems with serious consequences that need to be addressed with regulatory or governmental action. This framing therefore supported positive assessments of NetzDG, underscoring either the conclusion that NetzDG was a good law, that it was at least an important first step, or that at least some kind of similar governmental and regulatory intervention was needed. An illustration of the urgency and seriousness of problems with content and speech online, particularly hate speech and fake news, which justified either NetzDG or similar regulatory and governmental interventions, exemplified this framing.

The articles emphasized the seriousness of problems with hate speech and fake news, which warranted strong interventions, in several ways. This included using terms like “hate

²¹⁷ FAZ_21

²¹⁸ FAZ_8; NP_41; SZ_7

²¹⁹ SZ_29; NP_16

²²⁰ Zeit_4; NP_2; NP_24

speech” and “fake news” in a way that let them appear as legitimate and meaningful terms describing existing problems. This use of terms included for instance concrete *definitions* of the terms, such as describing hate speech as “hateful, discriminatory and inciting” speech and fake news as “intentional, manipulative false statements”²²¹ or “illegal false information.”²²² It also included clear denominations of hate speech as a form of *violence*. In addition, the articles enumerated concrete issues and criminal offenses such as hate, hate speech, racism, antisemitism, defamations, insults, slander, threats (to violence and death), Nazi-slogans, sedition, incitement of hatred (German: *Volksverhetzung*), group-based hostilities (German: *gruppenbezogene Menschenfeindlichkeit*), violent content, terrorism, disturbance of public peace by means of feigning criminal actions, (illegal) misinformation campaigns, false and fake news, terroristic propaganda, pornography, and revenge porn. Such enumerations emphasized the scope of the problem and made clear that problems with content online were very serious.

This framing of problems online as serious and concrete issues directed attention towards the *negative effects* such speech could have on its targets and public discourse in general. This included a brutalization of discursive norms, the discreditation of journalists or politicians and, as the *FAZ* pointed out, negative effects on children and youth as a vulnerable population.²²³ At the same time, the use of legal terms also suggested that regulatory tools like NetzDG were suitable to fight problematic content online.

The detailed descriptions and enumerations of problems with content painted a picture of the internet, and of social media, as a place full of hate speech, criminality, discrimination, and propaganda. *Der Freitag* interpreted this as a decline of the internet, describing how the internet’s debating culture had decayed over the last years and was increasingly disturbed by false

²²¹ DF_2

²²² Zeit_2

²²³ FAZ_16; TAZ_17

information, hoaxes, conspiracies, and propaganda, which were spread by both state and political actors and often difficult to identify for lay people.²²⁴ In line with this, one *FAZ* article presented a study which found that the internet’s “speed, free access, global connectivity, and anonymity” promoted an “unfiltered and nearly limitless propagation of anti-Jewish systems of thought.”²²⁵

Some reporting further used metaphors of pollution or disorder to describe what was going on online, letting the internet appear as a “dirty” or “disorderly” place that needed to be set straight. One *Zeit Online* article²²⁶ for example described fake news, conspiracies, and the like as “poisonous wastewater” and the *SZ*²²⁷ referred to a new potential supervisory authority as a “national decontamination facility.” Others described content moderation practices as “tidying up” or “cleaning” the internet, as making it a more “hygienic” place, and referred to content moderators as a “cleaning crew.”²²⁸ A *TAZ* article then described NetzDG as countering the brutalization of discourses online by offering a tool to providers to sanitize their platforms.²²⁹

This time, it was particularly left-leaning sources like *Zeit Online*, *TAZ*, and the *SZ* that were most likely to present the problems NetzDG addressed in a way that fit within this framing; however, elements of this framing could be found in articles from the *FAZ*, *Netzpolitik* and even, sporadically, *Welt Online*.²³⁰ Reproducing the idea that NetzDG was perhaps a first but insufficient step to counter problems on social media, some articles that held problems online to be serious still expressed doubts about NetzDG’s ability to tackle them.²³¹ Further, they

²²⁴ DF_2

²²⁵ FAZ_26

²²⁶ Zeit_17

²²⁷ SZ_1

²²⁸ FAZ_9; TAZ_17

²²⁹ TAZ_17

²³⁰ FAZ_16; SZ_14; Zeit_1; Zeit_2; Zeit_13; Zeit_14; Zeit_15; Zeit_22; TAZ_1; TAZ_2; TAZ_15; Welt_2; Welt_9; NP_13

²³¹ DF_2

mentioned “both sides” of the problem, so over- and underblocking.²³² Yet others referred to even tougher approaches in France and the UK, which could demonstrate that Germany was not alone in its efforts to get hate speech, fake news, and propaganda under control.²³³

A range of articles cited statistics that demonstrated the seriousness of problems on social media with numbers. For example, *Zeit Online* cited statistics reporting on how more and more people encountered hate speech online, with younger people seeing on average more hate speech than older people and women more than men.²³⁴ Likewise, the *FAZ* presented a scientific study on antisemitism online, fearing even that Jewish people were at danger of *physical* violence that could result from antisemitism perpetuated on social media.²³⁵ The *SZ* further cited statistics from the internet association *eco*, which had registered an increasing number of reported posts, with an increase of over 120% from 2016 to 2017 and an increase of 11,2% in 2018.²³⁶ While only a quarter of these posts were reportedly deleted, *eco* suggested that NetzDG was the reason for a rising attention to hate speech. The article further described that most reports concerned child pornography but reports on racist content had also been growing in numbers. Another article in the same venue described a reported increase of insults and hate speech, which had followed the immigration of refugees to Germany in 2015, as part of the motivation for drafting NetzDG.²³⁷ And while highlighting problems with NetzDG, even *Welt Online* informed about an EU analysis of hate speech online, which had determined that about 18% of reported cases were directed against foreigners, immigrants, and particularly Muslims (German: *Fremdenhass*) and that both antisemitic and racial hatred made up about 8% of hate speech content.²³⁸

²³² Zeit_13

²³³ Zeit_4; Zeit_21

²³⁴ Zeit_22

²³⁵ FAZ_26

²³⁶ SZ_31

²³⁷ SZ_39

²³⁸ Welt_3

Besides statistics, using examples of particularly vicious content or discussing the effects it had on its targets were other ways to frame problems with hate speech and fake news as serious and NetzDG as necessary. Such examples showed both the viciousness and effects of hate speech online and illustrated the positive effects that interventions like NetzDG could have. They included the story of Jewish-American journalist Virginia Heffernan, who had set her virtual Twitter location to Germany to escape antisemitic abuse,²³⁹ defamation campaigns against refugee helpers, mobbing attacks against school students,²⁴⁰ and a rather eclectic case where a group of YouTubers had insulted child and teenage volunteer workers at a park railway in Dresden and posted the attack to create more harassment online.²⁴¹ The lawyer, who had been hired to prosecute the perpetrators of the last case, was cited in referring to NetzDG as a viable instrument to act against such incidents. Quoted as perhaps the most prominent supporter of NetzDG was Sadiq Khan, the mayor of London, who had spoken out in favor of the new German law at the popular US-American technology conference South by Southwest.²⁴² In his speech, Khan described death threats and insults made against him and held up NetzDG as an example for how international social media corporations could be brought under control.

However, a *Zeit Online* report by journalist Richard Gutjahr provided by far the most detailed account of the effects of hate speech and disinformation campaigns.²⁴³ This report was written from a first-person perspective, as Gutjahr and his family had been exposed to massive threats and YouTube campaigns by so-called “truthers,” who the article described as mostly highly educated individuals. What gave rise to these campaigns was the circumstance that Gutjahr—who is married to a Jewish person—had in the past personally witnessed, or been the

²³⁹ SZ_39

²⁴⁰ SZ_39

²⁴¹ FAZ_17

²⁴² FAZ_23; SZ_32

²⁴³ Zeit_15

first reporter present, at two different terrorist attacks. Gutjahr's report described in much detail how "truthers" spread conspiracy theories online, exploited algorithms and attention logics, and gathered support for their views. Moreover, it illustrated companies' low level of cooperation and difficult reachability for the targets of such campaigns. It further criticized law enforcement agencies as not reacting adequately or taking serious defamation and hate criminality and it described the legal procedures victims could pursue to get justice as expensive, time-consuming, and often without resolution. Instead of NetzDG, this article argued for the enforcement of existing laws and the quick and strong prosecution of crimes online.

The previously presented discussions about problems with content online then focused on hate or discriminatory speech, even conspiracy campaigns, targeted at individual people and groups of people. As pointed out earlier, NetzDG was therefore regularly described as a law against hate speech but rather rarely as a "law against fake news."²⁴⁴ Nevertheless, hate speech *and* fake news were often mentioned together as two major issues symbolizing the problems with speech on social media platforms. Thus, fake news and misinformation were also mentioned as problems and likewise framed as a serious problem that required state intervention.

Interestingly, most examples of fake news described them as a *real-political problem* that referred to political power struggles between different nation states and international alliances and as part of broader political conflicts. The examples of fake news discussed in the controversy indicated that the issue was seen foremost as a political issue that concerned national interests and national security rather than as a problem of distorting individual people's access to facts or true information. In such a discussion of the problems with fake news, the internet therefore appeared as a contested space within broader political processes.

²⁴⁴ e.g., NP_1

AfD politician von Storch here again made an appearance: As the *FAZ* and *Welt Online* reported,²⁴⁵ the politician had shared a video of Heiko Maas, falsely quoting him as saying that “freedom of speech did not exist on Facebook.” Most prominently, however, the reporting discussed the problem with fake news in relation to political campaigning and election manipulation attempts, where a big concern was the influence that fake news could have on fair and democratic election campaigns. Connecting them to Russia’s annexation of Crimea and overall Russian politics, one *Zeit Online* article here even went as far as describing such election manipulation efforts as an attack on “our” Western values and as undermining “our institutions and values, law and order in Europe and the world.”²⁴⁶ Many articles therefore discussed particularly Russian-sponsored manipulation efforts or cases of fake news that allegedly involved Russian actors. These cases pertained to attempts of unduly meddling with political processes, especially in the US but also in France, such as spreading misinformation campaigns and impersonating interest groups, or to the spread of anti-Muslim and anti-refugee sentiments.²⁴⁷ They also described different national and EU initiatives to counter such efforts.²⁴⁸

Descriptions of hate speech and the likes as serious problems often identified actors from the political (far-)right—as well as Russian “trolls” and “AfD sympathizers”—as perpetrators of such speech, who were able to exploit algorithms to manipulate, polarize, and create an aggressive and toxic debating culture.²⁴⁹ While being critical of NetzDG itself, *Netzpolitik* for instance reported that right-wing media were very savvy in using social media to establish counter-publics in opposition to mainstream media.²⁵⁰ Elsewhere, the problem of hate speech was interpreted as a sign of greater problems with racism and xenophobia in Germany.

²⁴⁵ FAZ_11; Welt_8

²⁴⁶ Zeit_20

²⁴⁷ SZ_10; TAZ_14; Zeit_21

²⁴⁸ TAZ_2; Zeit_21

²⁴⁹ TAZ_7; TAZ_10; TAZ_14; TAZ_15; NP_30; NP_31

²⁵⁰ NP_13

To illustrate this problem, a *TAZ* column for example discussed the case of the “National Socialist Underground,” a right-wing extremist organization which had operated for decades and committed several murderous attacks, whose bringing to justice by the German judicial system had proved difficult.²⁵¹ The article also warned against equations of “right-wing” and “left-wing extremism,” suggesting this equation presented a dangerous “formula of trivialization of the perpetrators of radical right-wing violence.” The governing coalition’s crack-down on the *linksunten* website therefore appeared as part of a misguided focus on the left political spectrum while violence on the far-right was being neglected.

Platforms problematic business models and lack of engagement against hate speech, fake news, and misinformation campaigns were featured as one cause for this spread of problematic content. This interpretation let platforms’ own interests appear as conducive to the proliferation and distribution of problematic content and hence made a case that intervention was needed.²⁵² For example, Gutjahr’s report presented defamation campaigns as collateral damage of business models focused on increasing engagement and profiting from dehumanizing and sensationalist content. Some articles therefore criticized platforms’ use of algorithms and suggested their initiatives were rather cosmetic fixes. They cited questionable moderation and design choices such as “trending topics,” Facebook’s former motto of “move fast and break things,” or even a story about Facebook allegedly allowing far-right groups to sell Nazi relics by targeting users based on their antisemitic attitudes.²⁵³ In addition, others cited numbers that showed platforms accelerated and made more visible hate speech and fake news but also that there were proportionally few accounts which were active in promoting and spreading such content.²⁵⁴ This also offered some hope for the fight against it. One article, which was rather skeptical of the

²⁵¹ TAZ_7

²⁵² FAZ_16; Zeit_13; Zeit_17; SZ_2; SZ_10; TAZ_4; Welt_3; Welt_10; NP_15

²⁵³ Zeit_9; Zeit_17; Welt_10

²⁵⁴ SZ_27; Zeit_22

company's official commitment to election integrity and democracy, cited Facebook as wanting to avoid the term "fake news" as "imprecise and politically motivated."²⁵⁵ The platform however also stressed its commitment to fighting disinformation, which it defined as content that appeared real but had no factual grounding while decidedly excluding "undesirable" interpretations of factual events as well as politically controversial sites such as Breitbart.

7.3. The Wrong Approach

The final section of this chapter describes a *broader perspective on the causes of social and political problems*, which was adopted to frame NetzDG's ability to deal with problems of *hate speech and fake news* as the *wrong approach*. This framing unified various assessments of the problems with content online and with NetzDG. These assessments were united in their view that certain problems existed, needed to be addressed, and showed themselves on social media but that NetzDG was not the *right approach* to address them. They connected to concerns raised within the previously presented framings but addressed the more *general question* of what *the causes and nature* of the problems were that NetzDG was meant to tackle. This framing described NetzDG as *not the right political and legal tool* to address problems with hate speech and fake news. Thus, this framing describes different kinds of *mismatches* between the new law and pressing social and political problems. According to this framing, NetzDG was not *the right solution* to problems with hate speech and fake news because it did not build on an appropriate understanding of what the real problems were and because it did not provide the right approach to tackle them. Different arguments that fit within this framing were made across all kinds of different sources. Therefore, a general tendency was rather difficult to identify. This was because different perspectives and interests were united under this framing, similar to how concerns over

²⁵⁵ SZ_2

threats to freedom of speech managed to rail up the support of different actors. However, this framing was way less frequent.

One way in which NetzDG was framed as the wrong approach was as a *distraction from the real underlying issues*, such as greater political crises and broader processes of radicalization. One *Netropolitik* article for example criticized that speech regulations could not eliminate political crises such as climate catastrophe, militarization, and the demolition of workers' rights but only distracted from them.²⁵⁶ It called on political leaders to react to these crises more explicitly. Another one concluded that content like hate speech presented only the “digital excesses” of broader processes of radicalization, like the emergence of right-wing counter-publics and media ecosystems, which used social media to increase polarization.²⁵⁷ *Zeit Online* further quoted experts in pointing out that radicalization was not so much happening online as at home and in the offline world.²⁵⁸

Thus, doubts about NetzDG's *effectiveness and fit* for achieving its set goals were also raised.²⁵⁹ Because content like hate speech and fake, in this view, expressed problems caused elsewhere, NetzDG only seemed to treat symptoms but ignore causes:²⁶⁰ *Reporters without Borders* found it inapt to counter hate criminality²⁶¹ and internet activists feared its abuse by those it was meant to control.²⁶² Reporting 6 months after its implementation, a *Neues Deutschland* commentary consequently determined that it had done little to stop hate online.²⁶³ In addition, NetzDG's potential *effects*—or the lack thereof—presented yet another reason for a potential

²⁵⁶ NP_17

²⁵⁷ NP_13

²⁵⁸ Zeit_4

²⁵⁹ Zeit_4; Zeit_10

²⁶⁰ SZ_12; TAZ_1

²⁶¹ SZ_7

²⁶² Zeit_13

²⁶³ ND_15

mismatch between the problems and NetzDG as the solution because the new law ostensibly did little to improve law enforcement and had little effect on platforms.²⁶⁴ Instead of being brought to justice or having actual consequences, so one critique, hate speech just disappeared, implicitly sending the message that it was okay to hate.²⁶⁵ This critique emphasized the need to improve law enforcement, a need which for example Gutjahr's report had also stressed.²⁶⁶

Further, some articles also framed NetzDG as a form of *technological solutionism* and a *regulatory fix* that could not do justice to the complexity of social and political problems. According to this narrative, an exaggerated focus on technology and algorithms worked to cover up the social, political, and economic causes of discrimination and other problems and did little to address their roots. One *SZ* article even attested a “technological paranoia” to parts of the liberal public.²⁶⁷ According to the article's story, this public was looking for the causes of societal and historical problems in the digital realm, (erroneously) reducing them to manipulations on the internet. It described how journalists and activists had been swooped away by a hysteria after the Cambridge Analytica scandal and misguidedly interpreted Donald Trump's win as the mere result of technological manipulation. Regulatory interventions and strict corporate content moderation, in this view, expressed the desperate search for an “off-button” to societal and political problems such as a shift to the far-right, right-wing populism, a violent public discourse, or antisemitism. NetzDG here presented the half-baked results of this misinterpretation. While pointing out that the impact of fake news on election was still unclear, one *TAZ* article expressed a similar sentiment, referring to politics and the media as being carried away by an “anti-fake-news ecstasy” and discussing anti-fake-news efforts and strategies to combat

²⁶⁴ Zeit_10

²⁶⁵ NP_13

²⁶⁶ NP_36

²⁶⁷ SZ_12

misinformation as a current media trend.²⁶⁸ A similar diagnosis was made for Heiko Maas's proposed *Digital Anti-Discrimination Act*, which sought to promote unprejudiced programming. In a *FAZ* column, one internet activist attested that, like NetzDG, this law exemplified Maas's "digital pugnacity," exhibited a "bizarre focus" on algorithms, and was driven by an "unbridled will" to do just "something" in the digital sphere while lacking fundamental technical understanding.²⁶⁹

And even if social media were seen as a major cause of problems, NetzDG could still be judged as *inappropriate* for targeting them. For example, *Neues Deutschland* warned that some potential hate speech could be legal or that its legality was at least difficult to determine.²⁷⁰ A *Welt Online* article²⁷¹ then described that NetzDG for instance did not seem to affect at least some antisemitic content, putting this in the context of Germany's history of Nazism and of Germany-Israel relations. It emphasized the country's historical responsibility to solidarity with Israel, to which it was judged as not living up sufficiently. The article found that while anti-Muslim sentiments seemed to receive much public outcry, antisemitic ones were nourished or at least tolerated. In line with this, the *FAZ* also reported that the *Central Council of Jews in Germany* called for an evaluation of NetzDG's effectivity and increased efforts to raise awareness about antisemitism online.²⁷²

Further, some articles discussed *the protection of children and minors online* as a pressing problem for which NetzDG appeared rather useless. The problem cited here was that a vast amount of hate speech, radicalization, cyber-grooming, and sexual exploitation of children and minors took place within gaming platforms. These platforms however did not fall under

²⁶⁸ TAZ_2

²⁶⁹ FAZ_10

²⁷⁰ ND_2

²⁷¹ Welt_20

²⁷² FAZ_26

NetzDG and often did not include adequate reporting mechanisms.²⁷³ Interestingly, a *Der Freitag* report suggested that the case of NetzDG had demonstrated how concerns over censorship could be used to prevent the implementation of much needed measures in this realm, as proponents of such measures could face allegations of implementing “Chinese conditions.”²⁷⁴

These critiques point to another shortcoming attested to NetzDG, namely that it was based on a false *understanding of how things worked online*. Several articles criticized that it did not adequately address social media dynamics or account for the volume and speed by which content spread and that it would simply drive problems into the underground or less well-known platforms.²⁷⁵ It was further pointed out that NetzDG’s context-blind codification of hate speech could simply be circumvented by smart or innocuous formulations.²⁷⁶ In line with this, one *TAZ* article further emphasized how the attention economy, on which platforms’ operational logics and business models built, led them to nourish a world of (right-wing) conspiracies, filter bubbles, and polarization.²⁷⁷ NetzDG, so the article, was here ineffective as it only focused on the content of posts not on their manner of distribution.

Finally, NetzDG was also regarded as offering *the potential for abuse* and leading to *adverse effects*. Some articles cautioned that notice-and-take down functions could be abused,²⁷⁸ for instance to silence others, intimidate, or breach anonymity²⁷⁹ and that NetzDG could increase existing hatred,²⁸⁰ create anger over “denunciations,”²⁸¹ and take away attention from those

²⁷³ Welt_17; DF_4

²⁷⁴ DF_4

²⁷⁵ Zeit_1; Zeit_4; Welt_2; Welt_4; NP_13; FDP politician Nicola Beer, cited in TE_5

²⁷⁶ FAZ_7; NP_13

²⁷⁷ TAZ_14

²⁷⁸ Zeit_13; NP_13

²⁷⁹ *Digitale Gesellschaft*, cited in Zeit_1

²⁸⁰ Welt_12

²⁸¹ TE_28

affected by hate speech.²⁸² As both *Zeit Online* and *Welt Online* described, take-downs could also provide those subjected to them—particularly members of the AfD—the chance to stage themselves as victims and heroic defenders of freedom of speech.²⁸³ Moreover, evoking yet another case of potential overblocking, a *TAZ* article warned about the negative effects that anti-fake-news measures, which promised easy solutions to complex social problems, may have on LGBTQIA+ content.²⁸⁴

Given these mismatches, *alternative approaches* to address hate speech, fake news, or their underlying causes were also suggested. The cited *Declaration on Freedom of Expression* suggested that the problem required a “holistic societal response” (German: *gesamtgesellschaftliche Lösung*) to do justice to the structural aspects of problems with content online, under which the state, civil society, and internet providers would act *together* to prosecute illegal behavior while cherishing freedom of expression and strengthen counter-speech and media literacy.²⁸⁵ According to this kind of view, NetzDG presented a legalistic approach to a difficult societal problem that required thorough public debate. The *SZ* here for instance quoted Julia Jäkel, the CEO of the big media company Gruner + Jahr, in calling for an overall societal debate on the role of platforms rather than just closing the issue with a law.²⁸⁶ Similarly, Green politician Renate Künast also wished for a societal debate on how to best defend freedom of expression online instead of just handing out fines.²⁸⁷ As further additional solutions, counter-speech measures that addressed underlying social problems; better legal persecution; and the cultivation of digital competences, media literacy, user responsibility, and even the ability to simply ignore content were also

²⁸² FAZ_13

²⁸³ Zeit_13; Welt_12

²⁸⁴ TAZ_1

²⁸⁵ NP_5

²⁸⁶ SZ_4

²⁸⁷ SZ_8

named.²⁸⁸ In line with this, Facebook’s preference to develop solutions in collaboration with civil society initiatives, NGOs, and users was quoted²⁸⁹ as was FDP politician Beer, who called for an alternative regulatory approach to be developed in a transparent debate with experts and civil society.²⁹⁰

It is interesting to note that the publication of the NetzDG-mandated reports on the numbers of takedowns did not settle disputes over NetzDG’s effectiveness or receive much attention. Hence, the deletion numbers did not easily resolve disagreements over NetzDG. Generally, the reports showed that less posts had been flagged and deleted than initially expected.²⁹¹ Different reasons were named for this, such as the reporting system being difficult to find on Facebook or Twitter being especially careful given the political nature of its content. Cited in *Netzpolitik*, a spokesperson for the Ministry of Justice suggested that the low numbers spoke for NetzDG’s positive effects and showed that the previous “drama” over overblocking and the concerns of opposition parties had been overblown.²⁹² *Reporters without Borders*, on the other hand, concluded they proved that platforms’ own community standards accounted for most takedowns and should hence be the focus of discussion.²⁹³ One *Netzpolitik* article²⁹⁴ referred to 318 complaints made to the Ministry of Justice about posts *not taken down*, so cases where platforms had allegedly failed to comply with NetzDG. The article however questioned

²⁸⁸ SZ_12; Welt_12; DF_2

²⁸⁹ SZ_4

²⁹⁰ TE_5

²⁹¹ Articles reported 886 complaints under NetzDG on Facebook, which totaled to 1 704 flagged posts, of which 362 were actually taken down [FAZ_27; SZ_38; SZ_39; TAZ_17; NP_46]. The *SZ* further reported that, on YouTube, 213 330–214 827 posts had been flagged under NetzDG in the first six months, with 58297 posts reportedly being blocked in total [SZ_38; SZ_39]. The article referred to Google, which found that 73% of reported YouTube content was not of juridical relevance [SZ_39]. Finally, Twitter was reported to have deleted 28 645 posts out of 264 816 flagged ones [SZ_39].

²⁹² NP_46

²⁹³ FAZ_27; NP_49

²⁹⁴ NP_46

the meaningfulness of these numbers, especially given that the ministry did not accept complaints on falsely deleted posts.

Chapter 8

The Rule of Law

This chapter describes the *Rule of Law* frame, which played an important and prominent role in the NetzDG controversy and included ample discussions about the new law's relationship and adherence to the democratic principle of *the rule of law*. This frame's employment in the NetzDG controversy centered the discussion on the *modalities* by which moderation decisions were made not just on their content. It highlighted the importance of procedural aspects in making decisions—especially decisions over the legality of speech—and the requirements those who made such decisions needed to fulfill. As has been the case with the freedom-of-speech frame, this frame's application to the situation at hand, and for reaching conclusions on what the best policy would be, was again heavily contested. The two framings described in this chapter are opposed to each other, with the second framing especially emerging as a counter-framing to the first. The tension between the two framings indicates that part of the NetzDG dispute was about the *meaning* of and about the *best way to implement the rule of law on social media platforms*. On the one hand, there was the position that giving private corporations the task of deciding the legality of speech and enforcing these decisions would compromise the rule of law. On the other hand, others defended the view that implementing legal adherence in moderation decisions brought law and order to the internet and upheld the rule of law there.

The frame that this chapter describes is of special analytical importance to the NetzDG controversy because the law and the legality of speech played a central role in the discussion over how to best regulate content moderation and make moderation decisions. As I have discussed, the dispute over NetzDG was generally not so much about substantially drawing the line of acceptable speech as about how to best enact and enforce existing and accepted boundaries of

democratic speech on social media platforms. Nevertheless, as previous chapters have detailed, this dispute still left room to discuss the boundaries of free expression. This discussion, however, unfolded as a proxy debate over NetzDG's interaction with platforms' moderation practices and incentives. In a heads-on manner, the frame that this chapter presents therefore addresses a central question prompted by NetzDG's shape as a compliance regulation. This is the question of how to uphold laws on social media platforms in accordance with the demands of the rule of law as a democratic value and principle.

Chapter 8.1. first presents a framing of NetzDG as *a Threat to the Rule of Law*. The basic tenet of this framing was that NetzDG endangered the rule of law by privatizing legal decision-making and transferring an important task of the public judicial apparatus to private corporations. According to this framing, these corporations were unfit to act in this role. Instead, it seemed better to improve existing law enforcement online and provide official law enforcement bodies with the appropriate resources. Chapter 8.2., on the other hand, describes how NetzDG was framed as *Creating Law and Order on the Internet* and as ensuring that the law counted as much on social media as anywhere else. Regulatory interventions, and specifically NetzDG, here appeared to be especially needed to make sure the internet, as an otherwise chaotic and anarchistic place, was brought under the law and that platforms lived up to their responsibility to uphold it. According to this framing, NetzDG did not violate but *enabled* the rule of law by making sure that legal rules determined moderation decisions.

8.1. A Threat to the Rule of Law

The reporting often framed NetzDG as *a threat to the rule of law* in different ways. This framing incorporated different arguments and cases made for why NetzDG *negatively impacted the rule of law as a democratic value and governance principle*. Within this framing, the *process* of how content decisions were made, and not just their outcomes, featured as the decisive criterion for judging NetzDG's acceptability. Descriptions of NetzDG as *privatizing*—or “outsourcing”—legal

decision-making, law enforcement, and judicial tasks also reinforced this view and let NetzDG appear as violating rule-of-law principles. Moreover, considerations of *constitutional conformity* and *legal certainty* played another important role in this framing. This framing implied that NetzDG was the *wrong answer* to problems with law enforcement online and that the consequent enforcement of existing laws and criminal persecution was the right solution.

The argument that NetzDG *pushed private corporations into the roles of law enforcement, judges, and courts* was a central part of this framing. According to this argument, putting corporations in this role violated the rule of law because, as a governance principle, it implied that the state's judicial system decided over the legality of posts. Thus, difficult decisions over the legality of posts should be made by proper courts, not private corporations. Concerns over the emergence of a parallel jurisprudence fueled this framing. These concerns expressed widely shared worries that platforms would function like courts of law and that content moderators, as employees of internet companies and legal laypeople, would act as judges deciding over the legality and constitutionality of speech. The structures and employees of private companies, however, appeared unfit for fulfilling these kinds of tasks. To demonstrate this, some articles, for example, pointed out that content moderators would have to make difficult decisions on the legality of speech within minutes or even seconds, decisions for which courts would take years.

This framing included the view that NetzDG gave private corporations too much power and responsibility in deciding the boundaries of speech and *forced* them to make difficult decisions on legality. Simultaneously, NetzDG appeared as a *failure of the state* to live up to its responsibilities. It seemed that, with NetzDG, the state was taking the easy way out and passing on its responsibilities to platforms. As several articles discussed, NetzDG's privatization of legal decision-making and the failure of the state it represented bore a variety of risks. For example, users faced risks because the deletion of their posts would now depend on companies' interpretations of the law. Moreover, NetzDG could also create legal uncertainties for companies themselves. Finally, NetzDG was found to neglect the criminal prosecution of those who posted

illegal content and to hinder actual law enforcement; instead, as several articles criticized, it only required the deletion of posts.

Critics of NetzDG who interpreted it as a threat to freedom of speech also often framed NetzDG as threatening the rule of law. The view that NetzDG's intervention to content moderation violated the-rule-of-law procedures was usually held together with the view that it incentivized platforms to overblock: In my analysis, I did not come across the argument that NetzDG's violation of the rule of law led platforms to delete *too little*. If NetzDG was criticized as unduly interfering with speech and as compromising the rule of law and proper (legal) decision-making, the associated risk was always that platforms would infringe on freedom of speech by taking down legal content.²⁹⁵

Arguments and assessments that framed NetzDG as a threat to the rule of law or that at least supported this framing were widely shared and discussed across articles of all sources, both from mainstream media and political blogs.²⁹⁶ Again, similar to the framing of NetzDG as a threat to freedom of speech, this framing's prominence can be explained by its ability to rail up and unite the support of different actors and groups. The way in which NetzDG forced platforms to make legal decisions confirmed for example liberal, conservative, or even right-leaning views, which proposed that the new law would infringe on freedom of speech and civil liberties. Simultaneously, more left-leaning perspectives that subscribed to this framing worried about a loss of state control online, the increasing privatization of public institutions, and the

²⁹⁵ As will be explained later, the view that NetzDG was defending freedom of speech generally correlated positively with the view that it upheld the rule of law. This was because both types of judgments implied that NetzDG led platforms to finally take up their duty to take down illegal content. On the other hand, as just described, judgments that NetzDG compromised either of these principles also positively correlated with one another. These correlations are partially to be explained by NetzDG itself, as it only prescribes rules for take-downs not for keeping things up.

²⁹⁶ e.g., FAZ_4; FAZ_6; FAZ_8; FAZ_13; FAZ_15; FAZ_18; Zeit_1; Zeit_5; Zeit_8; Zeit_11; Zeit_13; Zeit_19; SZ_1; SZ_16; SZ_20; TAZ_1; TAZ_7; NP_1; NP_5; NP_8; NP_11; NP_13; NP_14; NP_34; Welt_2; Welt_14; Welt_17; Welt_18; SZ_8; TE_5; TE_6; TE_11; TE_15; TE_36; ND_2; ND_11; ND_12; DF_2; DF_5

growing power of platforms. All perspectives, in their own way, expressed concerns over a loss of control on behalf of the state's judicial apparatus, over a failure of the state, and over the negative impact these procedural flaws could have for freedom of speech.

For instance, the *FAZ* cautioned that NetzDG could lead to a “private media police” and an *SZ* commentary described NetzDG as instituting a “network court” or “Facebook self-court.”²⁹⁷ Spinning this further, *Welt Online* published a satirical piece, suggesting that platforms would now also be tasked with deciding over traffic offenses and even murder cases.²⁹⁸ Implicitly referring to the working conditions of corporate content moderators, the article included a made-up, facetious quote of Heiko Maas, stating that if student assistants at Twitter were fit to make decisions over freedom of speech, they could also be used in other fields of law. In line with this, *Zeit Online* pointed out that NetzDG forced platforms to make decisions in 24 hours, for which courts used to take years.²⁹⁹ *Der Freitag* then warned that the combination of time pressure put on moderators and of the power NetzDG gave to platforms would lead to a “censorship infrastructure.”³⁰⁰ Quoted in *Zeit Online*, *Netzpolitik* founder Markus Bechedahl stated that the privatization NetzDG stimulated would compromise the law's ability to limit platforms in their power.³⁰¹ Likewise, *TAZ* diagnosed that the new law could threaten the state's monopoly of power by transferring it to corporations.³⁰² Beyond this, *Zeit Online* pointed out that the deletion of posts could prevent criminal persecution by destroying evidence. Interestingly, one *SZ* article here specifically cautioned small journalistic organizations like the fact-checkers

²⁹⁷ FAZ_15; SZ_1

²⁹⁸ Welt_14

²⁹⁹ Zeit_19

³⁰⁰ DF_2

³⁰¹ Zeit_13

³⁰² TAZ_12

Correctiv to not let themselves be used for providing legitimacy to platforms' deletion practices and for avoiding proper legal decision-making.³⁰³

The articles additionally cited a variety of speakers who also expressed critiques which drew from this framing, such as corporate lobbyists; internet activists; media representatives; experts heard in a parliamentary hearing; the German Association of Publishers and of Journalists; and politicians from die Linke, the FDP, the Green party, and the AfD.³⁰⁴ In line with his opposition to NetzDG as violating civil rights and the constitution, FDP politician Jimmy Schulz for instance emphasized that “the liberal constitutional state cannot leave the decision about what is lawful and what is unlawful up to the interpretation of private companies.”³⁰⁵ Likewise doubling down on her own strong opposition to NetzDG was AfD politician von Storch, who was cited as describing NetzDG as the “end of the constitutional state under the rule of law.”³⁰⁶ On the other side of the political spectrum, Green politician Konstantin von Notz was referred to when warning against putting platforms in the role of judges, as this gave judicially difficult considerations to private corporations and could even lead to a “creeping censorship effect.”³⁰⁷

Predominantly the *FAZ* also reported that the platforms likewise objected to NetzDG because they saw themselves forced to make legal decisions and take over the tasks of courts.³⁰⁸ Especially Facebook used this framing to oppose NetzDG. In the words of a Facebook lobbyist, it did not “feel right” that this law would force platforms to make legal decisions.³⁰⁹ The company thus suggested that turning the platform into “judges, juries, and executors” of legal

³⁰³ SZ_1

³⁰⁴ FAZ_28; TAZ_1; TAZ_4; SZ_20; Zeit_11; NP_6; TE_11; ND_11, ND_12

³⁰⁵ FAZ_25

³⁰⁶ FAZ_13

³⁰⁷ SZ_3; ND_11; ND_12

³⁰⁸ FAZ_8

³⁰⁹ FAZ_21

decisions seemed like a bad idea.³¹⁰ To support this, it further stated that the rule of law obliged the state to not pass on to private corporations its own failures and responsibilities.³¹¹ “The prevention and fight against hate speech and false news,” so the company, was hence “a public task the state should not avoid.”³¹² Moreover, as it also pointed out, the law’s formulations were “unclear” for the companies themselves.³¹³ Echoing this sentiment, a spokesperson of the internet association *eco*, which ran a system for processing complaints over posts in collaboration with law enforcement, likewise emphasized that content moderation practices that were sensitive to fundamental rights required careful legal consideration and balance.³¹⁴

Given this framing’s assessment of NetzDG, it seemed that legal decisions over speech online should be made in the very same way that any other legal decision was made, namely in courts, and that they should be implemented by law enforcement. Therefore, this framing referred to a vision of the rule of law as working the same way on the internet and outside it, so that legal violations in both spaces could be prosecuted in the same way. Comparisons that underlined this vision were again made in different sources. For example, *Tichys Einblick* emphasized that illegal content should be treated like “any other crime” and prosecuted by law enforcement; it further suggested that crimes online should be dealt with in courts *in the same way* that crimes offline were.³¹⁵ A *TAZ* piece also evoked a metaphorical comparison to how things worked “offline” when warning that just as one would not call a private security firm when assaulted on the streets, it should be the task of judicial agencies, and not of private corporations, to decide what is allowed online.³¹⁶ In addition, the article pointed out that hate speech and the

³¹⁰ SZ_25

³¹¹ FAZ_5

³¹² FAZ_5; SZ_2

³¹³ FAZ_8

³¹⁴ SZ_31

³¹⁵ TE_19; TE_29

³¹⁶ TAZ_1

like existed *online as much as offline* and that deleting posts was not enough to combat them; instead, the problem needed to be jointly addressed by “politics, the justice system, social media, and society.”²⁷⁸

The drawing of such parallel comparisons to the “offline world” let the introduction of new laws like NetzDG appear superfluous, as what seemed needed, in this view, was the consequent application of existing ones.³¹⁷ Calls to instead implement existing laws were made across sources and under reference to such comparisons.³¹⁸ This position has already previously been expressed in Richard Gutjahr’s detailed report, which likewise concluded that law enforcement needed to take cyber-crimes much more seriously.³¹⁹ In line with this, a *Zeit Online* article clarified that just because law enforcement was unable to catch up with the amount of content and transgressions online, this should not provide a reason to privatize law enforcement.³²⁰

The reporting therefore named missing resources, insufficient capacities, and lacking training in the juridical apparatus as reasons for why the state was delegating legal decision-making and law enforcement tasks to private corporations.³²¹ Therefore, various voices demanded the supply of appropriate resources and institutions for enforcing the law online. These voices included the German Association of publishers, the authors of the *Declaration for Freedom of Speech*, the Green’s Renate Künast, the FDP’s Nicole Beer, and the internet association

³¹⁷ The same assessment was made for the Digital Anti-Discrimination Act, another one of Heiko Maas’s legislative proposals. While the concerns the proposal addressed were seen as valid, appropriate regulation was taken to already exist with the General Equal Treatment Act of 2006, which just had to be properly applied [TAZ_6].

³¹⁸ TAZ_6; NP_6; TE_29

³¹⁹ Zeit_15

³²⁰ Zeit_8

³²¹ Interestingly, one *Zeit Online* article pushed back against suggestions to better fund law enforcement, warning that it would be taxpayers who financed the “cleanup work” while platforms were making billions [Zeit_1].

eco.³²² They all called for an improved and adequate allocation of resources and equipment for law enforcement agencies, so that they could react quickly and effectively to illegal acts online.

Beyond providing more resources to existing law enforcement structures, some suggested to remedy problems with law enforcement online without threatening the rule of law in the way NetzDG did. These included reformations of the justice system, new institutions such as specialized courts, or, as the *SZ* suggested, to have a public supervisory authority just like the Federal Financial Supervisory Authority take over matters as a “public testing and decontamination facility.”³²³ Even a Facebook lobbyist here suggested implementing special courts that could make fast-paced decisions, as had previously been done in Brazil.³²⁴ Measures to combat hate speech and fake news outside law enforcement were sometimes suggested as other alternative solutions to avoid the problems this framing summarizes. The *Declaration for Freedom of Speech*, cited in *Netzpolitik*, for example suggested nourishing educational efforts that cultivated sensibilities for hate speech within the population and could avoid the problems that came with regulation and law enforcement.³²⁵

8.2. Creating Law and Order on the Internet

In opposition to the previous framing stood another framing that described NetzDG as upholding the rule of law on social media platforms, particularly by creating *law and order* on the internet. This framing suggested that NetzDG *defended* the rule of law by countering the arbitrariness with which social media platforms operated and by ensuring that they followed the law. This framing therefore described NetzDG as implementing law and order online by making sure that illegal content and hate crimes were not accepted but removed from the internet and

³²² SZ_1; SZ_16; SZ_20; SZ_31; NP_5; NP_6; TE_5

³²³ Zeit_11; SZ_1; Welt_12

³²⁴ FAZ_21

³²⁵ NP_5

hence that speech online adhered to legal norms. Thus, this framing united assessments that suggested NetzDG had a *positive impact on the rule of law* and that opposed the conclusions of the previously described framing: To frame NetzDG as creating law and order meant to describe it not as privatizing or hindering law enforcement but as *enabling* the enforcement of the law.

This difference between the presently and previously described framings can be explained by the respective framing's focus on certain aspects of law enforcement for content online. For instance, the previous framing directed attention toward the modalities and conditions under which decisions were made, leading to the verdict that procedures within the state judicial system, and not private platforms, needed to assess individual instances of speech. The framing explained in the present section, on the other hand, focused on ensuring that the content of speech online adhered to existing legal norms and that companies complied with these norms in their moderation practices. It therefore related the assurance of the rule of law on platforms to the implementation of *law and order*, which was interpreted as implying that content on social media platforms honored and followed existing speech laws.

Where articles employed this framing, NetzDG thus appeared to be ensuring the *implementation and enforcement of existing law*. This here seemed to be the *right approach* for tackling problems with content on social media. The basic tenet that *legal rules* ought to have the same force on the internet as anywhere else and that this was what NetzDG ensured characterized this framing. Several articles suggested that NetzDG only *implemented* already accepted and established laws; thus, it did not seem to present unconstitutional censorship. Consequently, NetzDG's function seemed to be to defend the law and implement legal rules online. This included the suggestion that it *contributed* to the persecution of digital criminality and to holding those who broke the law accountable. Consequently, NetzDG appeared as an appropriate state effort online. Overall, this framing presented the new compliance law NetzDG as necessary for *turning the internet into a lawful space*. It invited the interpretation that NetzDG (laudably) forced companies to apply notice-and-take-down duties prescribed by existing legal codes and to

implement legal rules in their moderation practices. The framing thus created the impression that NetzDG was an act of *the state asserting itself against private corporations* and an important engagement for democracy.

If NetzDG was cast in the positive light of enforcing the rule of law and establishing law and order, this likewise implied that companies were in principle capable of implementing legal rules in their moderation practices while the potential risks of doing so seemed neglectable. Some articles discussion on platforms' deep interventions to public life and democratic discourse supported this framing's conclusions. They provided an argument for why platforms needed to be subordinated to public rules and held responsible for the illegal and inciting content that financially profited them. The responsibility that came with this power was consequently used to justify the restrictions on corporate freedoms.

A variety of articles emphasized platforms' responsibility while simultaneously raising doubts about the extent to which the platforms did justice to these responsibilities when left to their own devices. This supported the conclusion that NetzDG was a necessary and democratically important intervention to enforce law and order. One commentary in the *SZ* for instance suggested that an intervention like NetzDG was needed because simply "talking" to companies about these issues had proven to not be fruitful.³²⁶ *Zeit Online* further reported that if platforms were left to delete as they pleased, users were delivered to the will of private corporations. These corporations however, so the report criticized, often did not give explanations; were difficult to reach; and made opaque, inconsistent, and questionable content moderation decisions.³²⁷ Aspects of NetzDG that were particularly widely lauded—and received nearly no criticism overall—were its transparency requirements as well as stipulations for better reachability of platforms inside the country and effective complaint management systems. The

³²⁶ SZ_4

³²⁷ Zeit_19

hope was that these stipulations could enable those affected by hate speech to gain information on perpetrators and take legal steps.

This framing correlated positively with framings of NetzDG as *protecting* freedom of speech, because it described the new legislation as enforcing already existing and democratically legitimated speech laws that respected and protected freedom of speech. In addition, framings that described hate speech and fake news as serious problems on social media likewise supported the feasibility of this framing's storyline: Where the internet was painted as a place of chaos and anarchy, to be brought under control through regulatory interventions, NetzDG seemed needed to enforce law and order. If the impression was conveyed that the internet was a chaotic, dangerous, disorderly, and even violent place, this framing's appeal increased: If the internet gravitated towards lawlessness, opacity, and unruliness when left alone by regulatory efforts, NetzDG appeared as a more attractive alternative. In line with this, a *TAZ* article therefore referred to Maas's legislative efforts as attempts to "tame" an internet where "algorithms reign and fake news sprawl."³²⁸

Elements of this framing or statements that spoke to it appeared within articles across sources from the mainstream media. However, within the overall discourse, this framing was less pronounced than its previously detailed counterpart.³²⁹ In general, it was especially center-to-left-leaning sources that articulated this framing, as it fit with their tendency to focus on concerns about platforms' irresponsibility and speak in favor of getting them under regulatory control. Several *FAZ* articles also cited arguments that accorded to this framing; they emphasized particularly the need for transparent procedures and structured procedures as well as to defend the law online. As has already been the case earlier, this framing was often used to describe

³²⁸ TAZ_6

³²⁹ FAZ_4; FAZ_11; FAZ_9; FAZ_14; FAZ_16; FAZ_17; FAZ_19; Welt_1; Welt_2; SZ_3; SZ_4; SZ_18; TAZ_1; TAZ_3; TAZ_6; NP_14; NP_37; Zeit_5; Zeit_8; Zeit_13; Zeit_14

NetzDG as an *attempt* to uphold the rule of law rather than as a definite measure for doing so or it was presented as one of two sides. Several articles for instance reported on NetzDG as an attempt to force platforms to deal with users' complaints concerning hate crimes and other illegal content more diligently; to delete hate speech, hateful comments, and illegal content quicker and more consistently; and to act against hate and lies on social media. In line with this, a *Zeit Online* article pointed to a difference between NetzDG's legal approach and its potential implementation: It emphasized that NetzDG was not changing the fact that platforms had to react to illegal content and only sought to enforce existing rules in a stricter manner; however, it also conceded that, in practice, this could result in overblocking.³³⁰ Elsewhere, the venue further described NetzDG as a result of the government's *intention* to force platforms to be stricter and more consistent in their removal of illegal content while also citing several critics.³³¹

Thus, as has been the case with the framing of NetzDG as promoting democratic discourse and protecting freedom of speech, this framing was often used with some discursive humility. This meant that the use of this framing emphasized the need for governmental and regulatory intervention to counter serious problems with platforms and with content on them while strong statements about NetzDG's ability to remedy these problems fully were not so frequent. Instead, where articles framed NetzDG in this way, they also often pointed at NetzDG's shortcomings. Thus, many articles and their assessments of the problem at hand stressed the need for regulatory and governmental intervention to moderate content on platforms while expressing various degrees of confidence in NetzDG specifically.

This observation points to a tension between what was identified as NetzDG's intention—and the general necessity to intervene—and its concrete implementation or potential effects. Framings that described a critical attitude towards the new law often included concrete

³³⁰ Zeit_13

³³¹ Zeit_5

concerns about NetzDG's potential effects while suggestions made for alternative solutions remained rather vague. Framings that put a spotlight on NetzDG's positive effects generally focused on the negative things that happened online and, in the *absence* of substantial regulation, they emphasized the need for an intervention *like* NetzDG. However, the use of these framings often did not express overt confidence in NetzDG's ability to solve all problems but frequently described its positive intentions and goals or emphasized laudable aspects while also pointing out its shortcomings.

In the case of the framing this section outlines, this tension makes a gap visible that exists between what the rule of law prescribes *in theory* and the *practical possibilities* to exercise traditional law enforcement on platforms. For example, while including criticisms of NetzDG, one *Zeit Online* article quoted a representative of the civil society organization *Digitale Gesellschaft* who suggested that the rules of what was deleted “must be made on the basis of a democratic and constitutional process and not left up to the more or less good will of economic corporations.”³³² Rather than giving them up to the arbitrariness of platforms, such rules, so the organization should be devised according to democratic standards that included a parliamentary process, an accompanying public debate, and the ability to have their constitutionality judged by courts.

It was then particularly Heiko Maas and his political allies who were quoted in promoting and defending this framing in the strongest and most straightforward way and who expressed least doubts about NetzDG's *actual, practical* ability to uphold law and order and defend the rule of law. Pushing back on accusations that regulations pruned civil liberties, Maas for example observed that “a majority of the population seemed to believe that the internet was a lawless space,” a circumstance he deemed unacceptable.³³³ He further argued that NetzDG *assured* that

³³² Zeit_8

³³³ SZ_4

illegal content, hate crimes, and illegal disinformation were taken down from social media sites.³³⁴ While conceding that it did not solve “all problems,” the politician referred to the new law as putting an end to a “verbal club-law on the internet.”³³⁵ In his defense of NetzDG, Maas then enrolled comparisons between offline and online but this time *in favor* of NetzDG: The politician stated that there should be as little space for illegal hatred on social media as there would be on the streets and that it was a duty held against victims to enforce this.³³⁶ Moreover, he emphasized platforms’ responsibility for the legality of content by comparing them to newspapers which could also not publish readers’ letters without checking their content first.³³⁷ In line with this, he defended NetzDG as helping to fight problems online by formalizing and concretizing companies’ tasks.³³⁸ With NetzDG, Maas and his governing coalition reportedly aimed at forcing platforms to take the German law as their standard for deletion.³³⁹ The government’s hope was that NetzDG’s transparency requirements could eventually enable a thorough evaluation of its effectiveness.³⁴⁰ Also in its support of the new law, the SPD further emphasized the importance of its proclaimed goal to fight hate criminality.³⁴¹ For Maas’s SPD colleague Andrea Nahles, it was then reportedly imperative to bring responsibilities to and prevent lawlessness on the internet.³⁴² According to Nahles, this had nothing to do with censorship. The Ministry of Justice also reiterated this position by factually stating that it was criminal law, and not Facebook, that decided on what ought to be deleted.³⁴³ Finally, even Angela Merkel, who *Tichys Einblick* cited,

³³⁴ FAZ_7; FAZ_8

³³⁵ SZ_8

³³⁶ TAZ_1

³³⁷ SZ_21

³³⁸ Zeit_1; Zeit_13

³³⁹ FAZ_1; NP_7

³⁴⁰ SZ_21

³⁴¹ Welt_5

³⁴² SZ_20; ND_1

³⁴³ FAZ_11

chimed in to support Maas's law by stating that the internet could not become such a "lawless space."³⁴⁴

This framing seemed to have partially developed out of the desire to create a *counter-framing* against critiques of NetzDG as violating the rule of law. The statements of Maas and his colleagues can be read as reactions to such critiques, and they were also cited as such. Some articles likewise stepped in to support this counter-framing. One *SZ* article for instance evoked numbers and expertise to counter criticisms made: It referenced university researchers who had concluded that worries over NetzDG's transferal of state tasks to private corporations were exaggerated.³⁴⁵ It further cited a professor who suspected that high-profile false decisions or cases of overblocking were not so much the result of companies' fears of fines but tactics to discredit the obligatory reporting system which created a lot of work for platforms.

³⁴⁴ TE_29

³⁴⁵ SZ_28

Chapter 9

Platform Transparency

The previous chapters presented how NetzDG and the potential regulation of content moderation more broadly were framed in terms of their impacts on freedom of speech or the rule of law as important democratic values and principles as well as in terms of their ability and suitability to react appropriately to what was happening on social media platforms. The present chapter now presents a frame under which the problem of content moderation is interpreted as a problem of *opacity*. In the controversy, this frame was employed to assess NetzDG in terms of *its ability to create transparency*. Under this frame's use, transparency stood in as another important democratic value and principle, which provided an important tool for the democratic oversight of institutions and powerful actors such as platforms when translated into governance practice. Where NetzDG was assessed according to this frame, the central concern was the pervasive opacity with which platforms operated.

The central measure of evaluation for NetzDG, under this frame's employment, was its ability—or rather, its *inability*—to counter this opacity, establish meaningful oversight and platform control through regulatory institutions or civil society, or empower users. Where this frame was drawn from to assess NetzDG and content moderation, *guaranteeing transparency* emerged as a mechanism that promised to hold platforms publicly accountable, remedy misbehaviors, establish political participation, channel moderation into democratic forms, and even exercise control over the societal effects of algorithms. Consequently, this guarantee of transparency appeared to be the right way to tackle content moderation. At the same time, the discussion under this frame suggested that, in actuality, there was little transparency when it came to platforms' practices and their content moderation and that NetzDG did not help this

problem. Instead, the new law could even worsen this problem by transferring more power and sovereignty *to* platforms.

This chapter differs from the previous ones because, unlike the previously presented ones, the framings that the subsequent subchapter detail do not express different attitudes towards NetzDG, as in speaking for and against it. Rather, they both describe a critical stance towards the new law. However, they are distinguished by the problem they focused on to reach conclusions on whether NetzDG supported or hindered the establishment of transparency. Chapter 9.1. then first describes a framing of NetzDG as *Reinforcing Platforms' Opacity*. This framing centered on existing problems with platforms' ways of operating and included diverse descriptions of platforms' obscure practices and their negative effects. According to this framing, NetzDG did nothing against this but could, in fact, even accelerate it. Chapter 9.2. complements this by describing a framing of NetzDG as *Encouraging the Use of Automation*. According to this framing, opacity was particularly a problem when it came to the use of algorithmic techniques and automated content filtering, as these were difficult to control and assess and likely to result in biased, and even discriminatory, moderation decisions. According to this framing, NetzDG then exacerbated this problem by incentivizing the use of such algorithmic methods. What was instead needed, as this framing suggested, were adequate algorithmic transparency and oversight as well as a broad public debate on the rules of algorithmic decision-making.

9.1. Reinforcing Platforms' Opacity

This framing's main concern with regards to NetzDG's impact on platform transparency was that *platforms already operated with an opacity* that caused many problems, and that NetzDG *reinforced* this opacity instead of countering it. According to this framing, this opacity pervaded most of the practices of social media platforms, and transparency existed neither for procedures nor for the content of moderation policies. This framing intimately linked platforms' opacity with their wielding of enormous power and their lack of accountability in doing so. Opacity

allowed platforms, as this framing suggested, to be arbitrary in their moderation decisions and unaccountable towards the public and state institutions. Thus, the focus that many articles put on the pervasive opacity of platforms' practices and on their causes and consequences illustrated this framing. Such discussions often described platforms' lack of transparency as part of a broader problematic development on the internet where power is being increasingly concentrated in the hands of a few big companies. The fundamental criticism of this framing was that this opacity and the increasing concentration of power that came with it allowed platform companies to operate with little public accountability while having negative impacts on public discourse. Therefore, assessments of the situation that were part of this framing centered not so much on NetzDG and its effects and acceptability as on platform practices as the main problem. NetzDG was framed in relation to this problem, either as not doing anything—or enough—against it or even as perpetuating it. Overall, this framing described NetzDG as not tackling problems with corporate opacity appropriately. By setting up duties in NetzDG's specific way, it rather seemed that the government had failed to enable transparency and instead allowed companies to continue deleting according to their own rules.

According to this framing, platforms internal practices and the conditions of their moderation labor were both the cause and the result of their opacity. Their practices helped to create opacity, which enabled them to continue working as they did and put their own economic incentives first. This opacity consequently made their public control impossible and allowed them to keep up their practices. Several negative impacts were attributed to such opaque practices, for instance, the deliverance of users to arbitrariness and the nourishing of “bad” content that led to the deterioration of public discourse. In line with this, various descriptions of platforms' internal rules and practices conveyed a sense of randomness and absurdity. Moderation on social media appeared to be arbitrary, contradictory, unfair, unaccountable, and even blocking important political speech. Further, corporate initiatives against fake news,

propaganda, or hate speech were discussed rather critically. They did not seem to solve problems but also remained opaque.

To confirm these observations and exemplify the negative effects of corporate secrecy and opacity, two articles for instance discussed the leaked Facebook documents ProPublica had published.³⁴⁶ These documents detailed Facebook's secret deletion practices and revealed that violent, misogynist speech and groups such as "White men," enjoyed vast protections while other, more vulnerable groups such as "black children" did not. They proved that the policies in place did not protect the most vulnerable groups but instead granted special rights to powerful people like celebrities and politicians.³⁴⁷ Accounts of the poor working conditions content moderators were subjected to, which appeared both as a cause and a result of obscure moderation practices, spoke to this framing. Beyond being overall concerning, these working conditions were described as contributing to problematic decisions because moderators had to implement moderation policies under precarious and psychologically troublesome circumstances and make decisions in as little as 10 seconds. Platforms' opacity was identified as maintaining these poor working conditions by keeping them out of the sight of regulators and the public.

According to this framing's verdict, their lack of transparency and publicness helped to keep platforms unaccountable and, as some articles pointed out, even had negative effects on user privacy. Opacity was thus described as allowing platforms to engage in surveillance, data collection, targeted advertising, and the employment of hidden rankings. Further, it was also found to prevent governmental and regulatory oversight; inhibit control by journalists, activists, politicians, and the public at large; and take agency away from users, infringing on their

³⁴⁶ NP_17; Welt_2

³⁴⁷ Interestingly, it was then also this disclosure that subsequently encouraged Facebook to take steps to increase its transparency and public accountability.

informational self-determination. Platforms thus appeared irresponsible and unaccountable to regulatory institutions, their users, and the public.

This framing therefore shared arguments also used to frame NetzDG as a threat to the rule of law, namely that the NetzDG signified that the state was giving too much power and control to private corporations, which in turn presented a failure and loss of control on its behalf. It seemed that with NetzDG, the state was proving itself weak against large corporations and failed to force them to be more transparent with their moderation practices. For example the *SZ* suggested, since platforms already were monopolistic players with access to billions of people's data, giving them more power by encouraging them to filter and delete on behalf of the state was risky business.³⁴⁸ Moreover, *Netzpolitik* quoted Heike Hänsel, a politician from die Linke, who stated that the government was being too passive towards Facebook's "power monopoly."³⁴⁹ Where this framing was used, it consequently seemed that the government did not address platforms' deletion practices appropriately or hold them publicly accountable; instead, it allowed them to retain undue power even over decisions on criminality and free expression. This framing included the observation that NetzDG *confirmed* companies in their power to shape the norms and rules of public discourse and *transferred interpretational sovereignty to corporations*.

Articles across the board expressed this sentiment that social media companies and their content moderation practices were characterized by a fundamental lack of transparency, including inconsistencies and cultural insensibilities, and that NetzDG was not doing anything to counter this but instead exacerbated platforms' opacity or confirmed them in their (illegitimate) power.³⁵⁰ However, this framing and particularly its emphasis on transparency and user

³⁴⁸ SZ_12; Facebook itself elsewhere rejected such claims about its monopolistic position or special market power, emphasizing that it was competing with many different networks and platforms from which users could choose [Welt_22].

³⁴⁹ NP_7

³⁵⁰ FAZ_15; Welt_2; Welt_3; SZ_9; SZ_12; Zeit_15; Zeit_19; TAZ_6; TAZ_12; NP_7; NP_13; NP_35; NP_37; NP_39; NP_43; NP_44; TE_12

empowerment were represented predominantly in left-leaning sources as well as in *Netzpolitik*: Many of the latter's articles were extremely critical of platforms' internal practices, their growing power on the internet, their irresponsible use of algorithms, and the difficulties their opacity caused for their control on behalf of users and the public at large. One of the venue's articles for instance explicitly stated that, with NetzDG, the legislators were passing up on an opportunity to overview "what is happening online."³⁵¹

Beyond the storyline traced above, some articles further added other concerns to this framing. *TAZ* for instance cited a study that suggested that platforms' opacity and lack of access for researchers prevented public inquiry into and the scientific study of platforms' algorithms and their effects.³⁵² Even *Tichys Einblick* chimed in, connecting the opacity of moderation practices to its overarching critique of illegitimate censorship online: One of its articles criticized the outsourcing of moderation work and collaborations with institutions like the Antonio-Amadeu Foundation.³⁵³ It suggested that both corporate *and* governmental moderation initiatives lacked transparency and could consequently lead to the (ideologically and politically motivated) deletion of undesirable content and the unduly policing of speech.

Facebook itself countered such accusations about its pervasive opacity, which were part of this framing, and emphasized its commitment to transparency, exemplified by its introduction of new measures such as the labeling of political advertisements.³⁵⁴ Interestingly, the platform however elsewhere also used its opacity as a *defense*: A company spokesperson, cited in the *SZ*, countered allegations over its lacking initiative against problematic content by saying that it often remained invisible to the public what the platform was in fact doing "behind the scenes."³⁵⁵

³⁵¹ NP_13

³⁵² TAZ_6

³⁵³ TE_12

³⁵⁴ Welt_22

³⁵⁵ SZ_4

To counter this idea that NetzDG contributed to platform opacity, Maas again presented a counter-framing by suggesting that it established *more transparency*. As *TAZ* reported, NetzDG was part of Heiko Maas's strive toward more transparency for technology companies so that their practices could be more rigorously assessed.³⁵⁶ The Ministry of Justice also defended NetzDG by emphasizing that the transparency it brought about would enable a thorough evaluation of the law and possible adjustments in the future.³⁵⁷ This hope in the power of transparency was shared widely within the discourse. It fueled a generally positive perception of NetzDG's introduction of an obligatory point of contact in Germany and of a transparent and efficient complaint management system. Thus, these requirements were generally not criticized and at least lauded as having the right intention; reportedly, they were even supported by opposition parties such as the Greens, the FDP, and die Linke.³⁵⁸

But while such pushback against framing NetzDG as reinforcing platforms' opacity took place occasionally and some stipulations were generally accepted as helpful for transparency, this view was not represented strongly and broadly enough to warrant its own framing or subchapter. Nevertheless, this circumstance shows that transparency was generally used as a frame by which to assess—and argue for or against—certain moderation policies and practices. Despite the generally positive perception of some of NetzDG's transparency measures, broader doubts generally remained about the success that governmental efforts for more oversight over platforms had had in creating transparency and accountability.³⁵⁹ One reason that was named for this was that platforms' design of reporting mechanisms remained opaque and complicated despite NetzDG. The *FAZ* reported that, on Facebook, the form for issuing complaints under

³⁵⁶ TAZ_6

³⁵⁷ NP_33

³⁵⁸ Zeit_11; Zeit_15; TAZ_4; NP_12

³⁵⁹ NP_7

NetzDG for instance was difficult to find.³⁶⁰ Other articles added that the transparency reports NetzDG obliged platforms to issue carried little informational value: Reviewing the first instance of reports, *TAZ* concluded that “companies were acting as opaque as ever,” deleting most posts on their own terms.³⁶¹ The article stated that while transparency sounded like openness, traceability, and control, the reports did not fulfill this ideal. It concluded that the transparency requirements were insufficient because they offered no insights into whether, for instance, Facebook had deleted too much or also legal content and because they did not allow for comparisons across platforms. As an alternative, the article suggested setting up an independent authority that oversaw deletion procedures. Likewise, even *Neues Deutschland* reported that the numbers gave little informational insights beyond showing differences between the extent to which different platforms such as YouTube and Facebook took user complaints seriously.³⁶²

As already indicated earlier, while this framing generally summarized a negative outlook on both NetzDG and platforms’ own practices, it also included a beacon of hope. On the positive side, it included the possibility that more transparency and openness would increase diversity and the chance for participation online.³⁶³ One *Netzpolitik* article therefore contrasted social media companies and their algorithms’ secret and opaque moderating and gatekeeping practices to what was envisioned as non-discriminatory and egalitarian access to all information online and to a meaningful and accountable control of algorithms.³⁶⁴ *Die Zeit* moreover suggested that more transparency would help users, whose content was unjustly deleted, to stand up to

³⁶⁰ FAZ_27; Here it should be noted that much later, in July of 2021, Facebook was eventually fined 3 million euros for not complying with NetzDG’s obligations for complaint management systems, exactly because of the inaccessibility of the NetzDG complaint form. See for example (“Hass im Netz,” 2021).

³⁶¹ TAZ_17

³⁶² ND_15

³⁶³ e.g., NP_35

³⁶⁴ NP_35

social media companies, defend themselves, and hold platforms accountable.³⁶⁵ Several articles then described the implementation of meaningful transparency as well as oversight and independent control for platforms and tech companies as potential efforts to *empower* users and reinstall their *informational self-determination*.³⁶⁶ In line with this, even Heiko Maas was referred to as hoping that algorithmic transparency could enable users to understand filtering and personalization they were subjected to,³⁶⁷ and Facebook itself wanted to create more transparency by labeling political advertisements.³⁶⁸

9.2. Encouraging the Use of Automation

Different from the previous chapters, the framing this section describes did not stand in opposition to the previously described framing but *complemented* it. While it also centered on platforms' opacity and its negative effects, it is distinct due to its specific focus on *the use of algorithms for content moderation and curation*. Overall, this framing was used to express the idea that NetzDG incentivized the use of algorithms to moderate content and that this would perpetuate biases and problematic moderation decisions, as well as again hinder effective control and public oversight for platforms. This framing was especially prevalent in early discussions on NetzDG, given that the law initially included an obligation to also delete copies of illegal content. The fear therefore arose that NetzDG would incentivize platforms to use automated techniques and upload filtering in order to implement this requirement. This criticism was then probably at least partially responsible for the final version's exclusion of such an obligation.

Thus, concerns over the use of automated filtering and moderation technologies played a prominent role in framing NetzDG as a problem of platform transparency. The criticisms made

³⁶⁵ Zeit_19

³⁶⁶ Zeit_19; TAZ_12

³⁶⁷ TAZ_6

³⁶⁸ TAZ_14

within this framing also connected to a more general societal concern over the use of automated decision-making. In line with this framing, several articles therefore cautioned that the use of algorithms and automation for content moderation could intensify the opacity of moderation practices and lead to biases and distortions in moderation decisions. One reason was that algorithms seemed to present black boxes with little explanatory power and that they lacked the contextual understanding deemed so important for judging speech. Moreover, this framing included warnings that the automated enforcement of content moderation rules could be gamed by right-wing or populist forces and hence accelerate the spread of dangerous content such as conspiracies. Further, filtering could be circumvented, so it was feared, by formulating statements in a seemingly politer or more ambiguous way. Consequently, automated techniques may make content moderation ineffective for fighting and suppressing hate and hate speech and even help to establish undemocratic speech norms. Such critiques often suggested that human moderation was preferable, less opaque, and less biased than the use of automated techniques.

According to this framing, the opacity that characterized automated moderation techniques and their use increased dangers to democratic oversight and it made democratic control of platforms and of the public and political discourse that took place on them even harder. Moreover, it hampered the establishment of accountability or transparency for technology companies and allowed platforms to “hide” behind algorithms. Further, through manipulations and a lack of rigorous external evaluation, automation could even accelerate existing problems with content on social media. One *Netzpolitik* article therefore stressed that instead of a law like NetzDG, what was needed was to assess algorithms and their consequences in the public interest and have a societal debate on the rules of algorithmic decision-making which did justice to the important role platforms played for public discourses.³⁶⁹ Interestingly this article presented the development of content moderation algorithms as a *social experiment*

³⁶⁹ NP_13

which raised broader questions about what happened when developers and moderators were judging content instead of politicians and judges. Elsewhere, the tech-news blog suggested that, while such experiments on the use of media in the formation of political opinions were being sold as furthering “freedom and democracy,” they missed fundamental democratic ingredients such as a separation of powers, control of governmental power, and civil participation.³⁷⁰

Overall, this framing was not as strongly represented within the NetzDG controversy as for instance those that were characterized by concerns over its impact on the rule of law and freedom of speech. While being mentioned at several points, critiques of the use of automated moderation techniques were most prominently made by *Netzpolitik* articles.³⁷¹ One reason for this may be that such criticisms evoked broader concerns about algorithmic unaccountability and opacity that are commonplace in web-political circles. For example, one *Netzpolitik* article concluded that the combination of ideas from NetzDG with the employment of automated techniques, non-transparent counter-terrorism measures, content and upload filtering on an EU level, and international trade treaties posed one of the *biggest challenges to preserving an open internet*.³⁷² Likewise, another one worried that the employment of upload filters would contribute to a potential censorship infrastructure that built on mechanisms already in place, for instance to combat terrorism, and that would prevent democratic control.³⁷³ The Pirate Party, which was quoted in *Tichys Einblick*, then also opposed NetzDG with the justification that it incentivized the use of “automated censorship algorithms.”³⁷⁴ And even though it remained optimistic about the potential of the technology, Facebook itself was also cited in its admission to limitations faced by the employment of automated techniques for content moderation.³⁷⁵

³⁷⁰ NP_37

³⁷¹ FAZ_16; SZ_12; Zeit_17; NP_1; NP_13; NP_24; NP_35

³⁷² NP_24

³⁷³ NP_2

³⁷⁴ TE_5

³⁷⁵ Welt_22

In line with this framing, the controversy included some alternative suggestions for how to establish algorithmic transparency and control.³⁷⁶ One *TAZ* article emphasized the need to increase research and expertise on algorithms rather than just publishing data or information that would be difficult to understand for lay people and not do much to establish effective accountability. To support this argument, the article quoted the NGO *Algorithm Watch*, whose founder Matthias Spielkamp stressed the need for more expertise and transparency of technology companies but believed regulation to always be the *ultimo ratio*. At the same time, the article also warned that before jumping to regulations or new institutions, it may be wise to conduct more research on the functioning and potential harms of algorithms and companies' practices. Elsewhere, the same venue warned that transparency may open algorithms up to abuse or that for instance the labels platforms attached to posts for more transparency may not be understood by users and hence be unsuccessful in tackling algorithmic manipulations.³⁷⁷

³⁷⁶ TAZ_6

³⁷⁷ TAZ_12; TAZ_14

Chapter 10

Regulatory Control for Platforms

This chapter—and frame—on *regulatory control for platforms* unites different assessments of NetzDG that were made against the broader question of how to appropriately govern and regulate platforms. This frame is a contextualizing frame that was used to discuss the broader, more general challenges of governing social media platforms. The framings united under this frame sometimes overlapped with other framings, such as those that found NetzDG to threaten the rule of law by putting platforms in the role of judges or those that interpreted it as furthering democratic discourse online. However, while the previous framings focused on NetzDG in particular, what signifies this frame is that it was drawn upon to situate NetzDG within the broader context of regulatory control online and relate it to the general value of internet regulation. According to this frame, NetzDG was thus problematized in relation to the overarching merits or downsides that control measures could have for platforms.

An essential question that this frame's framings problematized in various ways was how to categorize platforms and which status to assign them, for example, that of a public infrastructure, a publisher, or a private corporation; the question that followed from this was which regulatory approach their respective status entailed. Thus, this frame was employed to raise the broader issue of identifying the right regulatory approach for platform governance. NetzDG was interpreted and assessed in terms of its match with whatever was identified as the right approach in each case. What is interesting about this frame is that its use in the NetzDG debate directed attention to essential challenges of platform governance, such as how to fit platforms into the institutional landscape, what powers and responsibilities to assign them, what

to trust them with, how to best ensure their smooth and responsible functioning, and how to understand their relation to users.

The focus of the first framing that is presented was to warn against a broader trend of *overregulation and undue state interference*, of which NetzDG seemed to be part, and which was seen to endanger civil rights, technological innovation, economic competition, as well as plurality and self-determination. If this framing was used to reason about platform governance, platforms were seen as predominantly economic actors: The right regulatory approach was to further digitization and enable comprehensive, open internet access; fair competition; and decentralization. In contrast, the second framing identified regulatory control as necessary for *holding companies accountable*. According to this assessment, regulations such as NetzDG were necessary to ensure platforms acted with accountability and did justice to their role as public infrastructure. Within this framing, platforms were interpreted as akin to media and publishing infrastructures and as taking over central functions for public discourse. This role required them to take on more responsibility than “normal” corporations. However, they did not appear to live up to this when left to their own devices; hence, regulatory control seemed needed to step in.

The third framing was likewise characterized by a view of platforms as providing a public infrastructure that came with special responsibilities. However, it invited the judgment that NetzDG was an *inappropriate regulation* and not the right form of platform governance. According to this framing, NetzDG was insufficient to ensure responsibility and accountability for platforms or that they took up their public role. The verdict was that, while it transferred public tasks to social media platforms, it nevertheless allowed them to carry these out as private corporations and in arbitrary and unreliable ways. Finally, the fourth framing articulated a counter-framing to this latter view: Rather than describing NetzDG as part of regulatory control measures that did, or did not, ensure accountability for platforms as public actors, it was used to position such regulatory control as a consumer protection effort meant to *protect users from economic exploitation*. Identifying—and differentiating—these four framings was especially difficult because

there were so many ambiguities and overlaps amongst them. This circumstance shows that, in the course of the NetzDG controversy, there was a complex and ongoing struggle both over how to classify platforms but also over how exactly NetzDG fit these classifications and worked as a regulation, with different speakers sometimes taking on incoherent or contradictory positions.

10.1. Overregulation and Undue State Interference

One way in which NetzDG was framed in terms of regulatory control was as part of *a greater trend towards overregulation and undue state interference online*, both on a national and a European level. This framing included different aspects that were part of a critical stance towards state interventions on the internet and that positioned NetzDG in a recent history of governmental overregulation on the internet. Articles that articulated this framing discussed several negative effects that could result from such overregulation and undue state interference. These included infringements on privacy, civil liberties, and informational self-determination; negative economic consequences, such as the hindrance of technological innovation and Germany's falling behind in the international internet economy; and an unacceptable concentration of power in the hands of internet corporations. Interestingly, this framing demonstrates that warnings against overregulation and governmental interference also often implied that a low level of regulatory control and free market dynamics would bring about a liberal, democratic society.

Several articles for instance cautioned that NetzDG was part of an effort to use internet regulations to expand surveillance and undermine privacy online.³⁷⁸ Such efforts, they warned, could lead to infringements on civil liberties and freedom of expression, which were protected by anonymity online. Moreover, a variety of articles further related NetzDG to other regulatory

³⁷⁸ FAZ_9; FAZ_10; Zeit_4; TAZ_6; TAZ_7; TAZ_8; NP_39; NP_41; NP_48

efforts and internet regulations, which were often likewise critically perceived.³⁷⁹ These included for instance previous efforts to introduce so-called “*Netzsperrren*” in Germany. This term refers to the suggestion that internet service providers should be obliged to block users from accessing webpages indexed as containing depictions of child sexual abuse; instead, they should be forwarded to a webpage featuring a huge STOP sign and including information about the violence implicated in such material. In the web-political community and beyond, this proposal has been heavily opposed and even seen as governmental censorship.

On the European level, NetzDG was predominantly related to the introduction of *upload-filters*. This concerned particularly article 13 of the European Union’s copyright reform, which was heavily debated and sparked widespread resistance, especially from internet activists.³⁸⁰ This article would oblige platforms to ensure that posts did not violate copyright—a widespread fear had been that this would incentivize the use of upload filters to scan posts in advance.³⁸¹ Some articles also presented the EU’s efforts at soft regulation, which worked through guidelines and voluntary action, as a better way forward that may motivate platform companies to be more proactive against hate speech but avoid the threat of overblocking.³⁸²

In addition, this framing also included concerns, mentioned in articles from various sources,³⁸³ that regulatory interventions presented an *obstacle to innovation and progress*, created an *economic disadvantage* for Germany and Europe, and showcased the *digital incompetence* of the

³⁷⁹ e.g., FAZ_3; FAZ_12; Welt_3; Zeit_4; TAZ_16; NP_16; NP_43; NP_48; TE_36

³⁸⁰ After much discussion, this directive was nevertheless finally adopted in early 2019.

³⁸¹ As the *TAZ* (TAZ_16) reported, worries over the reform’s infringement on freedom of expression and freedom of information has for instance been expressed by the government’s digital commissioner Dorothee Bär (CSU) and web-political associations close to the CDU, the CSU, the SPD, and the FDP.

³⁸² In contrast, one *Netzpolitik* article compared NetzDG *favorably* to the EU’s efforts, pointing out that it at least did not contain an obligation to use upload filters [NP_24]. The article described the EU’s efforts as a dangerous amalgamation of NetzDG and the transatlantic pact ACTA and found it to elicit one of the most important discussions over the future of the open internet.

³⁸³ FAZ_3; FAZ_12; SZ_25; Zeit_18; NP_18; NP_24; NP_48; TE_36

government and regulators. For example, such concerns suggested that regulators displayed a blind faith in technologies and the capabilities of algorithms to appropriately filter content and solve difficult challenges faced by the digital public sphere. It seemed as if the government was driven by a misguided regulatory craze, characterized by a need for control, “phantasies of regulation,”³⁸⁴ and mushrooming surveillance efforts. Particularly the *FAZ* here pointed to a “NetzDG on steroids,” an SPD proposal that sought to oblige platforms to *display* certain media (sources).³⁸⁵ A further concern expressed in line with this was that regulations such as NetzDG exemplified Germany’s continuous solo efforts in the field of internet regulation, which posed a threat to e-commerce and digital integration across the union. Moreover, there were warnings that such regulations favored US-American corporations and unfairly disadvantaged smaller European companies. At the same time, Germany’s digital infrastructure was presented as underdeveloped and a manifestation of the country’s lack of digitization.

As was implied at several points, governmental overregulation and undue interference on the internet presented not only an obstacle to technological progress and innovation but also impeded on the realization of *informational self-determination*, *plurality*, and *openness* on the internet. For instance, *Tichys Einblick* warned that, by nourishing the concentration of power in the hands of few big actors, NetzDG and other regulations such as the GDPR undermined the emancipatory power of the net, people’s informational self-determination, and plurality.³⁸⁶ It nevertheless expressed the hope that the internet could still provide a “hoard of plurality.” This emphasis on *plurality* was also articulated by the *Declaration on Freedom of Expression*, which feared NetzDG would diminish such plurality and stressed that “*democracy feeds on a plurality of views.*”³⁸⁷

³⁸⁴ FAZ_3

³⁸⁵ FAZ_3

³⁸⁶ TE_36

³⁸⁷ NP_5

To value information self-determination and plurality in this way implied that internet users were to be seen as autonomous, mature individuals that could deal with problematic content on their own. In line with this, one *Welt Online* article demanded that people should take responsibility for their use of information technologies and accept possible risks rather than call on the state for help.³⁸⁸ A comfortable reliance on the state for security—which, according to the article, had led to the “unnecessary NetzDG”—was described as trading in “freedom for total protection” and as turning citizens into the state’s subordinate subjects (German: *Untertanen*).

The regulatory craze that was described as part of this framing was consequently also taken to impede on a free, democratic society. A commentary by internet activist Constanze Kurz, published in the *FAZ*, articulated this the clearest.³⁸⁹ It suggested that legislative efforts like NetzDG resulted from political fatigue, were meant to avoid real democratic politics, and showed ignorance of the political dimension of technology. Rather than deeper civil engagement, such efforts created “simulation” of political participation that avoided real democratic dispute and politicians’ genuine interaction with civil society—right-wing political phenomena such as “Trump, Brexit, Le Pen, or the AfD” were understood as “cracks” in this “simulacrum” that ought to wake people up rather than scare them.

Given that there was a variety of ways in which NetzDG could be likened to an unfortunate development of overregulation online, different parts of this framing were described in a variety of sources, which all had their point of view on the topic. *Netzpolitik*, for example, represented especially the view that problematic internet regulations demonstrated the government’s *incompetence* in the digital realm—and its false sense of techno-solutionism and regulatory craze—and incentivized platforms’ problematic use of algorithms. This seemed both ineffective to solve problems and dangerous for liberal democracy. Illustrating the problematic

³⁸⁸ Welt_19

³⁸⁹ FAZ_2

development that NetzDG was part of, one article even provided a list of developments that had allegedly contributed to the erosion of fundamental rights and the installment of mass surveillance over the last 50 years, pushing the country into a more authoritarian direction.³⁹⁰ It included: a hollowing out of the right to asylum; increasing (legal) possibilities for military presence inside the country; undermining the possibility to control activities of secret services; diluting the separation between the police and secret services; extending video surveillance in public spaces and mass surveillance online; weakening data protection; and limiting freedom of speech. Some articles from the venue also emphasized the value of *openness*, which NetzDG seemed to endanger.³⁹¹ Instead of undue interferences like NetzDG, they called for the implementation of open licenses, open and free wireless networks, and held up Wikipedia as a glowing example, citing the website in asking the reader to “*imagine a world in which every human being can freely share in the sum of all knowledge.*”³⁹²

Tichys Einblick likewise subscribed to this framing: The blog was concerned that regulatory interventions such as NetzDG may have a negative impact on the European digital economy *and* lead to censorship, diminish informational self-determinations, and endanger plurality.³⁹³ At the same time, sources from the political left also reproduced elements of this framing. *Der Freitag*, for example, characterized Germany’s digital policies as contradictory, “aimless, and clueless.”³⁹⁴ While not necessarily being opposed to NetzDG as such, *TAZ* similarly worried that increasing internet regulations endangered openness *and* privacy. In the discussion over the EU’s copyright reform, to which NetzDG was likened, one of its articles

³⁹⁰ NP_10

³⁹¹ Zeit_6; NP_18; NP_47

³⁹² NP_47, my emphasis

³⁹³ especially TE_36

³⁹⁴ DF_5

warned that such interventions might diminish openness, digital creativity, and meme culture online.³⁹⁵

In addition, there were a variety of actors who were cited in articulating concerns that fell in line with this framing. Civil rights activists for instance worried over the erosion of privacy and anonymity online. This included the *Digital Society*, an association committed to civil rights and consumer protection on the internet that saw NetzDG as an attack on anonymity online, and even David Kaye, the UN's special rapporteur on the *Promotion and Protection of the Right to Freedom of Opinion and Expression* at the time, who criticized NetzDG not only for its potential infringement on freedom of expression but also for its infringement on anonymity.³⁹⁶

Likewise, representatives from the internet economy also signed off on this framing. The internet association *eco* for instance wished for more “start-up mentality”³⁹⁷ in Germany; it reportedly worried over the Great Coalition's³⁹⁸ reelection, as it found this coalition to have a miserable track record in terms of internet regulations and to hinder technological innovation in Germany.³⁹⁹ Moreover, the *Digital Society* was again quoted in calling for NetzDG's abolition and speaking out against the use of upload filters.⁴⁰⁰ A Facebook spokesperson further suggested that a regulatory craze was (falsely) transforming all problems on the internet into the type of nails that could be hit with the hammer of legislation.⁴⁰¹ Even Zuckerberg himself was cited in line

³⁹⁵ TAZ_16

³⁹⁶ Zeit_1; SZ_8 (In reaction to this, Johannes Fechner from the SPD emphasized the party's willingness to make a disclosure of information dependent on a court order, something which was implemented in NetzDG's final draft [Zeit_2].)

³⁹⁷ FAZ_12

³⁹⁸ A coalition of Germany's two major parties, the CDU/CSU and the SPD, which was also in power during the time of NetzDG's development and implementation.

³⁹⁹ FAZ_12

⁴⁰⁰ NP_26

⁴⁰¹ FAZ_21

with this:⁴⁰² The CEO emphasized the need to protect his platform against governmental interference, spoke out against NetzDG as a form of micromanagement, and advocated for flexible guidelines that would allow platforms to develop their own responses.

As Tichys Einblick described, the FDP's Nicola Beer echoed a similar sentiment, finding NetzDG to express a “general control mania” that was rampant in the media sector.⁴⁰³ Finally, even then-residing foreign minister Sigmar Gabriel was quoted in finding that, when it came to digitization, Germany felt a little bit like a “developing country.”⁴⁰⁴ As the *SZ* reported, the SPD politician urged Europe to develop its own digitization progress in accordance with its liberal values, instead of remaining a passive bystander in “a new cold war about technology” between China and the US.⁴⁰⁵

What is overall interesting to notice is that the stance that the FDP, the web-political community, and internet associations like *eco* took against regulatory interference online resonated also with views from the political right. Liberal actors therefore perceived the need to distance themselves from this political right. As the *SZ* reported, after SPD politicians had pointed out in parliament that the AfD overwhelmingly supported the FDP's position, the liberals emphasized that, in contrast to the AfD, they did not see the internet as a “lawless space” or sought to make hate speech online possible.⁴⁰⁶ Likewise, *eco*'s chairman Oliver Sümé underlined the association's unwillingness to cooperate with the AfD's far-right wing, which it found to stand in contrast to “the values of our liberal democratic society.”⁴⁰⁷ The association emphasized that the need for a “free internet,” which functioned as a “basic instrument” of the liberal order, stood in contrast with the exclusion and nationalism represented by the AfD.

⁴⁰² SZ_19; SZ_33

⁴⁰³ TE_20

⁴⁰⁴ FAZ_12

⁴⁰⁵ SZ_25

⁴⁰⁶ SZ_14

⁴⁰⁷ FAZ_12; NP_29

Likewise, *Netzpolitik* analyzed the AfD's party program and found that the party's political agenda infringed on journalistic freedoms; compromised data protection, the rule of law, and freedom of press; and advocated for surveillance and censorship.⁴⁰⁸

Overall, this framing implied that the governments' main responsibility was to further the expansion of digitization and digital infrastructures and to guarantee all citizens free, anonymous, and unhindered access to the internet while steering clear of interfering with content online. The goal of such measures was to strengthen digitization in Germany and create an open and accessible internet in which everyone could participate; this implied that the self-organizing powers of the internet and free information flows provided the best form of governance online. Some articles for example suggested that Germany needed to transfer to e-governance, extend its digital administration and education, grow ubiquitous broadband access, and provide open and free networks nation-wide.⁴⁰⁹ The *Digital Society* here even published a catalog of ten demands for better internet politics, which were also echoed by other associations such as *eco*.⁴¹⁰ They called to end mass surveillance, nullify NetzDG, prohibit the use of upload-filters, liberalize copyright law, implement open licenses, secure net neutrality, strengthen data protection and IT security, realize e-government and digital education, and conduct more scientific research on phenomena like hate speech and fake news.

This view also fell in line with the proposition that what was needed to address problems on the internet was the strengthening of mature and responsible citizens, the enhancement of media literacy, and the encouragement of civic courage and counter-speech.⁴¹¹ As a fitting alternative to NetzDG, the FDP's draft for a *Law for Strengthening Civil Rights* was cited.⁴¹² Its

⁴⁰⁸ NP_23

⁴⁰⁹ Zeit_18; NP_18

⁴¹⁰ cited in FAZ_12; NP_26

⁴¹¹ NP_5; NP_15

⁴¹² e.g., SZ_14; Zeit_11; TAZ_9; NP_30

stated goals were to: introduce a turning point in “domestic and legal politics” and ensure citizens’ fundamental rights would be respected again, boost freedom of expression, limit governmental surveillance, strengthen privacy and civil rights in combating hate speech and terrorism, and replace existing legislations like NetzDG and the storage of phone records.

10.2. Holding Companies Accountable

In contrast to this previous framing, at whose center were warnings against the negative effects of regulatory interventions on the internet, this subchapter described a generally positive attitude towards such interventions. In this case, regulatory interventions, as part of which NetzDG was classified, were framed as an act of *holding companies accountable*. This framing again overlapped with previously presented framings, particularly the framing of NetzDG as promoting democracy and protecting freedom of speech. However, while this previous framing specifically centered on NetzDG’s role in making discourse online more democratic, the framing presented in this section described regulatory interventions more broadly as an important measure for holding irresponsible and unpredictable platforms accountable. Not all assessments and articles that fell in line with this framing unreservedly approved of NetzDG, as they had different views on how well the new law fulfilled the purpose of regulatory interventions online. Hence, while some lauded NetzDG or saw it as an important first step, others also suggested amendments, alternatives, and additional solutions.

A central part of this framing were discussions of platforms’ growing power, their influence on public discourse, and their maturing public responsibilities, which justified the necessity of regulatory interventions. The overarching argument was that platforms increasingly attained a more and more central role in public communication, which hence called for greater responsibilities and more accountability. Because platforms had long aspired to neutrality, this

circumstance might catch them in a rift, as one *Zeit Online* article argued.⁴¹³ Likewise, an article in *Der Freitag* traced a growing responsibility for platforms back to a shift in how platforms acted and interacted with their users, which also justified putting an end to what was called their “organized irresponsibility.”⁴¹⁴ The article suggested that platforms were no longer only providing hosting services but that they were acting as large-scale publishers⁴¹⁵ that engaged in editorial activities and influenced public opinion—interestingly, it found that, in the course of this shift, platforms turned their users into *workers* earning them revenue.⁴¹⁶ Moreover, the *FAZ* emphasized that the least the state could expect of platforms was to stick to rules and take up responsibilities for the content they financially profited from.⁴¹⁷

Different articles further highlighted the past failures of social media companies to do justice to their societal responsibilities or criticized platforms’ own initiatives.⁴¹⁸ Such failures played into this framing because they reinforced the perception that regulatory interventions were needed to hold platforms responsible and accountable. Such reports therefore helped to create the impression that, when left to their own devices, social media platforms were not doing enough to combat hate speech and fake news or do due diligence to their responsibilities; regulatory control appeared as needed to ensure platforms acted with accountability. Interestingly, one article specifically warned that platforms’ own initiatives and their measures to

⁴¹³ Zeit_19

⁴¹⁴ DF_1; It should be noted that the article was critical of NetzDG, finding that existing media laws should just be applied, but hence generally sympathetic of regulatory interventions that ensured that platforms took up their responsibility.

⁴¹⁵ Facebook itself pushed back against the suggestion that it acted as a publisher by emphasizing that it did not engage in traditional publishing activities or commission, read, select, or edit content on its site [FAZ_21].

⁴¹⁶ However, the article also found that instead of creating such a new, problematic law like NetzDG, platforms’ function as broadcasters should be acknowledged, so that they could be subjected to existing broadcasting law. It also suggested legally differentiating between closed group communications, where platforms acted as hosting providers, and content targeted to the broader public, where they acted as publishers.

⁴¹⁷ FAZ_14

⁴¹⁸ FAZ_16; Zeit_17; Zeit_19; SZ_10; NP_37

use for instance user rankings to curate content could endanger the expert system and the balanced reporting style that German media regulation incentivized.⁴¹⁹

These articles included many recounts of how social media platforms had previously not done enough against hate speech and fake news and had not supported those who were affected or targeted by such content, often leaving the public high and dry. They explained that, in the past, the targets of hate speech and illegal content were often left to fend for themselves or enforce their rights through official legal procedures, which were time-consuming and expensive. It thus seemed that platforms' own notice-and-take-down procedures were insufficient and malfunctioning: Their moderation practices again appeared as arbitrary, inexplicable, inconsistent, dishonest, unfair, or irresponsible. The critique was that they had done little to combat problems structurally, and that, on the contrary, their algorithms and business models fueled such "bad" content. In addition, it was mentioned that such irresponsible practices had negative impacts on those whose posts were deleted, as they had no possibility to appeal or receive an explanation. To illustrate this irresponsibility, one article⁴²⁰ cited Facebook's former motto of "move fast and break things," which was however later changed to "move fast but with stable infra[structure]."⁴²¹

Articles describing NetzDG's positive effects also spoke to this framing and illustrated the merits of regulatory control for social media platforms.⁴²² They insinuated that NetzDG

⁴¹⁹ NP_37

⁴²⁰ Zeit_9

⁴²¹ Facebook itself pushed back on such accusations and emphasized its responsibility. While reiterating its desire to stay away from "political and ideological debates," the platform pointed for instance to its initiatives against disinformation which it described as necessary to maintain users' trust, protect its community' against offenses and hate, and ensure people were well informed [SZ_2; SZ_19]. It also stated that it was not "a wild west" but active against abuse [SZ_25]. According to Zuckerberg himself, its own efforts in fighting misinformation and hate speech were important both for making time on Facebook worthwhile *and* for protecting the platform against governmental interference [SZ_19].

⁴²² FAZ_7; FAZ_8; FAZ_17; Zeit_1; Zeit_13; SZ_7; SZ_9; SZ_35

demonstrated the state's capacity to act in the digital realm and set a clear political signal. The new law thus presented an important step to prevent the propagation of problematic content, establish accountability for perpetrators, and support and empower those targeted by hate speech. This step included measures to install better reachability and easier procedures and to incentivize platforms to ramp up their moderation efforts, proved by their recent activities in this realm. As discussed earlier, such positive views on NetzDG often acknowledged that the law may not be perfect yet but that it was better than nothing; positive effects were frequently described as laudable *intentions*.⁴²³

Several articles described counterarguments against framings of NetzDG and the likes as overregulation and as dangerous interferences and emphasized the need to hold platforms accountable through regulation. The *FAZ* for instance observed that, in the “honorable fight for freedom of speech,” it was often forgotten how little action companies had previously taken against the brutalization of discourse online; therefore, NetzDG's critics seemed “opportunistic.”⁴²⁴ Other articles from the venue likewise suggested that the freedom platforms provided more and more turned into limitlessness.⁴²⁵ Additionally, the *SZ* quoted several researchers' view of critiques against NetzDG as exaggerated, given that the new law upheld already existing responsibilities of platforms.⁴²⁶ Finally, *Der Freitag* warned that, to further their own interests, some voices reframed platforms' irresponsibility as a defense of free speech.⁴²⁷

Various alternative solutions, such as new governmental institutions and instances of control and oversight that were suggested can also be included in this framing, which described regulatory control as important to establish accountability for platforms and mitigate their

⁴²³ e.g., FAZ_16; Welt_6; SZ_9; SZ_28; SZ_32; ND_1; ND_11; NP_37

⁴²⁴ FAZ_16

⁴²⁵ FAZ_14; FAZ_17

⁴²⁶ SZ_28

⁴²⁷ DF_1

negative effects.⁴²⁸ Sometimes, these suggestions were made in addition to NetzDG and sometimes as a substitute, depending on how NetzDG's specific merits were evaluated. Such suggestions included: a governmentally funded office staffed with legal experts that platforms could contact about deletions, a new supervisory and regulatory authority that would control the internet in the public interest, and, as the Green party proposed, an independent and cost-free information and consultation center financed by social media platforms. Reportedly, even Maas himself wanted to complement NetzDG and install a new digital agency that would assess algorithms externally.⁴²⁹

Overall, this framing was not very strongly advocated for; nevertheless, it provided an important counterpoint to framings that presented NetzDG and other regulatory interventions as undesirable. While it was, for example, also expressed in *FAZ* articles, which often emphasized the need to implement law and order and counter lawlessness and arbitrariness online, predominantly center-to-left leaning sources, such as the *SZ*, *TAZ*, *Zeit Online*, and even *Der Freitag* and *Neues Deutschland*, otherwise promoted this framing. Moreover, *Netzpolitik*, which was concerned with platforms attaining too much (public) power, also picked up on it.

From the corporate world, Matthew Prince, the CEO of the internet cloud service *Cloudflare*, who was cited in *Zeit Online*⁴³⁰ and who had recently decided to de-platform a Neo-Nazi page on his service, stood out in promoting this framing. The CEO believed that decisions on the rules for what was allowed, the norms of public discourse, and on de-platforming should be made by democratically legitimated regulators and state institutions rather than by arbitrary corporations. For Prince, platforms' growing power implied a need for clear legal frameworks that ensured transparency, the rule of law, and due process and it required the state to step in.

⁴²⁸ Zeit_14; TAZ_2; TAZ_12

⁴²⁹ TAZ_6

⁴³⁰ Zeit_8

Sporadically, even some actors opposed to NetzDG reproduced this framing. These actors included FDP politician Herbert Mertin, who emphasized that laws against hatred online were generally necessary for holding platforms accountable and that they were particularly needed for content hosted on servers outside the country, where traditional law enforcement had little leverage.⁴³¹ Similarly, despite its opposition to NetzDG, even the *Digital Society* found that platforms' growing power over content justified some curtailing of their corporate freedoms.⁴³²

10.3. An Inappropriate Regulation

The framing that this section describes overlaps in part with the previous framing. The reason for this overlap is that both framings are characterized by the view that platforms take on a central public role in contemporary democracies and that this role requires their accountability and strong regulatory interventions. Thus, this framing was likewise used to speak in support of stronger interventions. Platforms here also appeared as more than corporations and economic actors but as public infrastructures and akin to the media. Moreover, they seemed to be attaining a nearly monopolistic position over public discourse and regulation needed to ensure they did justice to this role. However, this framing is differentiated from the previous section because it was used to argue that NetzDG was inappropriate for this job—rather than holding companies accountable, it was seen as an *inappropriate regulation* for the challenges that platforms posed.

Part of this framing were discussions—also implicit elsewhere—over what the exact status of social media platforms was and what it implied for content moderation.⁴³³ Such discussions, which spoke to this framing, generally articulated the view that social media platforms acted as media or publishers and that it was necessary for them to take up this role and

⁴³¹ Welt_4

⁴³² Zeit_8

⁴³³ TAZ_12; TAZ_14; TAZ_15; Welt_2; Zeit_19; NP_2; NP_13; NP_37; NP_41; DF_2

accept their editorial responsibilities beyond deleting illegal speech. At the same time, they critiqued that NetzDG was not helping to make this happen but instead transferred more public power to private corporations, who however did not display responsibility or accountability in wielding this power. While platforms ought to live up to their public role, NetzDG—so this view—allowed them to continue acting as private corporations while at the same time giving them public tasks. This again, so the concern, would lead to censorship and the use of opaque algorithms. Thus, as sociologist Ulrich Dolata who was interviewed by TAZ⁴³⁴ suggested, NetzDG would infringe on users' self-determination and, according to the German Publishers' Association,⁴³⁵ pave the way for turning Facebook as the biggest “space of content” into the world's biggest censor.

Articles that (negatively) described what happened when platforms tried to combat hate speech and fake news through their own initiative also supported this framing and underlined the need for state interference. In addition, they pointed out that NetzDG only concerned the deletion of posts but left questions of algorithmic ordering untouched: Instead of short-lived activism against hate speech, *Netzpolitik* proposed, there should be a public debate on the rules of algorithmic content moderation that did justice to new media's role as “the 4th estate.”⁴³⁶

As part of this framing, and of the struggle it depicts over how to understand platforms' role, some articles discussed the ambiguities of classifying social media platforms. TAZ for instance wondered whether platforms should be compared to a pub as a private space where

⁴³⁴ TAZ_12

⁴³⁵ NP_6

⁴³⁶NP_13; The formulation of “the 4th estate” refers to the informal political influence and force of the media and (public) broadcasting, particularly regarding its potential to exercise a controlling function over state bodies, politicians, and the government. Within this formulation, the media is then seen to build a fourth, virtual and informal, pillar, in addition to the classical division of power into executive, legislative and judicial authority that is considered a fundamental organizational principle for constitutional states under the rule of law (G. Schneider & Toyka-Seid, n.d.).

owners could enact domiciliary rights or to a marketplace or public space where civil rights had to be upheld.⁴³⁷ Another article⁴³⁸ pointed out that platforms were neither really like traditional media, as they created very little content themselves, nor made it sense to treat them with traditional antitrust approaches, given their centrality for social integration. The article even quoted Anke Domscheit-Berg from the party die Linke, who stated that Facebook could not be treated as a regular corporation given its market-dominating position. In conclusion, this view overall suggested that platforms presented their own kind of entities, requiring their own unique regulatory approach.

In line with this, an interesting commentary in *Netzpolitik* discussed the challenges and merits that platforms brought for media production and public discourse.⁴³⁹ On the one hand, the article pointed out that platforms' status as private corporations with limited liability paradoxically worked to enable non-commercial and creative formats as alternatives to traditional media and broadcasting. On the other hand, it also discussed the chances of bringing Germany's public broadcasting system *to* platforms. This, so the article, would offer public spaces on social media that were outside economic subjugation, immediate exploitation, commercialization, and private interests—spaces that could enable openness, plurality, and transparency. To describe the original vision of how digital public spaces could look like, the article cited John Barlow's infamous *Declaration of Independence of Cyberspace* as an open and inclusive “radical utopia of equality” and “vision of emancipation.” As an example for how this vision could be realized, the commentary upheld the online encyclopedia *Wikipedia* and called on public broadcasting to become more active on it. This discussion is especially interesting because it offered up a *different perspective* on how to do justice to the public character of platforms and of

⁴³⁷ TAZ_15

⁴³⁸ TAZ_12

⁴³⁹ NP_47

the discourse on them. Instead of regulating content moderation, this suggested creating possibilities for non-commercial and publicly funded *content* on them.

Echoing some of the earlier-described views, some articles finally also noted that platforms' public role might imply that they had to actively uphold freedom of speech, something that NetzDG might impair. Few articles⁴⁴⁰ cited court-cases from both the US and Germany, which claimants had filed against social media platforms to reinstate their deleted (right-wing) posts under the argument that their deletion infringed on the right to free expression. Such cases were based on the argument that social media provided a *public space* where *civil rights* needed to be afforded and no one could be excluded based on their view. To make the argument that a nominally (and economically) private actor may still be required to protect civil rights on their property, the *TAZ* evoked an old court ruling that obliged formerly public and now partially privatized spaces, such as train stations and airports, to allow political demonstrations and guarantee a right to free speech.⁴⁴¹ The article went on to describe that the ruling suggested that if corporations provided conditions for public communication, akin to for instance postal and telecommunication services, they could be bound to the protection of civil rights, just like the state.⁴⁴² In line with this argument, the AfD reportedly also criticized that NetzDG worked the wrong way around, as broadcasters usually had to *keep up* legally contested content until resolution by the courts.⁴⁴³

⁴⁴⁰ TAZ_15; NP_40; NP_41

⁴⁴¹ TAZ_15

⁴⁴² At the same time, the article also warned that this could, in the case of platforms, mean they would no longer be free to delete legal but racist or problematic speech. A politician from die Linke, quoted in this context, was however not worried about this, finding that such problematic speech would then have to be mitigated by counter speech.

⁴⁴³ Zeit_11

10.4. Protecting Users from Economic Exploitation

Interestingly, the same article⁴⁴⁴ just discussed also *warned* against putting platforms in the role of public institutions, precisely because this would imply that they needed to actively uphold free expression, which in turn would mean that platforms were forced to allow a lot of terrible or right-wing speech. This warning thus highlighted the risks that came with understanding platforms as public infrastructures. The framing now presented in this section did away with this risk while nevertheless pushing back on arguments about overregulation and undue state interference. It was used to speak in support of regulatory interventions and especially NetzDG, not by arguing that they were required to do justice to platforms' public role but by positioning them as an act of consumer protection that *protected users from economic exploitation*. While this framing was overall not very frequent, it is nevertheless interesting: It presented a counter-framing to those who suggested that NetzDG unduly pushed platforms into the role of state institutions.

This pushback did not suggest that platforms' public role or media-like character justified stronger regulatory control. Rather, it interpreted NetzDG as a *consumer protection* regulation targeted at enforcing the rights of *users as consumers* and at ensuring platforms behaved properly *as corporations*. This suggested that while platforms were to be approached as private corporations, regulatory control was still needed to *protect users against exploitation* by overbearing companies. This framing was for instance expressed in Heiko Maas's own demands that, to become more *user-friendly*, Facebook ought to improve its transparency, complaint management system, and moderation capacities.⁴⁴⁵

⁴⁴⁴ TAZ_15

⁴⁴⁵ SZ_9

Moreover, this framing was also elicited by connections drawn between NetzDG and other consumer protection efforts like data protection and IT security legislation.⁴⁴⁶ One article⁴⁴⁷ for example pointed out that the European Union was taking measures to force US companies who operated in the union to commit to European legislation and standards and listed NetzDG as an example for this. It explained that people like Věra Jourová, at the time European Commissioner for Justice, Consumers, and Gender Equality but also Johannes Casper, a German data protection officer, understood social media platforms predominantly as advertising and sales networks and sought to reign them in through consumer protection policies. In line with this, *TAZ* emphasized that platforms' business models fueled populism and manipulation.⁴⁴⁸ The article even accused the CDU as having a track-record of prioritizing economic interests over consumer protection when it came to internet policy.

Other articles, which also spoke to this framing, argued that platforms' own efforts were only business tactics to prevent regulation rather than substantially changing anything for the better. *Zeit Online* for example described corporate efforts to prevent regulation around the globe as a “diplomatic mission” and understood such regulation as Facebook's “real” competition.⁴⁴⁹ Moreover, it described corporate initiatives nominally meant to establish more transparency or ban “dark ads” as only “cosmetic fixes.” Similarly, some *TAZ* articles read efforts at self-regulation as attempts of whitewashing and “nice advertising talk” that were aimed at hiding unethical and bad practices.⁴⁵⁰ This view could even lead to *disappointments* concerning NetzDG's rigor: One report found that the final version left NetzDG only with “slight improvements in

⁴⁴⁶ TAZ_6; TAZ_13

⁴⁴⁷ TAZ_13

⁴⁴⁸ TAZ_8; TAZ_14

⁴⁴⁹ Zeit_9

⁴⁵⁰ TAZ_12; TAZ_13

transparency and in the reachability of platform providers as well as the hope that through self-regulation, things will change for the better for those people affected.”⁴⁵¹

It should be noted that in *Welt Online*,⁴⁵² Facebook’s CEO for Central Europe, Martin Ott, countered such criticisms and emphasized the steps the platform was taking to improve things. These included: its concern with users’ well-being; its dedication to creating “meaningful” interactions, even at the expense of potential revenue; GDPR compliance; its cooperation with media outlets; its funding of independent journalism programs; its ramping up of the content moderation work force and technological capacities; its labeling of political advertisements; its promotions of digital literacy; and its commitment to paying even more attention to such issues in the future. The company further described the Cambridge Analytica scandal, which had brought up important questions of consumer protection and resulted in tensions with Facebook’s advertising clients, as a case of *abuse* that should not have happened rather than as the result of its business models. In addition, it also reiterated that it did not hold a monopolistic position. Interestingly, Ott nevertheless somewhat admitted to a public role for his platform when stating that social media gave people a voice in democratic discourses; however, the CEO also used a rather mythological phrasing when describing that the company wanted to make sure that “positive influences outweigh those powers which counteract balanced discourse.”⁴¹⁵

⁴⁵¹ TAZ_4

⁴⁵² Welt_22

Chapter 11

Legislative Quality

The *legislative quality* frame, which this chapter presents, stands apart from the previously illustrated frames. In contrast to these frames, its use in the controversy did not direct attention towards the content of what NetzDG was meant to achieve or the effects it could have for speech online but rather focused on NetzDG's quality as a (democratic) law, which was measured by its *legislative process* and the *quality of its legal text*. Within this frame, I exceptionally only present *one* framing of NetzDG as a *poorly crafted law*. This is because all articles and speakers who used this frame came to a similar assessment of NetzDG as a flawed law—while some focused on the hastiness of its legislative process, others pointed out its many uncertainties and errors that seemed to have resulted from this poor legislative process. According to this frame, the decisive criterion by which to judge NetzDG was how well it fared in terms of assumed *standards of how a democratic law ought to be devised and written*. While this frame directs attention to NetzDG's legislative quality, independent of its necessity and effects, it could also be used to support concerns over the new law's conflicts with constitutional rights and with freedom of speech.

The identification of this frame makes an analytically interesting contribution to my analysis of the NetzDG controversy. Its use demonstrates that what counts for the democratic legitimacy and acceptability of regulatory interventions to platforms are not just their content and effects but also their legislative processes and quality. The NetzDG controversy makes visible that not only the content and potential effects but also the circumstances under which a piece of internet regulation is devised, how it is written, and the legislative and deliberative processes that stand behind it are important for its public acceptance and democratic legitimacy.

This observation carves out something that my analysis has already made visible at several other points: that the internet does not present a separate sphere that only *interacts* with other political arenas but that it is itself part of locally and contextually situated political processes. Whether a piece of internet legislation is acceptable and legitimate depends not only on its content and effects but also on how it is written and passed.

11.1. A Poorly Crafted Law

According to the framing presented in this section, NetzDG was a *poorly crafted law* of low legislative quality that had been rushed through parliament and was full of technical errors and legal uncertainties. Where NetzDG was framed in this way, it appeared as a *bad law* according to certain criteria of what made a *good democratic law*, such as adherence to several procedural characteristics. These included careful public and parliamentary deliberation, well-defined terminology and scope of application, which ensured *legal certainty*, and its coherence with other existing legislation and constitutional rights. The verdict that neither NetzDG's content nor its legislative process lived up to these demands characterized this framing.

In many articles, NetzDG thus appeared as a poorly crafted, rushed, or technically bad law. One way to showcase NetzDG's poor quality as a law and its neglect of democratic procedural norms was to describe the process of its adoption as rushed, hasty, and careless. The upcoming national elections, which had motivated a desire to act against potential fake news, was identified as a major reason for this rush. According to this framing, NetzDG's implementation had therefore generally ignored procedural norms and deadlines; moreover, its legislative process was described as not having adequately responded to and engaged with criticism from civil society. Several articles further explained that NetzDG's implementation procedure, which had been driven by Maas and his allies, had not appropriately considered the many experts and organizations who had spoken out against the new law, for instance in a parliamentary hearing, and even warnings by the parliament's own scientific service had been ignored. Likewise, the

accuracy and legal expertise of jugendschutz.net’s report, which had justified NetzDG, was also questioned.⁴⁵³

A further way to frame NetzDG as a *bad law* was to point to technical flaws in the legal text, which reportedly even included typos and resulted from an inadequate legislative process and carelessness in its writing. According to such descriptions, NetzDG was imprecise and did not provide legal certainty. It included persisting uncertainties, unclarities, and poorly defined terminology; for instance, it seemed difficult to determine what exactly constituted “manifestly unlawful content.” Given that judging the legality of speech was already a complex and ambiguous endeavor, it seemed that such uncertainties could consolidate problematic effects of NetzDG, like for example overblocking. In addition, conflicts that NetzDG would potentially have with other laws, such as constitutional rights, but even EU rights and legislation, were also discussed as reflecting its low legal quality. What is more, a variety of articles warned that it was not clear if a legislation like NetzDG fell under the federation’s legal responsibility at all. Given Germany’s existing telecommunications regulation, they suggested that NetzDG might fall under the legislative competence of individual states. Putting this framing in a very succinct way, the *FAZ* therefore observed that NetzDG displayed “a rather mildly developed interest for juridical precision [...] and for basic rights overall” and presented a “crude mixture” and “miserable work of paragraphs.”⁴⁵⁴

Critiques of NetzDG that used this framing were articulated in a variety of articles across all sources.⁴⁵⁵ These included the different mainstream media but also particularly the different political blogs. One reason for this broad spectrum was that this critique could be used to

⁴⁵³ Perhaps to stay out of the crossfire, jugendschutz.net itself also declared the report had not been issued as a basis for legislative action [NP_12].

⁴⁵⁴ FAZ_6; FAZ_9

⁴⁵⁵ FAZ_2; FAZ_6; FAZ_8; Welt_3; Welt_4; Welt_6; Welt_12; Zeit_2; Zeit_11; Zeit_13; Zeit_17; SZ_6; SZ_7; SZ_8; SZ_21; SZ_22; TAZ_4; TAZ_7; NP_12; NP_27; NP_33; TE_3; TE_5; TE_9; TE_19; ND_5; DF_2

underwrite a variety of broader stances towards NetzDG, such as that platforms were irresponsible, that NetzDG gave them too much power, that it was a law with illegitimate political goals, or that it furthered government surveillance. For instance, several *Netzpolitik* articles noted that NetzDG’s impreciseness left open which kind of services would be concerned.⁴⁵⁶ Likewise, *Tichys Einblick* found that it remained unclear how NetzDG’s scope and applicability would be determined.⁴⁵⁷ The venue again connected these procedural flaws with a certain agenda, criticizing that NetzDG had been passed “hidden” behind the legalization of same-sex marriage and without the presence of enough parliament members.⁴⁵⁸ *Der Freitag* also pointed to problems of scope, however fearing that NetzDG would create advantages for internet giants, as smaller providers with little manpower would have more difficulties with its implementation.⁴⁵⁹ In line with this, another one of the venue’s articles also heavily criticized NetzDG overall, pointing to technical errors and unclarity, which it insinuated may be intentional. The article here identified parallels between NetzDG’s legislative processes—passing it with little debate and shortly before the summer break—and other recent security and surveillance legislations.⁴⁶⁰

As cited by various articles, this framing united a variety of different actors who criticized NetzDG’s legal and procedural quality. They included industry associations, Facebook, civil society, politicians, the *OZSE*, journalists, *Reporters without Borders*, internet activists, legal experts, the *Alliance for Freedom of Speech*, and even the UN’s *Special Rapporteur on the Promotion and Protection*

⁴⁵⁶ NP_1; NP_25

⁴⁵⁷ TE_4

⁴⁵⁸ TE_34; The SPD however countered this narrative and stated they had scheduled plenty of time and considered expert statements [Zeit_2].

⁴⁵⁹ DF_5

⁴⁶⁰ DF_2; The article here referred particularly to the introduction of a software commonly called the “Federal trojan” (German: *Bundestrojaner*). This software had just recently been legalized and allows governmental surveillance of individual electronic devices.

of the *Right to Freedom of Opinion and Expressions* at the time, David Kaye.⁴⁶¹ The appearance of this broad range of critics underscored the view that NetzDG was not a good law: As the *FAZ* ascertained, it consequently had received the legislation period's "loudest lobbyism firework".⁴⁶²

Moreover, there were also many opposition parties, such as the Greens, the FDP, the AfD, and the Pirate Party, and even some members of the CDU, who used this framing to warn against NetzDG. Renate Künast from the Green party for instance described NetzDG as a technically bad law that was being rushed through the legislative process.⁴⁶³ Her colleague Konstantin von Notz similarly suggested that it was "loveless" and "insufficient."⁴⁶⁴ FDP politician Thomas Roth was also cited in criticizing the quality of NetzDG's legal text.⁴⁶⁵ His party colleague Nicola Beer further warned that "whipping" NetzDG through the parliament would end up supporting populist voices *from the right and left*.⁴⁶⁶ Moreover, the AfD feared that the undefined legal terminology of "hate criminality" or "illegal fake news" would make it difficult to determine the scope of application and characteristically warned that NetzDG could hence lead to the suppression of "divergent opinions."⁴⁶⁷ Finally, the Pirate Party and even members from the CDU criticized the law's many uncertainties and impreciseness.⁴⁶⁸

As was reported, the second draft of NetzDG, which was eventually adopted, included changes that responded to such critiques.⁴⁶⁹ These included limiting NetzDG's applicability to platforms with more than 2 million users in the country and the exclusions of messaging services and cloud sources. Moreover, the new draft introduced the need for a court decision before the

⁴⁶¹ FAZ_2; FAZ_3; FAZ_6; SZ_6; SZ_7; SZ_8; Zeit_13; TAZ_4; NP_8; NP_14; NP_25; TE_19

⁴⁶² FAZ_3

⁴⁶³ Zeit_2

⁴⁶⁴ ND_11

⁴⁶⁵ Welt_5

⁴⁶⁶ SZ_3

⁴⁶⁷ Zeit_11

⁴⁶⁸ SZ_5; TE_5

⁴⁶⁹ FAZ_1; SZ_4; SZ_6; SZ_8; Zeit_5

disclosure of any personal information and it loosened time restrictions, required the consideration of context in judging speech, excluded the responsibility to prevent reuploads, and provided the possibility to transfer the decision over unclear cases to an institution of regulated self-regulation. Again emphasizing that NetzDG was an important but imperfect step against hate speech and fake news, Maas believed these amendments provided “reasonable clarifications” and a “good result.”⁴⁷⁰ However, the changes did not satisfy overall critiques of NetzDG as discussions over legal uncertainties and qualitative problems continued.⁴⁷¹ In line with this, *Netropolitik* emphasized that uncertainties about the precise implementation of NetzDG’s obligations persisted and that three months after its implementation, the administration of fines still remained unclear.

⁴⁷⁰ FAZ_7; Zeit_5

⁴⁷¹ e.g., FAZ_8; Welt_6; SZ_8

Chapter 12

Political Context

The frame of *political context* unites different interpretations of NetzDG in terms of its function in various political contexts. This frame's use cast attention not on NetzDG's effects, necessity, or substantive acceptability but on concrete political processes within which NetzDG took up a particular political function and symbolism. Under this frame, there again were different framings. These differ, however, not by their judgment of NetzDG as a good or bad law but by the *political level* on which they described NetzDG as functioning. Therefore, these framings even included different judgments of NetzDG, depending on whether its function on the respective political level was seen as desirable or not.

The first subchapter, which describes how NetzDG was framed as a *political football*, concerns the “middle” level of German party and election politics. According to this framing, different parties' political agendas and their relationships to one another were constituted through their views on NetzDG. The second subchapter presents a framing of NetzDG as *Maas's personal project*, which assessed NetzDG in terms of its meaning for Maas's personal political career and was hence focused on on the “micro” level. Finally, the third subchapter explains how NetzDG was framed on a “macro” level as *positioning Germany in international relations* and presents different functions in mediating international political relations that were ascribed to NetzDG.

12.1. A Political Football

This subchapter explicates a framing of NetzDG as a *political football*, which was focused on NetzDG's function in the context of *current political developments* in Germany. Discussions of

NetzDG in this context appeared in many different articles across the political spectrum and focused predominantly on the ongoing election campaigns, the relationship between different parties, and their stance on platform governance.⁴⁷² This framing thus situated NetzDG within ongoing political processes, particularly those that took place in the context of the upcoming national elections. What is particularly interesting here is that, within this framing, the position that different political parties took towards NetzDG and the potential counter-legislations they proposed were read as demonstrations of their party line or as acts of political positioning.

Particularly for *Netzpolitik*, NetzDG was one sign of the governing coalition's political disaster, a coalition which the tech-politics blog at some point referred to as the “worst coalition [...] for fundamental civil rights.”⁴⁷³ To illustrate the coalition's hypocrisy, the blog described a stark contrast between the government's preparations of its festive celebrations for the 70th anniversary of the German basic law in 2019 and what it saw as this government's continuous eroding of the rights this basic law guarantees.⁴⁷⁴

At various points, articles reported that all major opposition parties—such as the AfD, the FDP, the Left, and the Greens—were critical of NetzDG and demanded its abolition or at least major adjustments.⁴⁷⁵ Given that the FDP had run on the promise to do away with NetzDG, the party played a particularly significant role in the party politics that the articles described around NetzDG. Several articles for instance mentioned an alternative legislation that the FDP had proposed, aimed at strengthening whistleblowing, the rule of law, and civil rights and at preventing increased surveillance. Given their shared push for more economic liberalism and vast-reaching speech rights, voices on the political right perceived the FDP as an ally. As the

⁴⁷² FAZ_5; FAZ_9; FAZ_12; Welt_5; SZ_5; SZ_13; SZ_14; SZ_22; Zeit_2; Zeit_11; Zeit_13; Zeit_18; TAZ_8; TAZ_9; NP_25; NP_30; NP_38

⁴⁷³ NP_30

⁴⁷⁴ NP_10; NP_11

⁴⁷⁵ e.g., SZ_20; SZ_22; Zeit_11; TAZ_9; NP_30

SZ chronicled, the AfD for instance expressed strong support for the FDP's alternative proposal and even believed it to be a copy of its own party program; the FDP itself however sought to distance itself from this allyship by emphasizing its commitment to law enforcement online.⁴⁷⁶ In line with this, *Tichys Einblick* quoted both the FDP's and the Pirate Party's statements against NetzDG and was very skeptical of any attempts at political compromise on behalf of the FDP.⁴⁷⁷ Various of the venue's articles described such moves as discrediting the FDP's integrity and its commitment to freedom and the law, as presenting a form of political opportunism, and even as a move towards more authoritarianism.⁴⁷⁸ Likewise, the AfD itself was also heavily opposed to NetzDG, even calling it "a disgrace for Germany."⁴⁷⁹ Reportedly, the party thus celebrated it as a win when, after the election, it was assigned the leadership over the committee on legal affairs, under whose responsibility NetzDG would fall.⁴⁸⁰

12.2. Maas's Personal Project

This framing was closely connected to a framing of NetzDG as a political football, with both framings discussing the new law in terms of its function in German real-political processes. However, the framing presented in this section was centered on the person of Heiko Maas himself: It presented NetzDG as Maas's *personal political project* and as a yardstick for his success and likeability as a minister. As one *FAZ* article for instance pointed out, given that some of his central legislative efforts had previously failed, the success of NetzDG was important for Maas's career.⁴⁸¹ Several articles also expressed this attachment between NetzDG and Heiko Maas by

⁴⁷⁶ SZ_14

⁴⁷⁷ TE_5

⁴⁷⁸ TE_18; TE_20; TE_21

⁴⁷⁹ SZ_14

⁴⁸⁰ FAZ_20; SZ_26; Zeit_16

⁴⁸¹ FAZ_6

titling NetzDG “Maas’s hate speech law,”⁴⁸² the “Maas-law,”⁴⁸³ or—where opposition was strong—“Heiko Maas’s censorship law,”⁴⁸⁴ “big brother censorship act,” or “Maas’s enabling act” (German: *Ermächtigungsgesetz*).⁴⁸⁵

Maas himself was sometimes perceived as a somewhat dazzling personality: Together with his partner, a German actress, he had reportedly made several appearances in the German rainbow press.⁴⁸⁶ For those sympathetic to Maas, NetzDG appeared as part of his continuous engagement against right-wing politics. The above-referenced *FAZ* article for instance described Maas as a politician who had always taken a stance against right-wing politics; NetzDG thus appeared as part of his very personal fight against the (far) right.⁴⁸⁷ In line with this, *Neues Deutschland* also pointed out that he had become a bogeyman for the political right, not least due to his recently co-authored book detailing a “strategy against the right.”⁴⁸⁸ In addition to presenting NetzDG as part of Maas’s strategy against the political right, some articles also described it as part of his continued endeavors for consumer protection and against the irresponsibility of big US corporations.⁴⁸⁹ A *FAZ* article for instance interpreted NetzDG as a move that reinforced the minister’s image as someone who stood up to the “data corporations” and confronted them with “digital belligerence.”⁴⁹⁰

In contrast, voices from the political right-wing spectrum held rather strong animosities against him. For example, in 2017, members of a far right identitarian movement were reported

⁴⁸² NP_9

⁴⁸³ Welt_17

⁴⁸⁴ AfD politician Gauland, cited in [Zeit_12]

⁴⁸⁵ TE_23; The article here claimed that this title for NetzDG was often used in common parlance, a claim that was not further sustained and could not be confirmed by my analysis.

⁴⁸⁶ FAZ_6

⁴⁸⁷ FAZ_6

⁴⁸⁸ ND_1

⁴⁸⁹ e.g., Zeit_1; TAZ_17; Welt_12

⁴⁹⁰ FAZ_10

to have staged a protest against Maas and his “censorship ministry” in front of the Ministry of Justice.⁴⁹¹ Moreover, when Maas became the foreign minister in 2017, AfD politician Jörg Meuthen titled this “the maximum penalty.”⁴⁹² *Tichys Einblick* took a particularly strong opposition to Maas, whom it saw as biased, undermining freedom of speech, and installing censorship and mind-policing.⁴⁹³ One of its commentaries here even stated that no minister of justice had ever committed greater sins against this office than Maas.⁴⁹⁴ To demonstrate Maas’s hypocrisy, his changing political attitudes, and his lack of political integrity, yet another article from the venue listed former tweets from the minister.⁴⁹⁵ As another sign of the minister (and the SPD’s) political corruption, yet another one moreover critically discussed that Maas’s partner had accepted an advertising cooperation which had allowed the couple to keep furniture from a store free of cost.⁴⁹⁶

Thus, these articles again specifically related their interpretation of NetzDG as Maas’s personal project to his alleged democratically illegitimate intentions and political agenda as well as to his lack of democratic integrity. *Der Freitag* also harshly criticized Maas and advocated against his reelection. It used NetzDG to justify this stance and described the law as a “word monster” (German: *Wortungetüm*), as legally immature, and even as leading to denunciations.⁴⁹⁷ The article connected its view of NetzDG as a sign of Maas’s political failure to the law’s poor quality and its potentially adverse effects. In a less extreme manner, the *FAZ* also drew

⁴⁹¹ Welt_1; ND_1

⁴⁹² Welt_18

⁴⁹³ e.g., TE_6

⁴⁹⁴ TE_18

⁴⁹⁵ TE_26; This list also included a tweet that was discussed in *Neues Deutschland* [ND_11] and was evoked to show his hypocrisy. In this tweet, Maas had called anti-immigration author Thilo Sarrazin an “idiot.” The tweet had later disappeared, but Maas stated that he had no idea what had happened. He further claimed that he would not send it again today.

⁴⁹⁶ TE_8

⁴⁹⁷ DF_3

connections between NetzDG's character as Maas's personal project to its technical errors and poor quality and criticized the quality of the legislation Maas had written. It found that, as a trained lawyer, the politician seemed to approach legislative efforts with too little regard for "dry paragraphs."⁴⁹⁸

12.3. Positioning Germany in International Relations

The final framing, which I now present, described NetzDG as *positioning Germany in international relations*. Thus, according to this framing, NetzDG's regulatory effort was an act of positioning Germany on the international political scene. This framing therefore also problematized the challenges that a global internet and internationally operating platforms posed for national regulatory responses.

Part of this was a strongly framed concern that NetzDG could provide a *blueprint* for other less democratic or less liberal societies, which could then use the same kind of law to limit freedom of expression and implement censorship. Particularly several articles in *Tichys Einblick* expressed such concerns. These articles suggested that, with NetzDG, Germany was taking a step into the direction of states such as Turkey, North Korea, Belarus, and Russia.⁴⁹⁹ In the NetzDG controversy, such states therefore stood in as examples of undemocratic states, which did not uphold freedom of press, speech, and civil liberties. Given Germany's problematic handling of this realm—which NetzDG exemplified—one of the venue's articles even suggested that the US could function as a better example for understanding freedom of speech.⁵⁰⁰ In addition, an article in *Welt Online* recounted the persecution of journalists in different places and emphasized that Germany was an island in a "global sea of intolerance and growing restrictions

⁴⁹⁸ FAZ_6; FAZ_22

⁴⁹⁹ TE_3; TE_11; TE_19

⁵⁰⁰ TE_37

on civil liberties.”⁵⁰¹ It thus warned that restrictive regulations like NetzDG bore the potential for Germany to follow in the footsteps of less democratic or more authoritarian states.

Individual actors were also cited in framing NetzDG in this way. For instance, as the *SZ* reported, the vice president of the European commission at the time, Andrus Ansip, feared that NetzDG could function as an example for censorship laws elsewhere.⁵⁰² Further, the *FAZ* quoted FDP politician Jimmy Schulz, who, together with his party colleagues, condemned NetzDG as censorship, logged an official constitutional complaint against it, and worried that non-democratic countries were learning how to control public opinion from NetzDG.⁵⁰³ The politician stressed that, in this context, it was imperative “to emphasize the value of a functioning constitutional state for the freedom of its citizens.” Reproducing the comparisons described above, the internet association *eco* was cited in speaking out against the upload filtering which it found that both NetzDG and EU initiatives incentivized and in calling for a greater differentiation against states like “Turkey and China.”⁵⁰⁴ Moreover, *Netzpolitik* cited *Reporters without Borders*, who stated that, with NetzDG, German legislators had followed requests from China and Iran to do more about racist speech online and hence had bent to the will of countries that were themselves bad examples for freedom of press and speech.⁵⁰⁵

In line with this framing, other concerns about the negative impacts of regulations like NetzDG pertained to Germany’s *international standing and ability to compete economically*. This interpretation resonated with the framing that I described earlier and that expressed worries about the negative effects of overregulation and undue state interference on innovation and progress. As an example, one *FAZ* commentary suggested that NetzDG could contribute to

⁵⁰¹ Welt_21

⁵⁰² SZ_11

⁵⁰³ FAZ_25

⁵⁰⁴ FAZ_12

⁵⁰⁵ NP_46; Maas himself then also sought to push against this argument and criticized that anyone who sought to force companies to comply with German law was put under the “threat” of being compared to China [SZ_4].

slowing down innovation and the development of European alternatives to US-American platforms.⁵⁰⁶ Likewise, the newspaper cited *eco*'s CEO Oliver Sümé, who voiced concerns that the responsibilities which laws like NetzDG burdened platforms with hindered their growth, especially when compared to America or Asia.⁵⁰⁷ In line with this, the *FAZ* pointed out that platforms such as Facebook sought to defend themselves against national responses like NetzDG because these responses took on different forms in different places.⁵⁰⁸

The *SZ* moreover cited similar concerns, expressed again by voices from within the European Union. For example, it recounted that Ansip also opposed NetzDG as presenting a solo effort: The EU vice president emphasized that, if individual countries started to devise their own rules for global internet companies, this could be detrimental to the union; instead, he hoped that a recently issued EU guideline would do the job.⁵⁰⁹ Elsewhere, the *SZ* reported that the EU wished for platforms' own initiatives and self-regulatory efforts because legislation would take too long and that it exerted pressure on social networks to take up such initiatives.⁵¹⁰ At the same time, it reported that the commission eyeballed NetzDG as an example for platform regulation in case voluntary initiatives failed.⁵¹¹ Finally, as the *FAZ* feared, NetzDG could *embarrass* Germany internationally, in case the notification procedure with the EU failed.⁵¹² In line with this, *Netzpolitik* reported that the European Union was even holding back documents on its evaluation of NetzDG so as not to rebuff Germany or damage international relations.⁵¹³ Finally,

⁵⁰⁶ FAZ_9

⁵⁰⁷ FAZ_12

⁵⁰⁸ FAZ_19

⁵⁰⁹ SZ_11

⁵¹⁰ SZ_36

⁵¹¹ SZ_29

⁵¹² FAZ_3; According to EU law, NetzDG needed to undergo a notification procedure with the EU. While this procedure was eventually passed without problems, some beforehand feared that the procedure could fail given incompatibilities with EU law and procedural mistakes.

⁵¹³ NP_27

the Green's politician Simone Peter implied that NetzDG was a loss of German sovereignty, reportedly finding it unacceptable for US-American companies like Twitter to influence freedom of expression and press in Germany.⁵¹⁴

While the above-described assessments provided different arguments for why NetzDG did not do Germany a favor on the international political scene, some articles suggested that NetzDG helped Germany to set a *positive international example*. According to this assessment, NetzDG provided a crucial point of assertion and differentiation for Germany. *Zeit Online* for instance described NetzDG as part of the collision course that Maas was taking against US-American companies and recounted that it was received with awe on an international level.⁵¹⁵ This awe was also reflected in some of the stories told already earlier, such as Sadiq Khan's praise of NetzDG or Virginia Heffernan's story of using NetzDG to escape antisemitic abuse.⁵¹⁶

Particularly a commentary in *Zeit Online* further suggested that regulations like NetzDG could provide a site of negotiation for Germany's relationship to countries such as China, Russia, and even the US, who were taken to move away from Western values.⁵¹⁷ According to the author, NetzDG was part of Maas's effort to protect Germany and Europe against undue and undemocratic influence, such as Russian election meddling, and to reassert their liberal values. It also allowed Germany to stand on equal footing with US corporations, especially given the rifts that Donald Trump's election had caused between the countries. This was then the same article that was cited earlier as suggesting that "liberal democracy must defend itself, if necessary, with clearly delimited, illiberal means." The commentary thus implied that, to uphold "Western" democratic values, constraints to openness and freedoms were sometimes necessary and that NetzDG was an important state engagement to defend German and European democracy.⁴⁷⁸

⁵¹⁴ SZ_20

⁵¹⁵ Zeit_1

⁵¹⁶ FAZ_23; SZ_39

⁵¹⁷ Zeit_20

Part 3—Behind the Scenes

Insights to the Politics of Platform Governance

In the previous part, I presented my empirical research results and described the different framings of NetzDG that my analysis has uncovered. I explained that the media reporting described a myriad of different ways of framing and making sense of NetzDG, which I mapped out as different framings. This previous part answered my first research question about how the media reporting on NetzDG framed its acceptability and desirability and discussed the problem of regulating content moderation. In this third part, I now reflect upon and interpret my research results against my theoretical and conceptual framework and under recourse to democratic theory. This part answers my research questions about the assumptions on which different NetzDG framings were built. To do so and to explain differences between the framings, I identify the distinct democratic conceptions to which the framings corresponded. Moreover, I investigate how the framings legitimated different approaches to platform governance and unearth the political consequences of these approaches. Finally, I also discuss the discursive politics that characterized the framing processes within the NetzDG reporting.

In Chapter 13, I first reflect upon what held together framings of NetzDG within different frames and I propose that the controversy over the new law unfolded as part of a discourse of democracy, where different framings and the positions they described struggled over establishing *Democratic Legitimacy for Content Moderation*. I suggest that the framings all included unique legitimation strategies that put forward overarching arguments for how platforms can be governed in a democratically legitimate way under reference to the frames' overarching concerns.

So, while all framings referred to an ideal of democracy and its values and principles, the conflicts between them suggest that they expressed *differing understandings of how to enact democracy online*. Based on this insight, Chapter 14 conceptualizes two distinct *Socio-Technical Imaginaries of Democracy*, the technological and the regulatory imaginary. These encompass different visions of how democracy and social media platforms can work together and hence explain how different framings fit together as well as what differentiates them.

In Chapter 15, which is about *Configuring Democracy on Platforms*, I then set out to think about the social order that different imaginaries' democratic visions and the kind of platform governance they foresee come with. To understand this, I reflect upon the roles, rights, and responsibilities that different forms of platform governance attribute to platforms, states, and users/citizens. To identify these roles, I trace the framings' assessments of NetzDG back to different democratic conceptions, particularly the liberal, deliberative, and republican/agonistic ones. What I find is that the way in which the framings discursively legitimated different governance approaches corresponded to certain kinds of democratic conceptions and their ideas about how democracy works and about the roles state institutions and citizens should take up. Based on this finding, I show that tracing the framings' underlying assumptions to democratic conceptions from political theory provides valuable insights for democratic platform governance.

Finally, this part's last chapter, Chapter 16, reflects on the discursive politics that characterized the reporting of NetzDG. In this chapter, I discuss how different kinds of sources reported on NetzDG and legitimated or delegitimated it, who they cited, how the different speakers interacted with one another, and how the media outlets positioned themselves in relation to NetzDG and the controversy around it.

Chapter 13

Democratic Legitimacy for Content Moderation

In this chapter, I discuss what signified the NetzDG controversy as a controversy about how best to govern social media platforms. Reflecting on my research results, I find that all framings in the NetzDG discourse included certain *legitimation strategies*. Such legitimation strategies refer to overarching justificatory arguments for why a specific approach to governing content moderation on social media is either the *democratic* and hence right approach to take or for why it should *not* be adopted because it is *undemocratic*. The overarching frames that I identified in Part 2 capture certain *reference points* on which such legitimation strategies are built. These reference points include different democratic values and principles as well as political mechanisms that are positioned as fundamental to the realization of democracy. What I observe in my analysis is that all the framings that were part of the NetzDG controversy built on an overarching agreement that the central question at hand was a question of *democratic governance*, of how to ground platform governance and the regulation of content moderation on them in principles of democratic legitimacy.⁵¹⁸ However, at the same time, the individual framings described *different* answers to this question and different approaches as *the right approach* to platform governance.

I now explain this insight in more detail, and I discuss what the concept of democratic legitimacy describes and the role it played in the NetzDG controversy. In Subchapter 13.1., I outline why the discourse that took place around NetzDG's introduction presented a *Discourse of Democracy*, and I explain the role that different legitimation strategies can take up in this

⁵¹⁸ A similar argument about the role of democratic legitimacy in the NetzDG controversy has also been presented in a paper already published as part of this research (Fichtner, 2022).

discourse. In Subchapter 13.2. on the *Democratic Importance of Legitimacy*, I further describe the concept of democratic legitimacy, its different dimensions, and its role in democracies.

Moreover, I also explain how this concept is (mostly) applied to states and governmental power but is increasingly extended to private corporations and particularly big technology companies. I conclude the chapter by discussing how such questions about the democratic legitimacy of governmental power and state force, as well as corporate decisions, were addressed in the NetzDG controversy.

13.1. A Discourse of Democracy

In my introduction to content moderation as a field of platform governance, I presented different scholarly works that discuss what content moderation is, how platforms moderate, and how they should moderate. These works focus on platforms' own corporate practices and on the legal norms, organizational principles, and economic incentives that drive these practices. My findings from the NetzDG controversy relate to these works because the media reporting's use of different framings revolved around questions like the ones that these works problematize. These are questions such as what platforms do when they moderate and which incentives drive them or should drive them. Nevertheless, the public discussion over NetzDG still took on its own unique shape. It was pre-structured by NetzDG's approach as a state-issued compliance regulation meant to force platforms to delete content according to several predefined criminal offenses and fine them if they failed to comply.

I found that all participants in the public controversy surrounding the new law generally accepted that certain speech laws existed and that platforms nominally had to comply with them. Crucial points of contention were, however, whether NetzDG was necessary and whether it enforced these speech laws and tackled the problems of content moderation in the right way. My earlier description of the different frames and their framings showed that these fundamental questions were discussed in a variety of ways. I discovered that the media reporting on NetzDG

articulated different ways of reasoning about whether a) NetzDG furthered or endangered democratic values and principles such as freedom of speech, the rule of law, and platform transparency; b) whether it appropriately reacted to the problems that democratic discourse and its participants faced on social media; c) whether its regulatory approach matched social media's institutional status; and d) whether, as a law, its process and quality adhered to democratic standards.

Based on my analysis, I therefore propose that, overall, the media reporting discussed the question of NetzDG's acceptability and desirability as a *question of democratic governance*, of how to regulate content moderation in a democratic way. What all framings that were employed in the NetzDG controversy had in common was an underlying assumption that the right thing to do was to do the democratic thing. At the same time however, different framings built on distinct views on *what* this democratic thing to do was. The framings' different arguments about how to best approach platform governance and accurately assess NetzDG expressed these distinct views. Discursively, these arguments then justified and claimed *democratic legitimacy* for certain governance approaches.

Hence, I observe that all framings were built on the assumption that it is necessary to adopt policies and practices that accord with the values, principles, and structures of liberal democracy. For this reason, I suggest characterizing the discourse around NetzDG as a *discourse of democracy*, a discourse which generally addresses sensitive questions of collective decision-making and legal and governmental power. As NetzDG presents a state-issued regulatory intervention that exercises legal force over citizens' speech on platforms and over their access to information, it makes sense that this kind of discourse ensued around its introduction. Different positions that can be meaningfully taken on in such a discourse need to be justified by sensible arguments for why, for instance, a certain policy or governmental action is democratically needed and justified. Moreover, for such arguments to make sense in a collectively shared discourse and be able to enroll others, they need to refer to a shared vision of what democracy is. At the same

time, different arguments for why something is democratic may work to *create* such a shared vision through communicative processes.

As I discuss in more detail below, such shared visions include a variety of democratic abstractions, such as public discourse, popular sovereignty, the rule of law, and freedom of speech. These abstractions present idealized visions of certain mechanisms that promise to bring about and implement democracy. Given that democracy is valued and held as a goal to be achieved, these abstractions develop a normative force, as they are to be realized and safeguarded by governmental practices and legal structures. For example, one such abstraction, which also played a huge role in the public debate over NetzDG, is the idea that a certain kind of public discourse is necessary for liberal democracy. This explains why the influence that both platforms' practices and regulatory intervention could have on public discourse was such an important point of contention over NetzDG. Additionally, the rule of law, freedom of speech, and transparency also featured as significant democratic values and principles in the controversy—their safeguarding was generally taken as a basis for evaluating the democratic legitimacy of content moderation practices and decision-making. As part of such a discourse of democracy, speakers in the NetzDG controversy therefore needed to demonstrate adherence to democratic forms of governance for any position that they took on.

Following this observation, I suggest that all the framings I identified in the NetzDG reporting included *strategies of democratic legitimation*.⁵¹⁹ I understand such legitimation strategies as describing different arguments for why a policy measure or activity is democratic and hence acceptable and even desirable (or for why it is not). In doing so, such legitimation strategies evoke certain democratic values and principles as justifications for the stance they express.

⁵¹⁹ As mentioned in the beginning, my analysis does not focus on different speakers' possible intention behind their use of certain frames but on the discursive and political function this use unfolds. The use of the term "strategy" is hence not an attribution of intention but meant to capture the function that different framings unfolded in the discourse and for its participants/audiences.

Consequently, what I observe is that the framings I have identified included such legitimation strategies in their arguments for why NetzDG was (or was not) a democratically legitimate policy and regulatory intervention. Characterized by the overarching frame of which they were part, these arguments referred to democratic values and to principles or central democratic concerns to make their point and gain democratic legitimacy. Thus, what I find is that different discursive positions in the NetzDG controversy generally struggled over whether NetzDG was a *democratically legitimate form of platform regulation* and over *what the democratically legitimate way to govern content moderation on social media was*.

13.2. The Democratic Importance of Legitimacy

The concept of legitimacy, which has just been evoked, is a *powerful democratic concept*: Its establishment forms the basis of democratic policies, regulations, and governance practices. As Alan Buchanan describes, (democratic) legitimacy⁵²⁰ refers to the conditions under which some actors, like governments, law enforcement, and other (state) institutions, are (morally) justified to wield power over other actors such as citizens (Buchanan, 2002). Democratic legitimacy thus describes the circumstances under which *the wielding of governmental power is compliant with democratic rule*. In democracies, such a wielding of power needs to be rigorously justified because they operate on the maxim of fundamental equality for all people and cherish personal autonomy and freedom. As the wielding of (governmental) power however is an act of dominance by one actor over another, restricting the latter in the process, democracies require careful justifications for this act. Democratically acceptable—*legitimate*—reasons to accept this wielding of governmental

⁵²⁰ Democratic legitimacy and legitimacy can here be used synonymously because the entire discussion I analyze builds on the strong normative assumptions that democracy is the (only) right governance approach and social and political structure. This means that only those actions, policies, and so forth are legitimate that are democratically legitimate. Hence, democratic legitimacy here is a tautology—it can therefore be assumed that my use of legitimacy refers to democratic legitimacy.

power are then for instance that it *enforces* the principle of equality by guaranteeing an equal say and equal regard for everyone in deciding on the government or that it protects fundamental democratic laws and human rights (Buchanan, 2002, p. 710).

This principle of equality is a fundament of democratic thinking that ought to ensure that all citizens participate in and shape their own government, for instance through voting. This ought to enact *popular sovereignty*, also called *self-governance*—the reign of people over themselves, which is another fundamental characteristic of democracies (Bhagwat & Weinstein, 2021, p. 83). Democratically legitimate governmental power is then a power that corresponds to and emerges from popular sovereignty; its wielding is consequently taken to represent the shared will and interest of the citizens and defend a common good. This means that people owe acceptance of democratically legitimate governance structures and laws *to one another* (Bekkers & Edwards, 2016, p. 41; Buchanan, 2002, p. 714). The establishment of democratic legitimacy exercises a *moral force on citizens* because it implies that they *ought to accept* legitimate rules or governance practices. Democratic legitimacy thus provides reasons for why people should allow the state to “exercise a monopoly on the making, application, and enforcement of laws” (Buchanan, 2002, p. 695).

The *normative* dimension of legitimacy refers to its prescriptive force of dictating the conditions under which a state—or other powerful actor—is justified in exercising force and coercion or restricting individuals’ autonomy and liberty. The normative force of democratic legitimacy comes with *accountability* because it states when an actor can be held accountable for decisions made with the entrusted power. The *descriptive dimension* of legitimacy refers to how *people come to view* laws or governmental practices as legitimate, i.e., under what circumstances they believe a governance practice or actor is democratically legitimate (Buchanan, 2002, p. 689).

To be democratically legitimate—both in the normative and descriptive sense—governmental practices and policies need to be subjected to processes of justification that evoke values, norms, beliefs, and interests. As Victor Bekkers and Arthur Edwards point out, legitimacy can be established at different points of the democratic process (Bekkers & Edwards,

2016). It can be established at the input level of democratic processes, where policies are developed through democratic participation and representation; at the throughput level, where decisions on policies are made, such as in parliamentary and legislative processes; and at the output level, where decisions ought to contribute to collective well-being and comply with democratic principles and values. Interestingly, the quest for democratic legitimacy that took place in the NetzDG controversy touched upon all three levels. While much of the controversy was focused on the impact that NetzDG would have on democratic values and principles, some frames, or even framings—especially the legislative-quality frame as well as the framing of NetzDG as an illegitimate political tool—also directed attention to the democratic legitimacy of the legislative process or of political representatives and decision-makers.

Traditionally, legitimacy has been attributed to states and governmental power. However, recent work has also discussed whether legitimacy requirements can and should apply to platforms' private governance as well (Cowls et al., 2022; L. Taylor, 2021). Platforms' increasing capacity to set norms and regulate users' behavior invites this discursive shift—this capacity is also the (implicit) subject of Klonick's and Douek's work on how to understand corporate moderation practices and best compare them to state activities and institutions (Douek, 2022; Klonick, 2018). In the NetzDG controversy, this question was likewise the matter of some fundamental contentions around how to interpret platforms' role and power and fit them into existing political and institutional arrangements. Such questions of democratic legitimacy then develop in the context of platform governance, and particularly content moderation, due to the impact that platforms' practices and their power have on people's possibilities to express themselves and access information and on communication and discourse in general. Content moderation therefore appears akin to the exercise of (governmental) force that warrants a democratically legitimate justification. Moreover, it often implicates a public interest and touches upon democratic rights and processes of decision-making.

The NetzDG controversy addressed both the legitimacy of state interventions *and* corporate practices. It concerned the question of *who* could legitimately make moderation decisions and under what circumstances. On the one hand, critiques of platforms' arbitrariness, their growing power over public discourse, or their limited reachability and lack of responsibility problematized *the legitimacy of corporate moderation practices*. Essentially, the calls for more platform transparency, for more public accountability, for empowering users against platforms, or for platform's legal compliance, which some framings included, were calls to ensuring the legitimacy of platform practices. The discussion that concerned the legitimacy of corporate platform practices then generally focused on ensuring their accountability, political neutrality, and public control.

On the other hand, *the legitimacy of state and governmental practices* was another central contention in the NetzDG controversy. This contention revolved around questions such as whether the government was justified in issuing a law like NetzDG, whether the problems that speech on platforms posed to democratic discourse justified such a strong intervention, whether NetzDG was constitutional, what its impact on freedom of speech and the rule of law were, and if it had been devised by a democratic process. The last point is especially interesting because it shows that democratic controversies over platform governance concern not only the content of policies but also the processes and actors that set and enforce them.

Finally, an insightful observation is that the media discussions on NetzDG often did not clearly differentiate between corporate *and* governmentally mandated practices. This was the case for several examples of potentially overblocked or unjustly deleted content, for which it remained unclear if the decision had been made according to legal rules or community standards. Platforms' opacity presented one reason for this conflation, as it was simply not clear on what grounds a post had been deleted. However, I suggest that this conflation also more generally points to the reshuffling of social and political order, which the appearance and use of social media platforms trigger and which sparks discussions over their governance. This conflation

indicates that platforms can exercise state-like power over the interactions that take place on them *and* that there is a perceived need to justify how they exercise this power. If the prevailing opinion was that, as private corporations, platforms could act as freely as they wanted, there would neither be a discussion over the regulation of content moderation nor over keeping away undue influences and ensuring transparency.

Chapter 14

Socio-Technical Imaginaries of Democracy

In the previous chapter, I suggested that the different framings of NetzDG, which I have identified in the media reporting, included different legitimation strategies. Under recourse to the concerns and values that the overarching frames captured, these legitimation strategies provided arguments for why or why not NetzDG was a good and acceptable law and for how, more generally, content moderation on social media platforms should be governed. As I have indicated, for the framing's different legitimation strategies to make sense, they needed to build on certain ideas of what democracy is, how it works, and how it can be realized. However, the fact that there were many disagreements over whether and why NetzDG was a democratically desirable law indicates that the framings were built on different ideas of what democracy means and how to defend and enact it on social media. In the NetzDG controversy, fundamentally distinct assessments of the problems with hate speech and fake news, of NetzDG's impact on freedom of speech and the rule of law, and of how to best govern social media competed with one another. At the same time, different framings also complemented one another across frames by inviting the same view on platform governance or by suggesting, for example, that NetzDG was a mutually dependent violation of the rule of law *and* of freedom of speech.

In this chapter, I propose that a conceptualization of their underlying ideas about how democracy works and what democratic governance looks like can explain both the differences between and the complementation amongst the framings' positions. I refer to the concept of *socio-technical imaginaries*, which I have introduced in Chapter 4, to conceptualize these ideas. The present chapter hence sets out to explain both the differences between different framings, especially of the same frame, as well as the overarching structures that hold together different,

complementary framings across frames. This means that, based on my analyses of the framing's different assessments of NetzDG and their legitimation strategies, I conceptualize distinct visions of digital democracy. Further, I propose that there are two types of socio-technical imaginaries that can be conceptualized from the framings and the NetzDG debate. A discursive competition between these imaginaries explains the conflicts that existed between competing framings. Moreover, the conceptualization of these imaginaries enables a more explicit discussion about the kind of social order that policies and governance practices enact when they are devised according to a certain approach to platform governance.

Thus, the imaginaries that I describe in the following encompass greater visions of how democracy can be realized on social media platforms. These visions are consequently enacted by corresponding technological, regulatory, or institutional practices. My conceptualization of these visions builds the basis for my conclusion that the NetzDG controversy raised fundamental questions of social order which are usually implicated in questions about the substance of speech rules and democratic speech while avoiding to directly pose such substantive questions. This insight demonstrates that NetzDG's "mere" application of existing laws was hence unsuccessful in omitting the need to collectively decide how we want to live together as a democratic community or relate to one another and to public and private institutions.

Chapter 4.1. first outlines diverse *Democratic Fears* that surfaced in different framings. These fears are interesting because they can provide insights into what was taken as most significant or appeared as the greatest democratic threat in the respective framing. They show that imaginaries are not just built on a positive vision but also discursively supported and created by demonstrations of what could go wrong if a different path were taken. Chapter 4.2. then describes the 'positive' side of the democratic visions that different framings in the NetzDG controversy built on and conceptualizes these visions as *socio-technical imaginaries of democracy* by *Bringing Together Political and Socio-Technical Imaginaries*. For one, these socio-technical imaginaries of democracy are *socio-technical imaginaries* because they attribute a central role to the internet in

bringing about desirable collective life. Second, they are also democratic imaginaries because they embrace a particular vision of what democracy looks like and how it can be implemented. As I outline in Chapter 14.4., I further propose to distinguish *Two Socio-Technical Imaginaries of Democracy*. As I explain, these two imaginaries include different ideas about the primary source of democratic discourse as well as about the nature of both the internet and regulation. I call the first imaginary, which is described in more detail in Chapter 14.4., the *Technological Imaginary*, and the second imaginary, which is mapped out in Chapter 14.5, the *Regulatory Imaginary*. Subchapter 14.6. then closes the chapter with some *Observations on the Imaginaries' Discursive Role*.

14.1. Democratic Fears

When portraying the results from my framing analysis in the second part, I illustrated a variety of worries, concerns, and fears that were described in the articles and that regarded the potentially negative effects of problematic speech on platforms, of the absence of responsible moderation practices, or of strict moderation policies and regulatory interventions. Different fears appeared as part of different framings, where they helped to justify the position that was taken on with each. I find that in the NetzDG discourse, these fears circulated certain dystopian visions of how the wrong approach to platform governance could jeopardize democracy. Taking a critical look at the different fears and worries that were articulated as part of the framings provides insight into what appeared to be the biggest challenges and greatest democratic threats within them.

The presence of these fears and worries provides an indication of what different positions considered to be the most important aspects of democracy or the most significant leverage points for democratically legitimate platform governance. For instance, if a framing's central concern was that free expression would be limited, this also implied that far-reaching speech protections were taken as the most important democratic leverage. If the central concern was that hate speech would compromise democratic discourse, it seemed more significant to

ensure equality and human dignity in public discourse. The first subsection of this chapter therefore recounts prominent democratic fears that surfaced in the controversy over NetzDG. In my later analysis, I relate these fears to different socio-technical imaginaries of democracy and to their *positive* visions of how to enact democracy on and with social media, which competed in the NetzDG controversy.

First, some of the democratic fears that surfaced in the media reporting pertained to *social media platforms' potential to disrupt democracies*. This included fears of the spread of hate speech and targeted hate campaigns that could silence and discriminate or further antidemocratic and bigoted voices and movements such as the “alt-right.” In line with this, there were also concerns over the spread of fake news and misinformation campaigns that could create public unrest, manipulate elections, diminish democratic discourses, and polarize societies. These concerns surfaced in discussions of phenomena like hate speech and fake news, which were seen to silence and harass people, to enable and strengthen antidemocratic voices and movements, and to allow foreign or malicious actors to meddle in national elections. Such democratic fears then fueled critiques of platform practices because they seemed to potentially perpetuate such phenomena. These critiques concerned, for instance, platforms' lack of accountability and transparency or their employment of algorithmic decision-making and precarious moderation labor. These critiques often conveyed a sense that lawlessness and chaos reigned online, perpetuated by out-of-control companies. While the articles and speakers that expressed such fears did not necessarily support NetzDG specifically, the description of these fears generally created the perception that governmental or regulatory interventions were needed to react to and mitigate these problems.

Moreover, I found that the many discussions and concerns that were voiced over a *loss of freedom and civil liberties* also indicated another type of democratic fear. On the one hand, such concerns were fueled by *fears of the overbearing powers of huge technology corporations*. These fears surfaced in warnings that the new law would transfer important decisions over speech to opaque

or unaccountable companies. These warnings were part of several framings and articulated a general concern that the power platforms attained would endanger the democratic right to free expression and compromise the rule of law. Platform opacity was featured as another central cause for such fears. Quite a few articles described platforms as opaque and as employing obscure and uncontrollable algorithms to their financial advantage; a major worry was that this would further inequalities, lead to unfair content moderation decisions, and disempower users.

On the other hand, and sometimes even simultaneously, *a fear of a forceful state* also fueled such democratic concerns over a loss of liberty. For one, the framing whose central concern was that state actors were incompetent or misguided in their attempts to govern platforms and mitigate moderation problems and that their policy measures hence undermined the internet's democratic potential played to such fears. Allowing such incompetent actors to exercise power over the communicative possibilities of the internet seemed dangerous.⁵²¹ In addition, such fears also played a role particularly for concerns that state actors intentionally exploited the internet to exercise (illegitimate and authoritarian) control over people. According to this framing, the government employed even deceptive rhetoric to censor and suppress unwanted political opinions. Especially within the framing of NetzDG as an illegitimate tool, opacity was also attributed to the government. This view resonated with comparisons drawn to the GDR's Stasi and countries like North Korea, China, or Turkey, which evoked fears of overbearing governments and democratic decline. These comparisons called upon shared ideas of what illegitimate, illiberal, or non-democratic states and institutions looked like. Such states hence functioned as blueprints for what can happen if the government engages in online surveillance and censorship, potentially exercised through instruments such as NetzDG.

⁵²¹ Some who adopted this view then generally warned against concentrating too much power in the hands of any one big actor and were also critical of the monopolistic role technology corporations attained.

To conclude, I find that part of the different framings that I reconstructed from the NetzDG controversy were various anxieties over social and political changes that the internet and social media platforms can bring and over threats they can pose to political liberties, equality, and democracy. These anxieties concern the detrimental effects that social media platforms, their governmental regulation, or the combination of both can have on democracy. Dystopian visions on where the wrong approach to platform governance could lead to were therefore an essential part of the NetzDG controversy.

14.2. Bringing Together Political and Socio-Technical Imaginaries

Beyond such fears of what could go wrong with platform governance, I find that the NetzDG controversy also included *positive visions* of how to remedy problems and create a free and democratic society on and with the internet and social media. Based on their different components, I conceptualize two distinct *socio-technical imaginaries* which capture positive visions of platform governance to which the different NetzDG framings subscribed. As explained in the first part, such socio-technical imaginaries describe shared and performed visions of how to create desirable collective life with the help of science and technology. Given that the NetzDG controversy was structured by a broader discourse of democracy and that all framings were used to demonstrate why their position represented *the* democratically legitimate approach, I conceptualize the two imaginaries as imaginaries *of democracy*. Thus, the two *socio-technical imaginaries of democracy* imaginaries that I outline in the following also explain the differences between the framings as well as overlaps amongst them.

There are then distinct visions of how to protect and enact democracy with and on social media platforms that characterize these imaginaries. The term “imaginary” here suggests that these visions are collectively shared and that they are enacted, performed, and even institutionalized. Thus, as imaginaries, such visions have a societal and practical grounding and, for example, inform—or are enacted by—laws and social, political, or scientific practices. In my

work this means that I describe socio-technical imaginaries rather than “only” visions because my conceptualization builds on the different framings of NetzDG which referred to actual events, practices, and forms of governance and included examples and practical demonstrations that provided them with justificatory power. The different socio-technical imaginaries of democracy that I map out in this section consequently describe practically and institutionally grounded visions of how to create a just, free, and democratic society with the help of information technology and social media platforms. These imaginaries encompass broader, comprehensive visions of what democracy as a social and political system looks like. Their conceptualization, I argue, can explain both what differentiated and what united different framings of NetzDG in the media discourse. Moreover, it also allows for a critical reflection on the implications of different approaches to platform governance.

The imaginaries that I describe build on my insights about the struggle over democratic legitimacy that played out in the media discourse on NetzDG. As imaginaries *of democracy*, they are *political* imaginaries. In *Imagined Democracies*, Yaron Ezrahi explains that political imaginaries refer to “fictions, metaphors, ideas, images, or conceptions that acquire the power to regulate and shape political behavior and institutions” (Ezrahi, 2012, p. 3). Ezrahi describes that the *political imaginary of democracy*—which I here also call the *democratic imaginary*—hinges “on the widespread acceptance of such imagined abstractions as the public sphere, the observing public, the general will, the public interest, or the sovereignty of the people” (Ezrahi, 2012, p. 132). This democratic imaginary builds on the vision of a particular kind of citizen, a citizen who makes reasoned, engaged, and responsible decisions. In addition, this imaginary also envisions that certain forms of communication, exchange, and consensus-building take place in public discourse. Thus, as Ezrahi elucidates, the “particular kind of political order” that is democracy “requires the invention and embodiment of correspondingly particular type of agents (such as citizens and public opinion), procedures, and institutions (such as elections, judicial processes, parliamentary debates, and a free press)” (Ezrahi, 2012, pp. 1–2). These types of agents are

necessary to credibly enact and perform the social and political system that the democratic imaginary captures.

Based on this description, I propose that there are two imaginaries of democracy that can capture the democratic vision behind the different positions on platform governance that the NetzDG framings promoted. This is because, as explained above, the media discourse and its different framings generally discussed NetzDG and the problem of content moderation as a matter of democratic legitimacy, struggling over how to govern social media platforms in a democratically legitimate way. However, it is also clear that in the debate over NetzDG, there were vast disagreements over how to do this. *Diverging* imaginaries of democracy that come with different views on the desirability and democratic legitimacy of different practices and policies of platform governance capture the central contentions of these disagreements.

It was, for instance, a matter of contention which types of actors, procedures, and institutions would be needed to enact democratic values and principles on social media. As I describe in the next chapter, different conclusions on this matter drew from distinct views on democracy which have long fed disagreements in democratic reasoning and from distinct ideas about how the internet can work for democracy. For this reason, the different imaginaries of democracy that I describe below are also characterized by diverging ideas of how exactly democracy works. Their divergences concern: a) how to realize initially abstract democratic values, principles, and institutions such as public discourse, equality, freedom of speech, the rule of law, and popular sovereignty; b) the role that citizens ought to take on and how they ought to relate to one another; and c) what role state institutions have for democracy.

The imaginaries that I describe below all come with certain visions of how a democratic society can be realized and enacted *on and with social media platforms* and through platform governance. For both types of democratic imaginaries, which I conceptualize based on my framing analysis, information technologies and social media platforms play a central role in constituting, enabling, or transforming democracy. This is based on my observation that, while

there were substantial differences between what they described as the most democratic way to steer and shape this vehicle, within all framings, social media seemed to hold the potential to act as *potential vehicles for democracy*. Hence, what was at stake in the controversy was not only the question of what democracy looks like as such but also how it can exist together with social media platforms and be realized *through* them.

The differences that played out in the NetzDG controversy then pivoted around different views on how democracy works and on how to interpret democratic values and principles such as freedom of speech, the rule of law, and transparency. At the same time, however, differences also concerned interpretations of what was happening online, how social media platforms should work, and particularly how they should be governed to work in the service of democracy. The two competing *socio-technical imaginaries of democracy* that I outline take up these differences and explain their interdependencies. These imaginaries are simultaneously political *and* socio-technical imaginaries because they are co-constituted by certain visions of how technologies can work in the service of desirable forms of collective life and by certain visions of how democracy works.

Both Yaron Ezrahi and Sheila Jasanoff, who has conceptualized the term of socio-technical imaginaries (Jasanoff, 2015), agree that imaginaries need to be enacted and that they have a *performative* power. As Ezrahi points out, political imaginaries can, for instance, create “political facts,” “function as causes of political behavior and institutions,” and inform political practices (Ezrahi, 2012, pp. 3–4). As already mentioned, the reporting on NetzDG pointed to different regulatory and technological practices, which I analyze as performances of such different socio-technical imaginaries of democracy. These performances include the examples, events, and comparisons that the reporting featured. Moreover, they also include suggestions that were made for certain policies and governance practices. I find that such suggestions provide proposals of how to translate a certain democratic vision into practice; discursively, they hence function as persuasive tools that can speak for the adoption of a certain imaginary. This

shows that, by implying certain governance measures and practices, socio-technical imaginaries can gain persuasive force and political power, making their societal adaption in collective political imagination and institutional practices a hotly contested issue.

At the same time, my framing analysis shows that any justification for a governance approach draws from a complex world full of contradictions. In the case of NetzDG, there were many different events that could be chosen to underwrite any specific approach or assessment of NetzDG. Hence, empirical evidence and observations did not seem enough to settle potential disagreements and competitions between imaginaries.

14.3. Two Socio-Technical Imaginaries of Democracy

In *Imagined Democracies*, Ezrahi points out that “the political imaginary of democracy tends to be socially and politically contextualized in various societies by means of different performative scripts adaptable to local values, beliefs, and traditions. Despite relatively common terms like *freedom*, *equality*, *separation of powers*, or *the rule of law*, democracy and its performance trigger and engage different political rhetoric, behaviors, institutions and meanings” (Ezrahi, 2012, pp. 51–52). These kinds of differences can likewise be observed in disputes over how to govern social media platforms and enact democratic principles and values on them, and they were also part of the NetzDG controversy. Based on my work, I would like to add to Ezrahi’s description that such differences exist not only between societies but also between social and political communities.

As I have elucidated above, all frames used in the NetzDG controversy refer to certain aspects of democratic governance such as democratic values and principles like freedom of speech and the rule of law; public discourse and its problems and threats; the appropriate institutional status and regulatory framework for platforms; and the criteria that make a good democratic law. These values and principles are also a normative part of the political imaginary of democracy. This imaginary describes the prescriptive idea that democracy is the best form of

governance and ought to be adhered to and that its realization requires the enactment of certain democratic abstractions, values, and principles.

However, my analysis has also shown strong disagreements between different perspectives on NetzDG's impact on democracy and on how to govern platforms democratically, which the framings described. There were both *intra-frame disagreements* and *inter-frame agreements* on how to best govern platforms and regulate their moderation practices. This observation shapes my conceptualization of the different socio-technical imaginaries of democracy. They each take up the framings' different reference points and problem-setting stories and fit them within their overarching vision of democracy.

In this chapter, I describe two types of democratic imaginaries and trace them back to different ideological histories, reference points, and communities. The imaginaries map out two separate visions of digital democracy, which, as I propose, explain differences and similarities between the framings that were part of the NetzDG dispute. The imaginaries therefore encapsulate coherent visions of digital democracy that embrace different assessments made of NetzDG. They describe idealized visions of how democracy and the internet can function together and what the roles of both regulations and technological infrastructures are. I conceptualize and describe these imaginaries based on my conceptual framework, the insights from my framing analysis, and my understanding of the broader field of technology and internet governance.

While these imaginaries are here only discussed in the context of the NetzDG controversy, it will be interesting to study if this distinction also has explanatory power for other cases of internet and information technology governance. This is particularly intriguing because, as the next chapter details, which kind of imaginary gains traction and is adopted has far-reaching consequences for social and political order. In the following, I describe the core elements and assumptions of these two imaginaries, their main points of distinction, and their contextual history. Moreover, I will explain where they appeared in the NetzDG controversy.

I call the two types of imaginaries *the technological imaginary* and *the regulatory imaginary*.⁵²² As I will explain below, I trace them back to certain ideological histories and ideas; the first one—the technological imaginary—builds on early internet utopias that have a legacy in contemporary internet politics. This imaginary captures a vision according to which the free, decentralized flow of information creates a public, open discourse; empowers users; and consequently, brings about democracy on the internet. The second type of imaginary—the regulatory imaginary—traces back to a thoroughly republican and traditionally institutional vision, a vision of the *democratic state* whose structures and practices *enable* democratic interactions in the first place. According to this imaginary, the state acts on behalf of its citizens, employs regulatory power and laws to channel interactions into democratic forms, and thus creates democratic subjects that can subsequently enter public democratic discourse with one another.

It should be noted that the two types of imaginaries share intersections, which is perhaps unsurprising given that they are both socio-technical imaginaries of democracy. This means that within the technological imaginary, the state and its laws are still envisioned as playing an important role in protecting democracy, especially online, against, for example, monopolization, authoritarian infringements, or appropriation by big corporations. And within the regulatory imaginary, the internet still takes up a core function as a democratic means of communication, which, when governed appropriately, nurtures democratic processes and discourses. Therefore, both social media platforms and the internet, as well as regulatory frameworks, play an important part in these two imaginaries.

However, as a main point of distinction between them, there is a substantial difference in who or what takes up *the* central role in generating and safeguarding democratic discourse and what is positioned as *core mechanisms* of democracy. Moreover, the two types of imaginaries differ

⁵²² In the following, I simply use the term “imaginary” to describe socio-technical imaginaries in the sense that I have conceptualized them above.

in where their respective democratic vision locates the primary *source* of democracy and democratic discourse and in *how* this vision suggests that information flows can work in the service of democracy. In the technological imaginary, free information flows—which technological affordances make possible—are the primary source of democratic interactions. According to the regulatory imaginary, laws and governmental regulations function as primary sources for bringing about democracy and appear to be bitterly needed to mold communication flows into democratic forms. This means that the technological imaginary emphasizes the significance of the internet’s technological infrastructure, whose functionalities it holds central to the realization of a democratic society. The regulatory imaginary, on the other hand, emphasizes the importance of the state and its laws as “traditional” political and *democratic institutions*.

The two imaginaries therefore incorporate distinct ideas both about the nature of the internet and the nature of regulation. These ideas differ, for example, in whether they envision the internet as gravitating towards democracy or towards lawlessness and hate, and in whether substantive (speech) regulation appears as democratically necessary or rather as democratically dangerous. This shows that the two imaginaries can function as a heuristic for teasing out the oppositions at play between different framings. In the future, it will be interesting to investigate whether and how this heuristic can be extended to broader or other issues of internet governance and platform governance. In the remainder of this work, I now discuss how different views on content moderation and its regulation fit within and characterize these two imaginaries. This also helps me to explain how the imaginaries embrace different interpretations of democratic values; different mechanisms identified as generative of democracy; and different visions of the relationship between platforms, state institutions, and citizens.

14.4. The Technological Imaginary

The first type of imaginary, the *technological imaginary*, builds on the same vision that inspired early internet utopias. This vision is for example expressed in Barlow’s early *Declaration of*

the Independence of Cyberspace, which one article⁵²³ on NetzDG even cited (Barlow, 1996). Different contemporary research has shown that this vision was promoted by early internet adventurers and entrepreneurs but that it is also still prevalent in the contemporary web-political community (Ganz, 2018; Morozov, 2011; Turner, 2006). While this vision at first built on a rather anarchistic view of the internet, over time, it has developed into the idea that the internet is an inherently liberating but also *democratizing* medium. The technological imaginary then encompasses this vision; in this imaginary, the internet and its information flows promise to unleash inherently empowering, liberating, and *democratizing* forces.

According to this vision, free and unhindered information flows, openness, and decentralization enable users to freely share their thoughts, access information, and communicate with others. Consequently, a strong opposition to (state) paternalism characterizes this imaginary. According to this imaginary, internet users act as citizens online where they are liberated from governmental control but also from its protection. Hence, they need to be dutiful, active, and engaged on their own and exercise political agency or even organize autonomously. In addition, they need to be able to deal with hardly tolerable content or a flood of (mis)information.

The openness that is central to this imaginary—and that the internet is meant to realize according to its vision—ought to give people the chance to exercise their autonomy, express and define themselves, engage in public discourse, participate in the “marketplace of ideas,” and exercise their right to popular sovereignty. The internet’s role here is to enable people to form their own informed view on societal and political issues, participate in political discussions and decision-making processes, and hold governments accountable. Thus, according to the technological imaginary, the internet’s affordances guarantee freedom and openness, which in turn shield citizens from the authoritarian and potentially oppressive forces of paternalistic or

⁵²³ NP_47

authoritarian governments. Such freedom and openness are there to ensure people can hold their governments accountable and exercise their democratic rights.

Consequently, a certain level of decentralization for information flows is central to this vision. Because they can exercise too much control over information flows, both large, monopolistic internet corporations *and* overbearing governments are alternatively viewed as posing serious democratic threats. Transparency, as a form of openness that gives *users control*, is another value fundamental to this imaginary. The centrality of this value contains the promise to empower users to hold powerful players accountable. Thus, where the technological imaginary is adopted, such regulation is favored that tips the scale towards this “original,” utopian vision of the internet.

Different aspects that I use to characterize the technological imaginary surfaced in various framings within the NetzDG controversy. Some framings for instance described regulatory control as dangerous, warned about the negative effects of NetzDG’s interference to content moderation, and emphasized the need to protect speech from intrusive moderation policies. Moreover, this imaginary also captures ideas that were part of framings that cautioned against regulatory interventions to platforms, describing them as incompetent or as endangering free expression and exchange of ideas. In line with this, the parallels that some articles drew between NetzDG and previous attempts at *Netzsperrren*, which had received strong opposition from the German web-political community,⁵²⁴ illustrated the kind of dangers that regulation can pose to free information flows and that the technological imaginary classifies as undesirable.

Likewise, framings that implied that NetzDG unduly transferred the state task of legal decision-making to private corporations and even perpetuated corporate opacity and

⁵²⁴ In an analysis that looks at this opposition, Kathrin Ganz finds that, for this community, freedom and openness on the internet attains a nearly axiomatic status, evoking opposition to any intervention that limits information flows (Ganz, 2018).

arbitrariness also included elements of this overarching technological imaginary. This is because part of these framings were expressions of the fear that NetzDG's intervention would allow platforms to operate in an unaccountable and opaque manner, disempowering users and preventing them from controlling platforms. However, as I have repeatedly noted, the media articles generally did not question the legitimacy of existing speech laws, regardless of the position they took. Nevertheless, some framings included an implicit suggestion that NetzDG's application of these speech laws to corporate moderation practices could be dangerous and compromise democratic principles and values. These framings, especially a framing of NetzDG as a threat to the rule of law, described reasons for why existing speech laws could not easily be integrated on social media platforms. Instead, proponents of this framing suggested that these laws would need to be enforced separately in and by a legal apparatus. Hence, I find that these framings aligned with the regulatory imaginary's vision because they expressed a view of the internet as a separate sphere that nourishes democracy but also functions according to its own—perhaps even *more* democratic—rules and norms.

Likewise, framings that referred to NetzDG as being the wrong kind of platform regulation, as not tackling opaque platform practices appropriately, and as furthering undemocratic forms of control fall in line with the technological imaginary's vision of democratic discourse on social media. In this vision, such a discourse follows from the implementation of the “original” internet values. Various alternative solutions to NetzDG that followed from the just described assessments served as preferable paths that fell in line with the technological imaginary's democratic ideal. These alternative solutions included measures to support users' autonomy; enact decentralization; prevent surveillance, censorship, and monopolization; and regulations that support data protection, free and widespread internet access, and net neutrality.

14.5. The Regulatory Imaginary

In contrast to the technological imaginary, the regulatory imaginary encompasses the vision that governmental regulation (of speech and content) is needed to create democratic discourse on social media and channel information flows on platforms into democratic forms. In this vision, regulatory interventions appear crucial to uphold democratic and civil rights and protect citizens as users against exploitation. Within the regulatory imaginary, the internet does not—at least not anymore—gravitate towards emancipation and democracy. Instead, it features as a place of chaos and anarchy where democratic rights are trampled all over, hate speech flourishes, and foreign or anti-democratic actors collude with platforms' economic interests to undermine democratic processes and break laws.

Thus, according to this vision, the internet does not provide inherently liberating or democratizing forces. Instead, such forces need to come from democratic states and their regulations, which enact democratic values *on the internet*. According to this imaginary, the goal of regulation is not to protect or unleash the web's inherently democratizing powers, as these are taken to not exist, but to *bring* democracy to the internet. In the vision this describes, democratizing powers are *borne by a democratic state and its laws*, whose reach now needs to be *extended to the web*. Regulatory interventions are thus envisioned as ensuring free expression and law and order and as bringing about the right conditions for public discourse. In the vision of democracy that the regulatory imaginary captures, democratically legitimated speech laws—and their enforcement—thus provide the source for democratic discourse. This implies that these laws need to be upheld on social media platforms and applied to the content on them.

I find elements of this regulatory imaginary in different framings of NetzDG, particularly those that centered on defenses of its introduction and those that described regulatory interventions on the internet as generally necessary for holding platforms accountable, for protecting a democratic debating culture, or for defending free expression. These framings corresponded to the position that democratic discourse and civil liberties are best protected

when platforms delete content according to state-issued laws. This view, based on which I outline the regulatory imaginaries, was even already partially articulated in NetzDG's initial statement. This statement described the new law as tackling an increasingly toxic debating culture online (NetzDG Entwurf, 2017). Likewise, this view was also expressed in Maas's position that companies should be forced to stick to the law "just as on the streets."⁵²⁵

This view expressed a vision in line with the regulatory imaginary because it naturalized existing speech laws as the right framework for democratic discourse and let their enforcement on platforms appear rather straight-forward. The same counts for suggestions to tackle problems online with substantive laws, so that companies would be forced to moderate content in certain ways. These suggestions took the force of existing democratic laws at face value and proposed to subsume the internet under this force—at the same time, the application of laws to platforms appeared relatively straight-forward.

The regulatory imaginary does not put much trust in the feasibility of the original, utopian internet vision, as it envisions the internet as an undemocratic place in the absence of state presence. Consequently, the different stories of decline that the NetzDG reporting featured also inform my description of the regulatory imaginary. Such stories, which various articles featured, recounted how the internet's commercialization has led to the development of unaccountable internet giants and how the exploitation of platform logics by non-democratic actors stunts the web's democratic potential. Maas's argument that NetzDG was needed to counter the arbitrariness, lawlessness, and hate, which reigned on social media platforms and diminished democratic values, falls in line with this. Such recounts of the problems that existed with information flows and stories of decline on the internet functioned to underwrite the democratic need for regulation and governmental intervention and, as I find, hence spoke in support of a regulatory imaginary.

⁵²⁵ Taz_1

14.6. Some Observations on the Imaginaries' Discursive Role

The two imaginaries I have described are based on my own conceptualization but are also strongly informed by the different positions that the framings described and the assessments that they included. In the last chapter, I have outlined how different framings and their elements fit within these imaginaries. Based on this observation, I propose that discourses on platform governance and policy controversies circulate different imaginaries when their discursive positions build on their visions in the framing of the problem and their argumentation structure. As I detailed, different framings included different views on what it meant to govern moderation on platforms democratically as well as different legitimation strategies, which provided arguments for why something was the democratic thing to do. To be sensible, such arguments must build on certain (more or less) implicit ideas of how democracy works and can be realized. In the last section, and based on the insights from my framing analysis, I have conceptualized such ideas as *socio-technical imaginaries of democracy*. Thus, I find that discourses and their content can create acceptance for certain imaginaries or include competitions between them. This, of course, also includes an investigation of how such discourses influence different audience's views on democracy, which is something I cannot do in this work but that is an avenue for future research. However, under recourse to the NetzDG controversy and based on my own observation and interpretation, I here nevertheless discuss some of the potential discursive effects the circulation of such imaginaries can have.

For one, the stories of decline that I have just mentioned show that an imaginary can gain discursive standing where the visions of an opposing one are criticized or shown not to work. Imaginaries then comprise a *utopian* element—a positive vision of how to enact democracy on social media—and a *dystopian* element, which is, for example, expressed in fears and worries like those described earlier. I find that such fears can provide discursive support for the adoption of a particular imaginary because they demonstrate how adopting a different approach would be fatal. In the NetzDG controversy, some framings included arguments for why the new

legislation was not effective against hate speech and fake news but instead endangered freedom of speech. Where articles used this framing to assess NetzDG, they conveyed the impression that the democratic thing to do was to keep state intervention away from speech on platforms. In this way, such framings work to discursively support the democratic vision that characterizes the technological imaginary. Likewise, the suggestion that hate, anarchy, and exploitation reign when platforms are left to their own devices, which some articles implied or illustrated and which I classified as part of framing NetzDG as holding platforms accountable, spoke against the feasibility of this technological imaginary.

What I further observe from the NetzDG controversy is that vagueness and abstractness can work in support of the utopian vision that an imaginary encompasses. Based on my analysis of the media reporting, I find that the critiques of governance practices which different framings described were often rather specific, while the suggestions of positive solutions often remained vague or ambiguous. Such vagueness, for instance, signified descriptions of NetzDG as an “important first step” or a “good intention,” as well as calls for more transparency, new institutions, or media literacy, whose specifics were mostly not spelled out. I find that such vagueness and abstractness can have important functions and help to make the circulation of imaginaries “work” discursively or to have them unfold their persuasive power.

For example, the internet can be imagined most seamlessly as a free and decentralized space that brings forth democracy if the nitty-gritty of how specifically to implement this internet is not focused on or if certain simplifications are made. Likewise, it is easier to uphold governmental intervention and regulation as instruments that can curb problems and create democratic discourse when not thinking too concretely about how to exactly write laws or organize potential interventions. This points to a gap between the ideal abstractions and promises of a certain imaginary and the murky social and political realities that emerge from its adoption in practice. Given its character as a fiction or abstraction that can never fully be

realized, it is more difficult to “prove” an imaginary or to illustrate how it can be implemented in practice than to point to the failings of another one.

What is more, vagueness and ambiguity also help to unite different parties in a policy controversy. Such unity can in turn further the adoption of a shared imaginary on which different perspectives build. This is very similar to Deborah Stone’s observation that ambiguity makes ideas work politically because it allows them to persist despite potential contradictions *and* because it helps to unite different actors (D. Stone, 2012, p. 293). Ambiguity allows different positions to subscribe to the same overarching idea, as these can be interpreted in accordance with different perspectives. In addition, if discursive position such as different views on how to govern platforms maintain a certain level of vagueness and abstraction, it helps them reduce the complexity of a situation by focusing in on certain problems and only gesturing at broader solutions. The uncountable aspects that played into the NetzDG controversy and the many issues it touched upon powerfully demonstrate that such simplification is necessary, especially when addressing policy problems as complex as those posed by content moderation and platform governance. This complexity arises because content moderation concerns the vast amounts and variety of content that is shared on huge social media platforms, touching upon the multiplicity of social and political life, and the regulation of a powerful, global industry.

At the same time, this discursive reduction of complexity is also a result of my research approach.⁵²⁶ First, I chose to study media reports, which are often brief or cannot engage more

⁵²⁶ Platform governance and content moderation are certainly not the first realm of governance to face such challenges of complexity and its reduction. In *Seeing like a State*, James C. Scott for instance shows that the large-scale regulation of complex social phenomena and processes has historically required the simplification and ordering of these phenomena and processes (Scott, 1999). This complexity reduction has often been carried out by large-territorial states. It allowed them to make such phenomena and processes legible, administrable, and scalable, so that they could be governed and optimized. It means to streamline complex realities into simpler forms and reduce variety and ambiguity. Scott here demonstrates that such simplifications always bracket many important parts of human life and social interactions. They also put forward an exaggerated focus on efficiency and rationality that can

deeply with the problems they discuss or the political events they report on. Secondly, I chose to analyze framing processes, whose precise function is to reduce complexity. They do so by selecting important aspects and phenomena from unimportant ones and by ordering them so that a particular conclusion or solution can be derived. However, it is politically interesting to observe which simplifications designated different framings of NetzDG, which complexities these framings could maintain, on which assumptions they built, and which assumptions they problematized.

What is significant to see is that all sides in the controversy, and all framings, aimed at identifying a governance framework for moderation decisions that would guarantee a democratic form of discourse on social media. Thus, what was important to all positions was to identify the right framework and mechanisms for platform governance and content moderation. This meant finding the right—the democratically legitimate way—to govern uncountable decisions on individual instances of speech. What was disputed, however, was how to do this, who to trust with it, and which incentives to put in place. Overall, the controversy over NetzDG was based on the assumption that speech on social media could bring about, or contribute to, a democratic society. Under recourse to democratic values and principles, different framings struggled over the right policies and practices for content moderation. Thus, a central concern that was debated in the NetzDG controversy was how, and according to which logic, to make moderation decisions.

The different socio-technical imaginaries of democracy that I have described in this chapter conceptualize different visions of how democracy can be realized and implemented on social media. These visions also imply certain interpretations of democratic values and principles. I propose that, in different imaginaries, these values and principles function as levers for bringing

have dramatic social consequences. Likewise, any universal governance approach to content moderation is deemed to fall short in certain aspects and come with side effects.

about a liberal, just, and democratic society. For instance, their democratic visions imply that once freedom of speech is guaranteed in a certain way, democratic discourse on social media can take place; once the rule of law is upheld and the law enforced in a certain way, democracy is safeguarded online; and once proper transparency is established, platforms can be held accountable. As I describe in the next section, different interpretations of such values, and particularly of freedom of speech, correspond to longstanding struggles in democratic thinking. The NetzDG controversy reproduced these struggles, as different framings clashed over how to understand these values and principles and apply them to content moderation.

All framings thus evoked certain values and principles in justification of different approaches to platform governance but corresponded to different understandings of these values and principles in the context of content moderation. On the other hand, whether the regulation of content moderation on social media was even the right starting point for thinking about contemporary democracy was generally much less contested. This circumstance was of course stipulated by NetzDG itself, which proposed to use the enforcement of speech laws to tackle what it described as a toxic and undemocratic discourse culture online. Taking such an approach encourages a discussion that consequently revolves around whether this approach's various claims as to how it will solve the issues at hand are true or feasible. Despite this discursive focus however, in the NetzDG controversy, some discussions also drew attention to the societal origins of hate speech and bigotry and emphasized the necessity to tackle democratic problems at different societal levels. This was for example the case where NetzDG was framed as being the wrong approach to hate speech and fake news. According to this framing, NetzDG appeared to be beside the point, not because it endangered democratic values and principles but because it did not tackle deeper societal problems and complexities appropriately.

The fact that the problem of content moderation concerns fundamental questions of how to organize social and political life in the age of the internet is one possible reason for this unanimity. "Solving" such a complex issue appears to be a daunting task that can only be tackled

through measures that break the problem down to a simpler one, such as to the problem of how to apply laws to speech on platforms. These kinds of reductions and simplifications support the identification of governance levers to which policies and measures can then be applied.

A second point is that to struggle over the right *mechanisms* for regulating speech on social media also means to remain relatively neutral to the substantive content of speech. There was no framing of NetzDG that addressed the question of how to write *substantial* rules for speech on platforms in a straightforward manner. The high degree of public attention, scrutiny, and even outrage that issues around free speech online commonly receive may have driven this omission. Nevertheless, my analysis of the NetzDG controversy shows that debates over the right mechanisms to ensure democratic speech on social media, without writing new rules for what can be said, offer a chance to shape content moderation without discussing the substance of permissible speech. In this way, different positions in these debates do not need to state what kind of speech they find permissible and can hence avoid potential accusations of partisanship or politically motivated censorship. This circumstance allowed proponents of NetzDG and of stricter interventions to point out that they were not suppressing unwanted speech or creating *new* rules for speech. Instead, by referring to existing laws, they could argue that they were simply seeking to implement democratic laws, which were otherwise already widely accepted and implemented.

However, as I discuss in the next chapter, the controversy that emerged over NetzDG and over questions such as how to uphold existing speech laws on social media did nevertheless not avoid deeper questions of democracy, social order, and power. Instead, the controversy *shifted the modalities* by which these questions were discussed. While there was no dispute over how to write substantive speech rules, there were still fundamental contentions over, for instance, how public democratic discourse works, which capacities discourse participants bring, how they relate to each other, and what democratic citizen-state relationships look like.

Such questions have long been strongly disputed in democratic thinking and in disagreements over how to understand democracy and freedom of speech. As I argue, the NetzDG controversy illustrates that the appearance of platforms as players on the political scene and the challenges that come with new activities like content moderation open a chance to renegotiate democratic questions, which have previously been settled by laws. Thus, as I discuss in the next chapter, the status, roles, rights, and responsibilities of platforms, state institutions, and citizens were nevertheless at stake in the NetzDG controversy. To unravel this, the next chapter details the different roles that these three actors take up within the different imaginaries, roles which correspond to different interpretations of freedom of speech and public democratic discourse. With this illustration, I wish to show that which approach to platform governance is chosen and adopted and which kind of legitimation strategy attains dominance have consequential effects for social order and power relationships. The central question that needs to be collectively answered in platform governance is not how speech laws can “correctly” be applied to platforms but how we want to live together as a democratic community online.

Chapter 15

Configuring Democracy on Platforms

In the previous chapter, I identified and conceptualized different democratic imaginaries. These imaginaries capture distinct ideas about how democracy works on social media and they hold together or differentiate the different framings' assessments of NetzDG. The imaginaries are useful for articulating the assumptions that different approaches to platform governance and the regulation of content moderation build on and for describing the political consequences these approaches have when they are adopted for the design of policies and practices. In this chapter, I build on my conceptualization of these imaginaries and on my framing analysis to discuss the roles, rights, and responsibilities that different approaches to governing content moderation on platforms (and their corresponding framings of NetzDG) ascribe to three types of actors: platforms, state institutions, and users/citizens. This analysis provides a critical reflection on how different approaches to platform governance and content moderation end up shaping social order and political power structures, at least if they are adopted in governance practice. This analysis also enables me to crystallize what the NetzDG controversy can teach us about the fundamental political questions that are at stake when moderation is (or is not) regulated. These questions concern the nature of the state, of platforms as both technological infrastructures and corporations, of citizenship and civic interactions, and of democratic communities.

Conceptually, this chapter reaches back to Brian Pfaffenberger's work on technological dramas (Pfaffenberger, 1992). As I have explained in the first part, Pfaffenberger's paper raises awareness for the politics that are at play when discourse participants in a technological drama contest which social meaning should be ascribed to technologies and technological

infrastructures. As Pfaffenberger argues, such contestations over the social meaning of technologies and technological infrastructures emerge because any specific meaning justifies certain kinds of social stratifications and access distributions to technology. Hence, which meaning for technologies ultimately prevails and which one is adopted by decision- and policymakers and gains acceptance within a democratic public has implications for *who* can use the technology, *how*, under what circumstances, and *with what effect*. As Pfaffenberger points out, any social meaning that is eventually established and accepted also impacts the social and political order around the technology or technological infrastructure it pertains to. It does so by justifying and legitimating the *fabrication of certain social contexts*. Based on the meaning that has been established, such social contexts are justified because they appear as necessary to allow the technology to unfold its social and political potential and role. Hence, any social meaning that is established for a technology or technological infrastructure can be used to exercise control over the social and political world around it.

Thus, in this chapter, I take a closer look at the meaning that different framings assigned to social media platforms, for instance in terms of their social and political role or their institutional status, and I trace these different roles again back to the different imaginaries I have conceptualized. Moreover, I also discuss the social and political context that such roles for platforms justify if they are accepted and adopted. I do this by relating the different views on platform governance and content moderation to longstanding discussions in democratic theory.

These democratic discussions have long grappled over *the meaning and shape of democracy* and the role that states and individuals as citizens take on in it. As I will detail, the different ideas about how democracy can work out on social media platforms, which I identify from the NetzDG controversy, also fall in line with different conceptions of democracy and their interpretations of democratic principles and values, particularly freedom of speech. These different conceptions of democracy come with different ideas about how democratic discourse works, the logics and mechanisms by which it is governed, the kind of role the state ought to

take up and how this state relates to the public sphere, what it means to be a citizen, the capacities which citizens need to have and how they process information, and how citizens relate to one another as part of a democratic community. Therefore, this chapter connects the roles that different approaches to platform governance ascribe to certain actors with specific understandings of democracy.

The chapter is organized in the following way: Chapter 15.1. on *Constituting Platforms' Institutional Role* discusses the role, rights, and responsibilities that different approaches to governing content moderation on social media platforms, which the framings described, imply for social media platforms, and which logics appear to govern them from each perspective. Based on this analysis, Chapter 15.2. on *Freedom of Speech and the State in Democratic Theory* provides a brief excursion to democratic theory to explain how such views also trace back to contentions over the meaning and shape of democracy, contentions which have played out between different democratic thinkers. This provides the foundation for analyzing *The State's Role in Platform Governance* in Chapter 15.3. This chapter's analysis builds both on my empirical framing analysis and my excursion into democratic theory. It describes different conceptions of the state that I find to be implied within the different framings. According to these conceptions, states take up certain rights or face certain kinds of limitations.

Chapter 15.4. on *Making Citizens for Public Discourse* finally addresses the third actor of this democratic triangle. The chapter discusses the roles, rights, and responsibilities that individuals, as both users and citizens, ought to take up according to different conceptions of democracy and within the different imaginaries that employ them. Based on these previous insights, Chapter 15.5. finally provides some *Reflections on the Constitution of Digital Democracy*. Based on the insights from the previous subchapters, this subchapter pinpoints the fundamental, yet often not explicitly addressed, political questions that are at stake in content moderation and its regulation and that played out in the NetzDG controversy. I find that it is neither enough to “just” enforce existing laws online nor to let discourse on platforms be governed by a private, economic sphere,

even if platform transparency is established. Building on Chantal Mouffe's argument about agonistic democracy, I suggest that platform governance processes need to include public, democratic structures more explicitly, so that questions of content moderation can be addressed within a political sphere and by a democratic community.

15.1. Constituting Platforms' Institutional Role

As I argue in this chapter, which role social media platforms take up—and should take up—within a democratic social order and how exactly they would act in this role were fundamentally contested points in the NetzDG controversy. The decisions that are ultimately made on such questions determine the regulatory framework that seems most suitable to govern platforms. As I have already mentioned earlier, the appearance of platforms as new players on the political and institutional scene can question and reshuffle existing institutional arrangements and the regulatory structures that come with them. Platforms, whose role and status are still contested and evolving, need to fit within preexisting political and societal structures. At the same time, the adjustment of such preexisting structures may be needed to *accommodate* the new activities that platforms bring to the table, such as posting, liking, and sharing as well as moderating content. Thus, established social and political meanings and structures need to provide meaning for and integrate platform activities. For example, governance policies and practices need to account for the impact that social media platforms and their affordances have on democratic discourse or on democratic principles and values such as free speech.

In this way, platforms can trouble or change the political imaginaries that have hitherto dominated institutional or legal approaches, and they can *strengthen new socio-technical imaginaries of democracy*. This is because their workings need to fit into these imaginaries' democratic abstractions and mechanisms. On the one hand, platforms may provide concreteness and persuasive force for certain imaginaries, for example by promising new infrastructural and technological possibilities for putting their democratic vision into practice or for materializing

them. They may, for instance, hold the promise of giving everyone the chance to be heard and participate in public discourse without gatekeeping and without being subjected to powerful authorities. On the other hand, their functionalities and logics may also cast doubt on the feasibility of certain democratic imaginaries. This is, for example, the case where the failings of social media platforms, such as the growth of hate speech and fake news, trouble the plausibility of an imaginary's assumption about how people communicate or process information.

Thus, different interpretations of how platforms work also influence the apparent credibility of different socio-technical imaginaries of democracy in public discourse. In discussions over platform governance, such as the NetzDG controversy, different assessments of how platforms function in practice can illustrate why the democratic vision of a certain imaginary is misguided or *unrealistic*. Examples for this are framings of NetzDG that troubled the technological imaginary's assumptions, for example by problematizing the negative effects of economic structures online, the interests that govern information flows, or platforms' exploitation by undemocratic or malicious actors. This kind of emphasis and assessment illustrated that the decentralized and, in principle, open-to-everyone discourse on the internet, which is part of the technological imaginary's democratic vision, could in practice lead to distortions of public discourse, misinformation, hate speech, antidemocratic voices, and the exploitation of psychological vulnerabilities. Thus, different diagnoses of what happens on platforms can speak for or against certain democratic imaginaries.

In this section, I discuss which roles platforms took up, or were meant to take up, according to the framings' different assessments. I further argue that such different views on platforms, and on their functionality and status, are highly relevant for the politics of platform governance because they imply different *conclusions on how to regulate platforms* and on which powers and responsibilities to assign them. Comparisons between platforms and other, already well-regulated institutions or other, already widely accepted practices were an important part of this discussion over platforms' role, a discussion which played out in the NetzDG controversy. Here,

references to existing, established, and already accepted institutional and technological practices could provide orientation for devising appropriate policies for platform governance, help to classify content moderation as a certain governable activity, and offer blueprints for making sense of platforms.

Thus, part of the NetzDG controversy was a search for the right kind of institutional framework to use for making sense of social media platforms and the content on them. This search is not an uncommon component of debates about how to govern platforms (Cohen, 2016, 2018; Langvardt, 2017; Rahman, 2018). Different perspectives in such debates often draw comparisons between platforms and already existing, well-regulated actors and activities to propose that the governance measures that apply to these established actors and activities also apply to platforms. Based on this insight, Julie E. Cohen for instance points out that, when writing laws to regulate platforms, it is important to define which kind of actor platforms are and which kinds of services they provide (Cohen, 2016).

Private economic actors

One role that platforms took on within different framings, sometimes more explicitly than other times, was the role of *corporations and purely private economic actors*. If platforms are cast in this role, this implies that the democratic acceptability and desirability of regulatory interventions such as NetzDG must be assessed in terms of how such corporate actors react to regulatory interventions or act in their absence. Framings that described the negative effects that NetzDG's interaction with platforms as private corporate actors could have on democratic values and principles also included the assessment that the new law's regulatory intervention was problematic. In this view, the financial pressures that platforms as corporations follow, such as to avoid fines and save money on content moderation, lead to a negative reaction with regulatory interventions and incentivize platforms to make moderation decisions without the appropriate care and resources and hence to overblock. In the debate over NetzDG, this view led to the verdict that NetzDG's interaction with the imperatives that control platforms as private actors—

such as to use cheap moderation labor and avoid fines—would lead them to act in undemocratic ways.

Likewise, critiques of NetzDG as giving platforms the undue obligation, and simultaneously the undue power, to make decisions over the legality of posts were also based on the view that platforms foremost presented private economic actors. According to these critiques, it was wrong to give platforms the mandate to decide over the legality of posts and speech on them because such decisions were the state's task. This view described platforms as *unfit* for such decisions and proposed that the public judicial apparatus should make them instead. To assign decisions over the legality of speech to platforms here precisely appeared as wrong because these decisions ought not be made in the private, economic sphere in which platforms were located. Consequently, this position did not imply that uncontrolled discourse on platforms was the most democratic, but rather that giving platforms the task of deciding on the legality of speech instead of having this decision made in court was simply too dangerous.

Hence, the warnings against NetzDG's substantive regulation of content moderation on platforms, which were part of the framing of NetzDG as a threat to free speech, did not generally advocate against *legal* limitations to speech. However, they emphasized that courts needed to enforce such limitations *separately* from platforms' moderation practices. Thus, again, framings of NetzDG as a threat to freedom of speech or democratic discourse did not include doubts on the content of speech laws. Instead, they expressed caution against having platforms, as corporate actors, enforce these laws. This then suggests that keeping the state out of *corporate* moderation practices best serves democracy.

Such framings of NetzDG therefore illustrated that if platforms were seen as private corporations, this led to distrust in their capacity to make the kinds of decisions and carry the kinds of responsibilities that NetzDG entrusted them with. The view that interfering with the substance of platforms' moderation rules by threatening lopsided fines was the wrong approach and that empowering users to exert pressure on platforms was the better way showed this lack of

trust in the reporting. Likewise, different emphases on the need for transparency, media literacy, and fair competition as measures to ensure informed choices for users also expressed this view. Moreover, the support that regulated self-regulation received also reinforced this role of platforms as private actors, as this suggested a remedy that could disentangle content decisions from economic incentives but do so in a private sphere and without giving undue power over speech to states.

If platforms are envisioned as private actors, users often take on an important role. Because platforms then depend on them economically, it is on users to hold them accountable and make sure they adhere to their needs as citizens. The important thing, from this perspective, is that policies and practices empower users to do this. In the NetzDG discussion, the proposition that, rather than substantially shaping the content of speech on platforms, regulatory interventions should *enforce transparency* was built on this reasoning—it was based on the hope that transparency will in the end allow individual users, civil society, or even oversight institutions to keep platforms in check.

At the same time, a reason for casting platforms in the role of private economic actors may be the argument that this *supports* democracy because it enables platforms to provide a space for discussing public matters away from the state and its force. This argument implies that it is a good—a democratic—thing that platforms act according to financial, and not political, incentives. In this way, discourse on them can happen away from the state’s reach. This is akin to the idea that platforms enable a “marketplace of ideas,” where people can come together in privately governed spaces to share and evaluate ideas and keep those in power accountable. This idea perhaps motivated the use of framings that implied that discourse on platforms would work best and be most democratic when users were empowered to process information themselves and hold platforms accountable while the state, on the other hand, was kept out of information flows and moderation decisions. Likewise, suggestions for media literacy and transparency as measures to mitigate problems with platforms also resonated with this idea.

The role of platforms as corporate actors, to be kept in check through transparency and by empowered users, and the corresponding view that state-mandated moderation practices pose a threat to democratic discourse, fit within the technological imaginary. This is because, according to this imaginary, the internet is a democratic place *if* users are empowered and can freely interact with one another and if free information flows are guaranteed to keep powerful actors in check. At the same time, state mandates for moderation *on* platforms, as private corporate actors, here seem to endanger these requirements and have potentially limiting effects on speech and access to information. It thus seems better to have speech on platforms be governed by market pressures and to favor regulations that support decentralized market structures, free information flows, and empowered users.

To summarize, this interpretation of platforms as private economic actors suggests that platforms' corporate status works in *favor* of democracy because it keeps the state and government away from public discourse, ensuring this discourse happens freely and without governmental control. Thus, even as corporate actors, platforms still hold a central function for public discourse, which *derives* from their economic status. At the same time, this view also puts responsibilities on users: If problems with platforms' content practices arise, users need to jump in to pressure platforms to effectuate positive change. Finally, if decisions over the legality of speech need to be made, this should take place inside the judicial apparatus.

Within the NetzDG controversy, several framings included a variety of oppositions to the view that the state should not interfere with the content moderation decisions of platforms as private actors. Some of these framings spoke in support of NetzDG while nevertheless maintaining that platforms acted as private, corporate entities: However, they interpreted regulatory interventions, and particularly NetzDG, as necessary to ensure corporate actors were kept in check. This was the case where NetzDG was framed as a consumer protection effort or as bringing the rule of law to the internet. According to these framings, the impact of governmental regulation on platforms' economic incentives worked in favor of democratic

discourse online. This view conforms with the regulatory imaginary as it advocates for governmental regulation to ensure democracy and bring rules for democratic discourse to a private sphere, while the dangers of such democratic interventions are estimated to be low. In this view, the genesis of such regulatory interventions in the decision- and lawmaking processes of a democratic state ensures their democratic legitimacy.

Thus, in contrast to the above-outlined position that the absence of regulatory interventions to moderation on platforms is conducive to democracy, this just-described perspective suggests that the *absence* of regulation and state-issued rules is the true danger for democratic speech within platforms' private sphere. The impression that, when left alone, the internet's private sphere descends into chaos and anarchy also reinforces this view. This impression was created by framings that highlighted the power platforms held over their users or the way in which platforms' economic interests allowed malicious or non-democratic actors to exploit, manipulate, silence, or game users. These framings presented NetzDG's governmental intervention not as unduly interfering with free speech on platforms but as necessary to *protect users* against economic exploitation and to ensure democratic rules reigned. In this view, regulatory intervention did not negatively interact with platforms' economic incentives but balanced them out in a positive way.

Moreover, the framing of NetzDG as enforcing law and order and protecting the rule of law also incorporated the position that NetzDG's regulatory intervention on platforms was needed and democratically legitimate. A central contention over platforms' status further played out within the broader rule-of-law frame: The intra-frame tensions of this frame resolved around the question of what platforms would be doing when they made moderation decisions. Were they acting as quasi-legal jurors and judges who made decisions over legality and took over judicial tasks? Or were they simply adhering to state-issued tasks and submitting to democratically legitimate regulations that ensured the primacy of the state and its democratic rules over corporations?

Defenders of the rule of law?

This contention brought to the foreground the question of what it means to uphold the rule of law and implement law and order on social media platforms and what kind of practices the rule of law implies. Such contentions are again not new, as disputes over how to understand the rule of law and its implications have existed throughout history and in legal discourses (Bingham, 2007; Fallon, 1997; Tamanaha, 2004). I here provide a short excursion to these contentions before circling back to the NetzDG controversy. Richard H. Fallon for example describes the rule of law as an “essentially contestable concept” that can be conceptualized in various ways (Fallon, 1997, p. 7). Fallon further finds that different rule-of-law ideals reflect distinct “assumptions about what law must or should be to fulfill the requirements of the Rule of Law,” with each representing “a plausible approach to the protection of values reasonably associated with the Rule of Law” (Fallon, 1997, p. 10). In line with this, Brian Tamanaha’s historical tracing of the development of the rule of law as a concept has described how the struggle over this concept’s meaning and significance has always also been a struggle over societal and political authority and power and over the right form of government (Tamanaha, 2004). Tamanaha’s analysis shows that the outcomes of such struggles shape societal relationships.

However, there are some properties of legal and governance systems that all understandings of the rule of law generally associate with this principle (Bingham, 2007; Fallon, 1997; Tamanaha, 2004). These include a fixed system of rights and duties which bind everyone, no matter their power or status; this kind of system ensures that each person is ruled by the (same) laws and not by other people. In this way, the rule of law ought to protect people against legal arbitrariness and impreciseness and provide the predictability needed to make reliable interactions possible. In addition, the *separation of powers*, a central democratic principle that enables independent courts to control the government’s actions by means of (constitutional) law, is strongly associated with the rule of law. Thus, this concept gives an important role to courts and an independent judicial system. Tamanaha describes that the growing importance of the rule

of law has therefore historically coincided with the increasingly significant role of courts as “the proper reserves for lawful conduct” (Tamanaha, 2004, pp. 26–27). Further, the proliferation of the rule of law has led to the emergence of a professional legal class that interprets and administers the law in accordance with the rule of law (Bingham, 2007, p. 78; Tamanaha, 2004, pp. 29, 35). Oath-taking, which at some point even became required of rulers such as kings, here takes on an important function of pledging allegiance to the law (Tamanaha, 2004, pp. 22–23).

To bring this back to my discussion of NetzDG and the role of platforms: Such struggles over the meaning of the rule of law and over its implications for who is entrusted with making what kind of decisions also played out within the NetzDG controversy. Of course, NetzDG’s approach to oblige corporate moderation decisions to comply with speech laws may have partially been responsible for the emergence of such questions; the close resemblance between moderation decisions and legal decisions may have been another reason for this discursive focus. As said, the content of the existing speech laws that NetzDG prescribed was not contested—all framings of NetzDG generally accepted these laws as democratic. The circumstance that these laws were already legitimized, accepted, and grounded in democratic and constitutional principles can explain this agreement.

Despite this general acceptance of existing speech laws, the intra-frame contentions of the rule-of-law frame revolved around the question of whether NetzDG’s enforcement of these laws was *compliant* with the democratic principle of the rule of law. One of this frame’s framings then described NetzDG as enforcing law and order and upholding the rule of law. This framing included comparisons between platforms and other spaces where crimes were not just accepted and where laws equally counted, comparisons which evoked the legitimacy of established practices to justify interventions into platforms’ content moderation practices. Further, arguments which suggested that NetzDG prevented arbitrariness and unfairness in moderation decisions and ensured that everyone was treated equally under the law and that the law was rigorously upheld were part of this framing. These arguments suggested that NetzDG pulled

platforms under the *law*, preventing them from being a *lawless space*. It thus seemed to ensure that people, as subjects of this territory, were treated according to the principles of the rule of law. According to this view, NetzDG was not giving away the state's monopoly but upholding it.

On the other hand, the framing of NetzDG as a threat to the rule of law represented the view that the new law violated the rule of law principles because it removed legal decisions from the territory of the judicial apparatus and gave them to platforms, who however followed other principles. This framing included illustrations of the precarious decisions under which commercial moderators operated, which spoke in support of this view. These illustrations demonstrated that corporate content moderation in no way resembled the conditions of judicial decision-making and that NetzDG also implied no legal persecution—which is a fundamental part of law enforcement—but simply “deleted” crimes.⁵²⁷ As a result, the ramping up and better equipping of actual law enforcement units stood in as a better alternative here.⁵²⁸

Thus, platforms appeared as corporate and economic actors within a variety of framings. However, these framings often still differed in their assessments of what this implied for platform governance, suggesting different views on how platforms' economic incentives would interact with NetzDG's regulatory stipulations.

Publishers/media

In contrast, some of the other framings and their assessments of NetzDG and platform governance described platforms as *publishers* or *media*. This role for platforms implies that they produce or publish content and consequently need to make sure this content adheres to corresponding laws and standards. In the NetzDG controversy, various comparisons between

⁵²⁷ This has changed in 2020, as amendments made to NetzDG now oblige platforms to report particularly severe offenses to the federal police for persecution.

⁵²⁸ This also included some discussion on the financial aspects of who should provide the necessary resources and pay for content moderation [Zeit_1]. As was pointed out in the media reporting, having the evaluations of posts' legality carried out by state institutions would ensure due legal process but also imply that public funds paid for the moderation that corporate platforms profited from.

platforms and the media illustrated such an understanding of platforms' role. Descriptions of platforms as publishers for instance justified the demand that platforms needed to actively curate content and ensure its legality, but also that this was acceptable to expect of them.

Comparisons between platforms, media outlets, and publishers, for whom editorial responsibilities and ensuring the legality of what they published were already established practices, hence provided justifications for also giving platforms such a task. At the same time, these comparisons underlined the proposition that regulation needed to exert economic pressure on corporate platforms to comply with the law but that platforms also needed to take over a certain degree of *societal responsibility* for the content on them and that they *can* do this. The regulatory imaginary, according to which laws guarantee democratic discourse, embraces this kind of proposition. What is interesting to notice is that this proposition describes regulatory intervention not only as forcing private corporations to comply with laws but even as incentivizing them to *take up the responsibilities of a quasi-public institution*.

Speaking to this role for platforms, the comparison one *Netzpolitik* article⁵²⁹ made between platforms and Germany's public broadcasting presents an interesting analytical point. The article presented this broadcasting order positively as providing a space for free and critical media content. This comparison suggested that public broadcasting enables media content to be independent from market pressures that may compromise its freedom, integrity, or service to the public interest and that it protects this content from the need to engage in advertising or attention-seeking. The comparison also highlighted the question of how to disentangle content on social media from economic incentives so that platforms can take on the responsibility that comes with their media-like role. NetzDG can be interpreted as one contested attempt to do this, as it applies the instrument of fines to counterbalance existing incentives to neglect dutiful moderation. The comparison to public broadcasting, which this article made, presented a

⁵²⁹ NP_47

different solution, namely to implement structures for the *creation* of social media *content* that make this content independent of platforms' attention-based business models.

If platforms act as media or publishers, this gives rise to the question of whether, and under what circumstances, they are fit to take up this role. Interestingly, in the NetzDG controversy, journalistic and publishing associations spoke out *against* the new law because they feared that it would lead to unfair censorship, for example, when reporting hate speech or satire. These journalistic associations seemed to find that giving platforms editorial responsibilities, at least in the way that NetzDG did, was wrong because platforms would *not* live up to them or make sure important speech was protected. Instead, platforms would delete rather indiscriminately, as these associations feared. Thus, they suggested that casting platforms in the role of media or publishers was the wrong idea.

A public infrastructure

Finally, some assessments of NetzDG, especially those that evaluated it positively, proposed that platforms presented *a new kind of public actor* and, as such, had responsibilities to the public beyond profit-seeking. Consequently, putting them under the right framework and governmental oversight presented a measure to ensure that they lived up to this role and responsibility. This kind of view implies that platforms are not only publishers that need to engage in editorial activities but rather that they function as a *public, democratic infrastructure* and, in this capacity, are *responsible for ensuring that democratic principles reign on them* and that discourse on them takes on a democratic shape. This in turn means, for instance, guaranteeing that participants in the discourses on them are not silenced, harassed, or have their rights violated and that misinformation or foreign interference with elections is prevented.

In line with this, some framings included comparisons that suggested that platforms acted as *public infrastructures*. A strong example is one comparison to quasi-public spaces such as airports or (previously) public infrastructures such as communication services, which emphasized the point that platforms ought to guarantee certain rights usually held against public institutions.

The proposal that platforms even had a responsibility to actively *protect* freedom of speech beyond what NetzDG required accorded with this view as well.⁵³⁰ Likewise, framings that stressed the need to ensure that democratic values, principles, and communicative structures reigned on platforms and to hold platforms accountable beyond transparency also implied a quasi-public status for platforms. Examples for this are those framings that emphasized platforms' public responsibility or their failure to do justice to it and that advocated for the need to force platforms to live up to the public responsibility that came with their societal function. Similarly, the demand to politically determine algorithmic rules for content ordering, which *Netzpolitik* made, also at least partially implied a public-infrastructure status for platforms.

Some framings further included expressions in support of NetzDG that were based on the judgement that its regulatory intervention was democratically necessary because it ensured that platforms did justice to their public character and that democratic discourse took place on them. This kind of judgment—and view of platforms—speaks to the regulatory imaginary, where regulatory control over the internet presents a source of democracy, not just because it enforces law and order but also because it brings platforms and the public discourse on them more entirely under the auspices of the state. At the same time, this position also implies that platforms are, in principle, able to do justice to their public role and respect the right to free speech, at least if a democratic state devises and enacts the right regulatory framework.

The negative consequences of platforms' public role

As I have already described above, framings critical of NetzDG, on the other hand, described the view that it was precisely wrong and adversarial to democracy to thrust platforms into this public role. These framings provided ample reasons why platforms were unfit and

⁵³⁰ It is interesting to note here that speakers on the political right, who generally warn against censorship and who opposed NetzDG, at the same time filed various lawsuits to claim their free speech rights against corporations. I will pick up this point in Chapter 16 on discursive politics.

unequipped for this role. However, the view that platforms are unfit to act with public responsibilities does not have to imply that public democratic interactions on them cannot take place. Instead, the private status that they take on, which separates them from the state, in this view bears the chance to provide users with the possibility to *control the state* through communicative exchanges that take place away from it. To exercise this kind of democratic agency, users, however, need to be able to exert power over platforms, which in turn depend on them economically.

This line of argument explains how suggestions that were made for better law enforcement and for more transparency took on a view of platforms as economic actors. It also explains calls for market-friendly regulations. Such regulations promise a way to ensure platforms do not develop into opaque monopolies while nevertheless keeping them in their role as private actors and delegating decisions over legality to the state's judicial branch. The assessment that NetzDG was a sign of the democratic state's failing to live up to its own responsibilities then also presented a rather strongly-worded pushback on the idea of platforms as public actors. This assessment is analytically interesting because it draws attention to the makeup and capacities of the state *itself*, implying that the place for democratic decisions is perhaps somewhere else than on platforms.

Finally, the framing of NetzDG as overregulation also included another pushback against platforms' public role, describing reasons for why using NetzDG to thrust platforms in this role would compromise both innovation and economic progress. This framing reinforced the view that platforms needed to stay in a private, corporate role and it suggested the appropriate policies to support this and to ensure technological and economic progress.

To conclude this section: My comparison of the different framings of NetzDG has uncovered that different approaches to platform governance also imply different roles for platforms, which come with certain rights such as to make decisions on (the legality of) speech

or to be free from governmental interference, but also particular responsibilities such as to respond to users or moderate content according to laws and democratic values and principles.

Platforms' role in socio-technical imaginaries of democracy

In the previous chapter, I described two distinct imaginaries that envision two different sources for democratic discourse, namely free information flows, which the internet and platform in principle make possible, and state-issued rules and regulations, which substantially shape speech and information into democratic forms. Within these imaginaries, platforms take on different kinds of (institutional) roles, which, in the NetzDG controversy, surfaced in different framings. In the technological imaginary, democratic discourse springs from the free information flows that digital technologies make possible and hence depends on the insurance that these information flows can happen in a private sphere away from the state and be controlled by individuals as both users and citizens. This imaginary's vision therefore implies that the regulation that is needed takes on a market- and competition-oriented character and empowers users as individual economic actors in a marketplace-like sphere.

For the regulatory imaginary, democratic discourse springs from the rules that a democratically legitimate state sets and enforces. This vision, at first sight, does not negate the possibility for platforms to act as corporate, private economic actors who simply offer citizens the chance to share information and communicate. Even in the role of such corporate economic actors, platforms can of course nevertheless comply with the laws that have been devised by a state under the rule of law. And, when cast as consumer protection efforts, such laws can even protect the rights of citizens who act in this private economic sphere. This view, which centers the importance of legal compliance for ensuring democracy online, partially motivated NetzDG whose initial statement traced problems with a toxic public debating culture back to platforms' lack of legal compliance. In the controversy that ensued, this view was most clearly described in the framing of NetzDG as protecting *users* from *economic exploitation*.

However, my framing analysis of the public contentions around this law has made visible the many challenges an approach to platform governance faces which bases on the regulatory imaginary. These challenges particularly stood out in the framing of NetzDG as a threat to the rule of law: Even though they of course need to adhere to the law, if platforms are positioned as private economic actors, it consequently appears wrong to endow them with the power to decide whether *others* have violated the law, given this is the role of the state's judicial apparatus. But if they are supposed to take on more *public* responsibility for the content on them and to fulfill a public mission, they find themselves in tension with their economic incentives. To resolve this tension, they would need to move away from their incentives as purely private economic actors.

This points to a tension that ran through the NetzDG controversy and showed itself, for instance, also in Heiko Maas's standpoint that platforms, on the hand, needed to become more *user-friendly* and did not have any economic incentives to overblock *but* that they also, at the same time, needed to take over a public role that was akin to that of the media or even public infrastructures and that had the responsibility to shape information flows on them into democratic forms. I therefore find that the regulatory imaginary's vision works out best if platforms are envisioned as public actors who are not only driven by financial or market incentives but take up responsibility for democratic processes. In this role, they can then be trusted with shaping discourse on them into democratic forms.

One way to resolve this competition between the different imaginaries and their visions of how to enact democracy online could be to empirically investigate which roles platforms take up in practice. However, what makes settling the status of platforms difficult empirically is that they seem to take on a variety of roles in practice. Sometimes, they act as corporate service providers and mere intermediaries, but other times they also engage in curatorial activities; label and curate media products and news; or function as a place for public discourse, political critique, and democratic debates. Even Facebook's own statements, which several articles cited, took on conflicting stances on this. Hence, for any role that platforms may take on, there are

events, instances, and possible comparisons that speak in favor of this role *and* that show its failures. Perhaps the question is then not what the “real” function of platforms is but on which side it is better to err and which side effects are democratically better to tolerate. Depending on which path is chosen here, platforms may be situated in a relatively unregulated sphere that depends on economic exchanges but also on vigilant users or they may be positioned under the reach of the regulatory framework, which, however, is at the risk of either undue state interference or a loss of control for the state.

15.2. Freedom of Speech and the State in Democratic Theory

The question of which role to give to platforms, which the last section has described, was perhaps the most explicitly addressed one in the NetzDG controversy. However, as I find, an equally important part of the contention over NetzDG concerned which role to accord *to the state* and its different institutions. This makes sense because the NetzDG controversy revolved around the democratic acceptability and legitimacy of a regulatory intervention that was *issued and enforced by state institutions*. As I argue, a rather significant part of this controversy therefore revolved around the question of how to determine the right—the democratically legitimate—sphere for and form of regulatory state action on social media. This question also touches upon the *territory* of the state and the question of how this state ought to or ought not to expand to social media platforms.

Consequently, the approaches to platform governance that different framings represented also foresee certain roles for the state. These different roles define how the state ought to relate to platform users as its citizens and the duties and activities this state should be entrusted with. Here again, the democratic imaginaries I have conceptualized will function as useful tools for differentiating these roles and explaining how state institutions are integrated into different, greater visions of democracy. Further, the imaginaries also explain how the roles that coherent views on platform regulation assign to the state *and* to platforms fit together and

within one overarching democratic vision. Moreover, I also outline that different roles for the state also correspond to certain interpretations of democratic values and principles, particularly freedom of speech. This relates to discussions over freedom of speech in democratic theory, which dispute what kind of legal limitations to speech, if any, so which restrictions to the right to free speech—as a defense right against the state—are democratically permissible and under which regulatory framework this right is best realized. As I explain in the following, different views on freedom of speech and its practical implementation correspond to different views on the role the state plays in democracy, how it relates to its citizens, how these citizens interact with one another, and how public democratic discourse works.

As my framing analysis has shown, such disputes over what freedom of speech implies also played out in the NetzDG controversy, particularly in the discussion over whether the new law endangered or protected this right. This dispute can hence provide insights into different conceptions of the state and different understandings of public discourse, which characterized different positions in the NetzDG controversy. I find that these positions fall in line with different views on democracy that different *theories of democracy* have long described and struggled over. These theories are interesting for my analysis because they help to crystallize the different democratic assumptions that certain approaches to platform governance buy into and because they build a basis for a careful reflection on these approaches and their consequences.

An excursion to democratic theory

Taking an excursion to democratic theories and their understanding of freedom of speech, of the state, and of citizen-state relationships can help to distill the underlying understandings of democracy that signified different framings and that the socio-technical imaginaries' vision responds to. This section therefore takes an excursion into democratic theory. This excursion builds the foundation for my following analysis of the role that the state and its citizens played in the NetzDG controversy and in platform governance.

Substantive/defensive accounts

I start this excursion with arguments that generally *support* a certain degree of regulatory interventions and of *limitations to speech* and that are based on so-called substantive or defensive approaches to democracy. *Substantive accounts of democracy* focus on the *outcomes* of democratic procedures and the *content* of democratic discourses; they take a more instrumental view to freedom of speech. According to these accounts, a democratic public will can only emerge when public discourse produces a “polity and policy which demonstrates tolerance, mutual respect, and an embrace of diversity” (Bhagwat & Weinstein, 2021, p. 102). Therefore, regulations and laws need to ensure and safeguard this: Hate speech and discriminatory speech, which undermine democratic values and principles, can and even ought to be prohibited. Likewise, *defensive democracies*, sometimes called “militant” democracies, accept measures that potentially intrude into citizens’ privacy or restrict personal liberties if they are necessary to counter the subversion (even by democratic means) of democratic values and structures (Bhagwat & Weinstein, 2021, pp. 103–104). This may, for example, include measures that prevent the perpetuation of unconstitutional symbols or ideologies under the banner of freedom of speech.

There are several reasons which such substantive and defensive accounts of democracy cite in favor of stricter speech regulations and to back up their view on the need for governmental intervention to certain speech in the name of protecting democracy. These reasons include the prevention of false information, fraud, and deceit that hinder people from making the kind of free, informed, and wise political choices democracy requires of them (Restrepo, 2013). When it comes to social media platforms, this argument can provide a reason for interventions against fake news and misinformation campaigns, as they arguably distort people’s access to true information and hence their ability to form an informed view on matters of public concern.

In line with this, Nancy Fraser and Rodney Benson also suggest that governmental interferences to speech and media are justified if they are necessary to *counter economic incentives and*

market-presses that hinder the effective exercise of freedom of speech or democratic discourse (Benson, 2009; Fraser, 1990). For Fraser and Benson, state intervention to speech might be necessary to counter structures of inequality that may arise from a privately-owned media (Fraser, 1990, p. 64), to ensure plurality, to counter oppression, and to provide sufficient reporting on social issues (Benson, 2009, p. 188 ff.). As Benson suggests, the question is then “not state or no state, but rather how different kinds of legal, bureaucratic, and political frameworks can help foster different kinds of journalism” (Benson, 2009, p. 193). State intervention might here support freedom of speech by making sure that diverse news outlets and perspectives can exist.

This leads over to other arguments made in favor of speech restrictions and governmental interventions to speech. These arguments emphasize the need to ensure *everyone* can speak, make their voices heard, and participate in public discourse. Restrictions and interventions may be needed to ensure *equal political participation for everyone*, a precept of democracy (Restrepo, 2013, p. 385). As for example Nancy Fraser argues, interventions to certain speech may be permissible if they are aimed at preventing the domination of certain groups over others because this domination appears at odds with the fundamental equality that democracy ought to accord to everyone (Fraser, 1990). This argument can support the prohibition and suppression of hate speech, and of certain kinds of vicious speech, with the justification that this speech may deter its targets from speaking up and effectively prevent them from exercising *their* right to free speech. But even if those targeted by hate speech are not silenced or excluded, restrictions might still be justified where this speech nevertheless compromises the right to *equal political participation*. As Alon Harel describes, this may for example be the case where such speech devalues others’ voices or subjugates them to the “inequality and subordination” entrenched in stereotypes (Harel, 2021, p. 461).

A further argument for the prohibition of certain speech is that it threatens or diminishes the *human dignity* of others and calls into question their standing as fully-fledged human beings

(Harel, 2021, p. 460). This plays an important role in the German context where human dignity motivates many speech laws and regulations: Already the first paragraph of the basic law's first article describes the protection of human dignity as *the* fundamental responsibility of all state power. For this reason, for instance even the Declaration on Freedom of Expression, which was signed by many different parties, and which strongly criticized NetzDG, acknowledged the limits that human dignity legitimately puts to freedom of speech. Beyond dignity, the protection of *autonomy*—taken as another fundamental task of democracies—provides an additional justification for speech restrictions. This justification builds on the argument that hate speech and the likes can compromise the autonomy of targets, forcing them into stereotypes, marginalizing and excluding them from (mainstream) social life, and, again, subjugating them to other, powerful groups (Harel, 2021, p. 460).

These arguments, which justify certain limitations to speech, suggest that freedom of speech, and even personal liberties and autonomy, are relative: They only truly exist, as collective and shared values, when everyone possesses them or can effectively and equally enact them and when they are justly distributed. This notion corresponds to what Isaiah Berlin has called the *positive* notion of liberty, which captures the freedom *to*, for example, to participate or to be a respected member of a democratic community (Berlin, 1969). From such a perspective, freedom, including freedom of speech, is a *collective good* that can only exist when it is set within bounds that guarantee its *availability to everyone*. This understanding of freedom of speech simultaneously implies that the kind of speech that democratically legitimate regulations suppress is not *democratically valuable speech* and hence does not need to be preserved. For example, from this standpoint, it seems that banning hate speech or speech which threatens human dignity from public discourse is acceptable because this speech does not appear conducive to democratic discourse. It does not seem to contribute anything of value to public deliberation and the control of powerful actors.

Thus, all these arguments provide different reasons for why, and under what circumstances, the state can interfere with speech or dictate substantive rules. The overall aim cited to justify such interventions is therefore the *protection of democracy* in various ways, for instance through laws and regulatory interventions. These, so the argument, protect equality, freedom, and autonomy for everyone, shape public discourse into democratic form, and safeguard democratic principles and values. From this perspective, state interventions act *on behalf of (democratic) citizens* and embody *their collective* interests. This perspective on the state and its institutions falls in line with the tradition of republicanism in democratic theory (Bresser-Pereira, 2004, p. 115 ff.). Hence, I refer to this conception as the *republican conception of the state*. In this republican conception, the state is understood as *embodying* its citizens, their collective interests, shared values, and a common good. Following this conception, the state is then *responsible* for bringing forth a democratic citizenry, for example by setting democratic (speech) norms and promoting the enactment of civic virtues. A republican conception of the state comes with a higher acceptance of stricter regulatory limitations to speech, taking the risk of erring on the side of overly restricting potentially harmless speech.

The principle of *popular sovereignty*, of self-governance or the rule of people over themselves, is fundamental to this republican conception of the state (Rummens, 2006, p. 469). This principle states that it is the people who “exercise ultimate control over their government” and control it through public opinion (Bhagwat & Weinstein, 2021, p. 83). Popular sovereignty also requires freedom of speech, as freedom of speech ensures people can “speak freely about collective decisions” (Bhagwat & Weinstein, 2021, p. 84), participate in shaping their environment (Restrepo, 2013), and control state power. To safeguard popular sovereignty, guaranteeing freedom of speech ought to ensure public opinion does not become a mere representation of governmental views or of few powerful political actors, but rather that, vice versa, governmental views represent the people. This view on the state as representing a

democratic citizenry can allow for the more active regulatory shaping of public life and social norms if popular sovereignty is guaranteed through for instance legislative procedures.

The principle of popular sovereignty is thus particularly important for a republican conception of the state due to the power this conception allows the state to exercise over people's lives, for example when restricting individual freedoms and shaping collective norms. Popular sovereignty ought to ensure this power is democratic, corresponds to the will of the people, and represents them appropriately. In turn, popular sovereignty provides democratic legitimacy to the state and for substantial governmental interferences in social interactions, such as speech, if these interferences credibly and convincingly uphold this principle. However, the republican conception of the state and the governmental interventions in social life it allows for also imply that the *democratic legitimacy of the state* itself and of the procedures by which this state sets rules are of utmost democratic importance.

Procedural/Liberal Accounts

While the just-presented accounts of democracy demonstrate why, and under what conditions, it is acceptable to legally limit speech or put governmental restrictions on certain types of speech, there are also other accounts of democracy that stress reasons for *why such interventions may be democratically dangerous*. *Proceduralist, liberal, and libertarian* accounts of democracy generally take regulatory interference in speech as dangerous. Following these understandings of democracy and the central importance they accord to personal liberties, it seems democratically preferable to err on the side of allowing too much speech rather than too little. Such accounts provide arguments that caution against regulatory interventions to civil and personal liberties, and particularly speech and information, and advocate for rather far-reaching protections of free speech. Their arguments are motivated by different ideas of how democratic discourse works, why it is important, and what role the state has in democracies.

Proceduralist accounts emphasize particularly the procedural aspects of political discourse as democratically important, which is why interventions to the content of such discourses appear

unjustified. *Liberal* accounts share this view but emphasize particularly the value of individual liberties for the formation of democratic subjects and the functioning of democratic discourse. *Libertarian* accounts take this even further and predominantly focus on the absolute importance of *individual liberty* as a means to ensure *autonomy* and *free exchange*—they describe the guarantee of this liberty as the *state's main task*. Moreover, particularly libertarian accounts are often accompanied by a belief in the positive forces of free markets. Therefore, they are often used to advocate for an absolute protection of all kinds of speech, even antidemocratic speech or speech that advocates for the violent overthrow of democracy. Their verdict is that speech can only be restricted if it leads to *direct* violence or lawlessness (Bhagwat & Weinstein, 2021, pp. 103–104).

In line with this, and in contrast to the substantive account outlined above, which suggests that it is necessary to channel the content of discourses into democratic forms, *proceduralists* accounts of democracy are agnostic about the *outcomes* of democratic processes (Bhagwat & Weinstein, 2021, pp. 102–103). In the proceduralist view, vast protections of freedom of speech enable an important democratic discourse whose *discursive and deliberative aspects* are seen as *democratic ends in themselves* rather than only as means to create democratic policies (Bhagwat & Weinstein, 2021, pp. 102–103). In the proceduralist account of democracy, curtailing speech appears as less permissible because it seems unclear where the *standards for such limitations would come from outside the deliberative processes* themselves (Bhagwat & Weinstein, 2021, p. 102). Further, such accounts are motivated by the fear that limits to speech can *hinder* the deliberative process, for example by excluding some viewpoints and speakers. Thus, for proceduralist accounts, the risks that come with restricting speech are too great, especially because these accounts hold that there can be no “objective” agreement on what constitutes impermissible speech outside of discourse.

Consequently, for democratic proceduralists, substantive regulatory interventions and limits to speech are (for the most part) democratically unacceptable and even dangerous. One reason cited to support this view is that the function of public discourse, with which state-issued

regulations would interfere, is to *control* exactly this state. To do this effectively, public discourse needs to happen away from the reach of state power. Especially where political issues are involved, this view holds that the government—and the state and its monopoly of power more broadly—cannot be trusted with determining what is true and right speech. Libertarian accounts share this view, suggesting that instead, individual people who participate in public discourses must act as their “own watchman for truth” (Loewy, 1993, p. 430). For them, democratic discourse and free speech are therefore oriented at individual *truth-seeking*.

The idea of a *marketplace of ideas* represents this libertarian view. This idea describes a democratic abstraction according to which discourse participants introduce ideas into a marketplace-like structure which everyone can access (Marshall, 2021). In this marketplace, so the idea, other autonomous discourse participants can test these ideas, a process which then ultimately results in the prevalence of truth. As this democratic ideal has it, the more ideas can be introduced into this envisioned marketplace, but also the more they can be attacked, opposed, and defended in an unrestricted manner, the more likely interactions in the marketplace will produce desirable outcomes (Blasi, 2021, p. 29; Mackenzie & Meyerson, 2021, pp. 64, 66; Marshall, 2021, p. 201; A. Stone & Schauer, 2021, p. xiii). According to Stuart Mill, who was a supporter of the powers of the marketplace of ideas, the vigorous opposition of ideas in this marketplace keeps adopted ideas within the “limits of reason and sanity” (Blasi, 2021, p. 29). Thus, according to this view, having speech take place under these “market-conditions” is the best way to govern discursive processes, because it enables the competition between a wide range of ideas and their most rigorous assessment. Interferences to discursive processes by states and other powerful actors are here judged as undesirable. One reason is that such powerful actors pursue political interests that may lead them to distort truths. Another reason is that the discovery of such truths is taken to work best through the unhindered participation of as many voices as possible.

Thus, for the democratic ideal just described to work, the strong protection of individual autonomy, as the far-reaching defense of personal liberties, is required. Moreover, the *democratic* outcome of public discourse is understood as the aggregate of different individual interests who negotiate with each other. Regulating speech, for example prohibiting hate speech, here seems impermissible because it infringes on personal liberties and can compromise people's autonomy. In this view, regulating speech appears as equivalent to giving the state control "over what we think or believe to be true," which is found to pose an unacceptable "threat to liberal freedom" (Harel, 2021, p. 459).

In the first part of this section, I have presented an understanding of freedom of speech as a relational, collective value and outlined that this understanding corresponds to substantive, republican conceptions of democracy. In contrast, the democratic accounts that I have just described, which advocate for far-reaching protections of and against substantive limitations to speech, take on a different understanding. Within these accounts, freedom of speech appears as a more individualistic value, whose protection should guarantee autonomy and as much personal liberty as possible to individual people. This notion of freedom of speech then in turn captures Berlin's well-known description of *negative freedom*, the freedom *from* (Berlin, 1969, p. 3 ff.).

As just outlined, liberal accounts of democracy also suggest that the protection of personal liberties allows individuals to defend their interests within interactions that take place in a market-like structure. This implies that the outcome of discursive processes is the outcome of a negotiation between different sides. This view also posits that speech, even hate speech, does not have direct material and structural impacts on the world. While such speech might no doubt describe undemocratic and despicable points of view, it does not, in this understanding, directly *enact* them. Rather, it introduces these views into the marketplace of ideas, where they can subsequently be debated and refuted. So, while conceding that such speech expresses even abhorrent views, this perspective does not find that this speech effectively diminishes the autonomy, right to participation, or freedom of speech of those who it is aimed at.

Such strong defenses of vast-reaching speech protections fall in line with the *liberal conception of democracy*. Fundamental to this conception are civil liberties, which act as defense rights (Bresser-Pereira, 2004, p. 115; Dworkin, 1978). For the liberal conception, these rights take on utmost importance because they protect against the state and ensure that it does not encroach upon society and individuals' freedom. In contrast to the republican conception, where the state is taken to embody society and its citizenry, the liberal conception positions society as *separate from the state*, which functions as an *administrative apparatus*. In the following I refer to this conception as the *liberal conceptions of the state*.

According to this liberal view, the state's main tasks are to empower citizens to lead autonomous and self-determined lives and to assure fundamental liberties, which citizens need to pursue their individual plans, interests, desires, and values. In the liberal account of democracy, the legitimacy of state institutions and the government derives from their (successful) protection of individual rights and liberties. Accordingly, the task of democracy is to safeguard "personal rights that guarantee individuals the freedom to pursue their own goals and happiness;" an "impersonal rule of law" and constitutional rights ought to ensure this (William Rehg, 1996, pp. xxxiv–xxv). The purpose of laws, and their enactment by the rule of law, is not to normatively shape the content of social interactions and bring forth a democratic citizenry; instead, it is to protect individual rights and create predictability for social and economic interactions so individuals can pursue their life plans.

According to this understanding, the individual rights, which a democratic state ought to protect, often take the form of human rights that guarantee everyone's well-being and allow people to develop themselves and live free and autonomous lives (William Rehg, 1996, p. xxv). These rights are understood as *negative* rights that protect private interests and guarantee freedom from external compulsion, either originating from the state or other people (Habermas, 1998, p. 241). Citizenship, in the liberal conception, is foremost about having certain rights and liberties, which the state protects (and about respecting these same rights and liberties for others)

(Honohan, 2017). According to this perspective, democratic political processes, such as voting, enable citizens to bring their interests to politicians and policymakers so that they can devise policies that correspond to these interests (Habermas, 1998, pp. 239, 243). Constitutions take up an integral function in all of this, as they ought to keep the state apparatus in check and ensure that it responds to society's interests (Habermas, 1996d, pp. 297–298).

The deliberative account

Before discussing how different conceptions of the state and their views on democracy played out in the NetzDG controversy, and to round off this excursion to democratic theory, the final part of this section closes with one more prominent approach to democracy: The *deliberative account of democracy*, most prominently developed by Jürgen Habermas, which situates itself *between* the liberal and the republican account (William Rehg, 1996). This approach is particularly interesting due to the central role the *public sphere*, as another democratic abstraction, plays within it. This concept is often featured in debates over content moderation that describe platforms as a public sphere; here, I therefore outline on which presuppositions this democratic abstraction builds.

The deliberative theory's vision of democracy then takes several central ideas from the liberal account of democracy. These include: the democratic necessity for vast protections of free speech in multiple realms of life; keeping governmental interference to speech at a minimum; attributing utmost importance to civil liberties and their guarantee of autonomy so that people can freely develop as individuals;⁵³¹ centering a public democratic discourse that should take place in a private realm and away from the state; and a vision of the state as an administrative apparatus apart from society (Habermas, 1996b, pp. 169–170). In the deliberative approach, the

⁵³¹ Guaranteeing personal autonomy to everyone for Habermas also requires governmental welfare which ensures that everyone's basic necessities are met so that they can participate as autonomous individuals and political equals in the democratic processes.

public sphere that is so central to it is not part of the public realm in the sense that this public sphere is not envisioned as a publicly funded and controlled infrastructure or institution. Rather, the public sphere is positioned in a *private* realm, where citizens come together as private individuals to discuss matters of *public*, in the sense of shared or common, *concern* (Calhoun, 1992, pp. 7–8). They do this away from the state and with the goal of controlling it.

As Habermas points out, the public sphere is therefore even imagined as a rather anarchistic space: “pluralistic, close to the grass roots, and relatively undisturbed by the effects of power” (Habermas, 1996b, p. 182). At the same time, it is in danger of falling prey to unequal power distributions that distort the democratic, rational processes of public deliberation meant to take place in it (Habermas, 1996d, p. 307). The task of the state is therefore to use its coercive force only to ensure a system of rights that structures the public sphere. This system of rights needs to protect the personal freedoms necessary to avoid unequal power relations and to give all citizens equal chances to participate and influence deliberative processes. Laws, in this view, mediate between the private citizens that come together in the public sphere and the force of the state. They ensure the fundamental rights needed for democracy, but also encode the social norms and common interests that are discovered in the public sphere (Habermas, 1996a, p. 83). Laws can unburden the individual from having to reason about the right moral norms for every interaction because they can simply follow the rules of the law instead (Habermas, 1996a, p. 115 ff.). More complex and more energy- and time-consuming processes of deliberation are consequently confined to democratic deliberation in the public sphere, where the basis for laws are laid and where they are continuously monitored.

But while deliberative theory shares with liberal accounts of democracy an emphasis on individual liberties and a public discourse away from the state, its view on this public discourse differs from the marketplace-of-ideas–concept. In contrast to this concept, the deliberative theory of democracy describes participants of public discourse not as individuals pursuing their own, self-interested agenda or engaging in marketlike exchanges. Rather, it describes them as

coming together as *citizens* who are bound by the integrating force of solidarity and who understand themselves as being part of a *shared citizenry*, as having a joint mission to find a shared interest and public will (Habermas, 1996d, p. 299).

Finding this shared interest and public will, for Habermas, happens through the application of *critical rationality* in the deliberative processes that take place in the public sphere. According to the deliberative account, citizens come together to reach consensus through rational argumentation and public deliberation accessible and understandable to everyone. Therefore, Habermas suggests, potential “conflicts can be consensually resolved against the background of intersubjectively recognized normative principles and rules” (Habermas, 1996a, p. 106). Deliberative theory therefore presupposes that both practical questions about communitarian life and a society’s moral questions can be judged in an impartial manner and decided in a rational way (Habermas, 1996a, p. 109).

Consequently, public deliberation for deliberative theory is aimed at the development of a shared position to which all can agree without coercion (Habermas, 1996a, p. 103). This implies that the decisive reason for a policy or law must be its acceptability to everyone and that discourse participants must further be willing to justify their claims based on reason (Habermas, 1996a, pp. 108, 119). According to the deliberative account, the outcome of public discourses and their deliberative processes do not present an aggregate of or a negotiation between different individual—or group—interests in the way it does for liberalist accounts. Instead, the outcome of democratic public discourse, according to deliberative theory, is a public opinion that develops according to the “rules of a shared practice of communication” (Habermas, 1996c, p. 362).

This view suggests that people do not have fixed interests and preferences when entering the political process but develop these through a joint process of deliberation, through what is called *communicative action*, and by active participation in public discourse (Fraser, 1990, p. 72; Habermas, 1996c, pp. 336–337). The goal of public deliberation is for citizens to jointly discover

and develop a public will which represents a *shared truth and common good*. The task of politics is to translate this public will to the state's administrative apparatus and its laws. So, while discourse participants bring their values and needs to the discourse, deliberative theory suggests that they are *transformed* by this discourse. During the process of deliberation, citizens try to understand one another and reach a consensus which represents mutual accommodation and recognition (Rummens, 2006, p. 471). Justice is a central principle for public discourse: Only those norms are ultimately justified which are "equally good for all" and could be obeyed by everyone in a similar situation (Habermas, 1996b, p. 161).

Deliberative theory shares with the republican account of democracy the central role of popular sovereignty, the idea that the (democratically legitimate) force of the state enacts a shared and common will of the citizenry. According to the deliberative account, the principle of popular sovereignty is not at odds with the far-reaching protection of personal liberties but complementary to it. This is because such personal liberties are taken to support citizens in being autonomous, self-determined individuals; this, in turn, makes it possible for them to enact their *public* autonomy. This public autonomy refers to their right to participate in democratic self-governance as free and equal citizens.

15.3. The State's Role for Platform Governance

In the previous part, I have outlined different conceptions of democracy and their positions on freedom of speech, the role of the state, and public discourse. As I have explained, these different conceptions provide arguments for or against regulatory limitations and governmental interferences with speech, and they describe different views on how to set the boundaries of democratic speech. The content of the dispute over NetzDG's intervention in speech online differed from such debates in political theory, as the latter often concern the extent to which laws should substantially limit speech or restrict the content of communication. In the NetzDG controversy, however, no one contested the substantive limits that were already

written into existing speech laws. Overall, it was not a matter of contention whether the boundaries set by existing speech laws were democratically acceptable or whether the state's judicial branch was apt to enforce decisions on these boundaries.

Instead, the disputed question was *how* such laws and their corresponding judicial decisions could be enforced *on* social media platforms. Thus, the “real” controversy over NetzDG concerned how to uphold already-set legal limitations and exercise established law enforcement practices on platforms. This included the question of whether the internet may have presented a special realm where things may have to be handled differently. One reason that some articles cited in support of this was that social media provide new possibilities—and capabilities—to discourse participants online, which may allow platforms to function well (democratically) under a more *laissez-faire* approach. A further reason that speaks for this, which the discussion over NetzDG at least implicitly touched upon, is that platforms' functionality and the scope, speed, or volume by which content is shared on them complicate traditional legal approaches and law enforcement.

Despite these differences between the NetzDG controversy and debates in democratic theory, I suggest that the latter can nevertheless help to crystallize the specific visions of social and political order and of the role of the state that played out in the NetzDG controversy. In the following, I therefore analyze which of the democratic conceptions that I have just outlined characterize different approaches to platform governance, as they have been discursively supported and constituted by different framings. This analysis proves helpful for identifying the assumptions and consequences of different approaches to content moderation and its regulation. This is because such democratic conceptions rather explicitly describe how they envision democracy to function and democratic discourse to operate, how they understand democratic values and principles such as freedom of speech, and which rights and responsibilities they assign to different societal and political actors.

In this section, the above-explained democratic conceptions from theory allow me to map out different interpretations of democratic values and principles that the framings presented, the different aspects these framings focused on, and the causes they attributed to problems with social media platforms, and to relate them to certain *roles* which the framings described *for the state*. This in turn again enables me to reflect upon the role that the two imaginaries which I have conceptualized imply for the state and to distill the assumptions on which their visions are built.

A republican conception of the state online

The framing of NetzDG as defending freedom of speech and as presenting a democratically necessary form of state engagement included different arguments, like those of approaches to democracy that support stricter speech limitations. Such framings, for instance, highlighted the detrimental effects of unlimited online speech, such as hate speech and fake news, and pointed to the negative impact these effects had on public democratic discourse. They directed attention to reasons for why it was necessary and justified to enforce limitations on speech online. According to their storyline, such limitations *protected* democratic values and principles and *secured* democratic discourse, for example, by countering the proliferation of antidemocratic voices or the spread of (democratically illegitimate) hate speech and false information. This argument then corresponds to the relational, collective notion of freedom of speech as only being realized when speech is put within bounds and actively shaped into democratic forms.

This notion was of course most straightforwardly expressed by Maas himself, who was quoted as emphasizing that it was those who perpetuated hate speech and similar content who limited the free speech *of others* and who were the “true” enemies of free speech. This implied that democratic discourse was best protected when the state extended its reach to the content of speech on platforms. At the same time, this kind of assessment also suggests that the substantive legal structures that guarantee democratic speech outside of platforms can be brought to

platforms through their integration into moderation rules and practices. It invites the conclusion that demanding this of platforms is acceptable and even desirable.

I find that these framings took on a *republican conception* of the state. According to this conception, democratically legitimated speech laws embody the norms and virtues of democratic citizenship and hence need to be enacted and promoted *on* platforms. It is, in this view, not enough to prosecute illegal content in court; instead, moderation practices need to enact the communicative norms and principles that stand behind laws. Hence, from this perspective, regulatory interventions such as NetzDG seem to present an act of the *state stepping in to defend democracy on behalf of its citizens*.

In line with this, I find that the framings which positively described NetzDG, or at least its intentions, as holding platforms democratically accountable, as protecting freedom of speech on them, and as bringing law and order to them represented a republican conception of the state. These framings often centered on the negative effects of platforms' economic pressures and financial incentives for democratic discourse, which powerfully illustrated *reasons for why* the state should step in in this manner and defend public discourse on platforms. Such negative effects included antidemocratic actors' exploitation of, and profit from, platforms' opaque algorithms and the proliferation of lawlessness, hate speech, and fake news when platforms were left to their own devices. This was complemented by illustrations that showed market mechanisms alone were not enough to mitigate problematic speech or empower users. Framings that fell in line with this often highlighted that, in the absence of state interference, the internet economy was in many ways detrimental to democratic values and principles and that platforms by themselves lacked responsibility and accountability.

This republican conception of the state in platform governance falls in line with the regulatory imaginary's vision of digital democracy. According to this imaginary, the state's regulatory force is needed to shape speech and discourse online into democratic forms, protect it from undue or undemocratic influences, and defend freedom of expression by actively

combating anti-democratic speech. According to this imaginary, discourse online is most democratic when platforms are placed under *the auspices of a democratic state*. As discussed above, this view simultaneously implies that platforms have responsibilities beyond profit-seeking and even transparency and take on editorial or public responsibilities. At the same time, the dangers of governmental interference in speech appear low in this view, precisely because such *interferences embody the will of the people*, as the republican conception suggests.

What is finally interesting to note with regards to the role this republican conception played in the NetzDG controversy is that the framing of NetzDG as an *illegitimate political tool* likewise took on this kind of conception, despite its stark opposition to NetzDG and regulatory intervention in speech online. As discussed in Part 2, the reason is that platforms and their agencies became rather invisible in this framing. Instead, this framing put the discursive focus on the government and on mainstream politics, which it presented as *democratically illegitimate*. A central part of this framing was the view that the state and its government did not *accurately represent* the interests of their *actual* citizens. As described earlier, some articles that used this framing even cast the identity of these citizens, which the government was supposed to represent, in ethno-nationalistic terms. This stood out perhaps most clearly in the suspicion that the government prioritized the interests of immigrants and Muslim people over those of “indigenous” Germans. Thus, despite its strong defense of freedom of speech, this framing was characterized by the view that the current state was not democratically legitimate and that it did not accurately represent “the right people,” rather than by the view that extending a democratically legitimate state to platforms was wrong. This points to the fact that the republican conception of the state envisions this state as democratically legitimate and as acting in the interest of its people. What this exactly entails will be the subject of the next section.

A deliberative conception of the state online

In the previous section, I have also described the deliberative approach to democracy, which, according to its self-understanding, combines elements from the liberal and from the

republican conception. According to the deliberative approach, the state's administrative apparatus needs to enforce laws that represent a shared democratic will. At the same time, the state needs to stay out of the private realm where public discourse takes place. (This approach is particularly interesting with regards to the role of citizens, which will be discussed in the next sections.)

What I find is that it was particularly the framings of NetzDG that emphasized the *rule of law* and the importance of having legal officials and courts make decisions over the legality of speech which represented such a deliberative conception. Within this kind of framing, the state's judicial apparatus appeared as the only democratically legitimate place to enforce speech laws. This picked up on the liberal element that the state's task is to defend its citizens' rights in its legal apparatus. While it perhaps implied that platforms would delete less in practice, this framing did not include pushbacks on the substance of speech laws and their limitations of speech but rather held them as necessary for protecting democracy. Hence, this framing still included a republican element as well.

Part of this assessment was also the interpretation that NetzDG gave the kind of power to platforms which the state should itself retain and that it hence showed the state's failure to do justice to its responsibility. According to this framing, NetzDG transferred those powers and responsibilities to corporations, which, democratically, should be held by a state that represented its citizenry. Thus, through NetzDG, it seemed corporations would attain the kind of state powers and responsibilities which they were not democratically justified to have and which they would wield in undemocratic ways. Consequently, this led to the alternative suggestion to increase law enforcement activities on platforms, which would enable the state's judicial apparatus to ensure the reign of democratic speech laws but do so without transferring public tasks to private corporations unfit for them. Hence, this expresses the view that democratically issued laws were necessary for democracy and that they incorporated democratically-willed

boundaries for speech, but that these laws needed to be enforced by the private realm in which public discourse was taking place.

A liberal conception of the state online

Finally, the NetzDG framings also included suggestions to tackle problems with content moderation and with platforms that built on a *liberal conception of the state*. These included measures that would solely focus on creating the right conditions for economic transactions and on giving users informed choices as customers in a marketplace, through, for instance, increased transparency or openness of information flows. Despite including the proposition that regulation was needed to mitigate problems arising from platforms' business models, these framings emphasized the importance of keeping the state away from the *content* of online discourse. Instead, empowered users themselves, or even organized civil society actors, were here required to keep platforms in check and exert pressure on them so that they adhered to their values.

Moreover, I find that framings that included strong arguments for far-reaching speech protections online also represented this liberal conception, reproducing a liberal, individualist notion of free speech.⁵³² Most prominently, this was the case for concerns over overblocking. Such concerns expressed the idea that it was better to err on the side of *allowing* too much speech, even illegal speech, rather than risk *suppressing* too much speech or incentivizing the deletion of legal or democratically acceptable speech. This argument worked to suggest that it was better to adopt policies that ran the danger of restricting speech too little rather than too much.

⁵³² Truly libertarian accounts were rarely reproduced in the NetzDG controversy because existing German speech laws, which are generally relatively restrictive, and the need to enforce them was not doubted. No article in my sample thus advocated for absolute freedom or even a completely unregulated economic sphere. Nevertheless, liberal approaches that leaned on the side of allowing too much, rather than too little, speech and keeping the state out of speech on platforms did play a part.

Illustrations of how strict speech interventions such as NetzDG could potentially lead to the suppression of important parts of democratic discourse paint this same picture. Examples that visualized this danger included testimonies (of hate crimes), satire, political commentary, and even “gray area” speech posted, for example, by AfD members. Suppressing this speech as collateral damage in the fight against hate speech or fake news here appeared democratically dangerous. Such assessments fall in line with the liberal view of democracy that attributes democratic importance to allowing even such borderline and ambiguous speech, which appear necessary for protecting far-reaching freedoms and for keeping powerful actors in check. Again, in the NetzDG controversy, concerns over freedom of speech did not express doubts about the democratic acceptability of the limits that were already written into existing speech laws; hence, at least nominally, there was no debate about whether to legally limit speech. In practice, however, such warnings against overblocking and undue state interference did *effectively* advocate for a more laissez-faire approach to policing speech, *at least on platforms*.

When applied to the internet, the absence of regulatory interventions that this liberal view advocates for also implies that users can—and need to—judge information by themselves and that they are able to deal with problematic and hateful speech and to cope with abhorrent content. In an implicit manner, this demand on users was hence part of the warning against overblocking and, in a more explicit manner, part of the framing of NetzDG as overpolicing “uncomfortable” speech. The proposal of counter-speech as an alternative remedy to refute problematic or undemocratic speech also falls in line with this view, given that it built on the idea that something other than regulatory and governmental interventions were needed to counter problematic speech and that individuals needed to take up this responsibility. The suggestion of counter-speech, which was made at several points in the NetzDG reporting, then speaks to the liberal concept of a marketplace of ideas: if regulatory and governmental interventions are too democratically dangerous, the responsibility for shaping discourse into democratic forms and for countering wrong or false ideas falls to individual discourse participants.

Reflecting on what has just been said, I propose that the technological imaginary's democratic vision encompasses a liberal conception of the state. In this conception, the source for democratic discourse is primarily located in free and transparent information flows that empower users but from which the state is kept away. According to this conception, the state needs to be kept away from information exchanges between individuals in a private sphere but guarantee their fundamental rights and civil liberties through its legal apparatus. To realize this imaginary's democratic vision and protect its conception of the state in the context of platform governance, vast transparency about platforms' moderation practices is required. Further, platforms need to be clear about what users can expect, keep their promises, and not exploit or deceive users. This ensures that users, as citizens online or even organized in civil society organizations, can participate in a truly open marketplace or control moderation policies and practices on platforms through public and economic pressure. In the NetzDG controversy, this liberal conception of the state also resonated with suggestions for more transparency towards users as well as with the avoidance of monopolistic power for platforms and the need for counter-speech.

This liberal conception of the state depends on a view of platforms as part of a *private realm* that people can use to control the state. In this view, employing legislative action to bring social media under the auspices of the state and give them the governmentally mandated task of deciding over the legality of speech potentially compromises their democratic function. Instead, it is better to ensure transparency and fair competition so that users are empowered to defend their interests against any powerful actors.

Do platforms change the state?

One interesting point that was part of NetzDG controversy was that the *internet's affordances* perhaps required a *change for the role of the state* and its regulatory power. This was

exemplified in a commentary published in *Zeit Online*⁵³³ which found that more substantive restrictions to speech had been necessary after the second world war and the regime of the national socialists in Germany. As the article described, these restrictions had worked to eradicate antidemocratic and Nazi ideologies, made clear that such views were politically unacceptable, and alienated them from social and political norms, thereby creating a democratic citizenship. However, as the piece went on to argue, this approach was not feasible anymore for how communication worked on the internet. It was also, according to the author, not *necessary* anymore because the internet had taught “us,” as users and citizens, to deal with even undemocratic content so that its existence did not threaten democracy anymore. This position is particularly interesting because it points to the status and role of social media platforms and their affordances as starting points for conceptualizing the state’s role in relation to the internet. At the same time, the article’s argument also shows that deciding for a governance approach depends on societal context and history.

Moreover, this article’s argument is also interesting because it can showcase what may cause someone such as a politician, a policymaker, or a member of the public to adopt a liberal conception and a technological imaginary of democracy. As was the case for early internet pioneers, some might still have hope in the utopian vision of the internet’s emancipatory power and in its potential to bring about “real” democracy today. However, in the NetzDG reporting, this position was mostly underpinned by the assessment that adopting this approach was the only *feasible* way of protecting and enacting democracy online, as the democratic risks of having the state mandate substantive moderation rules for platforms were simply too great. Most arguments against NetzDG that the framings included suggested that platforms were just unfit to decide over the legal boundaries of speech and that this was why substantive regulatory interventions to speech on social media platforms would not work in the service of democracy.

⁵³³ Zeit_14

Thus, due to the way in which platforms functioned, it seemed they could not be brought under the auspices of the state without violating the rule of law or running the danger of overblocking. Consequently, user control and market-logics needed to jump in.

15.4. Making Citizens for Public Discourse

In the previous section, I have outlined the different roles that the framings attributed to both platforms and state institutions. I have further explained how these roles fit within the imaginaries I have conceptualized and which democratic conceptions they are part of. In the final section of this chapter, I discuss the roles, rights, and responsibilities that different approaches to platform governance give to individuals as both *platform users* and *citizens online* and discuss where these roles appeared in the NetzDG framings. Users and citizens then present the third and final protagonists in all the imaginaries. My analysis of this protagonist's role reflects on the capacities that different imaginaries' democratic visions require of users and citizens and how they envision these users/citizens to relate to one another within a democratic community.

The formulation of "users/citizens" already points to a fundamental tension at play in the NetzDG controversy, namely that this controversy concerned individuals both as users of platform services *and* as citizens of a state. The NetzDG debate concerned individuals in their capacity as platform users because it was about what users should be able to do on platforms, which rights they should have, and under what conditions they should be able to use platform services. It also concerned individuals in their capacity as citizens, subjected to a particular national political system, because much of the discussion revolved around civil and democratic rights, the (democratic) functionality of this system's legal structure, and people's participation in a public democratic discourse.

A liberal conception of citizenship

In the previous chapters, I have described how framings which described substantial interference to speech on platforms and NetzDG as problematic included arguments that were

based on a *liberal conception of democracy*. This liberal conception of democracy also comes with a particular view on citizens (Bresser-Pereira, 2004, p. 118 ff. Dworkin, 1978; Honohan, 2017; Isaac, 1988). According to this conception, *citizenship* is captured by the passport that someone holds, and its main content is to enable citizens to have *certain rights against the state*. The state guarantees these rights to citizens (and, in the case of human rights, to everyone on its territory) and its law enforcement and courts persecute potential violations. Such rights are, for example, fundamental rights and civil liberties like free expression and personal autonomy, but they also include consumer rights that ensure fair market conditions for transactions between corporations and consumers. As discussed above, the function of such rights and their enforcement is to make sure people can act as self-determined, autonomous, and mature individuals and to create reliability, so that they can pursue their interests and desires. Hence, framings that took on a liberal conception advocated for policies meant to ensure fair competition, create corporate oversight, limit platform monopoly and opacity, and establish transparency for users and civil society. These measures, so the hope, would enable platform users to make free and informed choices about their behavior as consumers of platform services.

As discussed, this liberal view also advocates for far-reaching protections of freedom of speech and personal liberties, and hence for little interference even with abhorrent speech. When adopted for platform governance, it therefore requires users to endure even hardly tolerable content. Moreover, they also need to have the capacity to process and judge, by themselves and on their own, the vast amounts of information that everyone can introduce into the digital marketplace of ideas in an unrestricted manner. And if users do want to change certain practices, such as, for example, platforms' lack of engagement against fake news and hate speech, they need to organize and pressure platforms with economic power. Hence, where a liberal conception is adopted for platform governance, individuals predominantly appear as the *users* of platform services. These services in turn provide their users with vast access to information and allow them to pursue their interests—or even the truth—in a market structure. These users are

simultaneously citizens by virtue of the rights they hold against a state which in turn enforces these rights to ensure fundamental liberties and predictability for people.

As I have discussed above, this liberal view operates with an *individualistic* notion to freedom of speech which stands in contrast to a relational, collective notion. This perspective does not pay much attention to the possibility that a certain kind of speech may reinforce or enact structural relationships of power and dominance. Despite the existence of such speech, in this view equality is rather served if individuals are not materially hindered from pursuing their life plans and interests or realizing their potential based on, for instance, group membership or racist and sexist grounds. Accordingly, this view does not ascribe direct effects on people's rights, abilities, or status to speech. Restricting speech is therefore not democratically necessary and not desirable because it hinders the free exchange of ideas and the pursuit of individual life plans.

A deliberative conception of citizenship

Another democratic conception that comes into play here is the *deliberative account*, which I have mapped out in my excursion to democratic theory and which aspires to combine republican and liberal conceptions. As I have discussed, this deliberative account sees public discourse as taking place in a private sphere relatively undisturbed by (state) power and hence supports vast protections for freedom of speech. At the same time, it holds that the state's power embodies a shared public will which is determined in public discourse and transferred to the state's force through lawmaking. For this conception, it is therefore important that the state's judicial branch, as an administrative apparatus, enforces the law under (democratic) conditions of the rule of law (Calhoun, 1992; Habermas, 1996a; William Rehg, 1996).

As outlined earlier, I find that this deliberative understanding of democracy also played a role in the NetzDG discourse and particularly in the framing of NetzDG as a threat to the rule of law. This framing did not focus on the liberal concern that governmental limitations to speech would hinder the free exchange of ideas or politically important speech. Instead, its main

concern was that legal limitations were wrongly enforced, that platforms, as private infrastructures, could not be entrusted with legal decisions, and that the state's judicial apparatus needed to step in.⁵³⁴ Likewise, I find that the framing of NetzDG as the wrong approach to problems with hate speech and fake news also reproduced a deliberative perspective. The reason is that this framing neither suggested that people just needed to endure such speech nor that such speech was not democratically detrimental nor that the state needed to interfere to shape moderation practices to prevent such speech. Instead, it suggested that the problems lay elsewhere and had other social and political origins such as the lack of a generally democratic spirit. This view is also implied in suggestions to solve problems with speech on platforms through counter-speech, which require civil initiative and users' active taking on of their civic duties, and through rather ominous "holistic" political solutions, which may be read as attempts to nurture a democratic climate more generally.

In line with this *democratic spirit*, it is important to note that the deliberative conception of democracy—which discussions about platform governance that talk about public discourse and the public sphere frequently evoke—makes certain demands of and assumptions about the citizens who participate in the public sphere's deliberative processes.⁵³⁵ First, this conception

⁵³⁴ I have previously noted that different framings complemented one another and supported one another in their conclusions on NetzDG's desirability and acceptability. The framing of NetzDG as a threat to freedom of speech and the framing of NetzDG as a threat to the rule of law were often articulated together and used to support each other. However, upon closer analysis, we now see that the different concerns they centered on—too strict interventions will hinder free exchange of ideas vs. the judicial apparatus and not platforms should decide over legality—correspond to the concerns that different conceptions of democracy center. This shows a point that I expand upon in the next chapter, namely that the opposition to NetzDG enabled the formation of discourse coalitions against NetzDG which consequently created the impression of a stark opposition to the law.

⁵³⁵ I note here that the deliberative account encompasses the liberal conception of citizenship, in the sense that it sees citizens as holding certain rights and even entitlements against the state by virtue of their citizenship. This may even go further than liberal accounts which are focused predominantly on liberties and civil rights. Habermas for instance holds that the deliberative account requires a welfare system that secures that basic needs are met for everyone; this in turn ensures that everyone can participate in public discourse and political processes. Hence, the

requires that citizens step back from their personal interests and identities and let not the identity of the speaker but the quality and the rationality of the argument be decisive (Calhoun, 1992, p. 13). Further, it demands that discourse participants understand themselves as part of a shared citizenry and commit to the deliberative rules of public discourse, such as the application of *critical rationality*, as well as to discovering a shared public will which adheres to justice principles.

Moreover, deliberative theory requires that a great number of citizens engage in public deliberation. This is because democracy, as this approach holds, depends not only on the quality of discourse, which corresponds to the application of critical rationality and reasoning, but also on the *quantity* of participation (Calhoun, 1992, p. 2; Habermas, 1996c, p. 362 ff.). It requires that as many people as possible actively participate in public discourse: A truly democratic discourse, according to this account, can only work if as many people as possible are included in the discovery of shared truths and a public will. This ensures that public discourse is not just there to manipulate public opinion of passively consuming citizens but that it functions as a “source of reasoned, progressive consensus formation” (Calhoun, 1992, p. 28).

This explication demonstrates what a deliberative conception of democracy expects of individuals as citizens, how it suggests that public discourse and communication operate, and how it understands the force of solidarity to bind citizens to one another. The deliberative conception then implies that speech on platforms is part of a public democratic discourse in which citizens together work out a shared sovereign will. At the same time, platforms, on which this discourse happens, need to present a private sphere that can be used to control the state. Hence, platforms here appear as part of a private realm but also to host a public discourse, to which *platform users come as citizens* who need to fulfill the demands of deliberative democracy.

deliberative account does not do away with fundamental civil rights; however, this account requires *more* of citizens than the liberal account. To *enact their citizenship*, citizens do not just need to pursue their individual plans but take on the civic rules and duties I describe in this section.

Given that the deliberative account situates itself between liberal and republican conceptions, I find that its implications for platform governance combine elements both from the regulatory and the technological imaginary's vision of democracy online. On the one hand, this conception implies that free information flows online are essential to creating a democratic public sphere, on the other hand, the laws that are in place and that have been devised by a democratic state's laws are taken to embody settled democratic norms and the will of the people. Democracy is then only in place when a state's legal apparatus protects these laws.

A republican conception of citizenship

As I have already mentioned, when it comes to the NetzDG controversy, I find that while several framings took up a liberal or deliberative conception of democracy, there were also some that pushed back on them. This included particularly those framings that described NetzDG positively as promoting democratic discourse, as countering the disturbances that hate speech and fake news posed to democratic discourse online, and as holding platforms accountable to their public responsibilities. These framings built on a relational, collective account of freedom of speech and referred to speech as having real, negative, and potentially discriminating effects. At the same time, they implied that platforms provided a quasi-public space that needed to be brought under the auspices of a democratic state. According to these framings, regulatory intervention on platforms—and the integration of legal rules into moderation practices—appeared as necessary to create the right discursive conditions for individuals to be able to act as citizens within these discourses.

As I propose in the following, to understand the democratic conception of citizenship that these framings hence articulated, another brief democratic excursion can be helpful. This excursion leads us to the arguments that Nancy Fraser and Chantal Mouffe make against Habermas' deliberative account of democracy (Fraser, 1990, 2021; Mouffe, 2000, 2013, 2016). These arguments build on a republican conception of the state and hence work specifically against deliberative theory's liberal dimensions and assumptions about how public discourse

works. In line with this, Fraser's work warns that the free-floating, rational discourse that Habermas imagines and its bracketing of individual identities, interests, and positionalities in fact work to recreate structures of dominance, discrimination, and subjugation: Fraser finds that the distinction between rational and irrational and the assumption of a shared common interest and mode of communication can assert the domination of one powerful group over others and exclude those who do not conform to hegemonic ways of thinking and communicating (Fraser, 1990, pp. 63–64).

To drive home this point, Fraser points out that Habermas' conception of the public sphere emerged from the observations of a White, male, bourgeois society and that it does not sufficiently consider the racialized, classist, or gendered exclusions that constitute this sphere (Fraser, 1990, pp. 59–90). This analysis suggests that deliberation in the public sphere does not take place in isolation from its broader social context: If relations of domination and subordination characterize this social context, marginalized groups may not be able to participate equally in public discourse and political processes and deliberation amongst different people as social peers may become impossible (Fraser, 1990, p. 65). Instead of bracketing social positionalities from public discourse, Fraser concludes, the inequalities that characterize these positionalities should be thematized, addressed, and countered head on to ensure equality in political participation (Fraser, 1990, pp. 63 ff., 73).

Fraser's critique hence speaks in favor of stronger governmental interventions to speech and social interactions where they are necessary and at least implicitly also for a relational, collective account of free speech. It works well with a republican approach to democracy where public discourse needs to take place under the auspices of a democratic state that more actively engages in public discourse to balance out inequalities.

This opposition to deliberative theory, which Fraser describes, then disagrees with deliberative theory's idea that (private) individuals already come to the discourse as citizens; rather, this opposition finds that people *become* citizens *in discourse*, where discursive structures

shape what being a citizen means and how individuals relate to one another as part of a democratic society. Chantal Mouffe's theory of *agonistic politics* elaborates on this view. This theory builds on a critique of deliberative theory that is similar to Fraser's and promotes a republican conception of democracy.

Mouffe criticizes that the deliberative approach *naturalizes* power struggles over what freedom and equality mean (Mouffe, 2000). For Mouffe, such power struggles are always a part of democratic politics. In the deliberative approach, so Mouffe's critique, the naturalization of such power struggles takes place because the approach positions its own concept of reason and rationality as the basis for measuring what is "right" and only counts those views as reasonable that agree with its conclusions (Mouffe, 2000, p. 45 ff.).

Like Fraser, Mouffe finds that this conception of public discourse and deliberation can leave relations of dominance invisible, that it "hides" mechanisms of in- and exclusion, and that it separates questions of legitimacy from questions of power in impossible ways. Instead of making invisible the power struggles that stand behind ideas of what constitutes a public democratic discourse, Mouffe proposes that democratic politics need to recognize that there is a constant negotiation over norms of social interaction, which takes place between the two poles of liberty and equality. According to the agonistic conception of democracy, there is no impartial standpoint that can be discovered through rational discourse but always "a *plurality* of legitimate answers to the question of [... what] the just political order" is (Mouffe, 2000, p. 62). Every answer to this question is not the discovery of a universal truth or right but a *decision* that comes with *responsibility* (Mouffe, 2000, pp. 55, 105).

While for Habermas, individuals come to the public sphere as private citizens on a joint mission to discover shared interests and a common will, for Mouffe, the identity that people can take on as citizens is *established in discourse and political struggle*. Civic identities—ideas about what it means to be a citizen—need to be actively carved out by the above-outlined struggles of democratic politics. Consequently, the discursive structures in place and its rules shape the

meaning of citizenship. The agonistic approach defends that the procedures and the substance of democratic discourse cannot be separated as neatly as deliberative approaches would have it. Unlike deliberative theory proposes, according to this view, it can hence not be assumed that individuals come to the discourse with a ready-made identity and role as citizens; instead, these must be formed in discourse. Moreover, within the agonistic conception, human affect and passions are not irrational disturbances of public discourse but an important, motivating factor in political processes. Such emotional states must however be channeled in a democratic way, so that *political adversaries meet as agonists, as friendly enemies*, who share a commitment to fundamental democratic values and principles and recognize one another as part of shared citizenry and democratic community (Mouffe, 2000, p. 103 ff.).

In the absence of a belief in a self-organizing, discursive rationality that “automatically” brings forth reasonable and democratic consensus, the agonistic approach finds that political contests and conflicts need to be *institutionally shaped into democratic forms*. This democratic shaping of political struggles entails the continuous drawing of a frontier between an “us,” as those who belong to the demos, and a “them,” as those who are outside it. According to the agonistic view, the active drawing of boundaries between an inside and outside—the active constitution of a democratic community, a *demos*—is an essential part of democratic political processes and necessary for the formation of political and democratic identities (of citizenship) (Mouffe, 2016, p. 4). In this view, such politics happen through “a plurality of competing forces which attempt to define the common good, and aim at fixing the identity of the community” (Mouffe, 2000, p. 56).

The agonistic approach then attributes an active role to state institutions in shaping democratic processes, discourses, and decisions. Pushing back on more anarchistic views and on attempts to dismantle state institutions as authoritarian, Mouffe suggests that representative state institutions play an important role for the democratic shaping of political struggles and warns against granting too much sovereignty to international corporations (Mouffe, 2000, p. 118 ff.).

The task of such public, democratic institutions is to *create* different positions of what it means to be a citizen, which people can take up and which make allegiance to democratic procedures and rules possible (Mouffe, 2000, p. 62). At the same time, they work to channel political antagonisms into democratic *agonisms*, so into a “vibrant clash of democratic political positions” (Mouffe, 2000, p. 104).

I now propose that Mouffe’s critique of Habermas and her approach to democracy can reveal some of the assumptions about individuals as both platform users and citizens on which framings of NetzDG as ensuring democratic discourse online and as holding platforms accountable in their quasi-public role built. These framings included propositions that can be explained with an agonistic conception of democracy because this conception suggests that the political shaping of discursive norms and hence also of moderation rules on platforms is a democratic necessity. Consequently, if this view is adopted, platforms can be interpreted as providing a public space, and democratic state institutions are further called upon to ensure that the discourse on platforms shapes their users into democratic citizens and constitutes a democratic community. This happens, for example, through the setting of clear boundaries for positions that are part of democratic discourse and for those that fall outside of it and are hence impermissible. Such actively set discursive norms embody the boundaries of the democratic community they encompass.

Consequently, I observed that an agonistic conception of citizenship, which falls in line with a republican conception of the state, was also part of several NetzDG framings. This conception showed up for example in Maas’s position that those who care about freedom of speech cannot idly watch hate speech and threats proliferate online and that those who perpetuate hateful speech are the true enemies of free speech. This statement expresses the democratic boundaries whose active setting an agonistic approach foresees. According to this conception, it is their allegiance to freedom of speech, as a collective right, that characterizes democratic citizens. These democratic citizens need to acknowledge one another’s humanity and

equality, even in their communication, and act in solidarity with one another, despite different political positions. In this conception of citizenship, the setting of clear limits for what kind of speech is acceptable, for what content can be shared, and for how citizens can talk to and interact with one another is a democratic necessity. Individuals only act as democratic citizens if they act within and accept such democratic boundaries and if they take on the civic duties that come with them. In the NetzDG controversy, I find that the framings of NetzDG as an act of promoting democratic discourse and as holding platforms accountable articulated this position and referenced a republican conception of democracy and an agonistic view of citizenship.

These framings' critique that platforms' business logics would advantage antidemocratic actors also picked up on this point. These critiques implied that the economic sphere was not enough to ensure that platform users acted in accordance with civic ideals and virtues, but that governmental regulation was needed to make sure they did. At the same time, I find that a similar conception of public discourse and citizenship was also part of the suggestion that NetzDG did not go far enough and that it provided a lopsided incentive structure that did not pressure platforms to keep up legal speech or to actively protect free expression. If state institutions and public structures are needed to step in to create democratic conditions for public discourse online, this role may not only require them to prevent non-democratic speech but also to *guarantee* free democratic expression.

15.5. Reflections upon the Constitution of Digital Democracy

In the previous parts of this chapter, I have discussed that a central underlying contention which characterized the framing conflicts over NetzDG concerned the roles, rights, and responsibilities of three important democratic actors: platforms, the state (and its institutions), and individuals as both platform users and citizens. First, I have shown that the framings' different assessments of NetzDG implied different roles for platforms and that their portrayal of the problem at hand described reasons for why platforms should take up a certain

role. Under recourse to democratic theory, I have further outlined that the framings' assessment likewise implied different roles for both the state and citizens. These roles can be identified and conceptualized when the framings' overarching narratives about platform governance are traced back to the different conceptions of democracy that they correspond to. This analysis has allowed me to understand and illustrate which understanding of democracy and of the interplay of states, citizens, and speech characterized the different perspectives on the regulation of content moderation that were taken on in the NetzDG controversy. In the following, I now summarize and reflect upon my insights from the previous analysis. Moreover, I particularly draw from the agonistic conception of democracy and my analysis of how it played out in the context of NetzDG to suggest a way forward for democratic platform governance.

Different democratic conceptions for platform governance

One thing I observed in the NetzDG controversy was that the articles and featured speakers generally did not question (existing) legal rules of democratic speech, even though they are rather restrictive in Germany. Hence, there was no real defense of a truly libertarian or strongly liberal view in the NetzDG debate because everyone accepted the set and rather restrictive legal boundaries for speech. Instead, some worried that the interaction between platforms as private actors and NetzDG's enforcement of these laws could endanger democracy.

As I have described, despite the general support for existing speech laws, the articulation of these worries and the negative assessments of NetzDG which they informed nevertheless implicitly suggested that the regulation of content moderation should follow a *liberal* account of democracy. According to this liberal view, it is better to err on the side of allowing too much rather than too little speech. Moreover, this view also implies that people need to endure "uncomfortable" speech while personal "sensibilities" are no reason to suppress speech. Finally, this liberal conception puts platforms in the role of private economic actors who consequently should not take over state tasks but instead be governed in a market sphere. Hence, I find that

the framings that interpreted NetzDG as a danger to freedom of speech but also as a hinderance to platform transparency or an act of overregulation were built on a liberal view.

Further, I have argued that framings of NetzDG as a threat to the rule of law and as being the wrong approach to problems with speech online put forward a *deliberative conception of democracy*. This is because the former implied strong support for the enforcement of even restrictive speech laws while simultaneously describing platforms as part of a private sphere and hence unfit to make decisions over the legality of speech. Likewise, the framing of NetzDG as not targeting the true causes of content like hate speech and fake news did not contest the need to counter the ideas this content represented but traced the problem with them back to reasons outside of platforms and to a general lack of democratic culture and solidarity.

Finally, I find that the framings that defended NetzDG as necessary to promote democratic discourse, to protect freedom of speech, and to force platforms to take up their responsibility were built on a *republican conception* of democracy. As I have explained, these framings summarized different arguments for why platforms were to be seen as a public space, to which the state then needed to extend its reach to shape the discourse on them into democratic forms.

Social order in the two imaginaries

My identification of different democratic conceptions that underpinned the NetzDG framings allowed me to describe which ideas of social order characterize the two imaginaries. On the one hand, the technological imaginary incorporates a liberal view of democracy and its individualistic approach to free speech. According to this imaginary, the internet, as a rather anarchistic, private realm, ensures democracy by empowering users to act as individuals, to freely exchange information, to control powerful actors, and to pursue their plans and interests.

This imaginary does not hold much space for the concern that speech online may uphold structural relations of domination and hence impede on people's ability to participate in this free, private sphere, or for the concern that certain content might exploit people's cognitive biases

and affects, preventing them from judging this content appropriately. This vision of the technological imaginary, of course, stands out most clearly again in Barlow's cited⁵³⁶ declaration. This declaration literally describes the internet as a space that is detached from people's identities and social status, allowing its users to enter this space "without privilege or prejudice accorded by race, economic power, military force, or station of birth" (Barlow, 1996).

I find that the many problems that speech on social media currently poses seriously trouble this vision. The many voices in the NetzDG controversy powerfully illustrated these problems. However, the perspective of the technological imaginary implies that these problems emerge from the concentration of too much power in the hands of a few big actors, both of states and of corporations, and from platforms' lack of transparency as well as their use of opaque algorithms. Consequently, for this vision, which was reflected in several framings that made such suggestions, the remedy lies in the return to some level of decentralization and the establishment of "real" transparency, so that individual users or civil society at large can employ their rational capabilities and economic power to keep platforms in check.

Just like the technological imaginary, the regulatory imaginary also refers to a vision of the internet and social media as a potential vehicle for democracy. However, within this imaginary, the discourse that takes place online is only democratic when set within a democratic state's boundaries and laws. In this way, the regulatory imaginary describes a republican conception of the state, where platforms appear as at least quasi-public actors (i.e., they are transformed into such through the right internet regulation). According to this imaginary, state-issued laws need to actively interfere to shape content into a democratic form.

As I have pointed out, framings that took on a deliberative conception stood between those poles. While they emphasized the importance of keeping up democratic speech laws and defending them inside the state's judicial apparatus, they nevertheless presented social media

⁵³⁶ NP_47

platforms as providing a separate, private sphere for public discourse that needed to be shed against substantive interventions by the very state it was meant to control.

Lessons learned

Nominally, NetzDG only aimed at getting platforms to adhere to their already existing legal responsibility. However, my analysis of the assumptions that underpinned different ways of making sense of this new law has revealed something more: that the controversy around it unfolded as a much broader debate over how to govern social media platforms in a democratic way. Hence, I have shown that, upon closer look, the fundamental contentions over NetzDG concerned nothing less than the question of how to understand and set up democracy.

Consequently, my work has demonstrated that different ways of democratically legitimizing platform governance and of understanding democracy on social media also imply a certain distribution of rights, roles, and responsibilities amongst different actors. Hence, when they are translated to governance policies and practices, different forms of democratic legitimation have serious impacts on social and political order and power relationships. This is why the regulation of content moderation and platform governance turned out to be so highly political and contentious, and why such a controversy ensued around NetzDG.

What I have further observed was that the NetzDG reporting rather explicitly addressed questions about the role of platforms, the appropriate regulatory framework for them, the state's right to interfere with speech online, and the democratic boundaries of speech. However, especially in the previous sections, I outlined that an equally important though often more implicit part of the controversy concerned *the role that individuals as platform users need to take on and the capacities they need to bring*. In correspondence with different democratic conceptions, I have demonstrated that contentions over content moderation and platform regulation include very different views on what it takes for platform users to act in their *capacity as citizens*, on whether discursive rules are needed to shape democratic positions, how a democratic community emerges, and how its members relate to one another.

For the liberal conception, platform users are citizens because, by virtue of their citizenship, they are part of a state that guarantees certain rights to them and defends these rights from them in its judicial apparatus and through law enforcement and courts. On the internet and social media, these citizens act as consumers of the services private corporations offer and they need to be able to freely access and exchange information. This allows them to form the opinion necessary to make proper political decisions with their votes and through similar acts of political influence such as civil society organizing. This is an individualistic view, according to which speech itself does not impact people's individual possibilities or their democratic rights. However, it is important to avoid the proliferation of any too powerful or accountable actors so that liberties, equality, and free choice are preserved. With regards to platform governance, this view comes with a rather *laissez-faire* approach to content moderation, which is better regulated in a market structure and through consumer choice.

To now end this reflection on a *normative note*: I find that the many problems and challenges which have emerged from social media platforms and the internet economy and which have been centrally discussed in the NetzDG controversy have raised serious doubts about the success of this liberal ideal on the internet, notwithstanding the many *chances* and possibilities for expression it brings. These problems include the effects of algorithmic ordering and the proliferation of hate speech, misinformation, and antidemocratic or hostile discursive norms.

At the same time, I find that the NetzDG controversy has also made visible the difficulty of keeping up a deliberative ideal on platforms, even though this ideal is often evoked for platforms through terms such as "deliberation" and "the public sphere." According to this deliberative conception, platforms present a public sphere and place for public discourse. Hence, users need to come to platforms *as citizens*, where they consequently participate in a public democratic discourse. This discourse is part of a political process of consensus-finding, social identification, and solidary action. At the same time, this discourse shapes and is shaped by

democratic laws that incorporate and enact shared values, such as the German laws that were widely accepted. I find that the framing of NetzDG as a threat to the rule of law has provided a convincing argument for why NetzDG's deliberative approach, which applies existing speech laws to the private realm of platforms to form discourse on them into democratic forms, is difficult. The infamous concern of overblocking refers to what happens when platforms are tasked with upholding speech laws through their systems while operating as private corporations.

Even Habermas has therefore more recently conceded that social media pose serious challenges for the realization of the ideal of deliberative democracy (Habermas, 2021). While they provide some editorial service through content moderation, they cannot fulfill the role that Habermas ascribes to the media, who

ought to understand themselves as the mandatary of an enlightened public whose willingness to learn and capacity for criticism they at once presuppose, demand, and reinforce; [...]they ought to preserve their independence from political and social pressure; they ought to be receptive to the public's concerns and proposals, take up these issues and contributions impartially, augment criticisms, and confront the political process with articulate demands for legitimation" (Habermas, 1996c, p. 378)

An agonistic approach to platform governance

Consequently, I propose that Fraser and Mouffe's critiques of deliberative democracy and their suggestion of taking on a more agnostic approach can provide a way forward for platform governance and content moderation. This democratic conception suggests that the boundaries, structures, and rules for democratic discourse and democratic citizenship need to be actively and explicitly formed through democratic political processes. This formation must do justice to inequalities, differences, and social positionality, and it must acknowledge societal differences. This conception implies that there is both a need to create democratically legitimate positions that platform users can then take on as citizens and to actively draw boundaries about which positions lie outside the democratic realm, such as certain kinds of speech or inhuman or

discriminatory points of view. For Mouffe, this formation and boundary drawing at the same time works to *create a democratic community* by defining what it means to be part of this community and how its members relate to one another. For Mouffe, representative institutions play a central role in this democratic formation and delineation and, instead of being avoided or discarded, consequently need to be designed in a democratic manner.

Here again, I find that the debate about NetzDG provides some valuable lessons. As I have described, aside from Maas's, many defenses of NetzDG took up a republican conception but also pointed to its shortcomings, describing it as a "good attempt" or "first step." In line with this, the framings also included articles that defended the need to intervene to solve problems with content on platforms but judged NetzDG itself as unsuitable. The problems that these latter assessments identified for NetzDG sprung from its "legalistic" approach of applying existing speech laws to social media and controlling how they were enforced. This, so the criticism, only gave platforms more power and the responsibilities of public institutions without ensuring that they took them up with the required due diligence.

However, in contrast to NetzDG, a "real" republican and agonistic⁵³⁷ approach would not "only" imply the enforcement and defense of existing laws on platforms (in fact, it is rather liberal and deliberative accounts which focus on the importance of the rule of law). Rather, an agonistic approach would require an active and continuous debate on what democratic moderation should look like and a political struggle over its rules. This would require the division of appropriate democratic institutions for this struggle, which would ensure the protection of

⁵³⁷ The agonistic approach that Mouffe has developed is one specific conception of democracy that builds on an overarching republican ideal of democracy and the state, as I have outlined it earlier. It should here also be mentioned that not any kind of republicanism is necessarily democratic. To be democratic, a republican political account needs to build on democratic notions of citizenship and community—and on shared *democratic values, principles, and norms*—to *become* democratic. For this reason, Mouffe emphasizes that despite their agonism, also participants in democratic struggles must share commitment to the democratic values of equality and liberty (Mouffe, 2000, p. 103).

fundamental democratic values. As mentioned, given that this democratic conception gives so much power to state structures, which are meant to embody shared values and collective goods, the democratic legitimacy and responsiveness of these structures is very important.

Here again, my analysis of the media controversy has shown that NetzDG did not enjoy strong descriptive legitimacy in the public discourse. Instead, there was a whole frame dedicated to calling its legitimacy into question from a procedural point of view, and, significantly, without a counter-framing. The legislative-quality frame unified diverse criticisms of NetzDG, not on the grounds that its substance was wrong but that the legislative and parliamentary bodies had not adhered to democratic and participatory standards. This framing centered on the *legitimacy of the regulatory processes themselves*.

Overall, my analysis of the relation between the NetzDG framings and different democratic conceptions leads me to a question that emerges from the tensions which played out over NetzDG but which was not addressed explicitly, and which my engagement with the agonist approach brings forth: *How can democratic political processes for setting content moderation policies and practices look like and be created?* My analysis of the NetzDG controversy foregrounds the importance of this question, which needs more engagement in the future but was not sufficiently addressed by NetzDG or by the reporting and discussion on it.

It seems that neither the predictions about NetzDG ending freedom of speech on the internet nor about bringing forth a less toxic or more democratic debate have come to fruition; in fact, not so much seems to have changed. Nevertheless, my analysis has unraveled that the controversy surrounding the introduction of this law and its engagement with democratic legitimacy make an interesting contribution to the struggle over democratic platform governance and the fight against hate speech and misinformation. I find that my analysis of the assumptions and consequences of the NetzDG framings in the NetzDG controversy underwrites the need to create democratic structures for platforms more proactively beyond parliamentary lawmaking.

Recently, some work and corporate initiatives have even taken up this point, at least to some extent, and sought to install some sort of publicly legitimated decision-making process. This includes some corporate approaches, such as Facebook's Oversight Board, and, perhaps at least to some extent, even Twitter (now X) owner Elon Musk's online polls about corporate policies and moderation decisions. Likewise, I understand Douek's suggestion to build a wall between platforms' moderation departments and the lobbying department as another step in this direction because it seeks to disentangle the economic sphere from the moderation sphere (Douek, 2022). However, all these approaches still delegate moderation into either a legal or ethical sphere, where trained or otherwise accounted individuals make decisions independent of financial incentives but without true representation or legitimation through democratic structures. What is still lacking from the agonistic standpoint is the design of democratic, public institutions for *making decisions on how to make moderation decisions*. Following the agonistic account, such *democratic processes* need to take place in a *designated political sphere*, which presents its own realm beyond the economic *and* moral sphere.

Chapter 16

The Discursive Politics around NetzDG

In the previous chapters of this third part, I focused on the content of the different framings I have identified. I analyzed the assessments of NetzDG that were part of the different framings, the legitimation strategies that they included, the relationship between platforms and democratic discourse they described, and their implications for how social media can work for democracy. Moreover, I described how different democratic conceptions correspond to different perspectives on and approaches to platform governance. As I have detailed, particularly in the previous chapter, this analysis helped me to identify the roles, rights, and responsibilities that these different approaches assign to different actors. This analysis makes visible how the policies and practices of platform governance that are built on these approaches shape power relationships.

My analysis showed that the dispute over NetzDG was not “just” about how to ensure that existing laws were rightly applied to platforms. It was also not “only” about settling, through rational analysis, the question of what kind of regulation or policy “Democracy,” with capital D, requires or what kind of platform regulation is implied by freedom of speech and the rule of law as democratic values and principles. Rather, I find that my analysis of the NetzDG controversy unraveled how the appearance of platforms on the political scene—their affordances and the new activities and novel need for regulation they bring—open a chance to change or renegotiate *the meaning and shape of democracy*. In my previous analysis, I traced such a process of discursive re-opening and re-negotiation, which took place in the public and political controversy around NetzDG. NetzDG itself presented one regulatory attempt to integrate platforms into the existing legal and institutional landscape. As I have argued and showcased, how such a

contestation is settled and consequently translated into the policies and practices of internet and platform governance has serious implications for social order and power relationships. It is hence highly politically contentious.

In my previous discussion, and with the help of my framing analysis, I carved out the different positions on how to approach content moderation and platform governance that the media articles circulated and the speakers they cited expressed. I also concretized and reflected on these positions' assumptions a) about the internet and social media platforms and b) about democracy and the role that individuals, state institutions, and information flows take up within it. This has helped me to outline which kind of governance approach for platforms and content moderation appeared as the right ones within the different framings' storylines and argumentative structure and which roles these approaches foresee for different actors.

With this analysis and mapping, my aim was to make explicit the assumptions of the different contested views on NetzDG and the political consequences of different approaches to platform governance, which competed for democratic legitimacy in the controversy. As I demonstrated, different ways of reasoning about the problem at hand and about the most democratic solution implied different conclusions on what the best, democratically legitimate approach was. In line with Schön and Rein's idea of *frame reflection* (Schön & Rein, 1994), I hope that this critical analysis and reflection can contribute to establishing more accountability for platform governance. In my view, this reflection can support accountability because it allows us—as researchers, members of (democratic) publics, and even platform users who think about the legitimacy of different forms of platform governance—to reflect upon what we buy into when we adopt a certain approach to platform governance as the democratic one. Moreover, this reflection helps us to *hold different actors accountable* by reflecting on the assumptions, consequences, and legitimacy of their positions.

As I have pointed out, the next step that follows from my analysis is to ask how the underlying, fundamental democratic questions that I have unraveled can be more explicitly and

democratically assessed and settled, beyond both “cold” lawmaking or economic exchanges.⁵³⁸ While Schön and Rein focus specifically on controversies amongst policymakers, my analysis looks at broader, societal contentions. These are harder to solve due to their scale but also due to the power relationship and politics at stake. Mouffe’s work on democracy provides a starting point for thinking about how to *make accountable and democratic decisions* on the different political options available, under serious consideration of their assumptions and consequences. To investigate this will be an important next step for my research. However, what I can already conclusively say from my analysis of the NetzDG controversy is that the perspective that social media platforms are nothing new and that existing laws “just need to be applied,” without posing serious questions about social and democratic order, citizenship, and solidarity, is untenable.

Thus, as I have just outlined, the focus of my analysis so far has been on *what* has been said and not so much on *who* said it. The goal of my analysis was first to uncover the different ideas that were circulated; to understand discursive structures of reason, sense-making, and legitimacy; and to identify the broader imaginaries and democratic conceptions that characterize them. Based on this mapping and description, the next step is to reflect upon how, where, and with what effect *different social and political actors articulated these ideas*. Future research can study this for NetzDG but, interestingly, also for other internet regulations and platform policies. In my analysis, I have therefore not studied distributions in a quantitative way, which may also be done in the future. Nevertheless, my presentation of the different framings in Part 2 also included descriptions of which articles used certain examples and cases in illustration of the framings. I have also explained which articles described each framing or presented statements that fell in line

⁵³⁸ It is also interesting to note a circularity implied in this question, which further complicates answering it. Because public discourse is such a big part of democratic deliberation and decision-making, the very question of how to govern content moderation is a question of how to make democratic decisions or engage in democratic interactions. Thus, the answers to the questions of *how to govern speech on platforms* and the question of *how to answer this first question* are mutually dependent on each other.

with it and which speakers the articles cited in line with the respective framing. As stated in the beginning, I have, however, refrained from assigning intention to the use of different frames and framings, mainly for epistemological reasons.

In this final chapter, however, I would now like to pick up on this point and reflect upon the *discursive politics that characterized the NetzDG controversy and the media reporting on it*. Such discursive politics here refer to *who* it was that got to have *a voice in the discourse* and shape the ideas about digital democracy that were circulated and *whose arguments could gain legitimacy* or seem reasonable in the media discourse. This also includes a reflection on *how* the articles cited different voices.

This chapter therefore considers another dimension of Pfaffenberger's conceptualization of technological dramas, which concerns how different societal and political actors—who, according to Pfaffenberger, are often societal elites—influence, shape, and legitimate a technology's social meaning so that it falls in line with their politics or interests. This also captures the descriptive dimension of legitimacy that I have theorized earlier, which, in democracies, is as important as the normative dimension. Legitimacy's descriptive dimension describes how a policy, governance measure, or the like gains *political acceptance* and comes to be *viewed as legitimate by citizens and the broader public*. This descriptive aspect of legitimacy hence captures the conditions under which people come to accept a certain policy or enactment of (governmental) force because it seems grounded in a democratic will and democratic values and principles or to enforce them.

Interestingly, what I have found in the NetzDG controversy is that the media reporting often did not address the fundamental democratic questions that I have crystallized in the previous chapters in a heads-on manner. Instead, the articles reported on different reasons that spoke for NetzDG or other measures and on the potential effects and impacts of NetzDG or these other measures on freedom of speech and the rule of law. In doing this, the articles often used examples that showcased the positive and negative effects of NetzDG or of other measures

(or a lack thereof) and demonstrated how pressing a certain problem is and where its causes lie. Moreover, they also used comparisons that made a case for why a certain approach is feasible because it is already democratically legitimate for a similar practice or problem. Thus, instead of articulating a clearly conceptualized and coherent view of what digital democracy looks like, the articles and speakers spoke in a piecemeal fashion to different imaginaries and in line with different democratic conceptions. In this way, their statements created a mosaic of different pieces that my analysis has puzzled together and interpreted. The different framings then summarized different ways of reasoning about platform governance that were adopted in the NetzDG controversy and dictated the sensibility of different arguments about platforms. Of course, the function of media discourse, which often is to report on different events rather than interpret or judge them, is one reason for this discussion style. (This observation leads back to the question of where a more explicit democratic discourse and decision-making process can take place.)

In addition, my analysis of the media reporting on the NetzDG controversy also explicated the limits of public discourse and discursive politics, at least when there are no structures in place to directly translate this discourse to policies. In the case of NetzDG, I observed a substantial gap between the legitimacy that the new law attained in media discourse (or its lack thereof rather) and its relatively straight-forward adoption through a parliamentary process. The media discourse itself even captured this gap when framing NetzDG in terms of its *legislative quality*. As I have demonstrated, the introduction of NetzDG was heavily contested and critiqued. According to my analysis of the media discourse, strong discourse coalitions formed against it. Despite this however, NetzDG was adopted and implemented with only a few tweaks. While it has been amended, it remains in effect until today.⁵³⁹ NetzDG was adopted because it was proposed by the governing coalition party at the time, the SPD, and eventually also embraced by

⁵³⁹ February 4th, 2023

its coalition partner CDU/CSU, who together held a governmental and parliamentary majority. Thus, what in the end decided over NetzDG was not the media discourse surrounding it, which strongly pointed out its different flaws and drawbacks, but the real-political force of democratic, parliamentary politics. In the future, this observation warrants a critical reflection on the power and political force of public (media) discourse itself, which was so fundamental to the entire NetzDG discussion. What was then lacking in this discussion, which was so focused on the democratic boundaries of speech and the democratic shape of communication, was a critical reflection how this public discourse (on platform) translates to parliamentary politics and political decisions-making.

In this subchapter, I discuss the discursive politics that characterized the media reporting on NetzDG, distinguishing between the mainstream media and the political blogs. While all sources kept a certain level of journalistic standard and had journalists write for them, I nevertheless found some significant differences in their reporting and framing styles. These differences are not surprising, given that the two types of sources present different types of media. Hence, they warrant a separate discussion. Chapter 16.1. then first presents and analyzes the *Discursive Politics of Mainstream Media*, whereas Chapter 16.2. focuses on the *Discursive Politics of Political Blogs*.

16.1. Discursive Politics of Mainstream Media

In Chapter 4.6. on *Media Analysis*, I explained that there are different styles of media reporting that correlate with different types of democratic discourse. In my opinion, the mainstream media sources mostly took up a deliberating and informing role when it came to NetzDG. The articles took up this *deliberative role* because they presented many different types of arguments and illustrated different ways of reasoning about NetzDG, its potential effects, and its democratic acceptability and desirability. In this way, they made different deliberative positions available to their potential audience. There were different article styles that exercised this deliberative function. This included journalistic commentaries where the authors took on

and explained a particular point of view, often by referencing other speakers or using illustrative examples. Moreover, there were a few longer interviews with certain stakeholders, such as Facebook, but also academic experts. These interviews allowed the interviewees to describe their position in detail. In addition, some articles provided in-depth recounts of incidents or cases, which provided illustrative examples for why a certain point of view or evaluation made sense or was realistic. Finally, there were many reports that simply described different positions and arguments on NetzDG, cited a variety of speakers, or discussed NetzDG in context.

When problematizing the question of how to govern platforms and regulate moderation, the articles rarely discussed broader, philosophical, or conceptual questions of democracy in the way democratic theorists do. Instead, they centered on discussions of NetzDG's impacts on different democratic values and principles by describing its effects with phrases like “overblocking,” “pushing platforms into the role of judges,” or “making sure platforms stuck to the law.” Moreover, they also used examples and cases that illustrated problems and showcased the positive and negative effects of hate speech and fake news, platform practices, NetzDG, or other policy measures. As I will discuss further in a moment, for this reason, examples and their intentional provocation took on a discursively powerful role in the NetzDG controversy. What was extremely rare, on the other hand, were explicit definitions of the democratic values and principles that NetzDG or other measures touched on. Instead, the meaning of freedom of speech and the rule of law were discussed as contentions over the effects of NetzDG's interaction with platform practices (e.g., did NetzDG force platforms to stick to law and order or privatize law enforcement?).

In taking up an *informing role*, the articles further cited and gave a voice to a diverse range of speakers, especially from the realm of politics, lobbying, and civil society. By citing these speakers, they functioned as a mouthpiece for different formal political and interest groups and positions and communicated their views to a broader audience and public. For one, many articles cited different parties' and their politicians' views and statements on NetzDG, mostly from

Germany but sometimes also from the EU context. Moreover, cited speakers included spokespeople mainly from industry associations, particularly the association *eco*, journalistic and publishing associations, the United Nations, and the Declaration for Freedom of Speech, which was signed by a variety of different actors as I have described earlier.

When it came to *corporate positions*, Facebook was by far the most represented and cited corporation. That the company's spokespeople were the most cited corporate speakers indicates the prominent role that the articles gave to Facebook; many articles also referred to NetzDG as the "Facebook law."⁵⁴⁰ One *Welt Online* article⁵⁴¹ even suggested that Facebook could sometimes be seen as the internet itself. Another one⁵⁴² described Facebook's own reckoning with its societal and political power and its attempts at formulating its own ethical guidelines—a magna carta or "basic law against hate"—with the help of experts from NGOs, ethics, and economics, and under the lead of Oxford professor Luciano Floridi. Thus, it seemed that in the NetzDG controversy, Facebook—a name that was at the time still used synonymously with the corporation now renamed to Meta—symbolically came to stand in for social media platforms. One explanation for this discursive focus is that Facebook was a very powerful and widely used platform at the time, which was also actively involved in debates over internet governance. It would be interesting to investigate if this focus of the public discourses around internet governance has shifted since 2017/2018, which was when the media articles were written.

Most of the speakers that were cited were wary of NetzDG for a variety of reasons and often described it as a problematic or democratically unacceptable law. By citing them and representing their point of view, the articles therefore generally helped to create the impression that NetzDG was a *heavily contested law*. This heavy contestation emerged from the formation

⁵⁴⁰ e.g., FAZ_9; FAZ_11; Welt_6; Welt_8; Welt_10; SZ_10; TAZ_4; TAZ_16; NP_25; NP_27

⁵⁴¹ Welt_22

⁵⁴² Welt_10

of both willful and inadvertent discourse coalitions, where different speakers and positions complement each other to speak for or against a particular policy measure (Leifeld & Haunss, 2012). The members of a discourse coalition share an overarching storyline. I find that in the NetzDG controversy, a strong discourse coalition emerged around the idea that NetzDG violated democratic principles and values or had negative effects for them for various reasons.

The circumstance that many different speakers and positions opposed the new law while having different reasons for doing so created this stark *discourse coalition* against NetzDG. (In the previous chapters, I have traced and conceptualized the political and democratic differences between their positions.) According to Philip Leifeld and Sebastian Haunss, “a successful [discourse] coalition should therefore manage to bundle a variety of different arguments in a broad, but still integrated, set of frames” (Leifeld & Haunss, 2012, p. 385). It is this effect that I observe between different complementary framings across the frames, which often drawing from liberal and deliberative democratic conceptions and which together created a strong opposition to the new law. Given their differences, it is at the same time questionable if the different speakers, who were united in their opposition to NetzDG, would be able to agree on how to best govern content moderation on platforms.

After having described the discursive role that mainstream media reporting took up for the NetzDG discourse, I now turn to *the speakers they cited*, who often formed the kind of discourse coalitions I have just described. While I have so far not ascribed any intention, I nevertheless reflect upon *why* the spokespeople and politicians that were cited may have taken the view they did and how this view fell in line with their role and assumed interests. On the one side stood the *industry associations*, who were concerned that platforms would be pushed into a role that did not fit their corporate status, incentivized to act as judges and to overblock, *and* hampered in their economic progress. Such warnings can be, and were, used to push back against strict platform regulations and big fines for corporations. Facebook reaffirmed this view strongly, articulating several strong counterarguments against NetzDG. The platform was

concerned over being made an “arbiter of truth” but also over being pressured to overblock. (This latter point is interesting because one may assume that if anyone could take measures to prevent overblocking under NetzDG, it would be the platforms.) At the same time, the platform nevertheless also emphasized its important role in public discourse and its own corporate initiatives to empower users and counter hate speech and fake news. These initiatives showcased the corporate point of view, which was that regulated self-regulation and corporate measures were the best way to go. (And some articles judged them as insufficient.)

Moreover, the *journalistic and publishing associations* that were cited, such as the German Journalists Association, also warned against NetzDG because they worried that it would infringe on freedom of speech and press or suppress media reporting. For one, these media associations are, in general, quickly alarmed when governments and states put laws into place that have the potential to infringe on free expression. In addition, they were concerned that their own content, such as reports and satire, might be deleted or overblocked. Generally, it seems that different cited actors were worried that NetzDG may hinder them in their expression or lead to their speech being taken down, regardless of what their political leaning or view on the problem with hate speech and fake news was. This shared fear over being concerned about or targeted by NetzDG contributed to the strong discourse coalition that formed against it.

The different examples that several articles described of unjustly taken down posts or cases of (potential) overblocking played an important role in the NetzDG controversy because they clearly illustrated its negative effects and dangers. As I discussed earlier, the most prominent case was the blocking of the satire magazine *Titanic* for its satirical impersonation of Beatrix von Storch. Beatrix von Storch’s own borderline post, which her account issued on the first day of NetzDG taking effect and which had prompted *Titanic*’s satirical impersonation, also provided a central anchor point for the discussion over NetzDG. It is here interesting to note that the post of the politician, who is a trained lawyer, was formulated in a legally ambiguous way. Hence, it is no wonder a discussion over its take-down ensued. While the post did not make a statement on

all Muslim men but only denoted *specific groups* of them, it nevertheless played with racist stereotypes that are often evoked against this group and that were prominent in Germany after an influx of people who sought refuge from the Syrian war. At the same time, the tweet also evoked collectively shared memories of the so-called “New Year’s night” in Cologne 2015/2016. During this night, groups of men, many of which allegedly had a North-African or Middle Eastern background, were reported to have sexually harassed a lot of women (Diehl, 2019). In its aftermath, the events of this night and the reporting on it helped to fuel anti-Muslim sentiments.

The prominence of this exemplary case helped to set the tone for the NetzDG discussion and directed attention to the problem of overblocking and the difficulty of determining the legality of gray area speech, which in the discussion often seemed to concern right-wing speech. The satirists and critics who jumped in on such speech, even with the intention of criticizing and ridiculing it, nevertheless discursively aided the formation of an inadvertent discourse coalition, as both kinds of authors together opposed NetzDG under the concern of overblocking and warned against its negative effects on free speech.

Likewise, the *different political parties* that spoke out against NetzDG also criticized it for a variety of reasons. As various articles pointed out, it should be noted that the controversy over NetzDG took place shortly before a national election and provided a site for electoral campaigning. NetzDG gave different opposition parties the chance to criticize the government that was currently in power, the governing coalition of SPD and CDU/CSU, and to present their own stance on internet politics. For example, the articles cited politicians from the Greens and, more rarely, from the Left, who voiced concerns over pushing private corporations into a public role and into the role of law enforcement and courts, a role that platforms were deemed unfit for. Their concerns fell in line with the fear that NetzDG could give too much power over public discourse to private platforms and not provide enough public control for them. The parties then nevertheless agreed with the need to regulate platforms in some way, to get corporations under control, and to act against the hate speech that took place on them. For

them, this implied amendments, which included better law enforcement online, more transparency and oversight measures for platforms, but also civil society initiatives and counter-speech.

The FDP, on the other hand, was most concerned about a loss of freedom and civil liberties, as the name of its own proposed counter-legislation (“Law for Strengthening Civil Rights”) indicated. In its position, the party connected civil liberties and personal freedoms positively to economic opportunities and their protection. Last, the AfD was likewise very outspoken against NetzDG, sharing fears that it endangered freedom of speech and the rule of law. Its main concern was especially the censorship of its own speech, which the party saw as politically uncomfortable but democratically important. Moreover, it also voiced concerns about the democratic legitimacy and intentions of the governing parties, for instance, when using Stasi comparisons for NetzDG. (Further, only *Tichys Einblick* also cited the Pirate Party who took a similarly strong stance against NetzDG as diminishing freedom of speech and free information flows on the internet and even installing censorship.)

The fact that in their opposition to NetzDG, certain actors formed inadvertent discourse coalitions also required some actors to actively distance themselves from others. This was the case for the FDP, whom the AfD strongly supported in their stance against NetzDG. The SPD in turn even used this alliance, and the fact that the right-wing populist AfD was generally a heavily criticized party, to call out the FDP for their opposition to NetzDG. This led the FDP to declare that, in contrast to the AfD, it did not support lawlessness online.

Mainstream media outlets across the political spectrum cited these different political positions and the speakers that, in line with them, spoke for and against NetzDG. As journalistic products, the articles, and their authors, of course took on a much less pronounced position on NetzDG. Their fulfilment of a deliberating and informing role implied that they reported on many different aspects and assessments. Hence, across the spectrum, articles from the mainstream media described different reasons for why NetzDG may be needed and which

problems it could bring: They articulated a variety of framings. Thus, all outlets brought in different points of view on NetzDG and platform regulation or cited speakers in line with them. At the same time, I nevertheless observed some more subtle differences in the way in which different sources framed NetzDG. These differences warrant a deeper investigation in the future, for which the observations from my analysis can provide a direction.

I generally found that *center-to-left-leaning sources* seemed to generally be more sympathetic to NetzDG or at least less hostile to it. They were, for example, more likely to acknowledge both sides, so arguments for and against NetzDG. They also more often dwelled on the problems that existed with antidemocratic speech and other horrible speech online, and especially on the unaccountable platform practices that seemed to nourish such speech. Moreover, they more often described the need for NetzDG or outlined its positive intention, while presenting critiques of NetzDG as having been stated by “critics.”

However, as I have already pointed out throughout the thesis, nearly no article seemed to fully embrace NetzDG. Rather, the articles, for example, highlighted the need to act or described how much worse the situation on platforms could be in its absence. Therefore, they referred to NetzDG as an “attempt” to do better, as an important first step, or even “better than nothing.” It was mostly *Heiko Maas and his political allies* who fully embraced NetzDG and strongly rejected the critiques against it as unfounded. Many different articles spoke in support of the need for regulatory interventions, showcased what could happen if platforms were left to their own devices and if undemocratic actors exploited them, or framed NetzDG as a good first try. Nevertheless, the discourse coalition *for* NetzDG was not nearly as strong as the one against it, leaving Maas rather lonely with his strongly articulated support for NetzDG.

I observe that sources positioned on the *center-to-conservative political spectrum* often took a rather critical view of NetzDG or at least emphasizes its need and positive effects less. For instance, they often presented critiques of NetzDG as facts rather than attributing them to speakers or dwelled on its problems. Despite its rather conservative and market-friendly leaning,

the *FAZ* however also stood out in emphasizing the need for law and order online and the problems with lawlessness on platforms, hence including some support for at least a regulation like NetzDG. At the same time, the outlet also most prominently gave a voice to Facebook and industry and emphasized the need to protect economic and technological progress and to not overregulate the internet. Finally, *Welt Online* similarly described different views but focused on strong warnings against NetzDG's negative impact on freedom of speech. One of the venue's commentaries,⁵⁴³ which emphasized the need for self-determination and for individuals to take up responsibility for their technology use instead of running to the state for help and security, especially stood out. Likewise, the venue also reported on many problems with the democratic appropriateness of NetzDG's legislative process.

Finally, what I find with regards to the mainstream media's reporting is that while taking up this deliberative and informing role, the articles rarely took on a *participatory role*, meaning they rarely spoke from the perspective of citizens or groups, such as those targeted by discriminatory speech, or from this experience *to* powerful elites. This means the reporting often spoke from a "neutral" or observant position rather than from the position of participating in or experiencing certain things. There were, for example, few accounts of how hate speech or fake news *feels* or the impacts it has on its targets' lives. The few cases that stood out here seemed rather special, such as reports on journalists' own experiences or citation of London's major.

And while the perspectives of artists (or even politician) who were overblocked were sometimes detailed, there was also nearly no account of "regular" citizens experiences with overblocking (except for where infamous law cases were cited). Hence, at least in terms of their phrasing, the articles, with the exception of some commentaries, stuck to a rather observing, neutral role that did not explicitly construct a "we" from which it spoke. Where this "we" however surfaced was predominantly in discussions of fake news, which, as I have explained,

⁵⁴³ Welt_19

were often framed as a geo-political problem. Hence, the media reporting generally built on the support for German sovereignty and positioned itself on the German or European “side.”

16.2. Discursive Politics of Political Blogs

In contrast to the mainstream media reporting, I observed that the political blogs in my analysis often took up what I described as the *participatory role* of the media in Chapter 4.6. This role refers to a more bottom-up approach, where the media take up issues from “the people” or specific communities or use their voice, supporting them in making their concerns heard or even in organizing and finding themselves. I find that the political blogs took up this reporting style by speaking more clearly *from* a political or societal position and by positioning themselves with regards to NetzDG and web-political questions. In this section, I describe this positioning based on the results of my framing analysis.

I found that the blogs often explicitly took on a certain position or situated themselves as part of a community and that they engaged in stronger framing processes, using for instance more suggestive or metaphorical language or making stronger points (mainly against NetzDG). This, of course, is part of the political blogging style, which not least the internet and its weakening of journalistic gatekeeping make possible. Hence, this is also what differentiated the blogs from traditional, mainstream media. Moreover, I already pointed to the blog’s political positioning in my description of the sources in Chapter 5, where I even referenced the blogs’ self-descriptions from their websites. Given all of this, the differences between the blogs and the mainstream media were not surprising. Nevertheless, they are analytically interesting.

Despite their stronger positioning, my analysis uncovered that all blogs reported on several of the different positions that were part of the mainstream media discourse. Hence, they discussed different perspectives on NetzDG and sometimes took up informing or deliberative roles. However, the articles’ authors often did not report on these positions in a neutral, observatory style but instead actively judged, reflected on, or engaged with them. Moreover, they

were more selective in *who* they cited. It is from this engagement with different positions that a clearer positioning for the blogs themselves emerged. The blogs' reporting made particularly intriguing contributions to the discourse and my analysis at those points where it provided a unique perspective on platform politics or articulated new ways of framing apart from the mainstream media reporting.⁵⁴⁴

As I have described in my methods section, the blog *Netzpolitik* generally takes an explicitly political perspective and focuses mostly on the defense of civil rights and technology politics. When it comes to its NetzDG reporting, I observed that the blog described a relatively clear, critical stance against the new law. For instance, it often reported on the coalitions that were formed against it. The venue seemed particularly concerned with the monopolization and further concentration of power in the hands of big internet corporations, who it described as opaque and arbitrary. In this way, the blog brought concerns from the critical technology community to the discussion. This community shares a belief in the empowering potential of information technology but also a worry over the negative societal and political effects that come with their commercialization and irresponsible or incompetent use. I therefore find that *Netzpolitik* played to the early web-political visions that I have outlined before by warning both against overpowering states *and* corporations and by arguing for transparency and free information flows. Overall, the blog's verdict was that NetzDG was not doing much to help this cause or even that it was doing the opposite.

Further, *Netzpolitik* articles often created the impression of speaking from a position of intimate technological knowledge, which allowed the web-political blog to claim the competence to speak on matters of internet governance. For example, several of its articles described the view that the government and mainstream political actors' approach to regulating the internet

⁵⁴⁴ This observation is partially also a result from my analytical process because I first analyzed the mainstream media sources and only then turned to the blogs.

was incompetent and hindered free information flows. It is interesting to note that this reporting connected such technological incompetence to a postulated political trend of undermining civil liberties and installing surveillance.⁵⁴⁵ One example for this position is a commentary that was published in the *FAZ*, not *Netzpolitik*, but co-authored by Constanze Kurz, who is a web-political activist and long-time spokesperson of the Chaos Computer Club.⁵⁴⁶ This commentary expressed the strongly worded suggestion that there was an ongoing alienation between political elites and democratic politics and a democratic fatigue on behalf of political leaders, which also showed itself in inappropriate and technologically incompetent regulations such as NetzDG. This line of argument is especially interesting because it implies that addressing problems with speech and moderation online would require more active political engagement and to take seriously the political dimensions of technology—hence a return to the “original” internet values. The commentary proposed that the emergence of movements such as right-wing populism were a sign and result of these problematic developments. This proposition may implicitly suggest that such movements partially resulted from a *political mismanagement of technology*.

Finally, *Netzpolitik* was the source that most strongly highlighted concerns over algorithmic accountability and was the main sponsor of the transparency frame. The blog brought fundamental concerns from the critical technology community to the discussion and put the spotlight on the workings and effects of platforms’ heavy use of algorithms, an aspect that NetzDG itself neglected. The blog’s discussions of these concerns suggested that establishing transparency and accountability for platforms’ algorithms was the most pressing issue of platform governance. According to the view it described, this problem could not be solved with a law like NetzDG, which instead even compounded the problem by giving platforms more power and decision-making authority. The proposed solution was to establish transparency that

⁵⁴⁵ NP_10

⁵⁴⁶ FAZ_2

would allow for accountability, auditing, and public control. Hence, the transparency frame provided a justification for this solution.

Despite being critical of NetzDG, the web-politics blog still displayed support for a public role for platforms. This position surfaced in its paralleling of platforms to the media's role as the fourth estate and in its suggestions that a public debate for algorithmic rules was needed, that platforms needed to be controlled through transparency, and that a public broadcasting-like content production on social media was desirable.⁵⁴⁷ However, paired with its predominant opposition to NetzDG and its calls for transparency and public control, the blog generally took the view that this public role needed to be realized through users' own participation, for example by using information about platforms' practices to keep them accountable. Hence, while this position recognized that platforms' business models and economic incentives posed a problem, the articles suggested decentralization, free user choice, public scrutiny, decentralization, and public media funding as alternative solutions for creating counter-pressure to these incentives.

As I have described throughout my framing analysis, the blog *Tichys Einblick* also took a strong opposition against NetzDG, referencing many of the framings that spoke against it and often using strong wording and metaphorical language to underline this. Moreover, it also attempted to form discourse coalitions with other actors, such as the tech community. *Tichys Einblick* was the only source that gave the Pirate Party a stage. According to its reporting, this party took a strong, critical stance against NetzDG, which it saw as an incision to free speech and as bearing the potential for censorship. Moreover, as I have discussed, *Tichys Einblick* also spoke in support of the FDP's opposition to NetzDG and understood it as a form of betrayal when the party did not stand up strongly enough against NetzDG.

Overall, the blog took a clear stance against NetzDG, generally finding it to be an illegitimate law. This surfaced most strongly in the framing of NetzDG as an illegitimate political

⁵⁴⁷ NP_13; NP_47

tool, which I identified predominantly in articles from this venue. It is interesting to note how some articles in the venue, which were frequently written in commentary style, sought to claim a citizen perspective. However, they did so in a way that often resonated with anti-immigrant, anti-Muslim, or even ethno-nationalist sentiments. As described in Part 2, one piece for instance referred to citizens as “indigenous” Germans.⁵⁴⁸ Others included descriptions of the government as siding with (Muslim) immigrants against its “own” people.

Elsewhere, warnings over NetzDG’s potential discrimination against less educated people also demonstrated this ostensive taking on of a “regular citizen’s” perspective. Here, the justification was that less educated people may not know how to formulate their criticisms innocuously and hence would be more likely to have their speech taken down under NetzDG. Moreover, the venue included recounts of stories about “regular” people who had their political critique or religious analysis taken down. An article that used a first-person narrative to paint a gap between how citizens allegedly wanted to feel and between how the state wanted them to feel is another example for how such a citizen perspective was discursively claimed.⁵⁴⁹ In addition, some articles aligned themselves with survivors of authoritarian rule, describing the citizens who demonstrated against Maas and NetzDG as being reminded of their time in the GDR and its lack of freedom of speech.⁵⁵⁰ As I have already discussed in Part 2, these articles were characterized by the overarching problem-setting story that the state needed to protect, as its citizens, those people who issued the kind of speech which was potentially taken down, rather than those people who such speech targeted.

This analysis points to an interesting tension between the two framings that were predominantly used by *Tichys Einblick* articles. We can identify this tension by tracing the

⁵⁴⁸ TE_21

⁵⁴⁹ TE_16

⁵⁵⁰ TE_15

framings back to their underlying conceptions of democracy. On the one hand, my analysis has shown that the framing of NetzDG as an illegitimate political tool resonated with a republican conception of the state. This framing attributed NetzDG's violation of freedom of speech to the alleged illegitimacy of the state. It was characterized by the problem-setting story of an illegitimate state seeking to suppress or control *its people* by trying to force them into a lifestyle that did not fit them and by seeking to enforce a false and untrue harmony.

Hence, this framing's problem-setting story did *not* build on a liberal view. This is because, from a liberal point of view, the problem would be framed in terms of the state not accurately defending fundamental liberties for everyone or encroaching on a private realm. Instead, as I have described, the framing's central tenet was that the state's policies and representatives were not *accurately representing* and acting in the name of its citizens and that they were not appropriately *embodying their collective interest* in their governance practices. Thus, the framing focused on a perceived lack of democratic legitimacy of the state's representatives. From this *followed* the concern that the policies of illegitimate political actors were leading to the suppression of politically important speech and the silencing of citizens. Thus, this kind of reporting drew up questions of *who* the citizens were that the state needed to protect and of whether existing political decision-makers were democratically legitimate.

On the other hand, some articles from the venue also framed NetzDG as overpolicing uncomfortable speech. This framing, in contrast, built on a liberal notion of freedom of speech. It spoke in support of vast freedoms for speech and suggested that people needed to find the capacity to deal with difficult speech on their own. Simultaneously, it also downplayed the severity of hate speech and fake news. Some articles, for instance, suggested that defenders of NetzDG exaggerated the scope of the problem or that the stipulation of such problems was used as an excuse for censorship.

From this tension between differing underlying conceptions of democracy emerges the question of how the articles' framing of NetzDG could simultaneously draw from republican

conception of the state, which implies that governmental interventions actively need to take up and enforce collective interests, and a liberal notion of freedom of speech, which takes an individualistic view in which the state needs to protect individual liberties rather than collective interests. One way to analytically resolve this tension between the protection of collective interests and individual rights would be to take on the position that the state's protection of problematic speech is in the *collective interest of citizens*, in a way that goes beyond the defense of individualistic freedoms. However, problematic speech such as hate speech and the like is often discriminatory and targets specific groups, for example based on race or religion. Hence, if one takes the position that the state ought to protect such speech in the *collective* interest, rather than to defend individual freedoms, this implies that the state should prioritize the collective interests of *some*, namely of those issuing such speech, at the expense of others, namely of those who it targets. Given the discriminatory nature of this kind of speech, this position is democratically difficult to maintain because it violates the principle of fundamental equality. This principle implies that all people are equal and have the same standing, dignity, and rights, independent of their group membership. For a democratic republican state that honors this principle, membership in the shared democratic community is established through the active enactment of citizenship and not through such group membership. The democratic state then represents the collective interest of the civic community that is so established.

The discussion hence shows that the underlying political tension between framings of NetzDG as an illegitimate political tool and as overpolicing uncomfortable speech could “technically” be resolved if citizenship was equivalized with a group membership that is established by, for instance, racial or religious terms. Thus, the overlap between these two framings within the reporting may point to a potential (re)definition of legitimate citizenship by means of group membership. However, this way of establishing citizenship violates democratic principles of equality and non-discrimination and runs counter to the conception of citizenship within a *democratic* republican account. Consequently, particularly voices on the political right

could use the uncertainties around law enforcement on social media to (implicitly) call into question democratic values and democratic norms of citizenship within their discussion of NetzDG.

Finally, I found that the reporting of the two left-wing-oriented blogs that I included in my sample, *Der Freitag* and *Neues Deutschland*, did not focus much on NetzDG. The venues generally published few articles on the topic. Another reason why they may not have featured prominently in my analysis is that I studied them last in my analytic process. Nevertheless, I made some interesting observations. For instance, the blogs generally also opposed NetzDG as a *disingenuous* governmental measure and as an illegitimate governmental tool. However, they did not so much share *Tichys Einblick's* concern that freedom of speech was under threat or that people needed to develop the capacity to deal with problematic speech, nor did they diminish the problems with hate speech or fake news online. However, they expressed the fear that the politicians behind NetzDG would use these problems as an excuse to target *their* (i.e., the blogs') speech or left-wing critiques more generally. They described critiques of Nazism, or LGBTQIA+ education, on YouTube as examples for this.

In this targeting, the blogs also described mainstream politics as relatively untrustworthy and even potentially illegitimate. One article for instance criticized the mainstream media for not being vigilant about this but instead being allegedly influenced by Angela Merkel.⁵⁵¹ This position was also supported by framing NetzDG and labels such as “hate speech” and “fake news” as trojan horses that could be used to legitimate unacceptable state control.⁵⁵² The concerns over growing governmental control that were prominent on these blogs connected NetzDG and governmental surveillance.

⁵⁵¹ ND_13

⁵⁵² ND_6

To **conclude this section** on the discursive politics of the media reporting on NetzDG: I find that all blogs stood out in their questioning of the legitimacy of the government and mainstream political actors rather than only of NetzDG as a law. They, however, each had their own specific approach to calling this legitimacy into question, which was based on the position from which they spoke or on the perspective of the community they sought to represent. In mainstream media reporting, a critique of NetzDG's legitimacy was likewise present, particularly in terms of its legislative quality. However, in this reporting, this questioning mainly pertained to NetzDG's specific legislative process, not to the general legitimacy of political decision-makers.

To **wrap up this chapter on the discursive politics** that surrounded NetzDG, I propose that my reflection on these discursive politics has demonstrated the significant role that political context, interests, and environments play in shaping the social and political meaning that platforms take on. This meaning is established and shared through discourses and solidified by the shared imaginaries that are drawn from. In addition, beyond showing the influence of different political processes, contexts, and interests, my analysis has also demonstrated that any changes to the way in which platforms operate and are governed need to go up against already existing, widely shared, and even institutionalized meanings and imaginaries.

NetzDG, for instance, had to go up against established platform practices, which, in the Western world and Germany, developed out of a thoroughly liberal tradition, a private economic sphere, and a liberal notion of freedom of speech. Together with freedom of speech's status as a defense right to which any *incision* needs to be justified, this meant that the obligation to prove its legitimacy fell to NetzDG's side. Its defenders needed to counter established views on platforms *and* prove not only the necessity and democratic legitimacy of the new law's intervention, but also its ability to solve existing problems. Its opponents, on the other hand, had the discursive advantage of only needing to highlight the new law's flaw without having to present a bullet-proof alternative themselves. At the same time, it is interesting to notice that this discursive

advantage did not translate to real-political resolution, which instead took place through a parliamentary majority.

Nevertheless, I find that my discourse-analytical research provides interesting insights into the politics of platform governance. For one, my research results illustrate how media reporting can discursively create legitimacy for certain forms of platform governance. It can do so by describing and circulating arguments and examples that provide justifications for these approaches and by citing actors who speak out in favor of them. Thus, the media discourse shapes the constitution and circulation of socio-technical imaginaries of democracy and of their visions of how to enact democracy on and with the internet. These visions, as I have argued, in turn come with certain democratic conceptions. As this chapter has shown, this process is not just ideologically motivated but also influenced by who gets to speak, from what position, and in which political struggle they find themselves or which interests they pursue.

For me, establishing accountability for platform governance means to make visible the tensions that exist between contextual political processes, stakeholder interests and alliances, and the fundamental democratic questions at stake in platform governance, rather than being swayed by individual examples or certain fears. Only then can the question of how to devise democratic governance institutions for internationally operating platforms be asked. As my unearthing of the discursive struggles around NetzDG showed, democratic platform governance is a continuous, shared effort over renegotiating the shape of democracy in light of social, political, *and* technological developments.

Chapter 17

Conclusions and Outlook

We have now reached the final part of this thesis. In this part, I first summarize the findings from my thesis in the *Summary* of Chapter 17.1. In Chapter 17.2., I reflect upon the *Main Insights* for the politics of platform governance that my analysis has generated. Chapter 17.2. closes the thesis with a reflection on my work's *Limitations and Future Research* opportunities.

17.1. Summary

In my thesis, I set out to investigate the politics of platform governance and to study how they play out around content moderation. To this end, I analyzed the media reporting on the introduction of the German *Network Enforcement Act*, or *NetzDG*. The introduction of this law, which obliges platforms in Germany to delete unlawful content on their sites, was heavily contested. In my work, I studied the reporting on these contentions in articles from mainstream media and a variety of blogs across the political spectrum. My work took an interdisciplinary approach and built on the fields of communication studies, policy analysis, Science and Technology Studies, and democratic theory.

For my empirical analysis, I used a qualitative, discourse-analytical approach and conducted a framing study of the media articles. My use of the framing studies approach, which emerged out of communication studies, allowed me to research the articles' descriptions and assessments of *NetzDG* as articulating different ways in which the problem of platform governance and content moderation was reasoned about and interpreted in the context of *NetzDG*. According to framing studies, such different ways of making sense of a problem or situation at hand rely on processes of selection, salience, and ordering and are based on different underlying structures of belief and appreciation. The linguistic turn in policy analysis, which emphasizes the political

significance of framing processes in politics, motivated my use of this approach. According to this turn, policy controversies include discursive struggles over the interpretation of shared values, the boundaries of solidary communities, and desirable forms of social life.

In my framing analysis of the NetzDG reporting, I built on Entman's prominent description of what constitutes a frame. Further, my analytical process was particularly inspired by van Hulst and Yanow's work. This latter work approaches framing as a dynamic process of sense-making in interaction with the situation at hand rather than as the strategic employment of static frames employed to sway an audience. Following this approach, I studied media reporting as a place of public reasoning and traced different framing processes that played out in this reporting.

Part 2 of the thesis presented the results of this framing analysis. I identified seven overarching frames that structured the NetzDG reporting, which were each characterized by a central concern. Three of these concerns pertained to democratic values and principles, namely *freedom of speech*, *the rule of law*, *transparency* (of platforms), and *legislative quality* (of a democratic law), and NetzDG's impact on or interaction with them. Another frame centered on *hate speech and fake news* as the central problems that justified NetzDG and included different descriptions of these problems and the new law's suitability to deal with them. Moreover, I also identified the frame of regulatory control as an overarching and contextualizing frame, which was characterized by the question of what platforms institutional status was and what kind of overarching regulatory framework they required. This frame included several comparisons between NetzDG and other internet regulations. Finally, the frame of *political context* unified different discussions of NetzDG as a subject of everyday politics, ranging from the personal to the international level, and of NetzDG as a matter of political alliance-building.

These overarching frames defined the central concerns and broader terms according to which the media reporting discussed and assessed NetzDG, as well as the broader problem of regulating content moderation on platforms. However, I have also found that the articles described a variety of different ways in which such assessments could be made and in which

conclusions on NetzDG and on platform governance could be drawn. These different assessments surfaced in the articles' illustration of different arguments for or against NetzDG; descriptions of problems with content on platforms and with its moderation; recounts of examples, cases, and events; and citations of different political actors' statements and views on NetzDG. In my work, I described different kinds of interpretations within one frame as different *framings*.

A central problem-setting story and an overarching argument and narrative were part of each framing. Hence, each framing included a certain assessment of NetzDG's acceptability and desirability, as well as alternative suggestions. Overall, the framings described different lines of arguments for or against certain approaches to platform governance. For several of the frames, their framings even played out as *intra-frame conflicts*, capturing, for instance, opposing views on NetzDG's impact on freedom of speech. These intra-frame conflicts revolved around a) the question of how to interpret freedom of speech and the rule of law with regards to NetzDG; b) what kind of problem, if any, hate speech and fake news online presented; and c) what the institutional status of platforms was and should be.

In the third part of the thesis, I interpreted the results from my framing analysis to unravel the assumptions of different NetzDG framings. I did so to make explicit their political consequences, should they gain dominance, and should their approach to platform governance be adopted in practice. Thus, in the third part, I reflected on the different framings with regards to what held them together, what differentiated them, and what assumptions they built on.

The first thing I found was that the NetzDG controversy *presented a discourse of democracy*. In this discourse, different framings and the positions they incorporated struggled over whether and why NetzDG was a democratic law and what the democratically legitimate way to govern platforms would be. Hence, in Chapter 13, I proposed that the framings were characterized by different *legitimation strategies*, overarching arguments for why a certain approach to platform governance is the *democratically right one*.

Given the disagreements that played out between the framings, I have proposed to interpret the framings as describing different positions on platform governance, which are built on distinct ideas of what democracy on and with social media looks like. To conceptualize these distinct ideas based on the framings, Chapter 14 has outlined two different *socio-technical imaginaries of democracy*. For their conceptualization, I drew both from the STS concept of *socio-technical imaginaries*, which refers to collectively shared visions of how a technology can enact a desirable society, and from the concept of *political imaginaries of democracy*, which postulates that democracy is an idea conditioned by the shared imagination of certain democratic abstractions, such as popular sovereignty and public discourse, and of certain kinds of democratic actors.

I distinguished two types of imaginaries, which differed in where they located the primary source of democratic discourse. I called the first imaginary the *technological imaginary*. I traced this imaginary back to visions of early internet utopias and described it as locating the primary source of democratic discourse in the free information flows which the internet can enable. This imaginary captures the democratic vision of governance approaches which emphasize decentralization, transparency, and individuality. I have called the second imaginary the *regulatory imaginary*. According to this imaginary, the primary source of democratic discourse originates from state-issued and enforced rules. I traced this imaginary back to traditional, republican ideas of state governance and described it as capturing the democratic vision of platform governance approaches which emphasize the need for state engagement to *shape* information flows into democratic forms.

The conceptualization of these imaginaries has provided an explanation for the differences and similarities between framings by describing distinct, overarching ideas of how democracy and social media platforms can work together. Based on this, I set out to understand the roles, rights, and responsibilities that different framings described for platforms, state institutions, and individuals as users or citizens. With this, I unearthed different ideas about how to set up social and political order and design power relationships. These different ideas

competed in the NetzDG controversy. I used the insights from my analysis of the NetzDG controversy to articulate how different approaches to platform governance affect social order.

At first, I looked particularly at the roles that platforms could take on. This was informed by the concept of technological dramas, which describes how different actors in a technological controversy discursively struggle over establishing a particular meaning for a technology or technological infrastructure to effectuate a certain politics. What I found was that there were three different roles that the articles described for platforms, with different implications for their regulation and legal responsibility in content moderation: platforms as private economic actors, as media/publishers, and as public infrastructures. I showed that when platforms are cast into a private role—the role that the technological imaginary envisions—this implies that it is democratically undesirable for regulatory intervention to interfere with speech on them, for instance by mandating the policing of speech. On the other hand, if platforms are cast into a public role—a role which corresponds to the regulatory imaginary—it appears democratically acceptable and even desirable to bring platforms under the auspices of the state but also to endow them with the ability and responsibility to make decisions over the legality of speech.

My next step was to reflect upon the different roles that the framings' assessments of the problem with content moderation foresaw for the state and its institutions. To fully understand and conceptualize this, I took an excursion into democratic theory and described liberal, deliberative, and republican/agonistic conceptions of democracy. Comparing the framings to these democratic conceptions, I found that the framings' argumentative structures corresponded to different conceptions of democracy. This comparison allowed me to describe the underlying conceptions of democracy and of the roles of states and citizens. These explain different framings and their assessments, as well as the differences between them. Hence, in this chapter, I described the different conceptions of democracy that played out within the two imaginaries and that come with certain configurations of the roles of platforms, states, and users/citizens.

Given that the framings took up different arguments and conclusions from them, these conceptions helped me to articulate the fundamental contentions over democracy that characterized framing conflicts over NetzDG. Reflecting on how arguments from different democratic conceptions played out in the NetzDG framings, I proposed that Mouffe's agonistic conception of democracy provides a way forward for platform governance.

Finally, in Chapter 16, I reflected on the discursive politics that my framing analysis made visible, and I discussed the discursive role that different media sources took on, the ways in which they positioned themselves towards NetzDG, and the discursive coalitions formed between the different types of speakers they cited. I observed that the mainstream media mostly took up informing and deliberative functions, described different positions, and exerted subtle preferences towards NetzDG, depending on their main framings, the cases they discussed, and the speakers they cited. The political blogs, on the other hand, engaged more explicitly with different positions, took on certain attitudes toward NetzDG, and spoke from a certain perspective. While the mainstream media reporting focused on problems with the content of NetzDG, the blogs more strongly questioned the legitimacy of mainstream political actors.

17.2. Main Insights

Overall, I found that in the political and media discourse, NetzDG failed to “solve” problems with hate speech and fake news through the “mere” application of existing speech laws. It also did not avoid engagement with the deeper democratic questions which the setting of boundaries for speech implicates. Instead, I found that the media discourse seriously questioned NetzDG's democratic legitimacy. I observed that different framings of NetzDG and the conflicts between them expressed fundamental contentions over: the role of platforms, the logics by which they ought to be governed, the tasks of the state in platform governance, the extent to which this state ought to extend its reach to content moderation, and over what can be expected of individuals in their roles as platform users and as citizens. Hence, despite the “mere”

application of already accepted and legitimated speech laws, the contentions over NetzDG unraveled as a broader controversy over how to set up democracy on and with social media platforms and what kind of social order this requires.

For the most part, the reporting on NetzDG did not address this question head-on but instead discussed different arguments about NetzDG's impact on freedom of speech, the rule of law, and transparency; about the right regulatory framework for platforms; the problems with hate speech and fake news; and about the democratic problems with NetzDG's legislative process. Moreover, the reporting described different examples and cases that fell in line with these arguments, and it cited diverse political actors. Especially many of the latter were united in their stance against NetzDG, each fearing that they could be negatively impacted or pursuing a political opposition against the governing coalition. This created a stark opposition to the law. Where the articles described NetzDG positively, they often cited reasons for why governmental intervention was needed and referred to it as an important first step but also mentioned its drawbacks. Hence, Heiko Maas and his few political allies that were cited were quietly lonely in their full-blown defense of NetzDG.

As said, the mainstream media articles mostly took on a deliberating and informing function. They did so by describing different possible assessments of NetzDG and by citing what institutional political actors such as politicians and lobbyists said. While outlining problems with hate speech and fake news from an observatory position, they mostly did not speak *from the perspective* of citizens online or of particular communities (with the exception of politicians, journalists, majors, popular artists, and comedians). The political blogs, on the other hand, took on a stronger positioning, claiming to speak from the vantage point of certain communities. Particularly *Tichys Einblick* claimed a citizen perspective, which however often resonated with anti-immigration and even ethno-nationalist sentiments. This perspective was claimed based on the need to defend free speech against a seemingly illegitimate government rather than based on democratic values such as equality and justice. In addition, I also observed a gap between the

serious doubts about NetzDG's legitimacy, which the media reporting and its speakers raised, and its relatively quick adoption by a parliamentary majority.

This gap points to the question of where and how decisions on platform governance should be made, which discourses should influence them, and who should have a say in them. What I find is that neither the NetzDG reporting, nor the parliamentary process engaged more deeply with the raised question of which political structures can enact shared democratic values online or create democratic positions for what it means to be a citizen, a member of a solidary community, on the internet. Building on Mouffe's agonistic approach, I suggested that future politics of platform governance should focus on the design of a political sphere. In this sphere, people can come together to address this above question explicitly and democratically. It stands separate from a legal and ethical sphere but also an economic sphere. The design and realization of this political sphere for platform governance, under consideration of the international character of platforms, remains a major challenge.

As especially *Netzpolitik* has pointed out, NetzDG neglected particularly the central role that algorithms play for content moderation. The democratic processes I have just called for therefore should not only address the writing of substantive speech rules and determine the processes by which to devise and enforce them but also engage with the governance of moderation algorithms. Beyond the private realm of civil society organizing and individual activism, the aim of this political sphere should be to provide resources for people to actively and *jointly* define shared values and engage with the rules and norms that structure their shared political lives.

Hence, I find that my investigation of the media debate around NetzDG has created strong support for Deborah Stone's view on policymaking as a "constant struggle over the criteria of classification, the boundaries of categories, and the definition of ideals that guide the way people behave" (D. Stone, 2012, p. 13). Upon closer look, the NetzDG controversy, and the different framing processes that characterized it, played out as contentions over how to set up

social order, design democracy, understand democratic values and principles, and constitute democratic communities.

The resolution of these contentions implies fundamentally political and value-laden decisions. In my thesis, I have not discussed empirical data on, for example, how effective NetzDG was or how widespread hate speech is. In the future, such data might be useful for a consideration of the effectiveness of different approaches. However, while this data can, of course, inform the feasibility of certain approaches, it would not be able to fundamentally resolve the political decisions about which *values should be centered* and which power relationships *should* structure social and political order. First, any statistical research or quantitative survey already builds on categories whose very definition is the subject of political struggle. Second, given the role that anecdotal evidence and examples evidently play in reasoning about platform governance, for any restriction that is made in the name of equality or justice, there will be a case for which this goes too far; for any freedom accorded, there will be someone to abuse it; for any public infrastructure, there will be a chance for undue state infringement; and for any business model, there will be exploitative and monopolizing forces.

Hence, platform governance cannot avoid questions of which values are important, of how to interpret them, and of how we want to relate to one another. This means that the fundamental democratic and political challenge of platform governance and of content moderation is not to find “the” right solution, neither technological nor regulatory. Instead, it is about deciding on the risks we—as democratic communities—are willing to take, which distribution of such risks we find fair and just, who and what we want to put our trust in, and in which direction we want to move our democracies. This is a political decision over the role we want to give to the state as an institution, how we think it should relate to its citizens, how we want to institutionalize platforms, and what political role we want to give economic actors. Finally, as I have argued, such political decisions come with the establishment of a certain

political and democratic community. To this, struggles over platform governance and over content moderation should pay more attention

17.3. Limitations and Future Research

I now conclude this thesis with a reflection on the limitations of my research approach. These limitations also provide avenues for future research. For one, I studied but a sample of media reports, on which I subsequently conducted my framing analysis. This, of course, meant that I only analyzed a fraction of the processes that constitute the politics of platform governance. It will be interesting to complement and contrast my research with other places of decision-making on platform governance in the future. This could be inside parliaments or even platform companies and help to conceptualize the limitations that public discourses face in influencing platform governance. In the case of NetzDG for example, I found that the law was adopted through a parliamentary process despite the lack of legitimacy that often emerged from the media reporting.

This observation poses a *normative* question for future research, which I find particularly interesting and have already sketched out based on Mouffe's democratic conception. This question concerns the influence that such discourse *should* have on platform governance and, consequently, how this discourse *should be shaped* and *who* should take part in it. Moreover, this question concerns the democratic sufficiency and suitedness of current mechanisms in place for governing platforms and content moderation. Such 'mechanisms' are, for instance, user activism within civil society, platforms' internal procedures, and regulatory procedures. Another normative question concerns the shape of viable alternatives to such existing, and perhaps democratically insufficient, mechanisms. Recursively, this leads back to the establishment of democratic legitimacy for platform governance.

I suggest that my analysis of the NetzDG controversy has shown that it is not enough to react to platforms' own lack of accountability and legitimacy "simply" with the enforcement of

existing laws. This does not, so I argue, adequately take on the deeper problems posed by platforms' reconfiguration of democratic structures. In my view, this lacking capability opened the door to many criticisms of NetzDG and explains lawmakers' failure to appropriately take them up in adapting the law. Hence, I take away from the NetzDG controversy that the legal (and even ethical) realm is not enough to solve political questions of platform governance.

At the same time, governing platforms in a private realm and through civil society, with political strategies such as public outcries or organizing, likewise has its limitations. This governance favors those who have the resources to organize and campaign, who are promoted by the algorithms, and whose tactics can exert maximal public pressure. This kind of political and democratic action still bases itself on the idea of individuals organizing in a private realm according to individual, but nevertheless shared, interests. While such organizing can rile up solidarity and support, it does not answer the question of how solidarity *can institutionally be created*. Hence, finding a third way forward for platform governance is a fascinating future endeavor.

Another limitation of my research and an avenue for future research that relates to the democratic legitimacy and decision-making power of discourses is posed by issues of participation and representation in the discourse. The sources I looked at limited my research results. As I said, these were mainstream media and a few political blogs. While these blogs are located within a certain political spectrum, they, of course, do not encompass or fully represent it. It would be insightful to additionally study how other sources or communities, and perhaps even social media users, reasoned and talked about NetzDG. In addition, I found that the mainstream media sources mostly offered up deliberative positions or quoted influential political actors such as politicians or lobbyists. However, they rarely took up a citizen perspective, such as the perspective of those marginalized groups that are most targeted by hate speech or even groups targeted by misinformation. While the blogs partially did this, they only took on very specific, sometimes even discriminatory, and exclusionary, perspectives. Hence, a question to

answer to in the future is how to bring others, especially marginalized or targeted groups, into the conversation and give them a legitimate voice.

This also leads me over to the question of framing effects, which my work did not consider. In my analysis, I interpreted the reports and the cited speakers based on my own perspective. While I described the effects that different framings could have and the conclusions they implied, this built on my subjectivity. I did not answer how this discourse would be or was perceived by different audiences or shaped how they thought about NetzDG and platform governance. These framing effects, the effects that different framing processes have on an audience, could be studied in the future.

Another limitation that comes with my research—which at the same time presents an essential part of it—is the situatedness and contextuality of the case and reporting. NetzDG is a specific case that is situated in a particular national, cultural, historical, and political context. I say that this contextuality was an essential part of my research, because my aim was to show that how platform practices are made sense of and integrated into existing meanings and structures, and hence how they are governed and which societal and political roles they take on, always happens against a specific context and history. It is therefore not enough to discuss platform governance in a decontextualized way or in a way that only focuses on the platforms themselves.

At the same time, this context, of course, also limits the validity or generality of my research results, as they pertain only to this context. Rather than making general claims about how platform politics work based on NetzDG's particulars, I sought to build a conceptual approach for studying the politics of platform governance and to interpret the discursive and institutional processes around them with regards to democratic assumptions and consequences. My hope is that this contributes to the conversation about how to make platform governance more accountable and democratic. I wish to do this by making explicit the political and democratic assumptions and consequences of different approaches to platform governance and the discursive and political establishment of legitimacy for these approaches.

Consequently, another avenue for future research that emerges from my work is the use of my research approach and conceptual framework for studying other cases of platform governance. This could include comparative work on the political and discourse processes that surrounded them and the implications they would have for my results. Possible research avenues could be other regulatory approaches, such as the recent *Digital Service Act* but also corporate initiatives like Facebook's oversight board. Moreover, it would be fascinating to study discourses around platform governance that take place in completely different cultural or political environments. These might unfold as entirely different discourses, around other central concerns, or based on very different structures of legitimacy. Likewise, it would be insightful to compare the discourse of democratic legitimacy with other discourses around platform governance, such as discourses of social justice.

Finally, limitations arise from my methodological approach. I have already outlined its drawbacks in Chapter 4.5. In line with critiques of discourse and framing analysis, and with the central role interpretation plays in my work, it has been a challenge to signify where the empirical material ends and my own interpretation begins. This has come with linguistic challenges, such as which temporality to use when describing the framings and imaginaries (e.g., present tense as they are categories that I conceptualized or past tense as they are structures and interpretive patterns that existed in the NetzDG discourse itself). Of course, as I have outlined, my overarching research philosophy and qualitative approach is that such a separation is not practically possible. Any description of the world is necessarily also an interpretation made by those who articulate it and shaped by the tools that are used (in my case the analyst herself).

Nevertheless, in my writing, I found myself in a position to have to make some ontological decisions. I solved this tension by locating different levels of my analysis on a spectrum between "the world out there" and my own interpretation. For one, I positioned the framings themselves as relatively close to the data and to what the articles wrote (hence, past tense to talk about them). In my presentation of the framings in Part 2, I showed the empirical closeness of my

ordering and description of the framings when recounting the different elements, stories, arguments, statements, and examples the reporting described. In the third part, I ventured into more interpretative territory. I sought to unearth the framings' assumptions by conceptualizing imaginaries and discussing democratic conceptions that explained what held together and separated the framings' storylines and arguments. As my description and conceptualization of these imaginaries and conceptions were more removed from what reports and speakers stated, I used the present tense for talking about them. This signified their further position towards the "I" of the world-interpretation continuum.

The interpretative, bottom-up approach I took for my research is of an exploratory nature. Hence, my work brings new research avenues to further validate my findings and evolve my approach and conceptualizations. This could, for example, be done for the NetzDG discourse itself. Not only could other venues, speakers, or communities be analyzed, but my findings could also be translated to more stringent coding categories. These categories would allow a quantitative analysis of framing distributions, for instance amongst sources or speakers. In addition, as I focused on studying the content of what has been said and on identifying and describing the framings, but I have not considered the temporal dimensions in detail. While I did not observe many changes over time, further study of this temporal development is reserved for the future.

To conclude: My approach and methodology have come with several limitations that pose restraints to the research results. Nevertheless, my framing study of the NetzDG media reporting and my analysis of its assumptions, potential political consequences, and discursive politics created impactful insights on the politics of platform governance. Further, this work opened avenues for future research into how to make platform governance more democratic, inclusive, and accountable.

Bibliography

- Abolafia, M. Y. (2004). Framing moves: Interpretive politics at the federal reserve. *Journal of Public Administration Research and Theory*, 14(3), 349–370.
<https://doi.org/10.1093/jopart/muh02>
- Amadeu Antonio Stiftung. (n.d.). *Advocacy. Training. Funding*. Amadeu Antonio Stiftung.
<https://www.amadeu-antonio-stiftung.de/en/about-us/>, accessed July 18, 2019
- Ananny, M. (2020). Making up political people: How social media create the ideals, definitions, and probabilities of political speech. *Georgetown Law Technology Review*, 4, 351–366.
- Änderung § 14 TMG vom 01.10.2017*. (2017, October 1). Buzer.de.
<https://www.buzer.de/gesetz/7616/al64287-0.htm>, accessed February 8, 2023
- Änderung § 14 TMG vom 01.12.2021*. (2021, December 1). Buzer.de.
<https://www.buzer.de/gesetz/7616/al162171-0.htm>, accessed February 8, 2023
- Angwin, J., & Grassegger, H. (2017, June 28). Facebook’s secret censorship rules protect white men from hate speech but not black children. *ProPublica*.
<https://www.propublica.org/article/facebook-hate-speech-censorship-internal-documents-algorithms>, accessed June 11, 2019
- Arab Spring*. (2021, January 27). Britannica. <https://www.britannica.com/event/Arab-Spring>, accessed February 13, 2023
- Arribas-Ayllon, M., & Walkerdine, V. (2017). Foucauldian discourse analysis. In C. Willig & W. Stainton-Rogers (Eds.), *The SAGE Handbook of Qualitative Research in Psychology* (2nd ed., pp. 110–123). SAGE Publications.
- Aydın-Düzgüt, S., & Rumelili, B. (2019). Discourse analysis: Strengths and shortcomings. *All Azimuth*, 8(2), 285–305. <https://doi.org/10.20991/allazimuth.477300>

- Balkin, J. M. (2004). Digital Speech and democratic culture: A theory of freedom of expression for the information society. *N.Y.U. Law Review*, 79(1), 1–55.
- Barlow, J. P. (1996). *A declaration of the independence of cyberspace*. EFF.Org. <https://www.eff.org/cyberspace-independence>, accessed June 13, 2019
- Bartels, A.-K. (2021). “Foreign infiltration” vs “immigration country”: The asylum debate in Germany. In J. Silverstein & R. Stevens (Eds.), *Refugee Journeys: Histories of Resettlement, Representation and Resistance* (1st ed., pp. 89–110). ANU Press.
- Beaufort, M. (2021). Die Demokratie? Die Öffentlichkeit? Die Rolle der Medien? In M. Magin, U. Rußmann, & B. Stark (Eds.), *Demokratie braucht Medien* (pp. 69–91).
- Bekkers, V., & Edwards, A. (2016). Legitimacy and democracy: A conceptual framework for assessing governance practices. In V. Bekkers, G. Dijkstra, A. Edwards, & M. Fenger (Eds.), *Governance and the Democratic Deficit: Assessing the Democratic Legitimacy of Governance Practices* (pp. 35–60). Routledge.
- Benson, R. (2009). Shaping the public sphere: Habermas and beyond. *The American Sociologist*, 40, 175–197. <https://doi.org/10.1007/s12108-009-9071-4>
- Berlin, I. (1969). Two concepts of liberty. In *Four Essays On Liberty* (pp. 118–172). Oxford University Press.
- Bernau, P. (2018, March 13). Digitalkonferenz SXSW - Drohung mit deutschen Gesetzen. *Frankfurter Allgemeine Zeitung*. <https://www.faz.net/aktuell/wirtschaft/digitalkonferenz-sxsw/sxsw-londoner-buergermeister-droht-mit-dem-deutschen-netzdg-15491236.html>, accessed July 19, 2022
- Bhagwat, A., & Weinstein, J. (2021). Freedom of expression and democracy. In A. Stone & F. Schauer (Eds.), *The Oxford Handbook of Freedom of Speech* (pp. 82–105). Oxford University Press.

- Bingham, L. (2007). The rule of law. *The Cambridge Law Journal*, 66(1), 67–85.
<https://doi.org/10.1017/S0008197307000037>
- Blasi, V. (2021). The classic arguments for free speech 1644–1927. In A. Stone & F. Schauer (Eds.), *The Oxford Handbook of Freedom of Speech* (pp. 20–43). Oxford University Press.
- Boltanski, L., & Thévenot, L. (1999). The sociology of critical capacity. *European Journal of Social Theory*, 2(3), 359–377. <https://doi.org/doi:10.1177/136843199002003010>
- Borger, J., & Ackerman, S. (2017, March 20). Trump-Russia collusion is being investigated by FBI, Comey confirms. *The Guardian*. <https://www.theguardian.com/us-news/2017/mar/20/fbi-director-comey-confirms-investigation-trump-russia>, accessed July 18, 2019
- Bresser-Pereira, L. C. (2004). *Democracy and Public Management Reform*. Oxford University Press.
- Buchanan, A. (2002). Political legitimacy and democracy. *Ethics*, 112(4), 689–719.
- Bundesministerium der Justiz. (2017). *Regeln gegen Hass im Netz—das Netzwerkdurchsetzungsgesetz*.
https://www.bmjv.de/DE/Themen/FokusThemen/NetzDG/NetzDG_node.html,
 accessed June 11, 2019
- Bundesministerium der Justiz und für Verbraucherschutz. (2017). *Löschung von strafbaren Hasskommentaren durch soziale Netzwerke weiterhin nicht ausreichend*. Fair im Netz.
https://www.fair-im-netz.de/SharedDocs/Pressemitteilungen/DE/2017/03142017_Monitoring_SozialeNetzwerke.html?nn=6704238, accessed June 11, 2019
- Bundesministerium des Inneren. (2017a, August 14). *Bekanntmachung eines Vereinsverbots gegen „linksunten.indymedia“*. Bundesanzeiger.
<https://www.bundesanzeiger.de/pub/publication/NYbECrHEmAKSHWzllXo/cont>

ent/NYbECrHEmAKSHWzllXo/BAanz%20AT%2025.08.2017%20B1.pdf?inline,
accessed July 18, 2019

Bundesministerium des Innern. (2017b, August 25). *Bundesinnenminister verbietet den Verein mit der linksextremistischen Internetplattform "linksunten.indymedia."*

<https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2017/08/vereinsverbot.html>, accessed June 11, 2019

Cacciatore, M. A., Scheufele, D. A., & Iyengar, S. (2016). The end of framing as we know it ... and the future of media effects. *Mass Communication & Society*, 19(1), 7–23.

<https://doi.org/10.1080/15205436.2015.1068811>

Calhoun, C. (1992). Introduction: Habermas and the public sphere. In C. Calhoun (Ed.), *Habermas and the Public Sphere* (pp. 1–48). The MIT Press.

NetzDG Entwurf, Entwurf eines Gesetzes zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz - NetzDG), Bundesrat

Drucksache 315/17 (2017). <https://dserver.bundestag.de/brd/2017/0315-17.pdf>

Chong, D., & Druckman, J. N. (2007). Framing theory. *Annual Review of Political Science*, 10(1), 103–126. <https://doi.org/10.1146/annurev.polisci.10.072805.103054>

Clegg, N. (2019, January 28). Charting a course for an oversight board for content decisions. *Facebook Newsroom*. <https://about.fb.com/news/2019/01/oversight-board/>, accessed June 11, 2019

Cohen, J. E. (2016). The regulatory state in the information age. *Theoretical Inquiries in Law*, 17(2), 369–414. <https://doi.org/https://doi.org/10.1515/til-2016-0015>

Cohen, J. E. (2018). Information platforms and the law. *Georgetown Law Technology Review*, 2(2), 191–196.

European Convention on Human Rights, 1 (1970).

https://www.echr.coe.int/documents/convention_eng.pdf

Council of Europe. (1997). *Recommendation No. R (97) 20 of the Committee of Ministers to member states on "hate speech."*

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680505d5b

Cowls, J., Darius, P., Santistevan, D., & Schramm, M. (2022). Constitutional metaphors: Facebook's "supreme court" and the legitimation of platform governance. *New Media & Society*, 1–25. <https://doi.org/https://doi.org/10.1177/14614448221085559>

Dachwitz, I., Rudl, T., & Rebinger, S. (2018, March 21). FAQ: Was wir über den Skandal um Facebook und Cambridge Analytica wissen. *Netzpolitik.Org*.

<https://netzpolitik.org/2018/cambridge-analytica-was-wir-ueber-das-groesste-datenleck-in-der-geschichte-von-facebook-wissen/>, accessed June 12, 2019

Davidson, T., Bhattacharya, D., & Weber, I. (2019). Racial bias in hate speech and abusive language detection datasets. *Proceedings of the Third Workshop on Abusive Language Online*, 25–35. <https://doi.org/10.18653/v1/W19-3504>

Deutscher Bundestag. (2017). *Bundestag streicht den Paragraphen zur Majestätsbeleidigung*.

Deutscher Bundestag.

<https://www.bundestag.de/dokumente/textarchiv/2017/kw22-de-majestaetsbeleidigung-508476>, accessed July 19, 2019

Diehl, J. (2019, March 11). Bilanz der Kölner Silvesternacht: Hunderte Opfer, fast keine Täter. *Spiegel Panorama*. <https://www.spiegel.de/panorama/justiz/koelner-silvesternacht-ernuechternde-bilanz-der-justiz-a-1257182.html>, accessed February 10, 2023

Douek, E. (2022). Content moderation as systems thinking. *Harvard Law Review*, 136(2), 526–607. <https://doi.org/http://dx.doi.org/10.2139/ssrn.4005326>

Dworkin, R. (1978). Liberalism. In S. Hampshire (Ed.), *Public and Private Morality* (pp. 180–204). Cambridge University Press.

- E-Commerce Directive, Directive 2000/31/EC of the European parliament and of the council (2000). <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0031&from=EN>
- Edelman, M. (1993). Contestable categories and public opinion. *Political Communication*, 10(3), 231–242. <https://doi.org/https://doi.org/10.1080/10584609.1993.9962981>
- Eisenegger, M., & Udriș, L. (2019). Medienqualität in der digitalen Ära. Konzeptuelle Herausforderungen und erste Antworten. In M. Magin, U. Rußmann, & B. Stark (Eds.), *Demokratie braucht Medien* (pp. 91–116). Springer, VS.
- Elliott, V., & Parmar, T. (2020, July 22). “The despair and darkness of people will get to you.” Rest of World. <https://restofworld.org/2020/facebook-international-content-moderators/>, accessed November 21, 2022
- Entman, R. M. (1993). Framing: Toward clarification of a fractured paradigm. *Journal of Communication*, 43(4), 51–58. <https://doi.org/10.1111/j.1460-2466.1993.tb01304.x>
- European Commission. (n.d.). *The Digital Services Act: Ensuring a safe and accountable online environment*. https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_en, accessed February 10, 2023
- European Union. (n.d.). *Types of legislation*. https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en, accessed February 10, 2023
- Ezrahi, Y. (2012). *Imagined democracies*. Cambridge University Press.
- Fair im Netz. (n.d.). *FAQ: Act to Improve Enforcement of the Law in Social Networks, 2017*. <https://www.bmj.de/SharedDocs/FAQ/EN/NetzDG/NetzDG.html>, accessed February 7, 2023
- Fallon, R. H. Jr. (1997). “The rule of law” as a concept in constitutional discourse. *Columbia Law Review*, 97(1), 1–56. <https://doi.org/https://doi.org/10.2307/1123446>

- Farkas, J., & Schou, J. (2018). Fake news as a floating signifier: Hegemony, antagonism and the politics of falsehood. *The Public*, 25(3), 298–314.
<https://doi.org/https://doi.org/10.1080/13183222.2018.1463047>
- Ferree, M., Gamson, W., Gerhards, J., & Rucht, D. (2002). Four models of the public sphere in modern democracies. *Theory and Society*, 31(3), 289–324.
<https://doi.org/https://doi.org/10.1023/A:1016284431021>
- Fichtner, L. (2022). Content moderation and the quest for democratic legitimacy. *Weizenbaum Journal of the Digital Society*, 2(2), 1-29.
<https://doi.org/10.34669/wi.wjds/2.2.2>
- Fischer, F., & Forester, J. (1993). Editor's introduction. In F. Fischer & J. Forester (Eds.), *The Argumentative Turn in Policy Analysis and Planning* (pp. 1–17). Duke University Press.
- Fraser, N. (1990). Rethinking the public sphere: A contribution to the critique of actually existing democracy. *Social Text*, 25(26), 56–80.
<https://doi.org/https://doi.org/10.2307/466240>
- Fraser, N. (2021). Neue Überlegungen zur Transnationalisierung der Öffentlichkeit. In M. Seeliger & S. Seignani (Eds.), *Ein neuer Strukturwandel der Öffentlichkeit? Sonderband Leviathan Nr. 37, Jg. 49* (pp. 139–158). Nomos.
- FSK. (n.d.). *Jugendschutz im Internet*. <https://www.fsk.de/?seitid=1261&tid=466>, accessed July 18, 2019
- FSM. (n.d.). *Über uns*. from <https://www.sicher-im-netz.de/ueber-uns>, accessed March 22, 2022
- Fukuyama, F. (2013). What is governance? *Governance*, 26(3), 347–368.
<https://onlinelibrary.wiley.com/doi/10.1111/gove.12035>
- Gal, S. (2006). Migration, minorities and multilingualism. In C. Mar-Molinero & P. Stevenson (Eds.), *Language Ideologies, Policies and Practices: Language and the Future of Europe* (pp. 13–28). Palgrave Macmillan.

- Gamson, W. A., & Modigliani, A. (1987). The changing culture of affirmative action. In R. G. Braungart & M. M. Braungart (Eds.), *Research in Political Sociology* (3rd ed., pp. 137–177). JAI Press Inc.
- Ganz, K. (2018). *Die Netz̈bewegung*. Barbara Budrich.
- Gelfert, A. (2018). Fake news: A definition. *Informal Logic*, 38(1), 84–117.
<https://doi.org/10.22329/il.v38i1.5068>
- German Criminal Code, (1998). https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1040
- Gesetz zur Änderung des Netzwerkdurchsetzungsgesetzes (2021). *Bundesgesetzblatt Jahrgang 2021*, 1(29), 1436-1443.
- Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität (2021). *Bundesgesetzblatt Jahrgang 2021*, 1(13), 441-447.
- Gesicht Zeigen! (n.d.). *Who we are*. <https://www.gesichtzeigen.de/ueber-uns/>, accessed July 18, 2019
- Gettings, M. (2007). The fake, the false, and the fictional: The Daily Show as new source. In J. Holt (Ed.), *The Daily Show and Philosophy* (pp. 16–27). Blackwell Publishers.
- GG, Basic Law for the Federal Republic of Germany (1949). https://www.gesetze-im-internet.de/englisch_gg/
- Gillespie, T. (2018). *Custodians of the internet: Platforms, content moderation, and the hidden decisions that shape social media*. Yale University Press.
- Gillespie, T., & Aufderheide, P. (2020). Expanding the debate about content moderation: Scholarly research agendas for the coming policy debates. *Internet Policy Review*, 9(4), 1–30. <https://doi.org/https://doi.org/10.14763/2020.4.1512>
- Grass, J. (2018). Von den Daten zur Story. Vermittlungsleistungen von Datenjournalismus. In M. Lünenborg & S. Sell (Eds.), *Politischer Journalismus im Fokus der Journalistik* (pp. 345–368). Springer VS.

- Groß, E., Zick, A., & Krause, D. (2012, April 16). *Von der Ungleichwertigkeit zur Ungleichheit: Gruppenbezogene Menschenfeindlichkeit*. Bundeszentrale für Politische Bildung.
<https://www.bpb.de/shop/zeitschriften/apuz/130404/von-der-ungleichwertigkeit-zur-ungleichheit-gruppenbezogene-menschenfeindlichkeit/>, accessed August 27, 2021
- Grundrechte in Deutschland - Definition & Grundrechtsarten im Grundgesetz*. (2022). Jura Forum.
<https://www.juraforum.de/lexikon/grundrechte>, accessed February 13, 2023
- Habermas, J. (1996a). A reconstructive approach to law I: The system of rights. In *Between Facts and Norms* (pp. 82–131). MIT Press.
- Habermas, J. (1996b). A reconstructive approach to law II: The principles of the constitutional state. In *Between Facts and Norms* (pp. 132–193). MIT Press.
- Habermas, J. (1996c). Civil society and the political public sphere. In *Between Facts and Norms* (pp. 329–387). MIT Press.
- Habermas, J. (1996d). Deliberative politics: A procedural concept of democracy. In *Between Facts and Norms* (pp. 287–328). MIT Press.
- Habermas, J. (1998). What is meant by “deliberative politics”? In C. Cronin & P. de Greiff (Eds.), *The Inclusion of the Other - Studies in Political Theory* (pp. 239–264). MIT Press.
- Habermas, J. (2021). Überlegungen und Hypothesen zu einem erneuten Strukturwandel der politischen Öffentlichkeit. In M. Seeliger & S. Seignani (Eds.), *Ein neuer Strukturwandel der Öffentlichkeit? Sonderband Leviathan Nr. 37, Jg. 49* (pp. 470–500). Nomos.
- Hall, S. (2001). Foucault: Power, knowledge and discourse. In M. Wetherell, S. Taylor, & S. J. Yates (Eds.), *Discourse Theory and Practice: A Reader* (pp. 72–81). SAGE Publications.
- Harel, A. (2021). Hate speech. In A. Stone & F. Schauer (Eds.), *The Oxford Handbook of Freedom of Speech* (pp. 455–477). Oxford University Press.
- Hass im Netz: Facebook zahlte fünf Millionen Euro Strafe*. (2021a, September 3). *Der Tagesspiegel*.
<https://www.presseportal.de/pm/2790/5010339>, accessed February 13, 2023

- Hayes, A. F., & Krippendorff, K. (2007). Answering the call for a standard reliability measure for coding data. *Communication Methods and Measures*, 1(1), 77–89.
<https://doi.org/10.1080/19312450709336664>
- Henley, J., & Oltermann, P. (2016). German firms including BMW pull advertising from Breitbart. *The Guardian*.
<https://www.theguardian.com/world/2016/dec/08/breitbart-looks-to-france-and-germany-another-alt-right-victory-steve-bannon>, accessed January 8, 2022
- Hisschemöller, M., & Hoppe, R. (1995). Coping with intractable controversies: The case for problem structuring in policy design and analysis. *Knowledge and Policy: The International Journal of Knowledge Transfer and Utilization*, 8(4), 40–60.
<https://doi.org/https://doi.org/10.1007/BF02832229>
- Hofmann, J., Katzenbach, C., & Gollatz, K. (2016). Between coordination and regulation: Finding the governance in Internet governance. *New Media & Society*, 19(9), 1406–1423. <https://doi.org/10.1177/1461444816639975>
- Honohan, I. (2017). Liberal and Republican Conceptions of Citizenship. In A. Shachar, R. Bauböck, I. Bloemraad, & V. Maarten (Eds.), *The Oxford Handbook of Citizenship* (pp. 83–106). Oxford University Press.
- Hsu, T. (2022, December 28). As Covid-19 Continues to Spread, So Does Misinformation About It. *The New York Times*.
<https://www.nytimes.com/2022/12/28/technology/covid-misinformation-online.html>, accessed February 13, 2023
- Hufty, M. (2011). Investigating policy processes: The governance analytical framework (GAF). In U. Wiesmann & H. Hurni (Eds.), *Research for Sustainable Development: Foundations, Experiences, and Perspectives* (pp. 403–424). Geographica Bernensia.
- Hülßen, I., & Müller, P. (2018, January 19). EU-Justizkommissarin zweifelt am Maas-Gesetz. *Spiegel Netzwelt*. <https://www.spiegel.de/netzwelt/netzpolitik/vera-jourova->

und-das-netzdg-eu-justizkommissarin-zweifelt-am-deutschen-gesetz-a-1188703.html,
accessed July 19, 2022

Indymedia. (n.d.). Wikipedia.Org. <https://de.wikipedia.org/wiki/Indymedia>, accessed July 18, 2019

Isaac, J. C. (1988). Republicanism vs. liberalism? A reconsideration. *History of Political Thought*, 9(2), 349–377. <https://www.jstor.org/stable/44797113>

Jahn, D. (2006). *Einführung in die vergleichende Politikwissenschaft*. VS Verlag für Sozialwissenschaften.

Jasanoff, S. (2004a). Ordering knowledge, ordering society. In S. Jasanoff (Ed.), *States of Knowledge* (pp. 13–45). Routledge.

Jasanoff, S. (2004b). The idiom of co-production. In S. Jasanoff (Ed.), *States of Knowledge* (pp. 1–12). Routledge.

Jasanoff, S. (2015). Future imperfect: Science, technology, and the imaginations of modernity. In S. Jasanoff & S.-H. Kim (Eds.), *Dreamscapes of Modernity: Sociotechnical Imaginaries and the Fabrication of Power* (pp. 1–33). The University of Chicago Press.

JMStV, Gesetz zum Staatsvertrag über den Schutz der Menschenwürde und den Jugendschutz in Rundfunk und Telemedien (Jugendmedienschutz-Staatsvertrag) (2003). https://www.kjm-online.de/fileadmin/user_upload/Rechtsgrundlagen/Gesetze_Staatsvertraege/JMStV_gaend_durch_19_RAESTV.pdf, accessed July 12, 2019

Jugendschutz.net. (n.d.). *Wer wir sind*. <https://www.jugendschutz.net/ueber-uns/wer-wir-sind>, accessed February 7, 2023

Keller, R. (2013). Zur Praxis der Wissenssoziologischen Diskursanalyse. In R. Keller & I. Truschkat (Eds.), *Methodologie und Praxis der Wissenssoziologischen Diskursanalyse* (pp. 27–68). Springer VS. <https://doi.org/10.1007/978-3-531-93340-5>

- Kiefl, O. (2014). Diskursanalyse. In C. Bischoff, K. Oehme-Jüngling, & W. Leimgruber (Eds.), *Methoden der Kulturanthropologie* (pp. 431–443). Haupt/UTB.
- klicksafe. (n.d.). *Die Initiative klicksafe*. Klicksafe.Net. <https://www.klicksafe.de/die-initiative>, accessed February 7, 2023
- Klonick, K. (2018). The new governors: The people, rules, and processes governing online speech. *Harvard Law Review*, *131*(6), 1598–1670.
- Koenig, T. (2006). Compounding mixed-methods problems in frame analysis through comparative research. *Qualitative Research*, *6*(1), 61–76.
<https://doi.org/10.1177/1468794106058874>
- Kress, G. (1996). Representational resources and the production of subjectivity: Questions for the theoretical development of critical discourse analysis in a multicultural society. In C. R. Caldas-Coulthard & M. Coulthard (Eds.), *Texts and Practices: Readings in Critical Discourse Analysis* (pp. 15–31). Routledge.
- Kuckartz, U. (2014). *Qualitative text analysis*. SAGE Publications.
- Kudina, O., & Verbeek, P. P. (2019). Ethics from within: Google Glass, the Collingridge Dilemma, and the mediated value of privacy. *Science, Technology & Human Values*, *44*(2), 291–314. <https://doi.org/10.1177/0162243918793711>
- Lakier, G. (2019). Imagining an Antisubordinating First Amendment. *Columbia Law Review*, *118*(7), 2117–2160.
- Langvardt, K. (2017). Regulating online content moderation. *The Georgetown Law Journal*, *106*, 1353–1388.
- Latour, B. (1994). On technical mediation. *Common Knowledge*, *3*(2), 29–64.
- Law, J. (2009). Seeing like a survey. *Cultural Sociology*, *3*(2), 239–256.
<https://doi.org/10.1177/1749975509105533>

- Leifeld, P., & Haunss, S. (2012). Political discourse networks and the conflict over software patents in Europe. *European Journal of Political Research*, 51(3), 382–409.
<https://doi.org/10.1111/j.1475-6765.2011.02003.x>
- Loewy, A. H. (1993). Freedom of speech as a product of democracy. *University of Richmond Law Review*, 27(3), 427–439.
- Lopez, G. (2016, December 8). Pizzagate, the fake news conspiracy theory that led a gunman to DC’s Comet Ping Pong, explained. *Vox*. <https://www.vox.com/policy-and-politics/2016/12/5/13842258/pizzagate-comet-ping-pong-fake-news>, accessed February 13, 2023
- Mackenzie, C., & Meyerson, D. (2021). Autonomy and free speech. In A. Stone & F. Schauer (Eds.), *The Oxford Handbook of Freedom of Speech* (pp. 61–81). Oxford University Press.
- Marshall, W. P. (2021). The truth justification for freedom of speech. In A. Stone & F. Schauer (Eds.), *The Oxford Handbook of Freedom of Speech* (pp. 44–60). Oxford University Press.
- Martin, D. (2018, January 6). German satire magazine Titanic back on Twitter following “hate speech” ban. *Deutsche Welle*. <https://www.dw.com/en/german-satire-magazine-titanic-back-on-twitter-following-hate-speech-ban/a-42046485>, accessed June 11, 2019
- Marwick, A., & Lewis, R. (2017). Media manipulation and disinformation online. *Report Data & Society Research Institute*, 1–104. https://datasociety.net/wp-content/uploads/2017/05/DataAndSociety_MediaManipulationAndDisinformationOnline-1.pdf, accessed December 22, 2021
- Matthes, J., & Kohring, M. (2008). The content analysis of media frames: Toward improving reliability and validity. *Journal of Communication*, 58(2), 258–279.
<https://doi.org/10.1111/j.1460-2466.2008.00384.x>

- Mau, S. (2004). Moralökonomie: Eine konzeptionelle Bestimmung aus ungleichheitssoziologischer Sicht. In P. A. Berger & V. H. Schmidt (Eds.), *Welche Gleichheit, welche Ungleichheit? Grundlagen der Ungleichheitsforschung* (pp. 165–190). VS Verlag für Sozialwissenschaften.
- Maurer, M., & Reinemann, C. (2006). *Medieninhalte*. Verlag für Sozialwissenschaften.
- Maxwell, J. A. (2013). *Qualitative research design*. SAGE Publications.
- Mayer, J. (2018, September 24). How Russia helped swing the election for Trump. *The New Yorker*. <https://www.newyorker.com/magazine/2018/10/01/how-russia-helped-to-swing-the-election-for-trump>, accessed July 18, 2019
- Meta. (n.d.). *Oversight Board*. <https://www.oversightboard.com/>, accessed May 12, 2022
- Milker, J., & Holtz, M. (2020). *MStV – Zulassungsfreiheit und Bagatellrundfunk*. Telemedicus - Recht Der Informationsgesellschaft. <https://www.telemedicus.info/zulassungsfreiheit-und-bagatellrundfunk/>, accessed March 22, 2022
- Monsees, L. (2020). ‘A war against truth’ - understanding the fake news controversy. *Critical Studies on Security*, 8(2), 116–129. <https://doi.org/10.1080/21624887.2020.1763708>
- Morozov, E. (2011). *The net delusion*. Public Affairs.
- Mouffe, C. (2000). *The democratic paradox*. Verso.
- Mouffe, C. (2013). *Agonistics: Thinking the world politically*. Verso. <https://doi.org/10.3224/zpth.v5i2.17126>
- Mouffe, C. (2016). Democratic politics and conflict: An agonistic approach. *Política Común*, 9, 1–20. <https://doi.org/https://doi.org/10.3998/pc.12322227.0009.011>
- Mozur, P. (2018, October 15). A Genocide incited on Facebook, with posts from Myanmar’s military. *The New York Times*. <https://www.nytimes.com/2018/10/15/technology/myanmar-facebook-genocide.html>, accessed July 18, 2019

- MStV, Medienstaatsvertrag (2020). <https://www.gesetze-bayern.de/Content/Document/MStV>
- MStV, Medienstaatsvertrag (MStV) in der Fassung des zweiten Staatsvertrags zur Änderung medienrechtlicher Staatsverträge (2022).
- NDR.de. (2019). *Der Fall Böhmernann - eine Chronologie*. <https://www.ndr.de/kultur/Der-Fall-Boehmermann-eine-Chronologie,boehmermann212.html>, accessed June 12, 2019
- Network Enforcement Act, Act to Improve Enforcement of the Law in Social Networks (2017). https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG_engl.pdf?__blob=publicationFile&v=2, accessed June 7, 2019
- Newton, C. (2019a, February 25). The trauma floor. *The Verge*. <https://www.theverge.com/2019/2/25/18229714/cognizant-facebook-content-moderator-interviews-trauma-working-conditions-arizona>, accessed November 21, 2022
- Newton, C. (2019b, June 19). Bodies in seats. *The Verge*. <https://www.theverge.com/2019/6/19/18681845/facebook-moderator-interviews-video-trauma-ptsd-cognizant-tampa>, accessed November 21, 2022
- Oltermann, P., & Collins, P. (2018, January 2). Two members of Germany's far-right party investigated by state prosecutor. *The Guardian*. <https://www.theguardian.com/world/2018/jan/02/german-far-right-mp-investigated-anti-muslim-social-media-posts>, accessed June 11, 2019
- Oversight Board. (2021, May). *Oversight Board bestätigt Sperrung von Präsident Trump und befindet Strafe von Facebook für nicht angemessen*. <https://www.oversightboard.com/news/226612455899839-oversight-board-upholds-former-president-trump-s-suspension-finds-facebook-failed-to-impose-proper-penalty/>, accessed May 12, 2022

- Patterson, T., & Seib, P. (2005). Informing the public. In G. Overholser & K. Jamieson (Eds.), *The Institutions of American Democracy: The Press* (pp. 189–202). Oxford University Press.
- Pfaffenberger, B. (1992). Technological dramas. *Science, Technology & Human Values*, 17(3), 282–312. <https://doi.org/10.1177/016224399201700302>
- Phoenix. (2015, November 15). *Hassbotschaften im Internet: Heiko Maas stellt Task Force vor am 15.11.2015*. <https://www.youtube.com/watch?v=-GunlXvVxmY>, accessed February 27, 2023
- Pointner, N. (2010). *In den Fängen der Ökonomie?* Verlag für Sozialwissenschaften.
- Pöttsch, H. (2009, December 15). *Grundrechte*. Bundeszentrale für Politische Bildung. <https://www.bpb.de/themen/politisches-system/deutsche-demokratie/39294/grundrechte/>, February 13, 2023
- Rahman, K. S. (2018). Regulating informational infrastructure: Internet platforms as the new public utilities. *Georgetown Law Technology Review*, 2(2), 234–251.
- Read, M. (2019, February 28). Who pays for Silicon Valley's hidden costs? *New York Intelligencer*. https://nymag.com/intelligencer/2019/02/the-shadow-workforce-of-facebooks-content-moderation.html?utm_source=tw, accessed November 11, 2022
- Reinbold, F. (2015, December 15). Hetze im Netz: Maas lässt Facebook gewähren. *Spiegel Netzwelt*. <https://www.spiegel.de/netzwelt/netzpolitik/facebook-laesst-heiko-maas-abblitzen-a-1067836.html>, accessed February 7, 2023
- Restrepo, R. (2013). Democratic freedom of expression. *Open Journal of Philosophy*, 3(3), 380–390. <https://doi.org/10.4236/ojpp.2013.33058>
- Roberts, S. T. (2019). *Behind the screen*. Yale University Press.
- Rosenberg, M., Confessore, N., & Cadwalladr, C. (2018, March 17). How Trump consultants exploited the Facebook data of millions. *New York Times*.

<https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html>, accessed July 19, 2019

RStV, Staatsvertrag für Rundfunk und Telemedien (Rundfunkstaatsvertrag) (1991).

https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Gesetze_Staatsvertraege/RStV_22_nichtamtliche_Fassung_medienanstalten_final_web.pdf, accessed July 19, 2019

Rummens, S. (2006). Debate: The co-originality of private and public autonomy in deliberative democracy. *Journal of Political Philosophy*, 14(4), 469–481.

<https://doi.org/10.1111/j.1467-9760.2006.00255.x>

Sap, M., Card, D., Gabriel, S., Choi, Y., & Smith, N. A. (2019). The risk of racial bias in hate speech detection. *Proceedings of the 57th Annual Meeting of the Association for Computational Linguistics*, 1668–1678. <https://doi.org/10.18653/v1/P19-1163>

Schiffrin, D., Tannen, D., & Hamilton, H. E. (2001). *The handbook of discourse analysis*. Blackwell Publishing Ltd.

Schmidt, A. (2015). Moralvorstellungen in der öffentlichen Debatte: Konzeptionelle und methodische Überlegungen zu Relevanz und empirischer Untersuchung. *Studies in Communication Media*, 4(2), 69–134. <https://doi.org/10.5771/2192-4007-2016-1-31>

Schneider, G., & Toyka-Seid, C. (n.d.). *Vierte Gewalt*. Bundeszentrale für Politische Bildung. <https://www.bpb.de/kurz-knapp/lexika/das-junge-politik-lexikon/321342/vierte-gewalt/>, accessed February 13, 2023

Schneider, I. (2010). *Das europäische Patentsystem*. Campus Verlag.

Schön, D. A., & Rein, M. (1994). *Frame reflection: Toward the resolution of intractable policy controversies*. Basic Books.

- Schulz, W. (2018). Regulating intermediaries to protect privacy online—The case of the German NetzDG. *HIIG Discussion Paper Series, 1*, 1–14. <https://www.hiig.de/wp-content/uploads/2018/07/SSRN-id3216572.pdf>
- Schwartz, S. H. (2012). An Overview of the Schwartz Theory of Basic Values. *Online Readings in Psychology and Culture, 2*, 1–20. <https://doi.org/http://dx.doi.org/http://dx.doi.org/10.9707/2307-0919.1116>
- Scott, J. C. (1999). *Seeing like a state*. Yale University Press.
- Somaskanda, S. (2017, March 1). Schmalbart in der Nachrichtenküche. *Internationale Politik*. <https://internationalepolitik.de/de/schmalbart-der-nachrichtenkueche>, accessed January 28, 2022
- Spohn, W. (2015). The (fragile) normalization of German identity within Europe. In W. Spohn, M. Koenig, & W. Knobl (Eds.), *Religion and National Identities in an Enlarged Europe* (pp. 17–38). Palgrave Macmillan.
- Stark, B., Rußmann, U., & Magin, M. (2021). Warum die Demokratie die Medien braucht. In M. Magin, U. Rußmann, & B. Stark (Eds.), *Demokratie braucht Medien* (pp. 3–16). Springer VS.
- Stecklow, S. (2018, August 15). Hatebook—Inside Facebook’s Myanmar operation. *Reuters*. <https://www.reuters.com/investigates/special-report/myanmar-facebook-hate/>, accessed July 18, 2019
- Stone, A., & Schauer, F. (2021). Introduction. In A. Stone & F. Schauer (Eds.), *The Oxford Handbook of Freedom of Speech* (pp. xi–xxiii). Oxford University Press.
- Stone, D. (2012). *Policy paradox: The art of political decision making* (3rd ed.). W. W. Norton Company.
- Strömbäck, J. (2005). In search of a standard: Four models of democracy and their normative implications for journalism. *Journalism Studies, 6*(3), 331–345. <https://doi.org/https://doi.org/10.1080/14616700500131950>

- Tamanaha, B. Z. (2004). *On the rule of law: History, politics, theory*. Cambridge University Press.
- Taylor, L. (2021). Public actors without public values: Legitimacy, domination and the regulation of the technology sector. *Philosophy & Technology*.
<https://doi.org/https://doi.org/10.1007/s13347-020-00441-4>
- Taylor, S. (2013). *What is discourse analysis?* Bloomsbury Collections.
- The Associated Press (2021, November 18). Hate speech in Myanmar continues to thrive on Facebook. *NBC News*. <https://apnews.com/article/technology-business-middle-east-religion-europe-a38da3ccd40ffae7e4caa450c374f796>, accessed November 21, 2022
- TKG, Telekommunikationsgesetz (2004). https://www.gesetze-im-internet.de/tkg_2021/BJNR185810021.html, accessed July 12, 2019
- TMG, Telemediengesetz (2007). <https://www.gesetze-im-internet.de/tmg/BJNR017910007.html>, accessed July 12, 2019
- Tomik, S. (2015, August 5). „Legt Euch nicht mit dem Internet an“. *FAZ.Net*.
<https://www.faz.net/aktuell/politik/inland/wer-sind-die-blogger-von-netzpolitik-org-13735090.html>, accessed January 28, 2022
- Traue, B., Pfahl, L., & Schürmann, L. (2019). Diskursanalyse. In Nina Baur & J. Blasius (Eds.), *Handbuch Methoden der empirischen Sozialforschung* (pp. 565–583). Springer VS.
<https://doi.org/10.1007/978-3-658-21308-4>
- TTDSG, Telekommunikation-Telemedien-Datenschutz-Gesetz (2021). <https://gesetz-ttdsg.de/>, accessed March 22, 2022
- Tuchman, G., & Tuchman, B. W. (1978). *Making news: A study in the construction of reality*. Free Press.
- Turner, F. (2006). *From counterculture to cyberculture*. The University of Chicago Press.
- Tversky, A., & Kahneman, D. (1986). Rational Choice and the Framing of Decisions. *Journal of Business*, 59(4), 251–278. <https://doi.org/10.2307/2352759>

- Twitter sperrt “Titanic”-Account wegen Satire-Tweets. (2018, January 3). *Zeit Online*.
<https://www.zeit.de/digital/internet/2018-01/beatrix-von-storch-twitter-titanic-gesperrt-netzdg-afd>, accessed June 12, 2019
- U.S. Const. amend. I.
- van Dijk, T. A. (1988). *News analysis*. Lawrence Erlbaum Associates.
- van Dijk, T. A. (1996). Discourse, power and access. In C. R. Caldas-Coulthard & M. Coulthard (Eds.), *Texts and Practices: Readings in Critical Discourse Analysis* (pp. 84–106). Routledge.
- van Hulst, M., & Yanow, D. (2016). From policy “frames” to “framing”: Theorizing a more dynamic, political approach. *American Review of Public Administration*, 46(1), 92–112.
<https://doi.org/10.1177/0275074014533142>
- Verbeek, P.-P. (2005). *What things do: Philosophical reflections on technology, agency, and design*. The Pennsylvania State University Press.
- Was ist eigentlich Hate Speech?* (n.d.). No Hate Speech. <https://no-hate-speech.de/de/wissen>, accessed August 27, 2021
- Widdowson, H. G. (1995). Discourse analysis: A critical view. *Language and Literature: International Journal of Stylistics*, 4(3), 157–172.
<https://doi.org/10.1177/096394709500400301>
- William Rehg. (1996). Translator’s introduction. In *Between Facts and Norms* (pp. ix–xxxvii). MIT Press.
- Wissenschaftlicher Dienst des deutschen Bundestags. (2007). *Zuständigkeiten von Bund, Ländern und der EU im Medien- und Telekommunikationsrecht*.
<https://www.bundestag.de/resource/blob/414758/56625ce3f32429cedc2ca5def04f88a1/wd-10-029-07-pdf-data.pdf>, July 12, 2019
- Wissenschaftlicher Dienst des deutschen Bundestags. (2017). *Entwurf eines Netzwerkdurchsetzungsgesetzes-Vereinbarkeit mit der Meinungsfreiheit*.

<https://www.bundestag.de/resource/blob/517610/71bea2c472dda728e8d5ba504b30bfd2/WD-10-026-17-pdf-data.pdf>, accessed August 27, 2021

Wodak, R. (2014). Critical discourse analysis. In C. Leung & B. v. Street (Eds.), *The Routledge Companion to English Studies* (pp. 302–316). Routledge.

Wong, J. C. (2019, February 7). “Overreacting to failure”: Facebook’s new Myanmar strategy baffles local activists. *The Guardian*.

<https://www.theguardian.com/technology/2019/feb/07/facebook-myanmar-genocide-violence-hate-speech>, accessed July 18, 2019

Wong, J. C., & Solon, O. (2018, April 24). Facebook releases content moderation guidelines – rules long kept secret. *The Guardian*.

<https://www.theguardian.com/technology/2018/apr/24/facebook-releases-content-moderation-guidelines-secret-rules>, accessed July 18, 2019

Zuckerberg, M. (2018a). *A blueprint for content governance and enforcement*. Facebook Newsroom.

<https://www.facebook.com/notes/mark-zuckerberg/a-blueprint-for-content-governance-and-enforcement/10156443129621634/>, accessed July 18, 2019

Zuckerberg, M. (2018b). *No Title*. Facebook.

<https://www.facebook.com/zuck/posts/10104874769784071>, accessed July 18, 2019

Appendix A

List of Analyzed Articles

Source: Frankfurter Allgemeine Zeitung

ID	Publication date	Date accessed	Title of article
[FAZ_1]	03/29/2017	09/04/2018	Maas verzichtet auf Vorab-Filter für Hassbotschaften
[FAZ_2]	05/15/2017	09/04/2018	Netzwerkdurchsetzungsgesetz: Nicht einmal mehr die Simulation von Partizipation
[FAZ_3]	05/19/2017	09/04/2018	Die SPD im Kontrollwahn
[FAZ_4]	05/19/2017	09/04/2018	Justizminister Maas: „Im Netz wird viel zu wenig gelöscht“
[FAZ_5]	05/29/2017	09/04/2018	Netzwerkdurchsetzungsgesetz: Facebook wehrt sich gegen Maas' Anti-Hass-Gesetz
[FAZ_6]	06/10/2017	09/04/2018	Justizminister unter Zugzwang: Die SPD braucht einen Erfolg für Maas
[FAZ_7]	06/23/2017	09/04/2018	Maas: „Gutes Ergebnis“: Koalition einig bei Gesetz gegen Internethetze
[FAZ_8]	06/30/2017	09/04/2018	#Netzwerkdurchsetzungsgesetz: Was Sie über das Gesetz gegen Hass im Internet wissen müssen
[FAZ_9]	07/01/2017	09/04/2018	Gesetz gegen Hetze im Internet: Im Freiheitsvakuum
[FAZ_10]	07/09/2017	09/04/2018	Aus dem Maschinenraum: Diskriminierung ist Menschenwerk
[FAZ_11]	08/24/2017	09/04/2018	Von Storch verbreitet falsches Maas-Zitat
[FAZ_12]	11/26/2017	01/11/2020	Digitalwirtschaft: Internetwirtschaft verliert Geduld

[FAZ_13]	01/02/2018	09/04/2018	Twitter-Sperre wegen „NetzDG“? Von Storch und Weidel sehen sich als Zensuropfer
[FAZ_14]	01/02/2018	09/04/2018	Kommentar zu Gauland-Aussage: Volksverhetzend
[FAZ_15]	01/04/2018	09/04/2018	„Titanic“ bleibt gesperrt: Tweets der Wahrheit
[FAZ_16]	01/11/2018	09/04/2018	Netzwerkdurchsetzungsgesetz: Freiheit für Heiko Maas
[FAZ_17]	01/12/2018	01/11/2020	Chancen des NetzDG: Kein grenzenloser Spaß
[FAZ_18]	01/14/2018	01/11/2020	Bilder von Barbara gelöscht: Facebook zensiert Deutschlands bekannteste Streetart-Künstlerin
[FAZ_19]	01/20/2018	09/04/2018	Der Techlash
[FAZ_20]	01/23/2018	09/04/2018	Bundestag: AfD übernimmt Vorsitz im Haushaltsausschuss
[FAZ_21]	02/05/2018	09/04/2018	Cheflobbyist im Gespräch: „Wir wollen kein Debattenwächter sein“
[FAZ_22]	03/08/2018	09/04/2018	Neues SPD-Personal: Ein Stilwechsel im Auswärtigen Amt
[FAZ_23]	03/13/2018	09/04/2018	Digitalkonferenz SXSW: Drohung mit deutschen Gesetzen
[FAZ_24]	04/12/2018	09/04/2018	Einstweilige Verfügung: Facebook darf Nutzer-Beitrag nicht löschen
[FAZ_25]	06/10/2018	09/04/2018	FDP-Politiker klagen gegen Netzwerkdurchsetzungsgesetz
[FAZ_26]	07/18/2018	09/04/2018	„Echte Bedrohung“: Antisemitismus im Internet nimmt zu
[FAZ_27]	07/27/2018	09/04/2018	Freiheit im Internet: Facebook löscht Meinungen nach eigenen Regeln
[FAZ_28]	01/08/2019	09/04/2018	Twitter: Maas-Tweet über Thilo Sarrazin verschwunden

Source: Welt Online

ID	Publication date	Date accessed	Title of article
[Welt_1]	05/19/2017	08/15/2018	Berlin; Dramatische Szenen, als 50 Identitäre das Ministerium stürmen wollen
[Welt_2]	05/22/2017	08/15/2018	Gewalt, Hass, Pornos; So absurd löscht Facebook
[Welt_3]	06/01/2017	08/15/2018	Facebook und Twitter; Hass und Hetze werden nicht schnell genug gelöscht
[Welt_4]	06/17/2017	08/15/2018	Herbert Mertin sieht Gesetz gegen Hass skeptisch
[Welt_5]	06/22/2017	08/15/2018	Landtag diskutiert über Gesetz gegen Hass im Netz
[Welt_6]	06/26/2017	08/15/2018	Hass im Netz; Warum das Facebook-Gesetz höchst problematisch ist
[Welt_7]	07/01/2017	08/15/2018	Hetze im Netz; Lammert rechnet mit Verfassungsklage gegen Anti-Hass-Gesetz
[Welt_8]	08/25/2017	08/15/2018	Auf Twitter; Von Storch verbreitet falsches Maas-Zitat - und reagiert
[Welt_9]	09/27/2017	08/15/2018	Debatte über Fachkräftemangel und Hetze im Internet
[Welt_10]	10/26/2017	08/15/2018	Soziales Netzwerk; Facebook gibt sich ein Grundgesetz gegen Hass
[Welt_11]	01/02/2018	08/15/2018	AfD-Politikerin; Warum Twitter Beatrix von Storchs Account sperrte
[Welt_12]	01/05/2018	08/15/2018	#NetzDG; Wie ein gut gemeintes Gesetz den Hass im Netz verstärkt
[Welt_13]	01/07/2018	08/15/2018	Medien-Woche, Folge 21; Gibt es eigentlich gar nichts Positives am NetzDG?
[Welt_14]	01/08/2018	08/15/2018	NetzDG erst Anfang; Twitter soll nun auch bei Verkehrsdelikten und Mord entscheiden
[Welt_15]	01/28/2018	08/15/2018	Umstrittener Witz; Gottschalk gerät bei Twitter unter Rassismus-Verdacht

[Welt_16]	01/31/2018	08/15/2018	Umstrittener Witz; Gottschalk gerät bei Twitter unter Rassismus-Verdacht
[Welt_17]	02/06/2018	08/15/2018	NetzDG; Die gefährliche Lücke im Maas-Gesetz
[Welt_18]	03/08/2018	08/15/2018	AfD-Chef Meuthen über Maas-Personalie: "Höchststrafe"
[Welt_19]	03/25/2018	08/15/2018	Datenschutz; Der Facebook-Skandal, das sind wir selbst
[Welt_20]	04/19/2018	08/15/2018	Deutschlands Umgang mit Israel; Im Gedenken Riesen. Im Handeln Zwerge
[Welt_21]	05/03/2018	08/15/2018	Tag der Pressefreiheit; Die Freiheit muss jeden Tag neu erschrieben werden
[Welt_22]	06/08/2018	08/15/2018	Facebook; "Uns war nicht zum Feiern zumute"

Source: Süddeutsche Zeitung

ID	Publication date	Date accessed	Title of article
[SZ_1]	04/05/2017	11/13/2019	Gesetz gegen Hasskommentare: Die Justiz muss entscheiden, nicht Facebook
[SZ_2]	04/06/2017	11/13/2019	Fake News: Nachhilfe von Facebook
[SZ_3]	05/19/2017	11/13/2019	Internet: Maas verteidigt sein umstrittenes Gesetz gegen Hass im Netz
[SZ_4]	05/27/2017	11/13/2019	Debatte: Reden wir darüber
[SZ_5]	06/01/2017	11/13/2019	Landtag - Wiesbaden: Hass im Netz: Justizministerin kritisiert Gesetzesentwurf
[SZ_6]	06/14/2017	11/13/2019	Internet: Sieben-Tages-Frist in Gesetz gegen Hass im Netz soll fallen
[SZ_7]	06/19/2017	11/13/2019	Internet: Kritik an Gesetzesentwurf gegen Hasskommentare im Netz
[SZ_8]	06/30/2017	11/13/2019	Soziale Netzwerke: Das Löschen beginnt

[SZ_9]	08/09/2017	11/13/2019	Internet: Facebook richtet zweites deutsches Löschzentrum in Essen ein
[SZ_10]	10/02/2017	05/28/2021	SZ-Magazin: Ich hasse Facebook
[SZ_11]	10/27/2017	11/13/2019	EU: Hass im Netz: Deutscher Alleingang sorgt für Ärger
[SZ_12]	11/16/2017	11/14/2019	Propaganda im Netz: Die gefährliche Sehnsucht nach dem Ausschaltknopf
[SZ_13]	11/24/2017	05/28/2021	Abbruch der Sondierungen: Was führte zum Jamaika-Aus?
[SZ_14]	12/12/2017	05/28/2021	Bundestag: Unerbetener Beifall
[SZ_15]	01/01/2018	11/14/2019	Netzwerkdurchsetzungsgesetz: Beginnt jetzt das große Löschen?
[SZ_16]	01/02/2018	11/14/2019	Netzwerkdurchsetzungsgesetz: Kriminelles gehört gelöscht
[SZ_17]	01/03/2018	11/14/2019	Medien: Twitter löscht Satire-Tweet der "Titanic"
[SZ_18]	01/04/2018	11/14/2019	Parteien: Maas verteidigt Gesetz gegen Hass im Internet
[SZ_19]	01/05/2018	11/14/2019	Internet: Zuckerbergs Ziel für 2018: Facebooks Probleme lösen
[SZ_20]	01/07/2018	11/14/2019	Nach Twittersperren: Opposition will Netzwerkdurchsetzungsgesetz abschaffen
[SZ_21]	01/08/2018	11/15/2019	Internet: Gesetz gegen Hassrede - Was soll und was kann es bewirken?
[SZ_22]	01/08/2018	11/15/2019	Netzwerkdurchsetzungsgesetz: Es geht um nichts Geringeres als die Meinungsfreiheit
[SZ_23]	01/15/2018	11/15/2019	Facebook zensiert die Streetart-Künstlerin „Barbara.“
[SZ_24]	01/19/2018	05/28/2021	Rätsel der Woche: Was unternehmen Firmen gegen Hetze im Internet?
[SZ_25]	01/21/2018	05/28/2021	Digitalkonferenz in München: China im Morgennebel
[SZ_26]	01/23/2018	11/15/2019	Bundestag: AfD übernimmt Vorsitz des Haushaltsausschusses

[SZ_27]	01/25/2018	05/28/2021	Hass im Netz: Antworten und löschen
[SZ_28]	02/01/2018	11/15/2019	Internet - Kassel: Kasseler Forscher verteidigen Gesetz gegen Hass im Internet
[SZ_29]	02/21/2018	05/28/2021	Soziale Netzwerke: Brüssel erhöht Druck auf Facebook und Twitter
[SZ_30]	02/26/2018	11/15/2019	Internet: Münchner Staatsanwälte ermittelt nicht gegen Facebook-Chef
[SZ_31]	03/07/2018	11/18/2019	Technik: Beschwerden über rassistische Inhalte im Internet gestiegen
[SZ_32]	03/14/2018	11/19/2019	Tech-Konferenz SXSW: Die Fehler in der Megastruktur Internet
[SZ_33]	03/22/2018	11/18/2019	Facebook-Chef: "Es tut mir leid"
[SZ_34]	04/12/2018	11/18/2019	Meinungsfreiheit: Gericht verbietet Facebook, Kommentar zu löschen
[SZ_35]	05/08/2018	11/19/2019	Internet - Essen: Facebook kündigt Ausbau der deutschen Löschzentren an
[SZ_36]	05/22/2018	11/19/2019	EU: Europas Kampf gegen Facebook und Co.
[SZ_37]	06/03/2018	11/20/2019	Netzkolumne: Die Facebook- Steuer
[SZ_38]	07/27/2018	05/28/2021	Internet: Gesetz gegen Hass im Netz - Bilanz von YouTube und Facebook
[SZ_39]	07/27/2018	11/20/2019	Bilanz: Was das NetzDG mit Deutschland macht

Source: Zeit Online

ID	Publication date	Date accessed	Title of article
[Zeit_1]	04/05/2017	08/15/2018	Facebook kann sich entspannen
[Zeit_2]	05/16/2017	11/01/2019	Hate-Speech: Das Facebookgesetz könnte noch scheitern
[Zeit_3]	05/24/2017	08/15/2018	Haftbefehl gegen Berliner AfD-Funktionär

[Zeit_4]	06/07/2017	08/15/2018	Kampf dem Terror, Kampf dem Internet
[Zeit_5]	06/23/2017	11/01/2019	Hetze im Internet: Koalition räumt Streitpunkte beim Gesetz gegen Hasskommentare aus
[Zeit_6]	06/30/2017	11/01/2019	Störerhaftung: Bundestag bessert WLAN-Gesetz nach
[Zeit_7]	07/26/2017	11/01/2019	Bundestagswahl: Junge Union versucht es mit Desinformation
[Zeit_8]	08/17/2017	08/15/2018	Kein Netz für Nazis
[Zeit_9]	09/22/2017	08/15/2018	Gesetzgeber sind Spaßbremsen
[Zeit_10]	10/17/2017	11/01/2019	Hasskommentare: Das höchste Bußgeld droht nur Facebook
[Zeit_11]	12/12/2017	11/01/2019	NetzDG: FDP, AfD und Linke wollen ein Anti-Anti-Hass-Gesetz
[Zeit_12]	01/02/2018	11/01/2019	Volkverhetzung: Hunderte Anzeigen gegen AfD-Fraktionsvize von Storch
[Zeit_13]	01/04/2018	11/01/2019	Netzwerkdurchsetzungsgesetz: Was Sie über das NetzDG wissen müssen
[Zeit_14]	01/09/2018	08/15/2018	Der Storch-Effekt
[Zeit_15]	01/17/2018	11/01/2019	Soziale Medien: „An Deiner Stelle würd ich mir in Die Hose scheissen, das meiner Tochter auch mal was passieren könnte.“
[Zeit_16]	01/23/2018	08/15/2018	Vorsitz des Rechtsausschusses geht an die AfD
[Zeit_17]	02/23/2018	08/15/2018	Verschwörungstheorien haben es zu leicht
[Zeit_18]	03/15/2018	11/01/2019	Koalitionsvertrag: Der Wille ist da, der Weg fehlt aber noch
[Zeit_19]	04/11/2018	08/15/2018	Ohnmächtig vor dem Bildschirm
[Zeit_20]	05/23/2018	08/15/2018	Maas versteht es
[Zeit_21]	06/09/2018	11/01/2019	Gipfelbeschluss: G7 wollen Abwehrsystem gegen Fake-News

[Zeit_22]	07/05/2018	11/01/2019	Hate Speech: User nehmen mehr Hass im Internet wahr
-----------	------------	------------	---

Source: Die Tageszeitung

ID	Publication date	Date accessed	Title of article
[TAZ_1]	04/05/2017	10/25/2019	Hass bleibt privat
[TAZ_2]	05/19/2017	10/24/2019	„Fake News“ und Bundestagswahlkampf Löschen, auflisten, checken
[TAZ_3]	06/07/2017	08/15/2018	Hate-Speech-Gesetz: Schnell, schnell
[TAZ_4]	06/21/2017	08/15/2018	Rechtswidrige Inhalte bei Facebook Selbstkontrolle scheint besser
[TAZ_5]	06/30/2017	08/15/2018	Netzwerkdurchsetzungsgesetz
[TAZ_6]	07/08/2017	08/15/2018	Die Macht der Algorithmen Heiko Maas will das Internet bändigen
[TAZ_7]	08/25/2017	10/25/2019	Kommentar Verbot von „linksunten“ Keine Sorge, der Feind steht links
[TAZ_8]	09/27/2017	10/25/2019	Koalition von CDU, FDP und Grünen Wo geht Jamaika, wo nicht?
[TAZ_9]	11/15/2017	08/15/2018	Ende der Vorratsdatenspeicherung? Noch ein Knackpunkt für Jamaika
[TAZ_10]	01/04/2018	10/25/2019	Twitter-Eskapaden von AfD-Mann Maier Rassismus? In Deutschland doch nicht!
[TAZ_11]	01/09/2018	08/15/2018	43 Zeilen Analoghass; Notwendige Maßnahme gegen Hassverächter
[TAZ_12]	01/22/2018	08/15/2018	Soziologe zu Meinungskuratoren im Netz „Facebook lässt sich nicht zerlegen“
[TAZ_13]	02/27/2018	08/15/2018	EU-Sanktionen gegen Internetfirmen Letzte Warnung an Facebook & Co
[TAZ_14]	03/04/2018	08/15/2018	Debatte Hass im Netz Die Sensationsschleuder
[TAZ_15]	04/21/2018	08/15/2018	Facebook und die Meinungsfreiheit Eine Kneipe ist kein Marktplatz

[TAZ_16]	07/04/2018	08/15/2018	FAQ zum Urheberrecht im EU-Parlament Was die EU-Reform bedeuten würde
[TAZ_17]	08/01/2018	08/15/2018	Die Lösungsverfahren bei Facebook und Co gehören unabhängig kontrolliert, sagt Christian Mihr

Source: Netzpolitik.org

ID	Publication date	Date accessed	Title of article
[NP_1]	03/14/2017	09/19/2018	Netzwerkdurchsetzungsgesetz: Maas stellt härtere Regulierungen für soziale Netzwerke vor
[NP_2]	03/17/2017	09/19/2018	Netzpolitischer Wochenrückblick KW 11: Zu Auswirkungen auf die Meinungsfreiheit lesen Sie die Packungsbeilage
[NP_3]	03/30/2017	09/19/2018	Youtube-Chefin gegen Hate-Speech-Gesetz
[NP_4]	04/03/2017	09/19/2018	Zeitschriftenverleger zum Hate-Speech-Gesetz: „Gefährdung der Meinungsfreiheit“
[NP_5]	04/11/2017	09/19/2018	Breites Bündnis stellt sich mit Deklaration für die Meinungsfreiheit gegen Hate-Speech-Gesetz
[NP_6]	04/25/2017	09/19/2018	Zeitschriftenverleger stellen 5-Punkte-Plan gegen Hate-Speech-Gesetz vor
[NP_7]	05/05/2017	09/19/2018	Justizministerium wartet darauf, Facebooks Löschteams besuchen zu dürfen
[NP_8]	05/17/2017	09/19/2018	Reporter ohne Grenzen: Netzwerkdurchsetzungsgesetz ist gefährlicher Schnellschuss
[NP_9]	05/19/2017	09/19/2018	Netzpolitischer Wochenrückblick KW20: Digitale Verunsicherung
[NP_10]	05/23/2017	09/19/2018	Große Koalition feiert Tag des Grundgesetzes: An Doppelmoral kaum zu überbieten

[NP_11]	05/26/2017	09/19/2018	Netzpolitischer Wochenrückblick KW21: Grundgesetz, Freiheitsrechte, Facebook
[NP_12]	06/02/2017	09/19/2018	NetzDG: jugendschutz.net wehrt sich gegen Kritik
[NP_13]	06/06/2017	09/19/2018	Wie man den Hass schürt? Risiken privatisierter Rechtsdurchsetzung
[NP_14]	06/09/2017	09/19/2018	Netzpolitischer Wochenrückblick KW23: Menschenrechte abschaffen, Kommunikation abhören
[NP_15]	06/21/2017	09/19/2018	EU-Digitalkommissarin Marija Gabriel segelt durch Anhörung, stolpert aber bei Verschlüsselung
[NP_16]	06/27/2017	09/19/2018	Global Internet Forum: Internetkonzerne wollen gemeinsam gegen Terrorismus vorgehen
[NP_17]	06/29/2017	09/19/2018	Warum Facebooks Löschregeln weiße Männer schützen, aber nicht schwarze Kinder
[NP_18]	06/30/2017	09/19/2018	WLAN-Gesetz: Bundestag schafft Störerhaftung endlich ab, ermöglicht aber Netzsperrern [Update]
[NP_19]	07/03/2017	09/19/2018	Netzpolitischer Wochenrückblick KW 26: VDS auf Eis gelegt
[NP_20]	07/14/2017	09/19/2018	Twitter sperrt Dokumentation von Polizeigewalt zum G20 (UPDATE)
[NP_21]	07/18/2017	09/19/2018	Transparenzbericht: Unsere Einnahmen und Ausgaben im Juni 2017
[NP_22]	08/17/2017	09/19/2018	Stelldichein mit YouTubern: Merkel brennt sie alle
[NP_23]	09/11/2017	09/19/2018	Netzpolitik bei der AfD: Zwei Kreuze und neun Gründe dagegen
[NP_24]	09/29/2017	09/19/2018	Netzpolitischer Wochenrückblick KW 39: Hol dir deine Daten zurück
[NP_25]	10/04/2017	09/19/2018	„Allzu restriktiv“: OSZE warnt vor Netzwerkdurchsetzungsgesetz

[NP_26]	10/25/2017	09/19/2018	Digitale Gesellschaft veröffentlicht Handlungsempfehlungen für Jamaika-Netzpolitik
[NP_27]	11/10/2017	09/19/2018	EU-Kommission hält Dokumente zum Facebook-Gesetz zurück
[NP_28]	11/18/2017	09/19/2018	Netzpolitischer Wochenrückblick KW 46: Verbraucherfreundliche Netzsperrern
[NP_29]	11/29/2017	09/19/2018	Digitalpolitik mit Haltung: Branchenverband Eco will nicht mit der AfD reden
[NP_30]	12/12/2017	09/19/2018	Bundestag debattiert darüber, NetzDG und Vorratsdatenspeicherung abzuschaffen
[NP_31]	12/18/2017	09/19/2018	Twitter: Neue Maßnahmen gegen Gewalt und Hass
[NP_32]	01/05/2018	09/19/2018	Netzpolitischer Wochenrückblick KW 1: Das große Löschen kann beginnen
[NP_33]	01/09/2018	09/19/2018	NetzDG: Viel Kritik, aber keine schnelle Evaluierung
[NP_34]	01/12/2018	09/19/2018	Netzpolitischer Wochenrückblick KW 2: Wenig Netzpolitik in den Sondierungsgesprächen
[NP_35]	01/19/2018	09/19/2018	Wie der Mensch die Kontrolle über den Algorithmus behalten kann
[NP_36]	01/23/2018	09/19/2018	CSUnet: NetzDG verstößt gegen die Verfassung
[NP_37]	01/29/2018	09/19/2018	Kommentar: Die öffentliche Meinungsbildung wird für Facebook zum Experimentierfeld
[NP_38]	02/07/2018	09/19/2018	Koalitionsvertrag deutet Datenschutz zur „Dateninnovation“ um und drängt auf EU-Leistungsschutzrecht
[NP_39]	02/12/2018	09/19/2018	Landgericht Berlin erklärt Facebooks Klarnamenzwang für rechtswidrig
[NP_40]	02/22/2018	09/19/2018	Gesperrter Nutzer in Kalifornien will Twitter als öffentlichen Raum definieren

[NP_41]	02/23/2018	09/19/2018	Netzpolitischer Wochenrückblick KW 8: Upload-Filter gefährden das Internet
[NP_42]	03/07/2018	09/19/2018	In den sozialen Medien schreibt jede Polizei ihre eigenen Regeln
[NP_43]	03/16/2018	09/19/2018	Netzpolitischer Wochenrückblick KW 11: Vier Jahre weiter so
[NP_44]	04/10/2018	09/19/2018	Wenn Zuckerberg vor den Bundestag käme: Unser Wunsch-Fragenkatalog
[NP_45]	04/27/2018	09/19/2018	Netzpolitische Highlights auf der re:publica'18
[NP_46]	05/08/2018	09/19/2018	Bundesregierung: Beim NetzDG Forderungen aus Iran und China entsprochen
[NP_47]	06/07/2018	09/19/2018	Demokratisch-mediale Öffentlichkeiten im Zeitalter digitaler Plattformen
[NP_48]	06/17/2018	09/19/2018	Eingenetzt: Wer macht bei Deutschland gegen Mexiko den Punktsieg?
[NP_49]	07/27/2018	09/19/2018	Netzpolitischer Wochenrückblick KW 30: Ende der Störerhaftung und mehr Funkzellenabfragen

Source: Tichys Einblick

ID	Publication date	Date accessed	Title of article
[TE_1]	04/06/2017	11/15/2018	Stimmen zum geplanten Netzwerkdurchsetzungsgesetz
[TE_2]	04/16/2017	11/15/2018	Steuern sind nicht Last, sondern Lust
[TE_3]	05/15/2017	11/15/2018	NetzDG: Maas' Netzwerkdurchsetzungsgesetz
[TE_4]	05/18/2017	11/15/2018	Union lässt Merkel, Maas und Bundeskabinett mit NetzDG im Regen stehen
[TE_5]	05/19/2017	11/15/2018	NetzDG - Pressemitteilungen FDP, Nicola Beer und Die Piraten

[TE_6]	05/21/2017	11/15/2018	NetzDG und so weiter: „Die Gedanken sind frei“ – wie lange noch?
[TE_7]	05/25/2017	11/15/2018	NetzDG: Redefreiheit
[TE_8]	06/04/2017	11/15/2018	Maas als Posterboy im Möbelladen
[TE_9]	06/09/2017	11/15/2018	Halali auf die Meinungsfreiheit: EU-Kommission erklärt Zensur im Internet zur Norm
[TE_10]	06/11/2017	11/15/2018	Ein neuer Kampfbegriff: "Islamophobie"
[TE_11]	06/19/2017	11/15/2018	Maas bräuchte für Zensurgesetz schon gesetzgeberischen Gewaltakt
[TE_12]	06/25/2017	07/02/2019	Noch ein Geschäftsmodell - Vertrauenswürdige Löschpartner von Twitter
[TE_13]	06/30/2017	11/15/2018	Konfetti-Parade im Deutschen Bundestag
[TE_14]	07/05/2017	11/15/2018	NetzDG: Vorbild "Heimtückegesetz"?
[TE_15]	07/18/2017	11/15/2018	NetzDG - Das Gesetz, das keiner anwenden kann
[TE_16]	08/05/2017	11/15/2018	Konformität: Alles ist gesagt - nichts ist erreicht
[TE_17]	09/06/2017	11/15/2018	Slomka ist Partei statt Moderatorin, Maas und Scheuer schließen die Reihen
[TE_18]	09/26/2017	11/15/2018	Maas ade
[TE_19]	10/20/2017	11/15/2018	Frontalangriff von Heiko Maas auf die Meinungsfreiheit korrigieren
[TE_20]	11/12/2017	11/15/2018	NetzDG und FDP
[TE_21]	11/16/2017	11/15/2018	Jamaika: Rasendes politisches Handeln ohne Bürger und Parlament
[TE_22]	11/21/2017	11/15/2018	Harare in Berlin und München – oder eher Harakiri?
[TE_23]	12/05/2017	11/15/2018	Maas macht mobil
[TE_24]	12/14/2017	11/15/2018	Kooperations-Koalition: Besser als Merkels Durchwurstel-Regierung

[TE_25]	12/26/2017	11/15/2018	Machen wir 2018 zu einem besonderen Jahr.
[TE_26]	01/07/2018	11/15/2018	Heiko Maas und die Meinungsfreiheit, anno domini
[TE_27]	01/10/2018	11/15/2018	Wie die PC-Ideologie die Freiheit zerstört
[TE_28]	01/12/2018	11/15/2018	NetzDG: Viel Petze und viel Hass
[TE_29]	02/04/2018	11/15/2018	Merkel und das NetzDG: Eine unaufrichtige Frau
[TE_30]	02/11/2018	11/15/2018	R.I.P. Facebook
[TE_31]	02/24/2018	11/15/2018	Essener Tafel: Notfalls mit Gewalt zurück auf Kurs
[TE_32]	03/31/2018	11/15/2018	Gott mit Dir, Du CSU!
[TE_33]	04/20/2018	11/15/2018	Justizministerin Barley: Frontalangriff auf Meinungsfreiheit und Pluralismus
[TE_34]	04/29/2018	11/15/2018	Im Bundestag: Anschlag der Grünen auf die Demokratie vereitelt
[TE_35]	06/04/2018	11/15/2018	Der Wissenschaftliche Dienst (WD) soll Abgeordnete und Parlament unterstützen
[TE_36]	07/04/2018	11/15/2018	Ende des Internets
[TE_37]	07/22/2018	11/15/2018	Die Magersucht der Meinungsfreiheit

Source: Neues Deutschland

ID	Publication date	Date accessed	Title of article
[ND_1]	05/21/2017	01/18/2022	»Identitäre« vor Justizministerium von AfD-Politiker angeführt
[ND_2]	05/20/2017	01/18/2022	Im Zweifel wird Facebook löschen
[ND_3]	06/20/2017	01/18/2022	Gesetzentwurf gegen Hasskommentare im Netz von Experten kritisiert
[ND_4]	06/30/2017	01/18/2022	Anti-Hass-Gesetz beschlossen, Journalisten streiken

[ND_5]	07/08/2017	01/18/2022	Gewaltritt durch den Paragrafendschunzel
[ND_6]	08/26/2017	01/18/2022	Erst Rechts, dann Links Zensur im Internet
[ND_7]	12/05/2017	01/18/2022	Youtube will mehr Videos löschen
[ND_8]	01/02/2018	01/18/2022	AfD-Politikerin im Internet blockiert
[ND_9]	01/05/2018	01/18/2022	Twitter sperrt Account der rechtsradikalen »Goldenen Morgenröte«
[ND_10]	01/06/2018	01/18/2022	»Titanic« darf wieder twittern
[ND_11]	01/08/2018	01/18/2022	Maas-Tweet zu Thilo Sarrazin gelöscht
[ND_12]	01/09/2018	01/18/2022	Meinungsfreiheit in privater Hand
[ND_13]	03/14/2018	01/18/2022	Vor ernsthafter Kritik gefeit
[ND_14]	05/01/2018	01/18/2022	Mensch, Maschine und Macht
[ND_15]	07/27/2018	01/18/2022	Gelöscht ist nicht gestoppt

Source: Der Freitag

ID	Publication date	Date accessed	Title of article
[DF_1]	06/14/2017	01/21/2022	Facebook braucht eine Redaktion
[DF_2]	07/10/2017	01/21/2022	Kollateralschäden inklusive
[DF_3]	09/18/2017	01/21/2022	Alle doof
[DF_4]	09/23/2017	01/21/2022	Gefahr? Wisch und weg
[DF_5]	11/17/2017	01/21/2022	Licht und Schatten
[DF_6]	03/21/2018	01/21/2022	Kein Vergessen

Appendix B

Publications

(04/2018-02/2023)

Fichtner, L., Ambsdorf, J., Branford, J., Mattis, J., Rieder, G., Rudschies, C., Schneider, I., Simon, J., Steinbiß, E., & Steinicke, F. (2023). Ethics assessment form, Department of Informatics, University of Hamburg (Version 1). *Zenodo*.
<https://doi.org/10.5281/zenodo.7622969>

Fichtner, L. (2022). Content moderation and the quest for democratic legitimacy. *Weizenbaum Journal of the Digital Society*, 2(2), 1-29. <https://doi.org/10.34669/wi.wjds/2.2.2>

Fichtner, L. (2021). Moderating the regulators/Regulating the moderators: NetzDG and online content moderation in Germany. In *Proceedings of the Weizenbaum Conference 2021* (pp. 1-4). Berlin: Weizenbaum Institute for the Networked Society - The German Internet Institute.
<https://doi.org/10.34669/wi.cp/3.5>

Fichtner, L. (2018). What kind of cyber security? Theorising cyber security and mapping approaches. *Internet Policy Review*, 7(2), 1-19. <https://doi.org/10.14763/2018.2.788>

Appendix C

Eidesstattliche Versicherung

„Hiermit erkläre ich an Eides statt, dass ich die vorliegende Dissertationsschrift selbst verfasst und keine anderen als die angegebenen Quellen und Hilfsmittel benutzt habe.“

Hamburg, 13.02.2023

Ort, Datum

Unterschrift