



## BIROn - Birkbeck Institutional Research Online

Keenan, Bernard (2024) Proficiency and online safety. *Journal of Law and Society* 51 (3), pp. 367-389. ISSN 0263-323X.

Downloaded from: <https://eprints.bbk.ac.uk/id/eprint/53428/>

*Usage Guidelines:*

Please refer to usage guidelines at <https://eprints.bbk.ac.uk/policies.html> or alternatively contact [lib-eprints@bbk.ac.uk](mailto:lib-eprints@bbk.ac.uk).

---

**ORIGINAL ARTICLE**

---

# Proflicity and online safety legislation

**BERNARD KEENAN**

Birkbeck Law School, Birkbeck,  
University of London, England / Faculty  
of Laws, UCL, London, England

**Correspondence**

Bernard Keenan, Faculty of Laws, UCL,  
Bentham House, 4–8 Endsleigh Gardens,  
London, WC1H 0EG, England.  
Email: [b.keenan@ucl.ac.uk](mailto:b.keenan@ucl.ac.uk)

**Abstract**

This article applies the concept of proflicity to the emergence of online harms legislation. Grounded in social systems theory, proflicity designates a mode of self-presentation prevalent in social media environments, though discernible in the growing number of situations where personal identity is mediated via a profile intended to be publicly observed. Proflicity is distinctly different to ‘sincere’ and ‘authentic’ modes of self-presentation, though they survive alongside it. The concept productively reframes what is at stake in the regulation of ‘harmful’ content on platform-based communications, exemplified in the Online Safety Act 2023, which is subject to extensive criticism for invading privacy and mandating the censorship of lawful speech – values that evolved in relation to authenticity and autonomy. Proflicity engages law first via the identity techniques that law presupposes and second via the design decisions that it now regulates.

## 1 | INTRODUCTION

Democracies are increasingly regulating the way in which communication is generated, shared, amplified, and suppressed on social media and search platforms in a wave of legislation exemplified by the Online Safety Act 2023. This article considers the form of subjectivity at stake in such regulation via the concept of proflicity, proposed by Hans-Georg Moeller and Paul D’Ambrosio.<sup>1</sup>

---

<sup>1</sup> H.-G. Moeller and P. J. D’Ambrosio, *You and Your Profile: Identity after Authenticity* (2021).

-----  
This is an open access article under the terms of the [Creative Commons Attribution](https://creativecommons.org/licenses/by/4.0/) License, which permits use, distribution and reproduction in any medium, provided the original work is properly cited.

© 2024 The Author(s). *Journal of Law and Society* published by John Wiley & Sons Ltd on behalf of Cardiff University (CU).

Proflicity designates a mode of self-presentation that has become ubiquitous in the era of social media. The basic suggestion is that proflic subjectivity is produced differently to authentic, autonomous subjectivity presupposed by modern human rights law. If democracy is threatened by the power of private platforms over the shape and structure of communication, this may in part be because the co-ordinates of the democratic subject are no longer the dominant mode of self-presentation.

The point is not to undermine the values or functions of the older era, but to demonstrate their fragility, emphasize the conditions on which they relied, and denaturalize the kind of ‘harms’ that were taken for granted. Proflicity’s defining features come not by reference to the underlying subject who uses social media, but the way in which social media ‘use’ their users to produce a constantly surprising, second-order form of mass media that generates conflict and ‘harm’ through its own internal dynamic. This in turn leads to the suggestion that the maintenance of freedom in communication is now an affordance of design decisions.

## 2 | ONLINE HARM

The Online Safety Act 2023 became law in the United Kingdom (UK) in October 2023 and had its first public effect the following month, when the regulator Ofcom ordered that access to an online pro-suicide forum be restricted in the UK.<sup>2</sup> The Act aims at ‘making the use of internet services . . . safer for individuals in the United Kingdom’.<sup>3</sup> It imposes legal duties on all large internet platforms providing ‘user-to-user’ communication and search engines, requiring them to identify and eliminate illegal content and activity from their platforms while ensuring that minors are not exposed to content or activity deemed ‘harmful to children’. Such content or activity is further subdivided into three subcategories with corresponding duties. The aim is to make internet service providers ‘safe by design’.

Political calls for regulation exploded in 2016, when political orthodoxy in Western democracy received two sharp shocks in the form of the UK’s Brexit referendum and the election of Donald Trump. These outcomes were blamed by many on the distorting effect of political communication online, especially the ability to generate and amplify ‘fake news’ that bypasses traditional editorial decision makers to ‘go viral’ on social media.<sup>4</sup> Attempting to head off regulation, social media firms implemented voluntary forms of self-regulation, with major platforms such as Facebook, X (formerly known as Twitter), Google, and YouTube investing in oversight bodies, publishing ‘transparency’ reports, and funding research into safety. Arguably, the self-appointed ‘new governors’ of public discourse invested in such initiatives mainly to maintain their autonomy.<sup>5</sup> This is not enough; regulation is needed, say its proponents, to provide clarity, accountability,

<sup>2</sup> T. Smith and A. Crawford, ‘Suicide Forum Blocked to Most UK Users after Ofcom Pressure’ *BBC News*, 10 November 2023, at <<https://www.bbc.com/news/uk-67374129>>.

<sup>3</sup> Online Safety Act 2023, s. 1(1).

<sup>4</sup> Digital, Culture, Media and Sport Committee, ‘Disinformation and “Fake News”: Final Report Published’ *UK Parliament Committees*, 18 February 2019, at <<https://committees.parliament.uk/committee/378/digital-culture-media-and-sport-committee/news/103668/fake-news-report-published-17-19/>>.

<sup>5</sup> B. Keenan, ‘Regulating Communicative Risk: Online Harms and Subjective Rights’ (2023) 35 *Law and Critique* 213. See also K. Klönick, ‘The New Governors: The People, Rules, and Processes Governing Online Speech’ (2018) 131 *Harvard Law Rev.* 1598; E. Douek, ‘Governing Online Speech: From “Posts-as-Trumps” to Proportionality and Probability’ (2021) 121 *Columbia Law Rev.* 759; E. Douek, ‘Content Moderation as Systems Thinking’ (2022) 136 *Harvard Law Rev.* 526.

transparency, and consistency, and to prevent private platforms from taking political decisions without public authority.<sup>6</sup>

To proponents of regulation, the problems with social media were obvious long before 2016. Rather than a healthy communicative public sphere, social platforms have produced a fragmented, opaque, and unpredictable environment where no one seems to be satisfied. Political opinions are arbitrarily censored without appeal, pornographic and violent images circulate freely, recommendation algorithms are exploited by political extremists in each election cycle, scandalous misinformation triggers spontaneous protests and violence, and billionaire owners exercise personal control over what is or is not permitted or promoted. Once the legislative ball was rolling, it became clear that social media had been causing ‘harm’ long before politicians paid attention. A total of 118 different experts and organizations submitted written evidence during the parliamentary committee stage of the Online Safety Bill’s progress through Parliament. They included charities in the children’s sector, the education sector, and the domestic violence sector; parents’ rights groups; anti-racism organizations; mental health organizations; the police; regulators; newspapers and broadcasters; consumer rights groups; academics and lawyers; privacy and civil liberties organizations; and of course the major social media platforms. Ministers and members of Parliament (MPs) were just as keen to take advantage, suggesting new categories of ‘illegal’ content to suppress, including media reports on small boats of migrants and refugees crossing the English Channel.<sup>7</sup> The utility of powers to police online communication is never lost on politicians. However, empirically evidencing ‘harm’ from online communication is difficult,<sup>8</sup> and the implications are fiercely contested, given that they have inescapable political consequences for users’ freedom to choose what to view, what to say, and how to present themselves.<sup>9</sup> Perhaps simply being served with one video after another, regardless of the topic, is harmful to a child’s social and psychic life.<sup>10</sup>

The move to regulate big tech platforms is not limited to the UK. Similar architectural measures are found in the Digital Services Act of the European Union (EU).<sup>11</sup> Whether seeking to intervene and actively mandate strict moderation policies or to abolish them in the name of maximal freedom, these recent laws represent a new era in the regulation of online communication. The regulatory era that had pertained in liberal democracies since the 1990s is decisively over. Under the old settlement, platforms were regarded in law as passive intermediaries with no liability for

<sup>6</sup> Keenan, id.

<sup>7</sup> Open Rights Group, ‘The UK Will Treat Online Images of Immigrants Crossing the Channel as a Criminal Offence’ *European Digital Rights (EDRI)*, 1 February 2024, at <<https://edri.org/our-work/the-uk-will-treat-online-images-of-immigrants-crossing-the-channel-as-a-criminal-offence/>>.

<sup>8</sup> The regulator has begun publishing qualitative analyses of various harms: see Ofcom, ‘Ofcom’s Approach to Implementing the Online Safety Act’ *Ofcom*, 26 October 2023, at <<https://www.ofcom.gov.uk/online-safety/illegal-and-harmful-content/roadmap-to-regulation/>>.

<sup>9</sup> J. M. Twenge et al., ‘Underestimating Digital Media Harm’ (2020) 4 *Nature Human Behaviour* 346; K. Jaidka, ‘Cross-Platform- and Subgroup-Differences in the Well-Being Effects of Twitter, Instagram, and Facebook in the United States’ (2022) 12 *Scientific Reports* 3271; J. Haidt, ‘The Dangerous Experiment on Teen Girls’ *Atlantic*, 21 November 2021, at <<https://www.theatlantic.com/ideas/archive/2021/11/facebooks-dangerous-experiment-teen-girls/620767/>>.

<sup>10</sup> See for example the annual reports from Internet Matters, monitoring children’s physical, social, emotional, and developmental ‘wellbeing’ in relation to internet use: Internet Matters, ‘Children’s Wellbeing in a Digital World: Our Digital Wellbeing Research for 2024’ *Internet Matters*, 25 January 2024, at <<https://www.internetmatters.org/hub/research/childrens-wellbeing-in-a-digital-world-index-report-2024/>>.

<sup>11</sup> Similar purposes lie behind Germany’s Network Enforcement Act (*Netzwerkdurchsetzungsgesetz*). France regulates social media platforms via the Audiovisual Council.

the content that their users posted or the ‘behaviour’ that they enacted. Only where a service provider was notified of illegal content hosted on their service, or ought to have been aware of it, were they potentially liable. This did not preclude private service providers from establishing and enforcing their own ‘community standards’ regarding the kind of content that they would or would not host, and of course the line between legal and illegal content varied with context and jurisdiction – but the structure was generally the same, and in principle allowed users and services maximal freedom of expression and privacy.

By contrast, the new regulatory era currently taking shape around the world requires services to actively monitor online communication according to standards and principles that do not apply offline. This makes users’ rights contingent on the way in which private platforms design and implement those norms in concrete operational rules aimed at tackling specified harms. Even with transparency mechanisms in place, it is difficult to measure the law’s success, given that communication and harm are both complex emergent phenomena. Politicians are able to strike a public posture against big tech while reifying platforms’ inordinate powers over the structure of communication. Critics see this wave of legislation as an ideological cover for a new generation of censorship by corporate interests, and a doomed exercise in techno-solutionism that will cause more harm than good.<sup>12</sup>

### 3 | POLICING HARM

Rather than defining harm, it is instructive to consider how it is identified and policed. The two basic techniques are *content moderation* and *content amplification*. Moderation is the process of removing or limiting the spread of content deemed to violate normative standards. These standards could be the platform’s terms of service, jurisdictional legal prohibitions on prohibited speech, or based on political interventions by those in control of moderators. Amplification ranks and recommends content, anticipating what users want to see. Both sets of techniques arose for commercial reasons. There is simply too much content being generated for users to feasibly navigate by their own initiative, so they are steered to content predicted to ‘hook’ their attention, and away from what might upset them.<sup>13</sup> Conversely, too much pollution of the timeline drives users away.

The line between moderation and amplification is not clear-cut. ‘Viral’ content can spread through user initiative alone, without any amplification from a platform, while much offensive content is simply ignored.<sup>14</sup> Controversy really arises when the platform is seen to have intervened. Thus, the two techniques indicate a familiar problematic of freedom and restraint. Related techniques include conducting detailed risk assessments, adding content-reporting options for users, establishing transparent and robust complaints processes, standardizing record keeping across the sector, requiring public reporting of statistical data regarding moderation, and regularizing review procedures. Transparency requirements enable the regulator, academic

<sup>12</sup> M. P. Angel and d. boyd, ‘Techno-Legal Solutionism: Regulating Children’s Online Safety in the United States’ (2024) *CSLAW ’24: Proceedings of the Symposium on Computer Science and Law* 86, at <[https://www.danah.org/papers/2024/Techno-legal\\_Solutionism\\_PREPRINT.pdf](https://www.danah.org/papers/2024/Techno-legal_Solutionism_PREPRINT.pdf)>.

<sup>13</sup> T. Gillespie, *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions that Shape Social Media* (2018).

<sup>14</sup> D. Keller, ‘Amplification and Its Discontents: Why Regulating the Reach of Online Content Is Hard’ (2021) 1 *J. of Free Speech Law* 227, at 232–233.

researchers, and independent observers to assess the mechanisms by which platforms moderate, recommend, and filter content to users.

Services must differentiate children from adult users to better protect the former from ‘harm’, design for transparency and accountability mechanisms in their interfaces, and at the same time protect users’ rights to ‘freedom of expression and privacy’.<sup>15</sup> This is manifested by duties on the largest ‘Category 1’ platforms to protect ‘content of democratic importance’,<sup>16</sup> ‘news publisher content’, and ‘journalistic content’<sup>17</sup> when removing content posted on a profile. In practice, these amount to mandated proportionality assessments that balance the competing imperatives.

To counter the threat that this poses to free expression, decision makers must consider whether the offending content ‘is or appears to be specifically intended to contribute to democratic political debate in the United Kingdom or a part or area of the United Kingdom’ in the case of individual users.<sup>18</sup> They must give news publishers’ content particular weight in such assessments, and must allow them time to make representations.<sup>19</sup> Particular weight attaches to journalistic content uploaded by journalists or users sharing journalistic work, and there is an expedited appeals system where journalistic content is removed or banned.<sup>20</sup> In general, while services need to create effective content-reporting mechanisms for users to report illegal content or content harmful to children, they must also assess the impact that doing so will have on lawful freedom of expression and the privacy of users.<sup>21</sup> The Online Safety Act effectively authorizes and outlines a kind of delegated judicial power to the platforms.

As such, the problem of ‘harm’ is not a substantive ‘thing’ that can be measured directly, but a kind of problematization or mode of observation, generating objects of concern that inevitably evolve through their regulation and resist it. As Michel Foucault observes, the basic problem of liberal governmentality is not whether there is ‘too much’ freedom or ‘too little’ security; rather, it concerns *producing* enough freedom so that it can be securely *consumed*.<sup>22</sup> That way, the growth of markets, population, health, and other biopolitical markers can be assured. As Jennifer Cobbe points out, online safety laws represent a form of governmentality that actively enhances the political capacities of private platforms to shape the contours of the social, empowering ‘social platforms to more effectively police the boundaries of acceptable speech according to commercial, legal, or other unidentified priorities, which undermines the capacity of these key sites of societal communication to serve as open and inclusive spaces for communication’.<sup>23</sup>

While sharing these concerns, we should also include in the critique of social media the question of subjectivity, recalling that Foucault claims that his studies of power ultimately amount to a history of the subject.<sup>24</sup> Here, legal technique has always played a key role. In different settings

<sup>15</sup> Online Safety Act 2023, s. 1(3).

<sup>16</sup> *Id.*, s. 17.

<sup>17</sup> *Id.*, ss 18 and 19.

<sup>18</sup> *Id.*, s. 17(7)(b).

<sup>19</sup> *Id.*, s. 18.

<sup>20</sup> *Id.*, s. 19.

<sup>21</sup> *Id.*, s. 22.

<sup>22</sup> M. Foucault, *The Birth of Biopolitics*, ed. A. I. Davidson, trans. G. Burchell (2008) 63.

<sup>23</sup> J. Cobbe, ‘Algorithmic Censorship by Social Platforms: Power and Resistance’ (2021) 34 *Philosophy & Technology* 739, at 761.

<sup>24</sup> M. Foucault, *The Hermeneutics of the Subject: Lectures at the Collège de France 1981–1982*, eds F. Gros et al., trans. G. Burchell (2005, repr. edn).

and fields, legal technique narrates the person as the subject of rights, capacities, and duties, and thereby attributes different qualities to people even as technologies dissolve or reconfigure the underlying epistemic substrate. In other words, when technologies reconfigure what a subject 'is', legal tools are deployed to shore up a threatened sense of unity.<sup>25</sup> Online harms legislation, and much critical commentary on it, implicitly assume that social media are tools that subjects use express themselves.

Proflicity complicates the picture by asking how subjects are reshaped by social media. Coined by philosophers Moeller and D'Ambrosio, proflicity describes the identity techniques involved in presenting oneself to others via a curated profile. Profiles are ubiquitous in digitalized forms of personal communication, with impacts on the wider social system, mediating encounters with friends, strangers, institutions, and corporations alike. Subjectivity has evolved accordingly. This means taking seriously the often unserious modes of communication found online as a distinct mode of being. If the features of proflicity seem trivial to older adults, they are probably quite familiar to younger adults who grew up with the internet, and endemic to teenagers and children socialized by social media – precisely the demographic now considered most at risk from 'online harms'. Whether we like it or not, we are today forced to contemplate the problem of profilic harms.

First, it is necessary to note that proflicity is not *profiling*. That profiling is central to the 'surveillance capitalist' economy is well known.<sup>26</sup> Profiles are generated by platforms via a variety of opaque classification techniques used to measure, quantify, predict, and influence user behaviour – techniques with a troubling genealogy in racialized behavioural science.<sup>27</sup> Profiles structure not only personal communication online but all aspects of the platform economy. In the 'society of algorithms', all users of multi-sided communication platforms are profiled in multiple dimensions as objects of data analytics, from which value can be extracted and governing techniques applied.<sup>28</sup> The automated profiling of individuals as 'data subjects' is a topic of legal and political debate and legal regulation. Article 22 of the General Data Protection Regulation (GDPR), for instance, contains a provision limiting the scope of automated profiling.<sup>29</sup> Profiling operates alongside proflicity, feeds off it, and conditions it in contingent, non-determinative ways. However, the focus of this article is on proflicity: the auto-profiling by which subjects perform themselves, or, rather, the way in which a profile is elicited from a subject by social media platforms.

The next section sets out the key dimensions of proflicity. It is then contrasted with *sincerity* and *authenticity*, two earlier modes of self-presentation. The question of self-presentation is then indexed to Niklas Luhmann's theory of social structure and the differentiation of the subject in social systems of communication. The relationship between the system of the mass media and profilic identity techniques is then explained. With this theoretical scaffolding in place, the implications of the concept are discussed in relation to online harms, in contradistinction to critical approaches that rely on an underlying presumption of autonomous authenticity.

<sup>25</sup> A. Pottage, 'Unitas Personae: On Legal and Biological Self-Narration' (2002) 14 *Law & Literature* 275.

<sup>26</sup> The best-known account is S. Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (2019).

<sup>27</sup> A. Bernard, *The Triumph of Profiling: The Self in Digital Culture*, trans. V. A. Pakis (2019).

<sup>28</sup> N. Srnicek, *Platform Capitalism* (2016); A. Rouvroy and T. Berns, 'Algorithmic Governmentality and Prospects of Emancipation', trans. L. Carey-Libbrecht (2013) 177 *Reseaux* 163.

<sup>29</sup> GDPR, art. 22(1): 'The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.'

## 4 | PROFILICITY

Profilic techniques are found in situations where an individual communicates their identity in a form that is *seen as being seen* and is expected to be validated by the feedback of other observers. Individuals and organizations curate and maintain profiles with an eye on the observations of a *general peer* – that is, an undetermined observer or observers who will view those profiles, in turn knowing that they are intended to be observed.

Profile-based identities are not only found in the form of online avatars but can also be composed and utilized in a range of offline settings, with academia an example. Each scholar's 'output' in teaching and research is profiled via metrics that are based on the feedback provided by a generalized audience – students and other academics – and the results are in turn publicly deployed in various contexts, some online, and go quite some way to determining a scholar's career prospects, even though the constructed artificiality of profile building is known to all involved. As such, even offline profiles have online manifestations, and proficity cuts across the online/offline distinction. Put simply, proficity is much like branding; in order to be visible in a particular market or institution or on a particular platform, one must build and invest in a profile. In both cases, one hopes for future returns.

The general peer is an abstraction that cannot be reduced to any one specific observer.<sup>30</sup> It is the undetermined totality of profiles that can view a profile, expressed only in aggregated form, such as the number of 'likes' on a tweet, shares of an article or link, viewers of a video, followers of a profile, and so on. The metrics cannot reveal what any individual understood or thought about what they saw, but they can provide meaningful second-order information about how a profile has been observed, and in this way the general peer can confirm or reject the identity that the user hopes to produce. In Elena Esposito's terminology, the observations of the general peer are an effect of 'artificial communication', combining human and non-human decision-making elements to generate unpredictable and contingent meaning that is composed without reference to the intentional agency of any one actor.<sup>31</sup>

The members of the general peer are also subject to the same profilic conditions. Everyone observes, understands, and presents themselves in anticipation of their own indeterminate audience, while at the same time forming part of the mass of indeterminate profiles observing others' profiles. Proficity is thus a form of *generalized second-order observation*, a term drawn from Luhmann's social systems theory, expanded below. In the loop of reflexive self-observation via the projected observation of unknown others, people behave differently than they do when their observers are determinate and familiar. Curating one's profile means selecting information and presenting it in a self-consciously constructed manner. An individual may operate multiple profiles and present themselves differently on each while giving no cause for suspicion. Indeed, one's 'professional' profile on LinkedIn is expected to be different to the 'social' profile on a platform such as X, which is different again from one's YouTube channel. Each profile is a fragmented and partial aspect of identity.

Proficity is not an effect of digital media but of media more generally. However, proficity and social media have co-evolved in recent years, with ubiquitous digital communication creating the conditions to make proficity the ascendent mode of public self-representation today. Online safety legislation is epiphenomenal to this shift – a contingent response to the emergence

<sup>30</sup> Moeller and D'Ambrosio, op. cit., n. 1, p. 48.

<sup>31</sup> E. Esposito, *Artificial Communication: How Algorithms Produce Social Intelligence* (2022).



of proficity that engages with the digital environment in which profiles take form, interface with individual subjects, and circulate socially.

## 5 | DIMENSIONS OF PROFICITY

Every user in each profile ecosystem is simultaneously performing their identity for the general peer and constituting a small part of the general peer for others. Identity affirmation via proficity feels good, despite its artificial quality. It confirms that we are who we are and confirms that others are who they are. In this way, social validation feedback loops recursively emerge. Social identity affirmation, rather than biological dopamine addiction, accounts for the well-known compulsion to continually check, engage, expand, and refresh one's profic identity.<sup>32</sup> Here are the key elements that compose the profic environment.

First, to generate a profile, one must create an *account*. An account provides an interface or structural coupling point between the individual or organization setting up the profile and the service provider hosting the profile.<sup>33</sup> The distinction between an account and a profile is useful when considering the legal dimensions of regulation after proficity, as the account is the mechanism by which individual or corporate legal subjects are bound by the terms and conditions of the platform, indicate their lawful consent to the collection and processing of data, and allow their legal identity and age to be verified by the platform for police, security, and other regulatory purposes. However, though they can produce some form of accountability, accounts do not determine what one does on one's profile.

A *feed* is an interface that supplies a constant stream of new information for users to consume and thereby to become part of the general peer.<sup>34</sup> This stream reflects the dynamics of new information added to the internet, particularly social media. Information is selected for display via automated analyses of profic communication in combination with 'curatorial' decisions taken by platform operators. Algorithmically generated and mutable, the feed intensifies the selection dynamics of the mass media, which constantly supply society with fresh information while disposing of redundant information (see below). The feed educates users in the reflexive techniques of profic observation; users observe the observations of other observers and reflexively adapt their communication accordingly. To post on a platform is always to observe oneself at the second-order level in an ever-changing, ever-renewing flow of communication about communication. Feeds are of course highly normative; content is amplified and suppressed in accordance with decisions taken by human and algorithmic agents, and online safety rules directly target these decisions.

The feed not only informs the user; it is also the thing that elicits communication from them. Information is selected for presentation to each user individually according to the platform's algorithmic analysis of their interests and tastes, but this selection is specifically intended to drive 'engagement' – that is, to prompt them to contribute to the communication in the network. The questions ubiquitously posed by the interface are revealing; Facebook asks everyone 'What's on your mind?', while X demands to know 'What's happening?!'

Usually, what is happening is a meme of some kind. *Memes*, as defined by Richard Dawkins in 1976, are units of information that successfully reproduce themselves across a culture: skills,

<sup>32</sup> Moeller and D'Ambrosio, *op. cit.*, n. 1, p. 53.

<sup>33</sup> *Id.*, p. 54.

<sup>34</sup> *Id.*, p. 56.

techniques, and artistic expressions that encode information in a social form of evolution.<sup>35</sup> Profilic communication similarly aims at cultural reproduction and evolution. To ‘go viral’ means that an idea, joke, video, image, or other unit of information is rapidly reproduced across the network in question. For the profiles concerned, this can be enormously satisfying, yet never satiating. In some cases, it can be personally devastating, even psychologically damaging.<sup>36</sup>

Social media are deliberately designed to enable mimetic forms of communication. Simply ‘liking’, reposting, or sharing a message composed by someone else associates that message with one’s own profile, while potentially recontextualizing it in a variety of unpredictable ways (affirmation, amplification, condemnation, sincere or ironic commentary, and so on). *Every* operation in profilic environments – even the copying of information generated elsewhere – is simultaneously a contribution to the ongoing reproduction of communication and a potential moment of variation or mutation, which in turn can be successfully picked up and reproduced.<sup>37</sup> Memes generate evolutionary networks of association that form connections between otherwise non-associated users. Sharing can generate micro-interactions on social media, allowing one-to-one relationships of mutual agreement to be publicly signalled, or it can produce an impersonal virality. Both can affirm identity, but the latter creates larger feedback effects; a profile that goes viral gains prominence and thus increases its future chances of further successful virality. Successful identity techniques are also mimetic; one can learn to generate successful memes by observing the successful memes of others. Profilic techniques on social media involve a constant cycle of posting, updating, ‘liking’, commenting, recycling, associating, and adapting the observations of other observers.

The subject in proficity is doubly *transparent*. First, there is a transparent link between communication and profiles, insofar as each user is presumed to have selected what they publish, ‘like’, or share on their profile. This link can generate a normative dynamic of responsibility and accountability, sometimes with unforeseeable consequences, as one’s record of posted content remains visible over time unless deliberately deleted and can be taken up by observers for use in unintended contexts. This ‘horizontal’ transparency is taken for granted, and users respond to it in different ways. Second, users understand that they are transparent to the platform in a non-reciprocal, ‘vertical’ relationship of surveillance. The business model of social media platforms depends on gleaning useful data about their users both individually and collectively, to perceive more than users can themselves perceive, and to exercise control over the patterns latent within that data and monetize it, primarily through advertising revenue.

Despite horizontal transparency, profilic *agency* is unequal. It is unevenly distributed and associational, and frequently unearned or unrelated to one’s own profilic labour. Vast commercial and governmental organizations, celebrities, journalists, politicians, and other individuals can exercise profilic agency on account of pre-existing fame. Some users ‘earn’ high follower counts by their prolific use of social media, leading to situations where those who have perfected the identity technologies of proficity are more likely to be seen by a greater number of users, who can in turn associate their own profiles with those profiles and the promoted or associated causes, styles, opinions, and images. If one constantly updates one’s profile with new posts, one benefits from social validation by way of new feedback. Conversely, ‘profile stagnation is identity regression’.<sup>38</sup>

<sup>35</sup> R. Dawkins, *The Selfish Gene* (1989 [1976]) 192.

<sup>36</sup> Moeller and D’Ambrosio, *op. cit.*, n. 1, pp. 59–60.

<sup>37</sup> *Id.*, p. 60.

<sup>38</sup> *Id.*, p. 233.

The better one gets at building and maintaining a profile, the greater the pressure of managing the expectations of a growing audience. Less successful profiles experience the problem of being ignored, which means that they are denied the experience of being selected as interesting by the general peer.<sup>39</sup>

Most profiles are more part of the general peer than they are observed by it. Yet even low-status profiles can collectively exercise agency through partaking in moments of shared satisfaction. Mass coordination around a topic produces a sense of collective agency, a fleeting unity realized through sharing and commenting on others' communication. Such moments can be celebratory, condemnatory, mocking, or all of the above, depending on one's alignment. Hence, controversies offer particularly good opportunities for growth in the network. As positive feedback loops generated by the recursive selections of algorithms amplify the attention received from the general peer, the more dramatically a profile supports a divisive cause, the more attention that profile gains. In turn, the cause becomes ever more important to that profile.<sup>40</sup> It could even form the basis of a new career as a commentator, politician, or campaigner. An attack on the cause is tantamount to an attack on the profile, and vice versa. What are often derided as 'virtue signalling' or 'trolling' are also adaptive achievements of successful profilic communication. After all, there is practically no event or statement that cannot be subjected to second-order moral evaluation. It does not matter so much what the content means. Opportunities to select an opponent's message and morally condemn it are always available, ensuring that political deliberation and consensus building are difficult if not impossible on large-scale platforms.<sup>41</sup>

There are dangers here too. At the moral level, one can suddenly be 'called out', condemned, and mimetically scapegoated; self-exposure prefigures self-destruction.<sup>42</sup> Where political events unfold and are mediated online, there is little scope for reflection, uncertainty, or questioning, since questions must be addressed to the general peer. In such soteriological moments, remaining 'silent' is problematized and condemned. The pressure of the general peer competes with traditional authority in determining how the world should be observed.<sup>43</sup> This transforms the materiality of the democratic public sphere,<sup>44</sup> giving inordinate power to the decisions made by platforms over the information that they promote or suppress, producing what Cobbe has labelled 'algorithmic censorship'.<sup>45</sup> However, algorithms do not censor as effectively as they amplify, producing discourse in the register of acclamation and condemnation.<sup>46</sup> Profiles represent investments of identity, but investments come with risk. The 'self-censorship' effect is an emergent effect in an environment of constant second-order exposure, inferential association, and mutual surveillance.<sup>47</sup> Identity investment produces intense forms of identity politics.

---

<sup>39</sup> Id., p. 234.

<sup>40</sup> Id., p. 89.

<sup>41</sup> Id., pp. 90–96.

<sup>42</sup> Id., p. 247. See also J. Ronson, *So You've Been Publicly Shamed* (2015).

<sup>43</sup> Moeller and D'Ambrosio, id., p. 79.

<sup>44</sup> The materiality of communication media is not captured by analyses that do not take account of time: see for example H. Rosa, 'Social Media Filters and Resonances: Democracy and the Contemporary Public Sphere' (2022) 39 *Theory, Culture & Society* 17.

<sup>45</sup> Cobbe, op. cit., n. 23.

<sup>46</sup> M. Dean, 'Political Acclamation, Social Media and the Public Mood' (2017) 20 *European J. of Social Theory* 417.

<sup>47</sup> Moeller and D'Ambrosio, op. cit., n. 1, p. 248.

Conceptually, proficity offers certain analytic advantages in thinking about how online communication operates. First, proficity is not a *diminution* of one's 'true' identity but represents a different dimension of identity. Profic communication may appear trivial, insubstantial, inauthentic, or insincere, but only from the perspective of authenticity. Many analyses of online communication (and its regulation) implicitly make this mistake.<sup>48</sup>

Second, proficity is useful because it is irreducible to technological determination. The semantics and problems of profic identity technology predate social media, originating in the spectacular society engendered by the mass media.<sup>49</sup> As explored below, proficity is the generalization of the mass media and its integration with digital selfhood. Its intellectual genealogy lies in the work of Walter Benjamin,<sup>50</sup> Guy Debord,<sup>51</sup> Jean Baudrillard,<sup>52</sup> Marshall McLuhan,<sup>53</sup> and other theorists of the capitalist media system. The evolution of the mass media has seen their constructed reality gain epistemic priority over 'natural' phenomenological experience.

Third, proficity is conceptually rooted in evolutionary and autopoietic systems theory. It is a philosophically existentialist category rather than a social one, but it observes society as a sense-making *unitas multiplex*, a system that gains coherence and structure only via its own communicative operations. As an intensification of the semantic drift of modernity towards generalized second-order observation, which according to Luhmann is the defining feature of modern society, the proficity that we see today is not necessarily the proficity that we will have tomorrow. That in turn opens the space for thinking critically with proficity.

In the next two sections, we contrast proficity with sincerity and authenticity, and then situate it within Luhmann's socio-theoretical matrix.

## 6 | SINCERITY AND AUTHENTICITY

The distinctiveness of proficity becomes clearer when the concept is contrasted against the identity technologies of *sincerity* and *authenticity*, adding a third term to the binary proposed in Lionel Trilling's 1970 Norton lectures.<sup>54</sup> Trilling claims that two distinct modalities of identity are distinguishable in Western cultural history.

First came sincerity, best summed up in Polonius' advice to Laertes: 'This above all: to thine own self be true / And it doth follow, as the night the day, / Thou canst not then be false to any man.'<sup>55</sup> At stake in sincerity is honesty to others and thus performing one's duties well. Sincerity techniques aim at self-discipline, allowing subjects to differentiate right from wrong, to be recognized as a good soul, and, eventually, to be rewarded in the next world.<sup>56</sup> They deny that identity is constructed while imposing a rigid construction on subjects.<sup>57</sup>

<sup>48</sup> See for example B.-C. Han, *Psychopolitics: Neoliberalism and New Technologies of Power*, trans. E. Butler (2017).

<sup>49</sup> U. Stäheli, *Spectacular Speculation: Thrills, the Economy, and Popular Discourse*, trans. E. Savoth (2013).

<sup>50</sup> W. Benjamin, *The Work of Art in the Age of Mechanical Reproduction* (1935).

<sup>51</sup> G. Debord, *Society of the Spectacle* (1970).

<sup>52</sup> J. Baudrillard, *Simulacra and Simulation* (1983).

<sup>53</sup> M. McLuhan, *Understanding Media: The Extensions of Man* (1964).

<sup>54</sup> L. Trilling, *Sincerity and Authenticity: The Charles Eliot Norton Lectures* (1972).

<sup>55</sup> W. Shakespeare, *Hamlet* (1994) Act 1 Scene 3. See also Trilling, id., pp. 3–6.

<sup>56</sup> Trilling, id., p. 9.

<sup>57</sup> Moeller and D'Ambrosio, op. cit., n. 1, p. 150.

In early modern literature, a ‘villain’ was an insincere, untrue person. Villains dissembled their true nature and intentions. The proliferation of villains in early modern literature reflected a preoccupation with the growing inadequacy of sincerity. Once people began to autonomously decide on morality, faith, and loyalty, to acquire rights or property that they did not inherit, and to otherwise diverge from the role expected of them, the heuristics of sincerity were no longer adequate.<sup>58</sup> This became apparent as the social order complexified.<sup>59</sup> What was supposedly natural began to appear as an arbitrary set of constraints on individuality. Eventually, sincerity gave way to the identity technology of the modern age: authenticity.

In authenticity culture, sincerity loses its esteem as cultural expectations come to appear as mere ritual. Authenticity compels subjects to search instead for their ‘inner truth’. Hilary Mantel’s novel *Wolf Hall* is a reimagining of the rise and fall of Thomas Cromwell, Secretary of State to Henry VIII, a figure of English history long remembered as a villain.<sup>60</sup> In Mantel’s rehabilitation, Cromwell is an authentic self in a court full of liars and charlatans. He must hide his true beliefs and capacities, bracing himself for interactions with his superiors (and intellectual inferiors) in the capricious king’s court by repeating an inward mantra of insincerity: ‘Arrange your face.’ To modern readers, the villain Cromwell is an authentic hero.

Trilling shows that the modern hero is not someone who performs their duty well but an outsider who turns inward to gain an ironic, critical, or morally superior distance from the strictures of society. Authenticity aims at finding what James Joyce called ‘epiphanies’, moments when spirit reveals itself, transfiguring the mundane commonplaces of life.<sup>61</sup> In art, philosophy, literature, and music, new aesthetic techniques emerged for living an authentic life, accompanied by suspicion of the effects of money and technology on the organic existence of humanity.<sup>62</sup> As Charles Taylor puts it, the modern subject thinks of itself as a kind of ‘subtraction story: the old horizons were eroded, burned away, and what emerges is the underlying sense of ourselves as individuals.’<sup>63</sup> However, this too is an effect of social practices and communication. The authentic subject is confronted with a different identity paradox to the one presented by sincerity. Authentic subjects are not necessarily expected to conform to an external moral order but to find their own. Everyone is encouraged to find out who they really are – to be unique, like everyone else. However, there is no internal moral compass. In Lacanian terms, the truth of the subject is in what they do *not* have, their constitutive lack.<sup>64</sup>

Sincerity did not disappear in modernity, but it no longer governed self-presentation. Sincere identity techniques are still in use today; indeed, they are essential in any situation where one must trust an individual or institution to perform duties. For example, when a solicitor undertakes to perform a task, they are bound to do it without reward. Just as villains are entitled to legal representation, so too are lawyers entitled not to be identified with their clients. It would be a category error to assume that a barrister *authentically* believes the instructions of their clients, but it is critical to the legal system that they *sincerely* advance them within the bounds of legality.

<sup>58</sup> Trilling, op. cit., n. 54, p. 16.

<sup>59</sup> Moeller and D’Ambrosio, op. cit., n. 1, p. 152.

<sup>60</sup> H. Mantel, *Wolf Hall* (2009).

<sup>61</sup> Trilling, op. cit., n. 54, pp. 89–90.

<sup>62</sup> Id., pp. 120–127.

<sup>63</sup> C. Taylor, *Modern Social Imaginaries* (2003) 64.

<sup>64</sup> K. Reinhard and J. Reinhard Lupton, ‘The Subject of Religion: Lacan and the Ten Commandments’ (2003) 33 *Diacritics* 71.

They are not lying; they are performing a duty. The split between one's authentic individuality and the sincerity required of a role can be observed in many professional, pastoral, and familial situations.

In the next section, we review Luhmann's reconstruction of the subject as the semantic reference point for self-organizing social systems, indexing the shift from sincerity to authenticity to changes in the structure of communication in society.

## 7 | IDENTITY, DIFFERENTIATION, AND RIGHTS

On Luhmann's account, society is not made up of people and populations but is instead the product of differentiated and closed systems of communication that operate in the medium of *meaning*. Humans are composed of 'psychical systems' that operate in the medium of *consciousness*, coupled to the 'living systems' of the body. Communication, consciousness, and life systems are each 'structurally coupled' to one another, but each is firmly in the 'environment' of the others and cannot 'cross the boundary' to directly interact. Each system produces only its own operations, including its own cognition of its environment, which is nothing but an internal correlate generated by selective sensing operations.<sup>65</sup> A theory of society without bodies or minds 'in' it seems counter-intuitive but allows Luhmann a high degree of theoretical abstraction that can account for how complex society evolved without needing some external guiding unity, self-referentially taking itself as its own object of enquiry.

For Luhmann, meaning is the basic 'substance' of the social: '[A]ll human experience and action occurs meaningfully and is accessible to itself only through meaning.'<sup>66</sup> Communication is not defined by the information produced in a statement, nor by the subjective understanding in the minds of participants, but by the actualization of a meaningful selection from a horizon of other possible selections within a self-referential system. Semantics operate differently within different systems, and serve to structure selections, making the complexity of communication manageable via stable references. Every social system develops an inventory of ready-made semantics and makes them available to connect new selections with what is already given and familiar, thus conditioning and narrowing the options for meaningful communication across a range of settings and contexts.<sup>67</sup> For instance, this article has observed the 'individual' or the 'subject' as a semantic reference point and an academic and sociological object. However, the individual subject has a different meaning when used in legal argument, and another again in economics, figurative painting, cognitive behavioural therapy, psychoanalysis, and so on. None of these subjects is ever quite 'there'; they are always referents in an ongoing self-sustaining process of sense making about the world.

Semantics change over time in accordance with the structure of systemic differentiation within society. Luhmann identifies three overarching types of social differentiation: *segmentary*,

<sup>65</sup> N. Luhmann, *Social Systems*, trans. J. Bednarz and D. Baecker (1995); N. Luhmann, 'How Can the Mind Participate in Communication?' in *Theories of Distinction: Redescribing the Descriptions of Modernity*, ed. W. Rasch (2002) 169.

<sup>66</sup> N. Luhmann, 'Social Structure and Semantic Tradition' in *The Making of Meaning: From the Individual to Social Order (Selections from N. Luhmann's Works on Semantics and Social Structure)*, ed. C. Morgner, trans. M. Hiley et al. (2022) 28, at 35.

<sup>67</sup> N. Luhmann, 'Individual, Individuality, Individualism' in *The Making of Meaning: From the Individual to Social Order: Selections from N. Luhmann's Works on Semantics and Social Structure*, ed. C. Morgner, trans. M. Hiley et al. (2022) 217.

*stratified*, and *functionally differentiated*. Each structure allows different kinds of semantic development to occur.

In segmentary societies, differentiation is primarily marked between similar units, such as families, households, kinship groups, or villages. The complexity of communication is relatively constrained. Memory provides resources for the development of rituals and social roles that give meaning to society and its environment, while personal identity is closely tied to the unit into which one has been born. As Luhmann puts it, there is a ‘strong coding’ of kinship affiliations and social roles. Segmentary societies gain stability at the cost of limiting internal differentiation. The options for communicating identity are accordingly narrow.<sup>68</sup>

In stratified societies, differences within society are connected to a unifying hierarchical structure. Basic inclusion criteria depend largely on accidents of birth, such as membership of a family, household, nation, or estate. However, unlike in segmentary societies, stratified societies are organized around the stratified differentiation of roles, especially in relation to families, law, religion, and power.<sup>69</sup> Individuals face expectations associated with tightly defined social roles and must suppress personal idiosyncrasies, meaning that role performance is experienced by individuals as a moral challenge. The imperative to conform to one’s role exerts psychological pressure on individuals and limits their options, even within the elite strata, as everyone is potentially subject to moral criticism and alert to the possibility of punishment or reward in the afterlife.<sup>70</sup> For example, Christian techniques of confession and prayer amount to an intensive hermeneutical practice carried out daily: ‘[O]ne is oriented to the self in a mode of deciphering one’s intentions, of rooting them out and purging oneself of impure intentions.’<sup>71</sup> The goal is harmonizing oneself with the natural order, instilling ‘belief, obedience, loyalty, and love’ in the innermost self.<sup>72</sup> Medieval law and natural philosophy presupposed this unity as an epistemological foundation, with legal subjectivity operating through what W. T. Murphy calls the ‘penetrative scheme’, according to which the hierarchical structure of society was imposed on the body while the law produced and adjudicated on the ‘juridical soul’.<sup>73</sup>

Stratified societies provided the conditions for sincerity to operate as the dominant identity technology. By contrast, in contemporary functionally differentiated society, the individual is fully differentiated from the social order and becomes the mediation point between autopoietic systems that are differentiated from one another.<sup>74</sup> Individuals are no longer expected to occupy fixed roles or to take on duties other than those to which they consent. Everyone, in principle, may take part in the economy, professionalize themselves through education, vote and express opinions on politics, have recourse to the legal system in cases of normative conflict, love whoever and however they chose, change their name, start a new family, adopt a new nationality, and rely on the continually renewed processes of the mass media to discover how little they know about the complexity of the world.<sup>75</sup> The modern subject thus stands *outside* every functionally differentiated social

<sup>68</sup> N. Luhmann, *Theory of Society*, Vol. 2, trans. R. Barrett (2012) 27–41.

<sup>69</sup> Id., pp. 50–65.

<sup>70</sup> Luhmann, op. cit., n. 67, p. 224.

<sup>71</sup> W. T. Murphy, *The Oldest Social Science? Configurations of Law and Modernity* (1997) 14.

<sup>72</sup> Id., pp. 10–11.

<sup>73</sup> Id.

<sup>74</sup> Luhmann, op. cit., n. 68, p. 85.

<sup>75</sup> Luhmann, op. cit., n. 67, p. 224.

system, yet may only communicate through them.<sup>76</sup> Without a firm orientation provided by social hierarchy, modern subjects – that is, individuals – learn to produce themselves as ‘a wholeness that was not there at first in the fragmentary, erratic development of their own imaginary life.’<sup>77</sup> In other words, people are abandoned or coerced into modernity as much as they are liberated by it.<sup>78</sup>

Luhmann offers Kantian moral philosophy as an example of the modern differentiation of self from society. For Kant, individuality is only assured through the natural faculty of subjective reason. Critical reason alone allows one to establish oneself independently of beliefs and traditions imposed by society. Only reason, rather than property or inherited nobility, can then form the legitimate foundation of a moral order.<sup>79</sup> Individuality thus no longer refers to an immortal soul that belongs to God, but to an ‘inner infinity and its need for expression.’<sup>80</sup> For Luhmann, this marks a rupture:

In semantics, this is expressed by the fact that ‘the individual’ is no longer *known*, but *unknown* (as spontaneous, inconstant, a black box, etc.). It is precisely the exclusion from the system of society that makes it possible for ‘the individual’ to re-enter ideology as a value.<sup>81</sup>

The ‘black boxing’ of the individual explains Luhmann’s axiom that humans are in the ‘environment’ of communication. Social differentiation and historical change occur as communication evolves in complexity. Society makes available the semantic possibilities that allow consciousness to experience itself as itself. This means that individuals encounter themselves and give autonomous meaning to their identities reflexively, as second-order observers. To become modern is to learn to operate through one’s observations, which are oriented towards the observations of others. Self-representation becomes a second-order question, and therefore risky; consequently, it becomes a matter of communicating one’s authenticity. The pressure to be authentic, just like everyone else, gives rise to a new system of self-expression: fashion.<sup>82</sup>

As social systems become functionally differentiated, they recursively develop in complexity and autonomy. Law, politics, economics, education, art, and religion all respond to growing environmental contingency by developing their internal complexity. The cognitive pressures on the psychical systems of individuals grow correspondingly.<sup>83</sup> Functionally differentiated social systems constantly respond to changes in their environment in their own ways, using their own codes, and thus evolutionary changes occur contingently in each system, with unpredictable results in others. Absent a single organizing principle, objective point of observation, or absolute

<sup>76</sup> N. Luhmann, ‘The Cognitive Program of Constructivism and a Reality that Remains Unknown’ (1991) in *Selforganization: The Portrait of a Scientific Revolution*, eds W. Krohn et al. (1990) 64, at 64–67.

<sup>77</sup> Luhmann, op. cit., n. 67, p. 220.

<sup>78</sup> N. Luhmann, ‘Globalization or World Society: How to Conceive of Modern Society?’ (1997) 7 *International Rev. of Sociology* 67; P. Sloterdijk, *In the World Interior of Capital: For a Philosophical Theory of Globalization*, trans. W. Hoban (2013).

<sup>79</sup> Luhmann, op. cit., n. 67, p. 264.

<sup>80</sup> Id., p. 267.

<sup>81</sup> Id., p. 224, emphasis in original.

<sup>82</sup> E. Esposito, ‘Originality through Imitation: The Rationality of Fashion’ (2011) 32 *Organization Studies* 603, at 606.

<sup>83</sup> Luhmann, op. cit., n. 67, p. 228.



knowledge, the world is processed and filtered through observational programmes, methodologies, theories, and sense-making devices – in short, a plurality of second-order perspectives. There is no natural ‘balance’ here; the prospect of one system dominating others or reconfiguring their operations is real but is dangerous only if one is not prepared to assert contrary values and defend them.<sup>84</sup>

In the legal system, the autonomous modern subject is protected by human rights. Whereas the ‘penetrative scheme’ sought to incorporate the soul into the dominant moral order, in modernity, morality became pluralized and differentiated from the law, which in turn was positivized; everything is permitted except what is specifically prohibited.<sup>85</sup> Human rights function by producing a ‘thin’ kind of inclusion for subjects in society. They do no more than secure one’s participation in society’s differentiated functional domains,<sup>86</sup> stabilizing functional and subjective differentiation in the face of contingency and risk.<sup>87</sup> In other words, human rights orient the legal system to the negative space of the individual, making law responsive to individuals regardless of their attributes. Without these protections, individuals are, as Hannah Arendt put it, ‘thrown back, in the midst of civilization, on their natural givenness, on their mere differentiation’.<sup>88</sup>

Diminution or denial of human rights thus risks permitting the de-differentiation of society. For instance, censorship enables political decision makers to determine the range of possible selections in communication.<sup>89</sup> Abolishing labour and welfare protections in the name of intensified market rationality excludes individuals from participation in society unless they have the economic capacity to attain capital and spend money.<sup>90</sup> Therefore, human rights law allows participation based on one’s recognition by the legal system as human, without foreclosing the future.<sup>91</sup> To defend the autonomy of the subject of rights is in a sense to presuppose, and value, the authentic individualism and differentiation of everyone, to hold out a space for a unified concept of the universal subject, who can quite literally be anyone.

## 8 | PROFILICITY AND THE MASS MEDIA

In sincerity, identity is imposed on the individual by the social order. In authenticity, the individual’s inner self is differentiated from society and serves as the apex of normative communication. In proficity, identity is once again externalized and mediated socially. However, if we index sincerity to social stratification, and authenticity to functional differentiation, the emergence of proficity does not yet represent a similar epochal change in the structure of society. Functional differentiation remains the predominant paradigm of social differentiation. The legal system remains responsible for legal communication, applying the code legal/illegal in its operations; the political system continues to make decisions binding on everyone; the economy continues

<sup>84</sup> Luhmann, *op. cit.*, n. 78.

<sup>85</sup> N. Luhmann, ‘The Code of the Moral’ (1993) 14 *Cardozo Law Rev.* 1002.

<sup>86</sup> E. Christodoulidis, *The Differentiation and Autonomy of Law* (2023) 14–16.

<sup>87</sup> A. Pottage, ‘Power as an Art of Contingency: Luhmann, Deleuze, Foucault’ (1998) 27 *Economy and Society* 1, at 1.

<sup>88</sup> H. Arendt, *The Origins of Totalitarianism* (1958) 302.

<sup>89</sup> G. Verschraegen, ‘Human Rights and Modern Society: A Sociological Analysis from the Perspective of Systems Theory’ (2002) 29 *J. of Law and Society* 258, at 277.

<sup>90</sup> Christodoulidis, *op. cit.*, n. 86.

<sup>91</sup> N. Luhmann, *Law as a Social System*, trans. K. Ziegert (2004) 115–116.

to communicate prices and values and operate in the medium of money; science and academia remain concerned with what is true and false, and so on. Proficiency remains within modernity's functional differentiation, yet is distinguishable as *the structural coupling of identity with the mass media*.

For Luhmann, the mass media constitute the social system that gives a sense of unity to our otherwise highly differentiated society. Rather than the rule of law or the supremacy of political power, the mass media allow society to perceive the same reality, or, in Luhmann's formulation, to know what is 'known to be known'. Writing in the 1990s, Luhmann held that all we know about society, we know through the mass media.<sup>92</sup> Of course, this does not mean that everyone everywhere consumes all of the output of the mass media. Rather, the mass media include any recorded communication addressed to an unspecified 'public' audience, producing what is available as knowledge in society and thus a globalized 'background reality'. What is 'known to be known' is a second-order formulation because the mass media allow us to rely on the observations of others to confirm facts and events. Luhmann opens his book on the mass media with the observation that 'what we know about the stratosphere is the same as what Plato knows about Atlantis – we've heard of it'.<sup>93</sup> Whereas Kant posited reason as the guarantor of reality, in Luhmann's image of society, the only a priori is the self-reinforcing reality generated by the mass media.

This means that we use the mass media to inform our decisions about the world, including whether to trust what we learn in the mass media. From this perspective, there cannot be an 'ideal' or authentic mediated communication that could be achieved outside of the mass media or by purifying them of corruption. We know that mass media reporting is open to doubt; nonetheless, we must use it as a starting point.<sup>94</sup> Our knowledge of the mass media includes the second-order understanding that media-generated reality is constructed. It makes no sense to start from the premise that the mass media *distort* reality, as there is no empirical reality available beyond those that systems construct. Therefore, the operative question for any analysis of the mass media is not whether media institutions are manipulated by power, money, corruption, or ideological bias – though they are – but how the mass media generate a reality that remains stable even though it is obviously artificial. Luhmann's answer is, once again, second-order observation.

Only when the first-order understanding of *what* is communicated (such as facts, entertainment, opinion, and advertising) is combined with an observation of *how* it is communicated can the reality of the mass media be understood. Conversely, to observe the mass media is to be educated in the reflexive techniques of second-order observation: observing the observations of observers.<sup>95</sup> Since the knowledge produced through the mass media is always incomplete, partial, and inconsistent, any attempt to censor or distort the mass media must reckon with the reality of second-order observation. Just like other systems such as science, law, and art, the mass media construct differentiated forms of reality. The reality of a system correlates with its operations; hence, the fact that the mass media construct reality does not make it less 'real'. Reality is real because of the mass media.<sup>96</sup> The point is not that the mass media cannot be influenced, censored, or distorted; rather, it is that there is no way to achieve a communicative system that would be free

<sup>92</sup> N. Luhmann, *The Reality of the Mass Media*, trans. K. Cross (2000).

<sup>93</sup> *Id.*, p. 1.

<sup>94</sup> *Id.*, p. 1.

<sup>95</sup> *Id.*, p. 4.

<sup>96</sup> *Id.*, pp. 8–9.

of suspicion through some external or internal guarantee. Society has no transcendental point of observation. The mass media's outputs are always observed as observations, too partial and differentiated to produce unity of belief or opinion.<sup>97</sup> Instead of delivering the truth about the world or the truth of the individuals depicted, the function of the mass media system is instead to 'irritate' society's communication, to engender a permanent sense of restlessness.<sup>98</sup> The system provides a constant, recursively generated source of fresh information to society. The autopoiesis of other social systems is fuelled by the mass media, which in turn pick up new information to report on, in politics, science, law, art, the economy, and so on, generating a heterarchical hypercycle of self-reinforcing communication that serves as the 'holy spirit' of modern society.<sup>99</sup>

Luhmann identifies the code of the mass media as information/non-information. Unlike the legal system, which applies the code legal/illegal to stabilize future expectations, or science, which aims to provide reproducible truths from its observations, the code of the mass media is inherently unstable because information, once communicated, ceases to be informative. In systems-theoretical terms, information is not a quantitative object, like a binary digit; rather, information is a 'difference that makes a difference' to an observer.<sup>100</sup> Not every observation is new. Information is always a surprise to the observing system. Once registered, information can retain its meaning but can no longer create surprise. Information is transformed into non-information through the system that produced it. In this way, the operations of the mass media constantly transform new information into redundant non-information, feeding its own output back to itself as what is now known, generating the neurotic compulsion for more and new information.<sup>101</sup> Thus, the mass media set the tempo of the world, with society accelerating accordingly.

The audience of the mass media is in the environment of the system, produced as an internally defined projection of the system. In a foreshadowing of algorithmic personalization, Luhmann observes that the 'person' is implied differently across three different types of mass media programming, which he categorized as news, advertising, and entertainment, as constructs of the audiences of such programmes. The multiplicity of the audience is 'psychically readable in the sequence of differences which arise from them'.<sup>102</sup> A similar observation could be made of profile-based platform systems today. Most obviously, the feed constantly generates new information and disposes of the redundant past. The auto-obsolescent feed is not oriented to truth but to what is most informative – that is, most surprising. All kinds of information and topics are shared, and the programmatic distinctions that Luhmann drew in the 1990s between news, advertising, and entertainment are today supplemented by a much more granular range of algorithmically generated possibilities that recursively 'learn' and amplify the categories in which users are interested. In other words, the 'person' presupposed by platforms is based not on pre-defined programmatic decisions, but on a fluctuating reality composed of modulating data that users collectively generate in different contexts. Here, profiling by platforms influences proficity, as the 'personalization' of each user's feed is the effect of how they have been profiled, which is not the same as how they have

<sup>97</sup> Luhmann's long-running intellectual foil, Jürgen Habermas, is the indirect target of this critique. Habermas continues to hold out hope for a better media sphere: see J. Habermas, 'Reflections and Hypotheses on a Further Structural Transformation of the Political Public Sphere' (2022) 39 *Theory, Culture & Society* 145.

<sup>98</sup> Luhmann, op. cit., n. 92, pp. 19–22.

<sup>99</sup> N. Luhmann, *Theory of Society*, Vol. 1, trans. R. Barrett (2012) 150–187.

<sup>100</sup> G. Bateson, *Steps to an Ecology of Mind: Collected Essays in Anthropology, Psychiatry, Evolution, and Epistemology* (1972) 381.

<sup>101</sup> Luhmann, op. cit., n. 92, pp. 19–20.

<sup>102</sup> Id., p. 74.

profiled themselves, though it is related to it. Hence, one profile recursively conditions the other according to different high-level programmatic aims that give each platform its brand identity.

Just as everything communicated by the mass media is ‘known to be known’, everything communicated via a profile is ‘seen as being seen’ and is open to second-order observation in the form of agreement, misunderstanding, disagreement, mockery, and so on. Just as the mass media ‘keep society on its toes’,<sup>103</sup> so too do profiles keep users awake, constantly swimming against personal auto-obsolescence by generating and associating themselves with new information. Rather than a mass breakout of narcissism, or a crisis of addiction to dopamine, the rise of proficity is better understood as the evolution of identity with the evolution of the mass media online. The addiction, if one wishes to use that term, is to information. Once one couples one’s personal identity with the mass media system, the old jargon of authenticity immediately seems absurd, and can only be deployed ironically. Reality now *must be curated*. One is not ‘there’ until one posts about it. One has no opinion unless one either shares it or amplifies similar opinions.<sup>104</sup> Political causes must be pursued by associating the cause with one’s identity. Yet, the profile remains both a construction and a form of addiction.

Contrary to any naïve faith in the truth-bearing power of publicity to persuade, Luhmann’s observation that ‘truth is held to reside in private, rather than public, communication’ remains accurate.<sup>105</sup> This is why private encrypted applications such as WhatsApp or Signal have grown in importance and popularity alongside the rise of mass-mediated profic culture. The more we give public accounts of ourselves, the more we need a reliable and secure channel for private communication. Human rights, structured by technical design decisions and affordances, still supplement the figure of the authentic autonomous human. We return to this point below.

## 9 | AUTHENTICITY CRITIQUE

The semantics of authenticity frequently undergird critiques of social media. For instance, the philosopher Byung-Chul Han is criticized by Moeller and D’Ambrosio for railing against the ‘transparency’ society that turns users into a ‘swarm’, stripped of their autonomy and abandoned to the passions of the digital herd.<sup>106</sup> Roberto Simanowski’s *Facebook Society* portrays a similar situation in which ‘being-with’ and ‘being-together’ are impossible, replaced by a mathematical society of singularities.<sup>107</sup> Shoshana Zuboff’s *The Age of Surveillance Capitalism* argues that social media firms pose a threat to individual autonomy through the recording, processing, and nudging of human behaviour in the name of profit.<sup>108</sup> Such critiques tend to collapse the distinction between the interfacial profile and the inner life of the individual. The individual is reified as the locus of human essence. However, analytic algorithms that profile users are not interested in authentic beliefs or essences except insofar as they can be sensed, digitally represented, predicted,

<sup>103</sup> Id., p. 22.

<sup>104</sup> Moeller and D’Ambrosio, op. cit., n. 1, p. 233.

<sup>105</sup> Luhmann, op. cit., n. 92, p. 43.

<sup>106</sup> Moeller and D’Ambrosio, op. cit., n. 1, pp. 77–78, pp. 257–262; B.-C. Han, *The Transparency Society*, trans. E. Butler (2015).

<sup>107</sup> R. Simanowski, *Facebook Society: Losing Ourselves in Sharing Ourselves*, trans. S. H. Gillespie (2018).

<sup>108</sup> Zuboff, op. cit., n. 26.

and pre-empted. Algorithmic devices ‘irritate’ communication without engaging ‘in’ it.<sup>109</sup> Such systems operate on cognitive systems via ‘non-subjective subjectivity’, shaping the production of reality prior to the conscious encounter with it.<sup>110</sup> While this does not mean that they are harmless, they do operate on different levels of observation. They observe humans as profiled users.

Proficiency leads to behaviour that, from the perspective of authenticity culture, appears shallow, manipulative, and inauthentic. However, it also exposes the media-technical bases of *all* identity forms, including the authentic idiom that modern subjective rights uphold in the legal system. Identity technologies have always been constructed in a recursive relationship with the mass media; on the other side of the distinction, the mass media co-evolve to give form to identity. The mass media determine the structure of communication in the environment of the subject, just as law narrates it.<sup>111</sup> The truth of the self is always bigger than any one individual. It is a relational, transsubjective question of the technical mediation of shared semantic forms.

By the same token, all identity technologies pose potential ‘harms’ to the individual. Under sincerity regimes, one was forced to perform the physical techniques and display the physical signs, symbols, and behaviours that showed that one was aligned, in the depths of one’s soul, to an external moral structure that presented itself as the ‘natural’ God-given order. The rewards of discipline and conformity were acceptance, but failing in one’s duty could result in dishonour, exile, ‘honour-based’ violence, or suicide.<sup>112</sup> Under authenticity regimes, one was expected to be unique, but for this one had to model oneself on others via the mass media of print culture, literature, music, film, fashion, and so on. To fail in the quest to produce oneself as an authentic soul was to risk being a hypocrite, a bore, a faker, an imitator, or simply irrelevant. As Esposito puts it, there is nothing as unoriginal as the quest for originality.<sup>113</sup> Authenticity culture teemed with models for individuality; it underpinned the notion of the author as such.<sup>114</sup>

Where both sincerity and authenticity depended on the first-order affirmations of sincere or authentic peers who were co-present, proficiency depends on the second-order affirmation of the general peer who is fully mediated. Digital media have not created proficiency, which arose first as branding before producing the celebrity culture of the twentieth-century mass media, but contemporary digital platforms are designed with proficiency in mind, leveraging interface and network effects to entice users to generate profiles for consumption and affirmation by the general peer, and, in the process, data to be mined for economic purposes. Just as with sincerity and authenticity, the harms of proficiency cannot be discounted. To profile oneself is to risk oneself. Just as the transition from sincerity to authenticity was characterized by a period of misrecognition, online safety legislation may mark the end of the beginning of a similar evolution. The symptoms of a loss of authenticity are clear – social media sites are full of profiles claiming to present authentic life, political analysis, cooking, travel, clothing, exercise techniques, cultural forms, and lifestyle tips, all authentically copying one another – but the contradiction lacked the semantic label that proficiency now provides.

<sup>109</sup> Esposito, op. cit., n. 31.

<sup>110</sup> M. B. N. Hansen, ‘Engineering Pre-Individual Potentiality: Technics, Transindividuation, and 21<sup>st</sup> Century Media’ (2012) 41 *Substance* 32.

<sup>111</sup> C. Vismann, ‘Cultural Techniques and Sovereignty’ (2013) 30 *Theory, Culture & Society* 83.

<sup>112</sup> Moeller and D’Ambrosio, op. cit., n. 1, pp. 143–147.

<sup>113</sup> Quoted in id., p. 172.

<sup>114</sup> F. Kittler, ‘Authorship and Love’ (2015) 32 *Theory, Culture & Society* 15.

If proficity means coming to terms with a mode of communication that excludes authenticity in advance, then critiques of online safety regulations that are concerned with the suppression of political and cultural free speech should go further. The main targets of regulation – the major platforms – are better understood as unregulated mass media, where the motivations and authenticity of others are always inaccessible, but the overarching goal is the production of conflict, disorder, and entropy, not consensus, understanding, or unity. Furthermore, just as we know that the mass media are manipulated and yet we accept their ‘reality’, so too do we know of the manipulations of algorithms and yet respond to the environment that they generate. Knowing what we know (and knowing how we know it), social media and search platforms may continue to function as they have done so far: supplanting the conditions for authentic communication with the virality of profic communication, connecting topics automatically, controlling what information is allowed to emerge from the resulting cacophony, and allowing profile builders a constrained form of freedom to create and operate multiple identities in response to the fragmenting reality that they experience.<sup>115</sup> However, a deeper anxiety remains, produced by the existential insult that proficity has delivered. As profiles, we encounter ourselves as elements in networks that compete for our attention, influence our desires, and distract us from living an ‘authentic’ life.

To combat profic angst, Moeller and D’Ambrosio suggest that *all* identity should be held at a remove. Drawing on Daoist tenets, they affirm that everyone ‘genuinely pretends’ to be who they are in every identity regime.<sup>116</sup> Maintaining a distance from one’s identity, in its sincere, authentic, and profic dimensions, requires adopting an attitude of equanimity, irony, and modesty.<sup>117</sup> Every identity is constructed; every construction can be deconstructed. Just as we can distinguish a barrister’s authentic beliefs from the arguments that they make in court, so too can we separate a person’s authentic beliefs from their profic communication. A couple might match profiles on a dating app, meet and authentically fall in love, and then sincerely declare marriage vows. None of these forms diminishes the others. Proficity should be read as neither authentic nor inauthentic but *non-authentic*.

## 10 | CONCLUSION

As the cyberneticist Stafford Beer put it, a system’s purpose is what it does.<sup>118</sup> The purpose of social media and other contemporary forms of profic media is to grow communication and make money, not to help people to communicate their authentic self, facilitate the democratic deliberation of political problems, or bring people ‘together’. No amount of regulation can change this purpose or transform social media into a venue for authentic communication. This is not to say that profic communication never has authentic dimensions, or that one’s authentic identity is immune to damage from profic communication. Indeed, defamation law increasingly requires the courts to differentiate between mere social media noise and statements that are damaging to

<sup>115</sup> Moeller and D’Ambrosio, *op. cit.*, n. 1, pp. 75–77.

<sup>116</sup> *Id.*, p. 252.

<sup>117</sup> H.-G. Moeller, *The Radical Luhmann* (2011) 105–119. Moeller embraces the differentiation of proficity via his popular YouTube channel, @carefreewandering. It is difficult to imagine tens of thousands of internet users reading Luhmann without the introductions that he provides.

<sup>118</sup> S. Beer, ‘What Is Cybernetics?’ (2002) 31 *Kybernetes* 209.

an individual's reputation, assigning liability and damages where appropriate,<sup>119</sup> highlighting the irresponsibility, conflict, and non-authentic irony that social media produce as an environmental norm. Rather, it is to say that identity is always enacted in communication, and communication therefore structures how identity is elicited and understood.

On this note, Bogna Konior's 'dark forest' theory of the internet is instructive.<sup>120</sup> It takes inspiration from sci-fi author Cixin Liu's novel *The Dark Forest*,<sup>121</sup> which suggests that the answer to Fermi's paradox – why is the universe silent when the likelihood of other intelligent life is high? – may be that though the universe teems with advanced technological civilizations, they remain silent because of the existential risk of attempting communication. Communication is therefore a sign of naivety, and silence the intelligent option. Similarly, communication on the internet is existentially dangerous to the self. Self-production online means submitting to an affective system that feeds on the energy of its users in order to increase its internal entropy. This is achieved via ever more sophisticated interfaces that release 'the titillating hallucinatory gas of subjectivity'.<sup>122</sup> In uploading their ideas about the world and themselves as 'content', users inject welcome chaos into the system, causing communication to bounce off other communication, creating disjunctions, disharmony, and conflict, and producing an entropic disorder that is full of surprises – and therefore interesting and addictive, according to the dynamics of the mass media.

While the ideological aim of online safety legislation is to produce a low-risk environment for communication, proflicity suggests that this is unlikely to be successful. One counter-intuitive effect of regulating to suppress the entropic dynamics of social media may be to encourage further fragmentation of the web into differentiated platforms where different modes of communication are possible, beyond the regulated terms set by the 'Category 1' platforms, and with less of the conflict that they profit from. The growth of smaller platforms, private encrypted messaging groups, podcasting, and long-form publishing platforms provide less risky kinds of prolific communication, where the affordances of authentic communication – such as nuance, irony, moral ambivalence, and speculative thought – can be communicated without being co-opted into the drama of the general peer and the regulatory requirements that states are now imposing.<sup>123</sup> In short, we may experience a revival of 'underground' media as large platforms become officially regulated.

Either way, as Nick Seaver argues, the underlying challenge is not to simply condemn the captivating power of platforms but to think about 'reconfiguring our captivating social infrastructures'.<sup>124</sup> To be effective, critique must feed into speculative and experimental forms of profile design.<sup>125</sup> Proflicity offers an ambivalent concept that at least allows us to differentiate profile identity from the 'European offline romanticism trap' that assumes that everything

<sup>119</sup> D. Mangan, 'Regulating for Responsibility: Reputation and Social Media' (2015) 29 *International Rev. of Law, Computers and Technology* 1, at 16–32.

<sup>120</sup> B. Konior, *The Dark Forest Theory of the Internet* (2020), at <<https://flugschriften.com/wp-content/uploads/2020/07/flugschriften-6-bogna-konior-the-dark-forest-theory-of-the-internet-v.2.pdf>>.

<sup>121</sup> C. Liu, *The Dark Forest (The Three-Body Problem, 2)*, trans. J. Martinson (2016).

<sup>122</sup> Konior, *op. cit.*, n. 120, p. 19.

<sup>123</sup> Y. Strickler, 'The Dark Forest Theory of the Internet' *OneZero*, 5 June 2019, at <<https://onezero.medium.com/the-dark-forest-theory-of-the-internet-7dc3e68a7cb1>>. Yancey Strickler is an author and founder of the crowdfunding platform Kickstarter.

<sup>124</sup> N. Seaver, 'Captivating Algorithms: Recommender Systems as Traps' (2019) 24 *J. of Material Culture* 421, at 432.

<sup>125</sup> B. Keenan, *op. cit.*, n. 5; B. H. Bratton, *The Stack: On Software and Sovereignty* (2016).

normative must refer back to the free-speaking autonomous individual.<sup>126</sup> It may allow a more realistic form of legal and political attention to be paid to the evolution of the social media environment, and critical engagement with the regulatory aims and practices imposed by the new online safety regimes and the effects that they have on the profilig freedoms and authentic desires of those subjects presumed to be in need of protection. We know what it means to be sincerely sincere and authentically authentic. How are we to be profilig?

## ACKNOWLEDGEMENTS

Thanks to Bo Bottomley, Hyo Yoon Kang, Connal Parsley, Daniel Joyce, Alain Pottage, Alex Damianos, and Hans-Georg Moeller for discussing the ideas in this article with me, and to the reviewers for their excellent comments and advice.

**How to cite this article:** Keenan, B. Profiligity and online safety legislation. *Journal of Law and Society*. 2024;51:367–389. <https://doi.org/10.1111/jols.12492>

<sup>126</sup>G. Lovink, *Stuck on the Platform: Reclaiming the Internet* (2022) 49.