

From Expression to Expulsion: Digital Public Spaces as Theatres of Operations in Nepal

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On 2 May 2016, Robert Penner, Canadian national residing in Nepal with a working visa, was arrested and then deported to Canada and his visa being cancelled. Based upon an analysis of the documentation related to his arrest and expulsion, this article analyses the articulation of different operations of control. A chain of public interventions and governmental actions makes the substance of the management of digital expression in Nepal and this has to be analysed with tools from media studies and science and technology studies. We present different operative regimes: Twitter accounts and discussions, police action and arrests, and court petitions. We analyse how operational levels are connected and how their interconnections lead to the criminalisation of one individual, most notably through the reformulations of the accusations by different groups of people via different devices. This in turn shows how specific technical interventions determine the control of the public space. These analyses then add to the debate upon the 'digital public sphere' by offering a critique of its spatial metaphor from a view focused on its performative stakes—public spaces not as sites of discussion, but as theatres of operations.

Keywords: Public sphere, Nepal, on-line activism, Twitter

Introduction—Cloud engineering, Twitter Politics and the State

ON 2 MAY 2016, Robert Penner, a Canadian software developer working as a principal scientist in Nepal for CloudFactory, an outsourcing company, was detained for 26 hours in custody. Subsequently, Nepal's Department of Immigration (DOI) revoked his visa and his work permit for his 'social media posting and sharing',

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alleged by the Government of Nepal (GoN), of what was considered as ‘provocative’ Twitter messages. He was then asked to leave Nepal within two days. This decision came as a surprise for many: what could a foreign resident in Nepal write in 140 characters on Twitter that could lead to his deportation? Penner did express his opinion on Nepali politics on Twitter, but who examined the veracity of his Tweets and on what basis the DOI took the decision of his ‘expulsion’/‘deportation’ was raising a lot of questions.

One first element of understanding of this event is given by the context in which it took place. Penner’s tweets happened during a specific period for Nepal, who had promulgated a newly written Constitution on 20 September 2015. This was followed by a series of events in Nepali politics. In particular, there have been strong disagreements over the provisions in the newly adopted constitution among marginalized communities, notably those concerning the Madhes in the Southern Plain of Nepal, known as Madhes (Jha, 2017).¹ A social movement arose and Madhes resisted the constitution promulgation over such issues as citizenship, federal boundaries or the electoral system. In the wake of those mass protests, the non-governmental organization, Human Rights Watch (HRW) published a report titled *Like We Are Not Nepali* criticizing the disproportionate use of violence by Nepal Police in Southern Nepal on protestors that caused over 3 dozen deaths (HRW, 2015). This report in turn raised heated discussions on multiple media and social networks. Many well-known civil society members and Nepali mainstream media’s editors considered the HRW report biased. Others supported the views and arguments expressed in the report. Penner was among the defenders of the HRW report, expressing his opinion mostly on the Twitter platform to challenge what he considered as unsubstantiated claims. For instance, he criticized claims made by the Nepal Embassy (Delhi) according to which there was no discrimination in the newly adopted constitution.² He also countered the view of some Nepalese Twitterati who considered HRW report as biased, strong and provocative and were claiming that it mostly showed the views of protesters while ignoring the violence committed on the security personnel as well as the economic blockade by Madhes at the border points.³ His interventions divided the opinion and quickly put him at the centre of public discourse among the Twitterati. For some participants, Penner was a ‘rationalist’ who checks the facts, diligently researches and critically engages on multiple issues to question both sides in Nepal’s polarized landscape. For others, Penner as a foreigner should have kept off from expressing an opinion on Nepali politics, and his critical interactions with Nepali Twitterati (civil society members, media editors and others) made him a ‘troll’/‘harasser’.

The context of these discussions allows for a better understanding of the issue, yet it does not give a full explanation for Penner’s expulsion. For instance, Twitter offers the option to ‘mute’ and ‘block’ participants’ tweets on one’s account and Penner’s opponents could have only used this option to put an end to their interactions. The story did not end that way and therefore there is more to be understood in that event beyond the political context. Penner’s case raises several questions and offers an opportunity to reflect upon some salient features of the

entanglement of media, technology and politics. One first series of questions arises around the regime of freedom of expression in Nepal. What does this case show of the state's control over the public sphere? What does it suggest regarding the conceptions of legitimate representation in the civil society—who is entitled to speak for whom? And more specifically, what kind of difference does it establish between citizens and residents (and between residents themselves) in terms of rights to expression—a question that matters all the more since a quarter of the population of Nepal has the status of residents, due to their lack of citizenship documents (FWLD, 2013⁴; Mulmi and Schneiderman, 2017). These questions carry on traditional interrogations upon the organization of the public sphere, sometime imagined contextually as an 'insider vs outsider' space through distinctions and overlaps between instances such as public, citizens and civil society. They are completed with a second set, regarding how the digital spaces, although they are repeatedly presented as boundary less, are subjected to bordering practices: policing of the speech and inscription in (national) territories sometimes overcome the 'placelessness' of the digital as demonstrated bluntly here. How come an engineer more reputed for his 'clicktivism' than for direct action could be expelled from a country for taking positions on debates widely discussed in the Nepali society anyway? To what extent is this situation intertwined between state control, public sphere rules and semi-public uses of social networks? This second series of questions relate to how new media renew understanding of the public sphere and its reflexive national imagination performed in digital space.

We think that in order to address these two series of questions, one has to take into account an essential aspect, which involves the materiality of the technology and its relation to multiple operations. We contend that the public sphere analysed here shall not be conceptualized as such but rather as a range of operations. Public space, when one deals with digital networks, is not so much 'public' or 'open' than it is a technology articulated to other technologies. No matter what one says, writes, publishes, it is less important to know or read it than to observe how this discourse gets embedded in a number of operations and becomes itself part of the operative machine. Publicity is not a relevant feature of digital space, and one site/place in the digital world should rather be characterised in terms of its attachment to operating systems. What sort of operating systems? Formalizing what kind of phenomenon, situation or action? Our answer would lead to pay attention to the political consequences of digital interventions: mobilization of police forces, of the legal apparatus ending on an expulsion in this dramatic case. As will be shown in this article, the debates around Penner's arrest would gain sensibly to take into account 'operating complexity' rather than 'discursive practices' or 'deliberative principles' since the discussion upon freedom of expression, separation and superimposition between private and public, and governmental control over digital spaces deeply relates here to how freedom of expression and use of media technologies led to expulsion. Ultimately, this approach would help us to answer the question: what kind of control is at stake on the internet and to what extent one has to think differently about the public sphere when confronted to such kind of event?

In order to deal with these issues, we will mobilise a ‘Science and Technology Studies’ (STS) framework, though we supplement it with approaches from political science and media studies. We will build our argument from one isolated case of control of freedom of expression, which allows us to pay more attention to the administrative and technocratic detail of the process during which this case was solved.

Part 1—From the Public Sphere to Digital Operativity

The Public Sphere as One Conception of Socio-Political Interactions

A large strand of works that have been addressing the issue of public debate, freedom of expression and the framing of contestation through digital technologies have resorted to the ground breaking work of Jürgen Habermas (1984, 1987, 1962) upon communicative action and the public sphere. This work has raised multiple discussions related to the location of politics, the materiality of debate, the framing of political participation and the terms that should be used to describe collective forms and places of expression (Badouard et al., 2016a; Wright & Street, 2007). However important this work may be, we would like in this article to take a slightly different approach, building from two different views. The first one relates to the difference of approach between Foucault and Habermas. The second stems out of writings by analysts of the role of the internet and new technologies of communication in the reconfiguration of democracy. These views will lead us to offer a conceptualisation of the political space, in which spatiality and discourse matter less than the series of operations that take place in relation to technological devices.

One important critique that has been made to Habermas appeared in the debate with Michel Foucault who was mobilising a very different conception of democracy and politics (Waldenfels, 1986),⁵ whereas Habermas is defining public space as both a conceptual/concrete space and an ideal of democracy through deliberative practice, Foucault’s approach to politics, the State and its institutions insist upon the role of apparatuses, tools and knowledge that shape subjects, collectivities and population (see for instance Foucault, 2004). In Foucault’s view, politics cannot result from the confrontation of rational citizens guided by an ethics of discussion, since the heart of politics lies precisely in the multiplicity of mediation processes, which shape such subjects. The analyst would always get too late on the stage that is called ‘public sphere’ if s/he only paid attention to discussion and confrontation of arguments. Instead, s/he has to analytically disentangle the construction through which such entities as ‘citizens’, ‘subjects’ and ‘public space’ have been historically built. In that sense, Foucault insists more than Habermas, not only upon the materiality of the political space, but also upon the constant shaping of political action through technologies.

One second set of works leads us to a different track than that opened by Habermas. It is not related to a conceptual critique such as that of Foucault, but rather upon an attention to the historical changes brought to democracy by the use

of new media technologies such as the internet. Among the many works dedicated to the role of the internet in the evolution of political practices, one could mention analyses dedicated to the role of infrastructure in the governance of the internet—a governance *by* infrastructure rather than *of* infrastructure (Musiani et al., 2016). Others have shown the sociotechnical role played by media technologies in shaping political participation and collective action—they have for instance documented the growing importance of ‘connective action’ in the organisation of social protest, that is the political participation through online media (Bennett & Segerberg, 2012). Others have emphasised, in the case of authoritarian regimes like China, how entangled media technologies and censorship practices are—far from the ideal of deliberative practices that presupposes publicity, transparency, inclusion and equal opportunity (Habermas, 2006). All these works are dealing with different aspects of the digitisation of society: technological infrastructures, social movements and online media, censorship; beyond this diversity they reframe the way in which ‘public sphere’ can be understood. In particular they put emphasis on the shaping of political situations by technological (media) tools.

Both Foucault’s work and recent research upon digital media encourage us to adopt a different perspective upon the link between political action and the public sphere. They suggest that, when studying online media, rather than considering the social world as a site of expression, one should try to understand how it is performed through the digital infrastructure. This performative view upon the public sphere does not deny the importance of public discourse—and largely acknowledges Habermas’ pragmatism—, but rather insists upon the importance of political action in relation to technological means of digital expression. What kind of event, of intervention, of action, take shape in the digital space(s)? How are they related, one with the other, and with other elements of processing of political action, external to the digital (e.g., state regulatory authorities such as police force, legal apparatus)? To that end, we propose here to describe the digital space as made of multiple ‘theatres of operations’ in which not only ideas or arguments are exchanged according to the deliberative processes, but strategies are put in place through shaped and shaping devices, in order to modify the social world, with sometimes very serious consequences for individuals and communities. That way we stay online with the spatial conception of political life (the theatre after the agora), but we tend to reconceive it through an *operational* approach.

The Theatre(s) of Operations

The notion of ‘operation’ we mobilize here borrows mostly from two sets of works. The first is the work by Sandro Mezzadra and Brett Neilson upon operations of capital: ‘highly sophisticated techniques and technologies of knowledge and calibration impinge upon the social relation of capital that continues to dominate contemporary forms of life and cooperation, notwithstanding its multiple mutations and fractures. While any operation exists within a wider network of operations, it is heuristically possible to isolate the moment of specific material operations

in order to analytically highlight the violence that haunts and issues from refined and abstract methods and paradigms of valorization' (Mezzadra & Neilson, 2015, p. 5). Although this conception of operation is mostly based upon an attempt to frame a specific logic of capital, it seems that we can also use the notion to define forms of organisation and intervention in the public space. What interests us here is the fact that operations are shaped through technological devices (cranes and containers in Mezzadra and Neilson's, but social networking websites in ours). It is also the insistence on the effects and actions of these devices, not only organizing discussion but also production relations, transport of goods and people, financial transactions and so forth.

The second notion of operation mobilised here is that of Joseph Masco in his book, *The Theater of Operations*. Masco's book is an analysis 'of American self-fashioning through technoscience and threat projection, of how fear and terror have been domesticated as a primary national resource and projected out globally as a twenty-first century American project' (Masco, 2014, p. 3). Though Masco's approach is centred on the military and its conception of operations deeply grounded in war vocabulary, it is of interest to us. A theatre of operations is a zone of conflict between at least two opponents and in which are deployed forces under military and administrative commandment. Masco, through the lens of STS, insists upon the role of expert knowledge and technologies in the construction of the (American) society as a theatre of operations. Theatres of operations are built through knowledge, forms of organisation, modes of intervention and action. Logistics, technologies and processes of command constitute the core operations that feed conflict zones. In our own understanding of his work, by applying the notion of 'theatre of operations' to social spaces (or to the society) one not only pays attention to the conflictuality of this space, but also to its technological and epistemic structuration and to the crucial role of the state upon how groups and individuals intervene. Not only 'argument is war' as shown by Lakoff and Johnson (1980), but the techno-statal martiality pervades our use of as trivial devices as on-line discussion sites.

In analytical terms, resorting to the notion of 'operation' implies four consequences. First of all, it forces us to acknowledge a different conception of public expression, not so much in terms of linguistic intervention within the public sphere that as an element in a chain of actions. That way, the opposition between public/private or open/closed spaces does not matter since the attention is turned towards the interplay of interventions, which are producing the socio-political reality. Of course, these interventions happen in specific sites, and space plays a role; however, the relevance of interventions stems out of their impact upon social reality and not of their inscription in a public space with rules or argumentation. The conception at stake relies on a pragmatic approach to the social world, whereas Habermas' view would be more 'procedural' in that respect. It is attentive to the outcome of public intervention rather than to their normative conditions. Second, the notion of operation leads us to categorise the multiple modes of intervention and devices that allow for action in the theatre of operations. More than the public space preconditions, what matters here is the techno-semiotic characteristics of the tools of

intervention, which contribute to shape both the debate and its outcome. Third, it is necessary to account for the interconnections between these tools, how they interact and how the people who use them circulate between tools and the possibilities they offer (the Twitter messages can be relayed on multiple platforms, be they digital websites or police reports, with different consequences depending on the media and its social inscription). The fourth and last consequence is to understand how these interventions contribute to shaping the social through conflictual processes, and especially in the particular case of Robert Penner, how they can lead to expulsion of social actors. If we follow sociologist Saskia Sassen (2014), expulsion today has become a major descriptor of the social activity. However, expulsions result from ‘systemic tendencies’ and not necessarily from individual or institutional intentionality. In our own work it appears interesting to link such an approach of expulsion with the organisation of the digital public space as part of a ‘theatre of operations’, since it will show how modes of intervention can interplay and lead to the expulsion of persons from the national space.

Based on this framework, we will now detail the case of Robert Penner’s expulsion from Nepal; to that end we will consider Twitter as one theatre of operations related to other theatres or fields. Our analysis will focus on the link between the use of Twitter and the possibility of being expelled from a territory. The notion of theatre of operation allows us to analyse state intervention over social networking websites as the result of a particular entanglement between political participation, technological devices and state control. It would be oversimplifying to understand on-line networking websites only as spaces of discussion, due to their technological nature, their embedment in larger statal and societal, often conflictual, projects. They are spaces of discussion, but also of production of value, of control of the populations, of terror and police intervention. Under that new light one can understand them as operating systems—operating on discourse, on language and on political activity.

Part 2—Communicative Action and the Theatre of Operations

Debating Authority in the Public Space

The case of Penner’s expulsion unpacks how the notion of ‘theatre of operations’ is at play in social networks. In the case presented here, initial discussions happened on the digital platform wherein various forms of agencies colluded to criminalise the political participation of one individual and to bring state control and laws to expel him. First of all, the HRW report provoked a series of debates, relayed and fed by Twitter participants, among whom Penner. The HRW report came after the adoption of Nepal’s constitution, which was followed by mass protest, human rights violations in Madhes and an economic blockade on the trade and transit route between India and Nepal border points, particularly in Birgunj. Various journalists and civil society members claimed HRW report to be biased. For instance, dated 16 October 2015, the editor in chief of widely read National daily, *My Republica*,

Subhash Ghimire, tweeted ‘One of the most biased human rights reports I’ve ever read’. Others pointed that HRW did not cover the complete issues pertaining of that time. For instance, dated 16 October 2015, the opinion writer for *Nepali Times*, Rubeena Mahoto, tweeted ‘HRW rightly calls out human-rights violations by the police during Madhesh protests. But will they spare a word to condemn the blockade?’

Penner took part in the debate regarding this issue, and his interactions with the prolific Human Rights activist of Nepal, Subodh Pyakurel (over 115,000 ‘followers’ on Twitter), regarding the HRW report put him at the centre stage. Mr. Pyakurel was highly critical of the report. For instance, on 28 October 2015, he tweeted:

HRW report on Madhes conflict didn’t report lynching of sick police man dragging out of ambulance. Wrongly reports const.[constitution] creates 2nd class.

Dragging out patient from ambulance and heinous killing is crime against humanity. HRW intentionally hides.

Penner and Pyakurel then had several exchanges expressing their disagreement. For instance, Mr. Pyakurel claimed in his tweets, on 29 October 2015:

Report is incomplete... Didn’t consider attendant’s interview saved by villagers. As if no lynching

Cleverly manipulated biased report. Didn’t report lynching. Didn’t consider attendant’s view saved by villagers.

In response to this, Penner tweeted on the same day:

See footnote 62: ‘injured APF ASI dragged out of ambulance & Killed’, ‘Protesters seize amb., kill injured APF official’.

Subsequently, Mr. Pyakurel responded:

Why not in main report? Why ignoring such a serious act to investigate and conclude by a reputed HRW?

Again, Penner countered Mr. Pyakurel’s claim that HRW tried to hide the policeman’s death:

I don’t know, but if @hrw wanted to cover it up, they wouldn’t have mentioned it in the 1st place, or linked to newspapers

Don’t forget that @hrw spent 3000 words on Kailali lynching of 8 police officers. Does that count for something?

Furthermore, Mr. Pyakurel tweeted (29 October 2015) and reiterated:

Mr. Robert pls examine the intention. They alleged that const. [constitution] creates 2nd class citizen. They should prove.

Penner replied to Mr. Pyakurel (30 Oct 2015):

The allegation of ‘second-class citizen’ is reported in quotes from Madhesis. It’s not @hrw making the allegation.

Likewise, Penner debated with various other individuals and journalists on the HRW reports on the Twitter platform.⁶

In that debate, Penner’s interventions were criticised by some and defended by others, resulting in a new discussion upon Penner’s ability, right and legitimacy to take part in discussions on Nepali politics. Interventions from civil society members and media editors asked the state authorities to examine the depth of Robert Penner’s ‘freedom of expression’ on social media while others legitimated his participation. For instance, Mr. Subodh Pyakurel responded to one of Penner’s tweets on 17 December 2015:

An expat so engrossed in local politics. GoN should examine depth.@bishnurimal @PMO_Nepal @NepalPoliceHQ.

This tweet brought in the loop, by tagging them, political actors such as Nepal Police and Prime Ministers’ Office. Replying to Pyakurel’s tweet, on 17 December 2017, Prashant Jha, currently an associate editor of Nepali origin at the *Hindustan Times* (India), defending Penner’s freedom of expression, tweeted:

‘to bring the state in to harass him [Penner] unacceptable’ and, in continuation of the tweet thread, stated that ‘to use your [Pyakurel’s] proximity with the government to ask for an investigation reflects intolerance and chauvinism’.

These first exchanges remained somehow ‘internal’ to the platform, in the sense that they were involving only Twitter participants and they were dedicated to determine Penner’s authority to take part: Was he an authorized participant or should he be banned from the discussion?

On that ground, the first debate apparently remained in the limits of one space, the Twitter digital platform. During an informal exchange between Sohan Sha and Penner, the latter explained his involvement in the following terms: ‘I lived in Nepal for four years working as an engineer to train Nepali engineers and bring investment to Nepalese economy. Only in the last year did I start to follow political news in Nepal. I did try to understand as a resident what’s going on. I had started to learn Nepali language too. I started to ask questions to Twitterati (mostly) journalist and civil society activists and thought leaders in Nepali political discussion

online. When the new constitution of Nepal came, I spent a lot of time reading it, especially the citizenship, the Human Rights Watch Report on extra-judicial killings, the blockade at the Nepal/India border, school being closed for months in Madhes due to protest. I started expressing my opinion on social media (Twitter, Facebook and blogging). I was surprised when others on social media didn't just disagree with me, but many accused me of being a Madhesi revolutionary sympathizer, or a foreign agent paid by India or the CIA to destabilize Nepal.

But I saw myself as trying to ground the debate in evidence, using quotes from original source documents, instead of jumping to conclusions and spreading conspiracy theories. Nepali Twitterati generally assumed that I, as a foreigner, knew little about the issues. So I worked very hard to gain credibility by replying on verifiable authorities outside to myself, searching and downloading studies and legal documents, posting screenshots and triple-checking all my factual claims lest I be proved wrong' (Penner, May 2; June 9; September 2 2017, personal Interview on Skype/Facebook). In that sense Penner relates to forms of on-line activism only as an individual expressing his opinion on a social platform and additionally on a few websites; he inscribes his interventions in a series of new forms of civic engagement in the media (Uldam & Vestergaard, 2015). This attitude triggered discussions regarding his legitimacy to intervene, which in a first time was kept in the arena delimited by the Twitter platform.

This first phase of this dispute highlights the entanglement of two types of operations: argumentative exchanges (Twitterati's interventions), coding and engineering (Twitter platform).

But one would miss the performative nature of this space (as a theatre of operations rather than as a discussion site) by restricting it only to the Twitter platform; one has to analyse its interconnections with other 'operating systems', which become clear with the further developments of the debate. On 9 April 2016, an anonymous individual (@UnitedNepal1) lodged a complaint on Twitter to the authorities (namely, Hello_Sarkar, official Twitter account of the Nepali government) citing the violation of Immigration Rule [28(1)(e)(f)(g)(i)]. On 11 April 2016, @Hello_Sarkar, taking cognizance of the complaint, asked to give further proof to @UnitingNepal1 to pursue the case against Robert Penner. Following that reply, Robert Penner's previous tweets were provided as an evidence to @Hello_Sarkar Twitter account, citing that 'the foreigner staying in Nepal has been intervening on Nepal's internal matter' (from Nepali, own translation). In response, @Hello_Sarkar registered the complaint [challani(file) number 30899] on Twitter.

This turn in the debate, through the involvement of Nepalese authorities, brings a new light on the organisation of public expression. It shows that this public sphere, rather than being governed by internal rules—those defined by the designers of the platform with a contribution of its participants to some extent—involves at least two sets of rules according to the participants: the platform rules (internal and applying to a digital space) and the Nepal government rules, at least in the case of Nepalese issues discussed by people residing in Nepal. The rules of communicative action here seem therefore more heterogeneous than previously, since discussions can be

driven simultaneously from different stages and do not refer in a dual way to either the state or civil society norms. One needs to acknowledge the entanglement of these different sets of rules in the structuration of public expression and its consequences in the public space. But we still need to go one step further in order to understand how the operative nature of digital space is at play in the case. We will show it by paying more detailed attention to the intervention of the State.

From Expressing on Social Media to Facing the Mighty State

On 2 May 2016, around morning 9AM Penner tweeted, ‘Nepal police came to my office. They’re taking me to Jawalakhel’, the Police Department, Lalitpur, Kathmandu. Later, Penner again tweeted on the same date, ‘Nepal Police will be taking me to Immigration from Jawalakhel’. Later, he was told by the DOI that he had violated the ‘immigration rules’ of Nepal and was sent at the Police Headquarter, Kathmandu, Nepal. The notice was issued at the request of the DOI of Nepal. The cause of his arrest is not outlined in the notice issued. On 3 May 2016, the Immigration Department of Nepal issued a letter, in response to the arrest of Penner, stating that ‘he has shared his views on the social networking sites. It spreads the negative message...therefore; under Immigration Rules (1994) section 26(1) applies to revoke his valid work visa and asked to leave the country within 2 days’.⁷

The police intervention constitutes only one aspect of the control exercised here and one has to pay equal attention to the role of the legal apparatus. On 4 May 2016, the second last day of the deadline was given to Penner to leave the country, he filed a writ petition—against Immigration Department, Metropolitan Police (Lalitpur), Police Headquarter, Ministry of Home [Central Secretariat], Nepal and GoN, Office of the Prime Minister and Council of Ministers—in Nepal’s Hon’ble Supreme Court in order to request a stay order on the immigration rules applied to revoke his work visa. However, the court hearing could not take place on that day. Only on the third hearing, on 9 May 2016, the hon’ble Supreme Court of Nepal issued a show cause notice to hear both sides of the argument. At that time Penner was out of the country. Later, on 22 May 2016, the lawyer on behalf of Penner, Adv. Dipendra Jha, argued the case to issue a stay order on the revocation of his visa. However, according to Dipendra Jha, the office of Attorney General put forth the document that Penner himself signed, agreeing to leave the country.⁸ On this basis, the Hon’ble Supreme Court of Nepal issued an interim order/decision on the same day asking that ‘he should return to Canada made by Department of Immigration. The appellant has already left for Canada; therefore issuing an interim stay as appealed is no longer necessary’.⁹ Ever since then, on the Penner’s case, the Hon’ble Supreme Court hearing has been postponed over half a dozen times. At the time of writing this article, the next case hearing was scheduled on 23 October 2017.

In these technical details, two aspects are worth highlighting. First, since the Immigration Department gave Penner only two days to leave the country while the court proceeding could not take place during his presence in Nepal, he had no option

but to leave the country. Second, since he left the country following the immigration department order, the Hon'ble Supreme Court did not issue the stay order on the rules imposed on him. Interestingly, these aspects are not related to the way Twitter and Twitter interventions are organized, but in that case can be interpreted either as strategies from the state administrative actors or as contingencies that led to the deportation. In any case, they show the entanglement of the activity on Twitter with a control apparatus, which is firmly grounded within national boundaries—here, in the Nepalese police, and in the legal and immigration administration.

This entanglement between social network posting, immigration situation and legal/police apparatus encourages some degree of confusion. For instance, the editor in chief of the national daily *My Republica*, Subhash Ghimire, tweeted on 3 May 2016:

....a white man's immigration violations can't be masked under free speech.

Moreover, multiple narratives and interpretations were published on Twitter regarding Penner's use of the digital public sphere, his participation to Nepalese politics and his stay in Nepal, in support as well as a criticism of his expulsion. Penner himself gave his version of his arrest and expulsion on 12 May 2016:

Numerous false reports are circulating about my visa termination. The public is being told I was deported not just for social media posts but for violating my visa by overstaying, having multiple visas and changing companies.

But here is the Immigration letter revoking my visa which clearly shows the reason: 'social media posting and sharing'. Immigration wanted me to sign this, including a confession of 'negative message'. But I refused.

Here are the facts. My working visa was renewed 3 times, each time under Sprout Technology. The news reports that Sprout dissolved in 2012 are absurd – that's the year I moved to Nepal to begin working for Sprout. And I didn't work for 2 different companies – Sprout is a subsidiary of CloudFactory.

I never overstayed, never had multiple visas, never changed companies. If I had committed these obvious violations, they would have been cited as reasons in immigration's letter of visa revocation show here.

This view is corroborated in a way by the Director General of the DOI, who revealed in a BuzzFeed news that, 'we have been analyzing his tweets for several weeks and we decided that they violated the immigration laws of the country', adding further that 'we felt that his tweets were intended to rile people in support of the Madhesi protests and against the constitution'.¹⁰

One way of analysing these events could be to question who is deciding and tracing the boundary of 'expression'? It would also be to try to understand what

kind of interpretation is at play of what is an impact on peace and social harmony. It would at last be to suggest that the promise that ‘internet is destined to be a space of political freedom has now largely faded’ (Barker, 2015, p. 199) and to consider the consequences of this fading. However, what is of greater interest to us here is the fact that a chain of operations guided events towards the final expulsion. First, a heated debate related to who can express opinions on the Nepalese political life, then a denunciation and eventually the intervention of the police in relation to immigration and legal apparatuses. Moreover, the case of Penner is helpful to highlight the administrative and technocratic details of the ‘operativity’ of the digital public space, which connects speech to control and discursive intervention to the use of state authority and force. From that point of view, the digital public space can in no way be seen only as a space of symbolic exchange, since it is completely entangled with state power, legal rules and police practice. We think that ‘theatre of operation’ here gives a better sense of what is at stake when we try to think of this kind of setting than metaphors that would focus only on the discursive dimensions of such sites of exchange. The operations that are involved here are as follows: discursive and argumentative operations, engineering operations, legal operations and police operations. These series of operations cannot be separated in order to account for the outcome of this story. This entanglement of operations (discourse, specialised coding, law, policing) is what makes here the texture of the social world, contrary to a conception of the public sphere that would emphasize upon the discursive/deliberative dimension of politics.

Conclusion—New Media, Borders and Nation

Works upon political participation and deliberative democracy have shown with great success the importance of paying attention to the materiality of democratic devices. Discussions are shaped differently according to the space in which they take place. Our own analyses expand this view with the idea that not only discourse is at stake in discursive spaces but also productive labour, economic transactions or, in Penner’s case, geographic legalities and trajectories. What is so deeply political with design is therefore not limited to the ways in which it allows stakeholders, activists and spokespersons to intervene. Rather, it is the fact that this discourse is related to operations that transform and control the social world, one kind of ‘digital governmentality’ (Badouard et al., 2016b) related to national forms of government. In order to conclude we will synthesize the observations made from the case study by detailing the particular management of public expression, or ‘public reason’ which is at stake. ‘Advocated for from below the seats of power, public reason tends to be shaped by institutionalized relations between citizens and the political authorities who governs them’ (Jasanoff & Kim, 2015, p. 20). The case studied makes the importance of borders more visible than what is often assumed when dealing with supposedly borderless internet networks. It also underlines the entanglement of forms of legitimacy, exclusion and authority in relation to technological devices

and infrastructures. To some extent, this emphasises the underlying violence of the ‘institutionalized relations’ through which public reason is formed according to Jasanoff and Kim. This can be shown by looking at the construction of publics and authorities, in relation to the technologies that support this process, following one question: who or what designs public speech?

Grounded Legitimacy

In the debate about Robert Penner’s expulsion, the question of who is entitled to speak about the Nepali constitution is obvious primarily in relation to the discussion upon nationals and non-nationals. If Robert Penner’s interventions are considered inappropriate by some Twitter users, it is mostly on the basis that he is a foreigner and that as such he should not give his opinion on Nepali politics. This critique is first targeting what is considered a lack of information: ‘@robpenner Also, the majority people involved in protest were indians not madeshies who did for money. Do detailed research before posting’ (tweet on 7 March 2017). Penner answered: ‘Where is your “detailed research”? #PramanKhoi [where is evidence]’. This argument is completed by what is considered a bias that Robert Penner would express regarding Nepal and the Nepali police in particular. For instance, Penner tweeted a video (7 March 2017) that was being already circulated in the social media: ‘#Nepal police are this cruel to bystanders @ 1:10—how can we believe they later tried to save lives by shooting legs instead of head/chest?’ In response to this one asked him (10 March 2017): ‘@robpenner You are a human right activist. why are you silent when indian police shot nepalese in thier [sic] own land? Or you are only against nepali police?’ More importantly, Penner’s intervention is being reframed by some users as a violation of the law. On 3 May 2016, the editor in chief Subhash Ghimire tweeted: ‘Harassment, trolls & insults aren’t freedom of expression. A white man’s immigration violations can’t be masked under free speech. Period’. These tweets show that Robert Penner’s comments upon Nepali politics are conceived of as inappropriate and even illegal.

That way it appears that the Twitter users themselves frame the (national) limits of public debate. But these representations engage in the public space not only as mere discourse since they relate to exclusion. What if Penner was a citizen of Nepal instead of being a resident? Two individual cases point to an explanation. Rahman and Raju Sah, at different points of time, were arrested in 2014 in Nepal for their Facebook posts. Charges were later dropped due to widespread criticism. In the case of Penner, the expulsion appears as enough to criminalize him without charges being discussed in the court of law. Even though the matter was still in the sub judice in the Hon’ble Supreme Court of Nepal at the time of writing, when Sohan Sha asked Penner about his hopes for the next court hearing in October 2017, Penner replied: ‘I have to believe that eventually the Supreme Court will stop delaying my case, but I don’t know when’ (Penner, Robert, September 2 2017, personal Interview on Facebook). At this first level of the shaping of right to expression, two elements then have to be taken into account: the control of interventions upon the platforms

by individual participants, and in that context their declared or known nationality as the criteria of participation.

Structural Exclusion

However, this layer of the shaping of public reason shall be completed by a second one. ‘Nationals’ and ‘non-Nationals’ are here categories supposed to discriminate between members of the civil society allowed to express themselves regarding the Nepali constitution. But as Partha Chatterjee has shown, ‘civil society’ itself as a category often hides a part of the society that qualifies as ‘political society’ (Chatterjee, 2004). In that case, the political society can be seen as the Madhesi population involved in the ‘protest’ and ‘violence’. The whole Twitter debate analysed here leaves aside the fact that most participants to the discussions are not Madhesis, whose condition is yet one crucial issue of the debate (except select few Madhesi Twitterati). Penner is a Canadian national, and most of his opponents and defenders on Twitter belong to the Nepali Hill Brahmin (high-caste) community living in Kathmandu—whereas Madhesi users remain mostly silent and do not get involved in the discussions.¹¹ This absence can be interpreted as due to ‘passive social exclusion’ from the digital space, what we would term as ‘infrastructural exclusion’. Indeed, according to Amartya Sen, ‘When, for example, immigrants or refugees are not given a usable political status, it is an active exclusion, and this applies to many of the deprivations from which minority communities suffer in Europe and Asia and elsewhere. When, however, the deprivation comes about through social processes in which there is no deliberate attempt to exclude, the exclusion can be seen as a passive kind. A good example is provided by poverty and isolation generated by a sluggish economy and a consequent accentuation of poverty’ (Sen, 2000, pp. 14–15). In the case of the digital space in the Nepalese context, the research conducted by Martin Chautari on access to broadband internet reveals that as per census survey of Nepal in 2011 only 3.33% household had internet access and almost one-third of internet access at the household level was concentrated in Kathmandu valley where almost two-third of the total number of households had broadband internet access (Chautari, 2017).¹² To put tweets data (2015) originating from Nepal into perspective, it reveals that almost sixteen districts of Nepal out of total seventy-seven districts have no Twitter activity at all. And at least fifteen more districts have barely produced one dozen tweets. Put together these districts, at least seven districts are from Madhes. Moreover, taking the mobile data references, over 80% Tweeter tariff comes from one-fifth of the area of Nepal out of which 41% of the total tweets from Kathmandu valley (the capital region of Nepal).¹³ Thus, it is argued that the digital space is not exclusionary per se, but participation depends heavily on who is getting access. Weidmann et al. (2016) have claimed that the left behind of the internet revolution are the politically disenfranchised ethnic and religious minorities in a nation state. In additional data (Bohannon, 2016), they show that Nepal’s Madhesis are particularly affected, with an estimated 1% of access to the internet. In that sense, the shaping of the public

and of the actors of the theatre of operations relies strongly on the infrastructural dimensions of access. ‘Who is entitled to speak?’ relies then not only upon explicit internal platform rules regarding national and non-national participation but also on the result of structural forms of inclusion and exclusion from the technology.

State Action

The second level of ‘public shaping’ shall in turn be completed with a third, which is the state as an authority giving one license to express oneself. As has been shown, the intervention of police force and of the immigration administration in a delimited national space supplement the process through which public expression is managed. Expression in the public sphere is not simply about an abstract/concrete space organized by rules framing freedom of speech. Robert Penner’s case is not only about how the digital public space is regulated by principles and implementation techniques. His interventions result in his expulsion, but he could have written what he wrote as well from Canada from where he could not have been expelled. In that sense, if Twitter can be seen as a public space, the rules that organize speech on Twitter differ, depending on what is talked about and *from* where (geographically speaking). Of course, Twitter has its own rules. But the interesting fact here is how activity on Twitter happens to be related to other regulations of speech and perceptions of how political activity should be framed in other spaces (here, the national Nepalese territory). Twitter appears as one public space, and Penner kept on posting even once out of Nepal. Then the issue is about how expression in particular public places is related to means of control belonging to other places: expression in these places corresponds to operations interacting with other operations. The multiple ‘theatres of operations’ must then be linked and the texture of their links has to be investigated. On-line discussions and their rules (discussions between Twitteratis), infrastructural forms of organisation or exclusion (major absence of Madhesis debaters related to a lack of access) and state authority and action form here the basis of the management of public expression. And the elements of violence, technology and state authority at play in this organisation of discussion might be more properly seized through the notion of theatre of operation.

On 27 December 2015, Akhilesh Upadhaya, the editor of *The Kathmandu Post National Daily*, tweeted that Robert Penner ‘is certainly asking some difficult questions to us Nepalis, including journalists; will not dismiss him because he is not a Nepali’. This was a few months before Penner’s arrest. In the meantime, it seems that opinions had become much more divided on Penner’s participation to the Nepalese public debate. However, it is certain that Penner’s case and the causes leading to it have brought difficult questions to researchers working upon the digital public space and the ways in which it could be conceptualised.

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NOTES

1. For more details see Sharma and Najar (2015).
2. For more details see Penner (2015a).
3. For more details see Penner (2016).
4. The Forum for Women, Law and Development (FWLD) in 2012 projected that 23.65% of the population aged 16 and above—or 4,346,046 individuals—lacked citizenship certificates (FWLD, 2013).
5. Although this debate never happened *in person* and both authors mentioned each other only on some occasions, the differences and opposition between their approaches stimulated many works.
6. For more details see Penner (2015b), which is Penner's another article that followed his Twitter interventions on the HRW report.
7. The letter copy issued by the Department of Immigration, Nepal, has been publicly released by Penner through his Facebook account on 12 May 2016.
8. See 'No Interim Order' (2016).
9. The interim order of Hon'ble Supreme Court in Nepal for Penner's case, dated 22 May 2016 (own translation from Nepali language).
10. See Kaphle (2016).
11. However, there are select few editorials on behalf of Robert Penner.
12. Sohan Sha asked about the latest data for broadband internet access at the households in Nepal upon which they argued that it has been almost flat since 5 years between 3 per cent and 4 per cent.
13. Compiled from the raw data on Twitter activity from Nepal in 2015 (Pandey & Regmi, 2018).

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