

DOI: 10.53116/pgaftr.7771

Artificial Intelligence, the Internet of Everything and the Scope and Scale of Seduction at the Boundaries of Law

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Submitted: 12 November 2024 | Accepted: 13 March 2025 | Published online: 12 June 2025

Abstract: Online and algorithmic systems can promote the emotional, intellectual and political seduction of people. The power and scope of these systems may create new threats against which traditional means of protection may be overwhelmed. We discuss possible legal and technical ways to combat such misconduct as to protect the innocent and the autonomy of the individual.

Keywords: online, algorithmic, seduction, legal, technical, protection

1. Introduction

Seduction has a lurid attraction all its own (see e.g. James, 2012) but traditional legal punishments and sanctions for sexual seduction, while showing the opprobrium in which it has been held, have slowly died away. Some states still have criminal or civil liability in some circumstances for seduction, but they are few and far between, with courts treating such laws with disfavour (see e.g. *Michigan Penal Code*, 750.532; HG.org, s. a.). Though grist for pot boiler, bodice ripper “romantic” novels, seduction is disreputable as it represents the subversion of a person’s will and reason and the topic of sexual gratification may introduce problems for jurists in deciding matters (Iqbal et al., 2023). It is not surprising therefore that Dante Alighieri (2009) consigned seducers to the Malebolge, the eighth circle of Hell adjacent to the ninth and home of Judas and Satan. Seducers joined there by panderers, thieves, falsifiers, hypocrites, and other fraudsters; their punishment being symmetric and grotesque (cf. *New American Standard Bible*, 2020, Proverbs 30:31). The idea of seduction, consisting in clever lies and targeted deceit, stands beyond personal dalliance to greater concerns about its

power to influence broad actions through less than honourable motives, and ultimately corrupt the grace of human reason.

The Latin root for seduction is *seducere*, to “lead astray”. Thus, seduction is rather problematic as respect for personal autonomy may limit state interference where efforts are made to lead adults astray. The core foundational aims of the U.S. First Amendment to freely permit speech relating to politics and the way people govern themselves would be crushed, as every opposing viewpoint claims the other to be wrong, misleading and evil and surely must be suppressed. But the First Amendment jurisprudence respects the rights of people to lead and be led astray, though subject to the efforts of others at correction and “truth”. Only the most compelling social interests have any possibility of limiting speech to mitigate the asserted damages they cause. And one of the most compelling interests in any culture, society and community is that of the protection of children.

The seduction of children for extreme purposes of sexual exploitation is the failure of that protection. It is a failure that has massive consequences for the healthy physical and psychological development of a child, and that failure may be the ruination of that child’s life and those around them. Including the society and culture in which they mature and live. The challenge is effective protection of children from such sexual exploitation, which leads to all the dangers of seduction of the mind. And the many other forms of exploitation that may damage the future, theirs and ours.

2. The scope and scale that lead astray

Seduction is present in a host of human endeavours beyond sexuality, such as political, moral and religious endeavours. Garance Franke-Ruta (2012) has written on the means of political seduction, Michael L. Brown (2022) on the “political seduction” of the church, and Robert Bork (1990) on the political seduction of the law. Concern for people astray embraces almost all human endeavours built around information, discussion and reflection that require thought and, above all, human reason to properly understand. One noteworthy 21st century example is concern about “fake news” and the effectiveness of accusations of fake news to reduce or destroy the credibility of any information, regardless of its veracity (see e.g. Chin & Zauddin, 2024). The Internet magnifies the scope and scale of distribution of information whether true, false or misleading (Mayer & Till, 1996; Trauth-Goik, 2018). It “puts every user close to all the evils of which we could possibly conceive” (Losavio, 2024, p. 245). Every temptation, corruption and seduction is available to anyone online all the time; further regulation of freedom of expression may become inevitable as it becomes necessary.

Dissemination and distribution are enhanced by use of artificial intelligence (AI) driven recommender systems or other AI systems that serve up targeted content of any nature, whether requested, suggested or pushed to an individual. In the U.S.A., internet powered social media, data and information systems are protected under the First

Amendment to the U.S. Constitution,¹ and they are further protected by the U.S. Communications Decency Act Section 230² immunity from liability for evil content posted by third parties that may be delivered via those systems.³ Such statutory immunity may be limited or removed by legislative action. Judicial limits may result if a greater causal connection between the primary offenders and their postings and the social media companies is established, whether intentional, negligent or otherwise.

And it may change as the scope and scale of damage from these systems grows. First Amendment protections are not absolute and may not apply if there is a compelling reason to do so under the test of “strict scrutiny”. Section 230 safe harbour immunity is subject to legislative amendment, has been done regarding the use of online internet services that promote human trafficking, commercial sex services and child sexual exploitation; these limits may increase in the future (NIJ, 2024; FOSTA-SESTA Acts, 2018). Such modifications may be implemented without full consideration of the downstream impact; there are indications that such content moderation regarding commercial sex services may have unintended harmful effects, such as reduced safety for the service providers (NIJ, 2024). As the internet “puts every user close to all the evils of which we could possibly conceive” (Losavio, 2024, p. 245), every temptation, corruption and seduction is available to anyone online all the time. There may come an inflection point where the damage done leads to further regulation even under the most solicitous regimes of freedom of expression.

3. Limits to American free speech absolutism

Freedom of expression has different limits among the jurisdictions and legal regimes of the world. Examination at the boundaries of freedom of expression in the world begins with examination of the laws of the United States of America. The United States protections include the freedom to speak, freedom to receive speech and the freedom to speak anonymously beyond those of any other country. But they are not absolute, and each is subject to regulation based on balancing the harm of the speech against the harm of its suppression. Regulation of content that qualifies speech may have to show there is a compelling need to restrict it, an effective means of restriction is available, and those

¹ “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

² 47 U. S. C. Section 230, part of the Communications Decency Act of 1996 providing a safe harbour immunity to providers of an “interactive computer service” that may republish content from third parties.

³ *Gonzalez v. Google LLC* 598 US 617 (2023), where the family of Nohemi Gonzales, killed in a nightclub bombing by ISIS sued Google for aiding and abetting and conspiring with the Islamic State of Syria and Iraq and that bombing via the use by ISIS supporters of YouTube system operated by Google; the case was dismissed by the Supreme Court for failure to state a claim, per the Supreme Court ruling in *Twitter v. Taamneh* 598 US 471 (2023). *Twitter v. Taamneh* 598 US 471 (2023), where the family of a person murdered in a terrorist attack by ISIS sued, alleging that social-media companies aided and abetted ISIS in its terrorist attack on the Reina nightclub, where ISIS used those services; the Supreme Court held that those allegations fail to state a claim under 18 U. S. C. para. 2333(d)(2) (The Antiterrorism Act), pp. 6–3.

means are narrowly drawn to impact the least speech possible.⁴ Even under the boundary conditions of American regulation of speech, the most extensive freedom of expression, the common law of the United States sets out various doctrines permitting regulation and limiting harm resulting from speech.

3.1. Jurisprudential designation of “nonspeech” as to permit regulation

Areas in which regulation is permitted begins with the jurisprudential definition that some forms of expression are not “speech” as to be entitled to constitutional protection. There are some categorical exceptions that permit the government freedom to regulate certain speech, even though it does so based on the content of the speech. The United States government may proscribe these items, provided they constitute: obscenity; defamation, libel or slander; incitement of lawless action, if there is “a clear and present danger”; “fighting words”; or speech planning and directing illegal activities.

A speech act is obscene if the average person, applying contemporary community standards, would find it, taken as a whole, appealing to the prurient interest, or if it depicts or describes, in a patently offensive way, sexual conduct or excretory functions specifically defined by applicable state law, or a literary work, taken as a whole, lacks serious literary, artistic, political or scientific value.⁵ It is defamatory, libellous or slanderous and the expression may be punished if it is (1) a false and defamatory (injurious) statement concerning the plaintiff, it is (2) an unprivileged publication to a third party, there is (3) a fault amounting to at least negligence on the part of the publisher who has First Amendment special protections, such as the press, but potentially strict liability for *per se* of a private non-press party, and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.⁶ Mere advocacy of violence alone may be protected speech; to be unprotected, speech must be as to (1) imminent lawless action, (2) intent to produce imminent disorder, (3) likelihood of producing imminent disorder.⁷

Systems of AI which can serve up such speech via the Internet can be regulated as to the dissemination of such harmful speech with prohibitions on and punishment for that dissemination. The use of sexually obscene materials to groom a target and promote related seduction of a person less than 18 years of age is both prohibited and punished; indeed, simply showing such materials to someone under 18 is illegal. Serving up words that can incite lawless action and encourage violence may be regulated, though there may be a very fine line in determining what is impermissible and permitted speech in this domain (Cabral, 2021). The use of AI systems to push fraudulent or misleading speech in commercial transactions can be banned. The use of systems of speech disseminated via the

⁴ For content related regulation of speech there must be a compelling interest at stake, an effective regulation and no less strict avenues available to protect that compelling interest. Speech deemed not protected speech, such as obscenity and defamation, receives no protection.

⁵ See *Miller v. California*, 413 U.S. 15, 23, 37 L. Ed. 2d 419, 93 S. Ct. 2607 (1973).

⁶ See, e.g. *New York Times Co. v. Sullivan*, 376 U.S. 254, 268, 11 L. Ed. 2d 686, 84 S. Ct. 710 (1964).

⁷ See *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72, 86 L. Ed. 1031, 62 S. Ct. 766 (1942).

internet of criminal activity is clearly subject to prohibition, even as advocacy of the positions of those committing to criminal activity may be protected speech if not coordinated with criminal and terrorist organisations. This is discussed in greater detail below in U.S. Court of Appeals for the Seventh Circuit's opinion in *United States v. Osadzinski*,⁸ which details the analysis needed in such cases.

3.2. Content regulation of speech permitted subject to balancing tests

Expressions can be regulated due the damage done under a test called “strict scrutiny”, where state regulators must establish that the regulation of particular speech is needed (1) for a compelling state reason, (2) that can be protected by regulation, and (3) being drafted as narrowly as possible to provide the protection while limiting the minimum amount of speech affected.

One example of this relating to the protection of children is the regulatory prohibitions on the creation, distribution and possession of child pornography showing the sexual exploitation of humans under the age of 18. Although pornography generally, indecent material, is permissible under American law, child pornography is prohibited precisely because it involves the unlawful sexual exploitation of children. This demonstrates that the compelling interest in protecting children from such exploitation is sufficient to justify broad legal prohibitions of such speech used to sexually exploit children where effective and narrowly drawn.⁹

This reasoning applies to AI, the Internet of Things, and everyone's connectivity to the internet. If there is a compelling interest in limiting operations that cause injury to compelling interests, these factors may lead to a broad re-evaluation of the nature of regulation of certain kinds of speech mediated by these systems that have, in the past, been protected from regulation.

This potential re-evaluation may be driven by the power of the information technologies represented by AI to customise information and target of recipients, the power of dissemination represented by the internet to most any recipient and the power of broad data collection presented by the Internet of Things to aid in that customisation. Regulatory tests of expression under strict scrutiny are not purely legal. They require an examination of the facts of the means by which information is distributed to people and the impact on those people. This is demonstrated in a variety of instances where regulation of technology mediated speech has been tried.

Such is the phenomenon known as connectivity, being explained in *ACLU v. Reno*, where the ability of people to connect to all the information in the world having great benefits is stressed. The regulation of such means of information distribution must weigh as benefits against possible detriments and the means by which the detriments might mitigated. Next, there is the Internet of Things and ubiquitous data, that is, the data body

⁸ *United States v. Osadzinski*, 97 F.4th 484, 490–493, 2024 U.S. App. LEXIS 7364, *12–19 (7th Cir. Ill. March 28, 2024).

⁹ *New York v. Ferber*, 458 U.S. 747 (1982). But where virtual child pornography is created without the exploitation of a child, it cannot be prohibited under U.S. law, despite being barred by other nations.

of all information collected on everyone and everything they do and everywhere they are will continue to grow. The expansion of data sensing systems and power of data distribution and collection technologies, such as cloud computing, make this inevitable. Nothing is lost and nothing is forgotten such that to compensate for these technical facts some legal regimes provide for a “right to be forgotten” as part of their regulation of data systems. Finally, there is AI and profiling and directed dissemination of content which is the power of AI systems to do probabilistic analysis on a particular subject provide effective response relevant to that subject is now unprecedented. The Generative Pre-trained Transformer architectures for content analytics by AIs can produce remarkably accurate and directed information and appeals to a particular person. It is this particular technology and its scope and scale of focus on an individual, their interests and their desires, that may as a factual matter change the balance regarding whether or not there is a compelling need to regulate such information dissemination systems in a variety of areas.

It is the power of AI-driven recommender systems used widely in commerce, for example, that demonstrates the risks these systems may present to people in other domains of human activity. Instead of promoting the purchase of music or movies or toasters, such technologies may promote dangerous actions, especially by those whose discernment is yet developing.

3.3. At what limits might “AI” speech be regulated?

The compelling state interest in protecting children creates a foundation for possible regulation of expression and speech that may injure them.¹⁰ Perhaps most graphic is the damage that these systems do to child sexual abuse. The connectivity of the internet generally and social media systems particularly assures wide access to everyone, including children (Wachs et al., 2012). Once access is obtained, the information seduction of a child may begin and progress to damaging ends. Child sexual exploitation is especially pernicious, vile and damaging to the target child. Although, there are a variety of definitions regarding the seduction behaviour, called “grooming”, used to seduce children, there is yet no consensus nor widely accepted psychometrics to assess this behaviour (Bennett & O’Donohue, 2014). While the practice of child grooming is only now being studied as to its elements and process, its parameters are gaining focus: “gaining access to a child, gaining the child’s compliance, maintaining secrecy and avoiding disclosure.” (Craven et al., 2006) Grooming behaviours have been catalogued and tested as to response by subjects, as detailed by Winters and Jeglic (2017), with stages in the process. They outlined characteristics how such behaviour creates these stages that may be (1) the choice of victim, depending on several factors such as appeal or attractiveness, ease of access, or perceived vulnerabilities of the child, family situations indicating low levels of adult supervision, families with issues of discord, domestic violence, substance abuse, health concerns, and personal issues of lack of confidence, low self-esteem and insecurity. (2) Access to victim which is followed by isolating the child

¹⁰ *New York v. Ferber*, 458 U.S. 747 (1982).

physically and psychologically. (3) Building trust by learning the child's interests, encouraging the child, helping the child, offering gifts and secrets. And finally (4), escalation to physical contact.

Knowledge of such behaviours may be necessary for effective investigation and prosecution of child sexual abuse cases (Pollack & MacIver, 2015). With these elements of such behaviours, a structure for "grooming" can be built. Black et al. (2015) noted the linguistic processes for online grooming behaviour were similar to offline behaviour and shared common language patterns, albeit in a different order from that in offline activity. Their analysis noted the frequency distribution for words/actions, with flattery, parental presence at work and travel and "inappropriate behaviour". This linguistic analysis could easily port to the training of an analytical model to engage broadly with targets, the advanced AI Large Language Models (LLMs) like ChatGPT that can pose and respond to text questions and statements through natural language.

Such LLMs can be trained against large sets of data to build its probabilistic model of responses. These may be found in social media systems generally as well as those dealing with making social connections, including those on the Dark Web. Lorenzo-Dus et al. (2020) have detailed their lexical and collocation analysis of online grooming transcripts that shows recurring patterns and linguistic structures in grooming language. They suggest the need to develop powerful algorithms to drive detection software of such behaviour as well as hone understanding of the *modus operandi* of offenders. The unsupervised training of LLMs for child sexual exploitation may also be matched by fully supervised and programmed models based on the patterns found in grooming behaviour. The evolution and development of Small Language Models (SLMs), technologies for building effective operative systems on smaller, specialised bodies of knowledge, text and speech, may be used to build even more effective systems.

Detection of such systems will be important as, unfortunately, they also may support the development of "grooming" systems that automate the exploitation process. GPT models are now available for modification and customisation as desired by the programmer. The great danger presented by such automated systems is that these machines work night and day in a global connected world to advance these evils. They may evolve to detect law enforcement investigations and "stings" and AI detection models as to avoid their own detection and alerts by protective monitors in place on host systems, such as social media.

While illegal, what additional regulatory systems may be needed and how might they comply with free speech protections? As noted, child pornography is regulated due to the compelling interest in protecting children from exploitation.¹¹ This rationale applies to systems for the dissemination of information generally online but has been limited by the facts. *ACLU v Reno* struck down the Communications Decency Act as it, while protecting a compelling interest of protecting children, did not propose an effective solution that would not interfere with the speech rights of adults.

If the challenge of creating an effective system for the regulation and investigation of child sexual grooming conduct narrowly applies and does not inappropriately infringe on the speech rights of adults, then the equation is changed and regulation may be

¹¹ See *Osborne v. Ohio*, 495 U.S. 103, 111, 109 L. Ed. 2d 98, 110 S. Ct. 1691 (1990).

appropriate. It may promote or mandate the development and use of such protective systems as outlined here.

3.4. A compelling state interest in suppressing crime and terrorism

Paralleling this are matters of state interest in stopping the seduction of people for wrongful purposes are crime and terrorism. This analysis above applies to efforts to eliminate or regulate online expression in support of terrorism. International terrorism is defined by the United States Code to embrace violent acts intended to intimidate or coerce a population or influence the policy or conduct of a government.¹² As with crimes generally, there are no free speech protections for speech that directs such criminal activity. But speech supporting the aims of a particular “terrorist” organisation may be protected and safe from state interference.

Acts of supporting terrorism are different from voicing support for the beliefs and causes of terrorism, which may be itself protected under the First Amendment. The allure may be a political seduction of an individual but, depending on the circumstances, protected expression.¹³ This was carefully addressed by the U.S. Court of Appeals for the Seventh Circuit as to the extent of First Amendment protections offered by computer mediated systems for the dissemination of information from the terrorist organisation ISIS. That Court noted the conduct of the defendant in *USA v Osadzinski*:

Thomas Osadzinski created a computer programme that allowed ISIS (the Islamic State in Iraq and Syria) and its followers to rapidly duplicate terrorist propaganda videos online and thereby to stay a step ahead of efforts by the United States and other western governments to thwart the organisation’s media campaign. Osadzinski shared his computer programme with people he believed were ISIS supporters, taught them how to use it, and deployed it to compile and disseminate a large trove of ISIS media. Osadzinski claims that his conviction violated the First Amendment because his actions constituted independent free expression.¹⁴

Yet the Seventh Circuit Court rejected his defence under both the First Amendment protection of freedom of expression and the specific constitutional savings clause of the statute of prosecution, 18 U.S.C. para. 2339B. The U.S. Congress, aware of dangers in potentially limiting speech, provided that “nothing in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the First Amendment to the [U.S.] Constitution”.¹⁵ The statute of prosecution banned “only a *narrow category of speech*” that falls outside the protection of the First Amendment speech “to, under the direction of, or in coordination with foreign groups that the speaker knows to be [*involves*] terrorist organizations”.¹⁶

¹² 18 USC 2331 (US).

¹³ *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010).

¹⁴ *United States v. Osadzinski*, 97 F.4th 484, 490-493, 2024 U.S. App. LEXIS 7364, *12-19 (7th Cir. Ill. March 28, 2024).

¹⁵ 18 U.S.C. para. 2339B(i).

¹⁶ *Holder*, 561 U.S. at 26. (emphasis added).

Internet communications and software coding both use “speech”. The defendant *Osadzinski* asserted his free speech rights were violated and his prosecution was punishment for his advocacy of the cause of ISIS. *Osadzinski*’s conduct included his coding and distribution of software supporting the organisation’s mission. But the Court, assuming *arguendo* these were expressive activities under the First Amendment, noted those protections would not cover his *actions* in support of ISIS that ranged from (1) giving them “official videos” to (2) providing the software to facilitate distribution of ISIS media broadly and (3) bypass efforts to block such messaging. Hence, *Osadzinski* conviction was upheld.

The *Osadzinski* case demonstrates the limits of speech in pursuit of criminal goals, from terrorist recruitment to the sexual exploitation of children. Also, it emphasises the need for careful analysis of the facts and law at issue to ascertain the limits of regulation and the scope of protection.

3.5. The compelling interest in political speech: from exploitation of children to exploitation of everyone

The First Amendment is first and foremost about protecting and encouraging political speech. Political speech governs politics, the highest form of human endeavour. The foundations of the United States rest on exchange of ideas as to how best to govern ourselves. As such political speech is the most protected speech under the First Amendment. AI systems play a significant role in political speech. They build on the immense power of the internet to connect people with others of their like interests or with those with new ideas. AI systems may then serve to falsify information in powerful ways that are not easily recognised, yet are carried around the world to those most susceptible to its seduction.

This power is great enough that Mannheim and Kaplan (2019) assert it may be an existential threat to American democracy, and democratic regimes everywhere. Panditharatne and Giansiracuse (2023) detail the hazards of AI-mediated disinformation for democracy. The invasive and manipulative information power of AI is unprecedented and may demand an accounting. Lies in politics are just the way of the world and can have an easy and broad facility, albeit historically accompanied by possible means to validate that information and sift truth from falsehoods. We have a compelling interest in politics and in free speech, so how do we balance those interests? Or do we need to balance them at all? If we do not, the very faith in the foundations of democratic governance may be at risk. With the massive increase in the power of AI deception, does that change this equation? There is a compelling interest in political life, including political life based on reason rather than seduction, but is there an effective solution that narrowly limits what speech is infringed?

One partial list of dangers includes all we have discussed for the seduction of children and adds the following risks: (1) “deep fake” images, (2) “deep fake” audio, (3) “deep fake” video, (4) targeted text communications, attacking a candidate with false statements, and (5) targeted text communications, leading to voters choosing not to vote.

And all of these can build powerful, yet false narratives as to subvert truth, and in turn subvert reasoned political life.

This phenomenon could open a whole new horizon for politics, still one ought to err on the side of caution. It is rather telling that the 2024 Elon University poll of national sentiment by Americans regarding elections found that 73% believe there will be AI manipulation of social media to influence the election, 70% believe the election will be affected by such use of AI, 62% believe the election will be affected by target AI to induce voters not to participate, and 78% believe one or more of these AI actions will affect the 2024 Presidential election.¹⁷ Also, 96% felt there should be some punishment for the malicious and intentional creation or alteration of fake photographs, audio or video. Those ranged from being barred from office (46%), criminal prosecution (36%) and fines (12%) for such misconduct. Yet being barred from office might require constitutional amendments, federal and state, and penal sanctions, absent conduct, might not be legal under U.S. law. The majority of voters were not confident they would be able to discern AI-generated media artifacts.¹⁸

The Federal Communications Commission issued its Declaratory Ruling that under the Telephone Consumer Protection Act¹⁹ robocalls under AI control were prohibited, noting the new challenges they present consumers.²⁰ The ruling built on protections against “voice cloning” where a consumer may be misled as to whom has actually called. FCC Commissioner Geoffrey Starks noted specifically that:

Real world examples here are no longer theoretical. Bad actors are using voice cloning – a generative AI technology that uses a recording of a human voice to generate speech sounding like that voice – to threaten election integrity, harm public safety, and prey on the most vulnerable members of our society.

Using AI to target messages for specific individuals based on data analysis of their information profiles creates powerful means of seduction, means to pitch any idea as consistent with a person’s beliefs and prejudices. How bad must it be for governments to act, without destroying the very benefits freedom of expression give? And that cannot be given by any other way for a democratic society?

4. Conclusion

The mathematician, Alan Turing (1950), addressed the issues of “artificial intelligence” first as a refutation of ideas that it was an impossible system. He then proposed that the test of this would be his “imitation game”, where a human judge could no longer tell the difference between a person and the machine in its outputs. And that is the challenge before us, and democracy. Will the dangers to democracy simply be new

¹⁷ Elon University 2024.

¹⁸ Elon University 2024.

¹⁹ 47 U.S.C. para. 227(b)(1) (US).

²⁰ U.S. Federal Communications Commission 2024.

variations on old mendacity? Or will they truly present a vast new scope and scale of information manipulation leading to human manipulation? That may, in turn, lead to an information autocracy controlled by those in control of the means of communication, analysis and narrative.

There is a clear concern. But how great or sculpted that concern will be is as yet unknown. Turing's admonition in closing his discussion of *Computing Machinery and Intelligence* gives us some guidance for the road ahead: "We can only see a short distance ahead, but we can see plenty there that needs to be done" (Turing, 1950).²¹

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²¹ Rest in peace, Alan Mathison Turing.

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