

Are legal regulation of the internet and freedom of speech compatible?

Legal regulation of the internet and freedom of speech are compatible with the proviso that the regulation does not interfere with our ability to hold the powerful to account. On this condition, legal regulation of the internet is not only compatible, but crucial, to our ability to exercise freedom of speech and, to a large extent, only a consistent reflection of regulations we currently experience offline.

It would be remiss of us to reduce freedom of speech to simply the ability to say anything we please. In reality, it plays a far more important, perhaps even much more useful, role in our society. By and large, the right to freedom of speech is a means to an end, existing as a key mechanism in 'holding the powerful to account'.¹ This is because free speech allows for dissent to be expressed and opposing opinions to be shared, both of which play a critical part in providing a check on power. It does so by ensuring the public can at the very least openly criticise overbearing, misbehaving or incompetent leaders and through that work to make change. Therefore, if this endpoint is maintained, or even bettered, then a regulated internet should be favoured.

Following this logic, regulations that are compatible would be those that protect vulnerable private minority groups from abuse and hate speech, however, not ones which work to prevent 'hate speech' on public political parties or companies. We can see dangerous manifestations of the latter in places like Vietnam where the 1999 Media Law (Article 1, chapter 1)² states that all media—be that TV, radio, or newspapers—must serve as a 'mouthpiece of Party organisations', receiving a list of forbidden topics weekly with the greatest hits including human rights issues and political dissidents to name a few. Another very recent example of this can be found in Russia, where a strategically vague law against 'fake information' has been passed³. This law now means that those found guilty of spreading an 'anti-war sentiment' (in relation to the conflict in Ukraine) face up to 15 years in prison, and also, more generally, that dissenters have even less of an ability to criticise the ever democratically backsliding⁴ Russian government.

Were the legal regulations to act within the above restraints and only work to prevent people using the internet falling victim to hate speech it would, to an extent, further the use of freedom of speech by removing a key barrier to access of it. This would be by creating a

¹Amnesty International. 2022. *Freedom of Expression*. [online] Available at: <<https://www.amnesty.org/en/what-we-do/freedom-of-expression/>> [Accessed 14 March 2022].

²Committee to Protect Journalists. 2015. *10 Most Censored Countries - Committee to Protect Journalists*. [online] Available at: <<https://cpj.org/2015/04/10-most-censored-countries/#1>> [Accessed 14 March 2022].

³Reuters. 2022. *Russia fights back in information war with jail warning*. [online] Available at: <<https://www.reuters.com/world/europe/russia-introduce-jail-terms-spreading-fake-information-about-rmy-2022-03-04/>> [Accessed 16 March 2022].

⁴Kiyan, O., 2020. *Russia & Democratic Backsliding: The Future of Putinism*. [online] Harvard International Review. Available at: <<https://hir.harvard.edu/russia-democratic-backsliding-the-future-of-putinism/>> [Accessed 16 March 2022].

universally understood and regulated standard of conduct online which would play a central role in helping to deconstruct self-censorship brought about by the phenomenon of vigilante justice that we can see arising wherever a lack of legal enforcement, or distrust in the power supposedly enforcing, is faced⁵. We can see that this is especially ripe in places wherein there are no hate speech laws, and thus people take it upon themselves to bring about justice for various sins of political incorrectness and other strains of offensive speech as they see fit. This manifests in the United States, where there is a lack of hate speech laws as they would be found unconstitutional under the First Amendment – something recently reasserted in *Matal v. Tam* in 2017⁶. We can see the impact that this has on freedom of speech when turning to data that illustrates the gap between how comfortable people are expressing their views, depending on whether those views fit the current (western) progressive narrative or not. In the US, the disparity between these two groups is comparatively large, sitting at 25%⁷, far more than the 15%⁸ in the UK.

Although the legislation mentioned earlier does not directly address online conduct, it reveals two telling realities. The first is that more specific legislative guidance surrounding what truly abuses freedom of speech dispels many fears about violating guidelines or causing upset and getting into trouble. The second is closely linked: with legal regulation the difference between those who do and do not mean harm becomes far more stark. This helps put an end to self-proclaimed online police that, with their varied interpretations of what is and is not permissible to say, often in defence of groups they themselves are not actually a part of, deter many from innocently exercising their freedom of speech and diverging from the status-quo.

To transfer this fix to the online setting however, it is crucial that these laws are specific and enforced effectively otherwise it will not work to help to increase the use of free speech. Government schemes such as the Online Harm White Paper⁹ are not beneficial as they are neither specific and effectively enforced nor protective of the ‘end’ discussed earlier. This is due to the vagueness of the sentence “harms with a less clear definition”. This is not only non-specific, and therefore can never be effectively enforced, nor does it provide a guideline for users, but puts the ability to hold the powerful to account at risk as those in power can interpret it at their own discretion—something neither compatible with, nor beneficial to freedom of speech.

⁵ The Conversation. 2020. Vigilantism, again in the news, is an American tradition. [online] Available at: <<https://theconversation.com/vigilantism-again-in-the-news-is-an-american-tradition-141849>> [Accessed 15 March 2022].

⁶ En.wikipedia.org. 2022. *Hate speech in the United States - Wikipedia*. [online] Available at: <https://en.wikipedia.org/wiki/Hate_speech_in_the_United_States> [Accessed 15 March 2022].

⁷ Cato.org. 2022. [online] Available at: <<https://www.cato.org/survey-reports/poll-62-americans-say-they-have-political-views-theyre-afraid-sh-are-liberals-are-divided-political-expression>> [Accessed 15 March 2022].

⁸ Yougov.co.uk. 2022. *Cancel culture: what views are Britons afraid to express?* | YouGov. [online] Available at: <<https://yougov.co.uk/topics/politics/articles-reports/2021/12/22/cancel-culture-what-views-are-britons-afraid-expre>> [Accessed 15 March 2022].

⁹ GOV.UK. 2022. *Online Harms White Paper*. [online] Available at: <<https://www.gov.uk/government/consultations/online-harms-white-paper/online-harms-white-paper>> [Accessed 15 March 2022].

Despite the seeming cure that regulation provides for the current issues with expression—if implemented correctly—there is the argument that the government and the law should not have such a heavy-handed role in what is and is not abuse of this freedom as it should be governed by the people and the minority group's own standards. This can be rebutted in two ways; firstly in that the reality that handing it to the people is not effective as due to this vacuum of justice many have been grappling to find some kind of way to hold people accountable, a need which springs from intrinsic desire for justice¹⁰. In this, each person is creating their own standards and severity of punishment, whether that be shaming, doxxing, 'DDoSing'¹¹, or trying to sabotage future career prospects of the alleged offender. This leaves people, as earlier identified, unable to voice beliefs and spark progressive debate if this view could be deemed amoral or offensive when held against the status-quo standard. The second rebuttal, when it comes to the government deciding for minority groups what constitutes illegal speech, this can be, and is already, easily catered for in the current process for adopting legislation. The Equalities Office, for example, conducts thorough research and runs consultations¹² of affected groups far before debate in parliament begins.

Regulation of the internet can also be justified when considering the fact that we already face ample restrictions offline, and these are not seen as incompatible with our right to freedom of speech—from a utilitarian standpoint at least. For example, it is universally illegal to disseminate copyrighted content or highly illicit material, such as under-age pornography or manuals on how to construct explosives, despite the fact that these can all be seen as forms of expression or speech in the legal sense. Such regulations can be justified by J.S. Mill's Harm Principle, wherein we allow for free expression to the point that it does not disproportionately harm others. The utilitarian justification for certain limits therefore is that the costs of allowing anything to be distributed anywhere outweighs the potential harms. The question is ultimately then not whether legal regulation of the internet is compatible with freedom of speech—in fact it is arguably paramount to the effective functioning of society—but how comprehensive and restrictive it is, and especially whether it limits the ability to hold those in power to account.

When considering hateful or discriminatory content specifically, we can take the example of Denmark, which is ranked first in terms of freedom of speech and expression¹³. The country is considered on the global stage to be one of the most, if not the most, highly ranked nation in terms of freedom of speech, yet Danish laws are incredibly strict when it comes hate

¹⁰ AJW, T., 2016. Declaring Justice to be a Human Need. *Journal of Perioperative & Critical Intensive Care Nursing*, 02(04).

¹¹ A Distributed Denial-of-Service (DDoS) attack is an attack meant to shut down a machine or network, making it inaccessible to its intended users

¹² GOV.UK. 2022. Government extends consultation to help shape future Conversion Therapy legislation. [online] Available at: <<https://www.gov.uk/government/news/government-extends-consultation-to-help-shape-future-conversion-therapy-legislation>> [Accessed 16 March 2022].

¹³ Worldpopulationreview.com. 2022. *Countries With Freedom of Speech 2022*. [online] Available at: <<https://worldpopulationreview.com/country-rankings/countries-with-freedom-of-speech>> [Accessed 15 March 2022].

speech as of 1939¹⁴. From this it is clear that regulation and freedom of speech are entirely compatible and it is natural that, if they can co-exist offline, they must be able to exist online. The government has a universally recognised duty¹⁵ to protect others from abuse and prevent abuse of freedom of speech, meaning legal regulation of the internet is inalienable.

Legal regulation of the internet is compatible with freedom of speech up to the point that these regulations begin to limit users' ability to keep those with power in check, be that a politician, business, monarch or sometimes even celebrity. Resting on this condition, regulation is not only compatible but useful in promoting the safe deployment of freedom of speech, and is simply a reflection of laws already in place in offline life which would be negligent to leave behind as we further emigrate to an online life.

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¹⁵ Amnesty.org.uk. 2022. *What is free speech? One of the most important human rights explained.*. [online] Available at: <<https://www.amnesty.org.uk/free-speech-freedom-expression-human-right>> [Accessed 16 March 2022].

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