

What limits, if any, should we place on the right to freedom of expression?

Freedom of expression is the right to express one's opinions without censorship, restraint, or legal penalty. It is vital in society to ensure that we have basic freedoms and rights as human beings. It also acts as a catalyst for other human rights, enabling one to speak up when other rights, like freedom from discrimination, are denied. Different limits on freedom of expression will be explored, including national security, hate speech, and defamation. It shall be concluded that limits should be placed on the right to freedom of expression to avoid tension and conflict only in exceptional circumstances, and such limits should be tailored to each country's needs with an international watchdog.

1. What limits should be placed on freedom of expression?

Despite the importance of freedom of expression, certain limits can be justified. Based on Locke's natural law, it is submitted that such a natural right is automatically limited within the social contract. Humans, though free, equal, and independent, are obliged to respect each other's natural rights to life, liberty, and property.¹ We have mutual responsibilities to refrain from harming others' rights, whilst the state prevents others from violating ours. Thus, society necessitates some limits on freedom of expression.

a. Hate Speech

Firstly, limits on freedom of expression are necessary as when 8 billion people demand that their opinions be validated, the world becomes increasingly polarised. This would further accentuate divisions amongst groups with contrasting opinions, in juxtaposition with the global aim to create a consensus to ensure social cohesion. It could also result in a "disdain chain", a form of hierarchical discrimination whereby parties look down upon parties with 'lesser' opinions. A balance should therefore be struck between freedom of expression and freedom from discrimination.

¹ von Leyden, W. (1956). John Locke and Natural Law. *Philosophy*, 31(116), 23–35. <http://www.jstor.org/stable/3749204>.

Comedy is a form of freedom of expression by an artist towards general contemporary events, often expressing controversial views in areas like politics. A prime example of teetering on the lines of expression versus discrimination would be comedians making jokes about minority groups. In “The Closer,” Dave Chapelle jokes that he doesn’t want “a woman with a dick using a urinal next to me(him)”, infuriating LGBTQ+ groups which strive for equal rights. He claims “offensive” and “boundary-pushing” is in the name of good comedy and his critics are just being overly sensitive.² Although artistic freedom of expression should generally be upheld, this essay submits that limits including bans and punishments should be imposed on expressions that hinder the advancement of equal rights without coherent logic and justification.

Furthermore, courts should ensure that art is not merely a political pawn, but a product of critical analysis, appreciation, and reflection. For example, the controversial portrayal of Muhammad in the 12 cartoons published in a Danish newspaper in 2005.³ As Islam has a strong tradition of aniconism, the visual depiction of Muhammad was considered highly blasphemous. This sparked protests around the world, including violent demonstrations and riots in some Muslim countries. While the cartoons did not constitute physical violence, they challenged basic religious beliefs and triggered an international outcry. A case-by-case approach should be taken whereby each country, with its own major religion and public threshold of tolerance, should decide whether sanction is in order. If artistic freedom is not balanced with a sense of artistic responsibility in socioeconomic, cultural, and religious contexts, it paves the way for obscenity and artistic perversion disguised as artistic freedom.

b. National Security

Secondly, where an individual's freedom of expression conflicts with a state’s national security, limits, such as sanctions and deterrence, should be imposed on such rights. For example,

² Gillota, D. (2019). Reckless Talk: Exploration and Contradiction in Dave Chappelle’s Recent Stand-Up Comedy. *Studies in Popular Culture*, 42(1), 1–22.

³ Goolam, N. M. (2006). The cartoon controversy: a note on freedom of expression, hate speech and blasphemy. *The Comparative and International Law Journal of Southern Africa*, 39(2), 333–350. <http://www.jstor.org/stable/23252640>.

the widespread assumption that the Chinese government's ban of Google, YouTube and other commonplace Western applications has caused "substantial harmful limits to the right of freedom of expression" is arguably incorrect and can be justified by China's data security concerns.⁴ The real reason behind the policy was Google's unwillingness to save users' information in a Chinese database.⁵ An additional benefit of the policy was the cultivation of a greenhouse-like environment for local equivalents (Baidu, WeChat, Bilibili) to grow. Instead of China's policies being simply for the sake of limiting the right of freedom of expression, the limits have been made to protect national security and are counterbalanced with the Chinese platforms for people to express their opinions freely.

An occurrence where freedom of expression was limited in the name of national security would be *R v Attorney-General for England and Wales* (2003). The Ministry of Defence filed a case against "R" as he had signed a confidentiality agreement, yet he published his memoirs about the Gulf War upon return to New Zealand. The Ministry's case was upheld in the name of national security, despite the alleged undue influence. As national security was at blatant risk after he published confidential details about the Gulf War, this is an exceptional case where the limit on "R"'s freedom of expression was necessary to protect national security.

However, the ambiguous term "national security" suggests a space where strings could be pulled, and mouths covered. "National security" could be used as a blanket excuse to achieve the wishes of a powerful individual or manipulation by a government, limiting freedom of expression illegitimately. For example, in 2013, Snowden leaked classified NSA documents showing the violations of citizens' right to privacy by the US government.⁶ The US Department of Justice then unsealed charges against Snowden of two counts of violating the Espionage Act of 1917 and theft

⁴ McDonnell, Stephen. "China Congress: How Authorities Censor Your Thoughts." *BBC News*, BBC, 15 Oct. 2017, <https://www.bbc.co.uk/news/world-asia-china-41523073>.

⁵ Tan, Justin, and Anna E. Tan. "Business Under Threat, Technology Under Attack, Ethics Under Fire: The Experience of Google in China." *Journal of Business Ethics*, vol. 110, no. 4, Springer, 2012, pp. 469–79, <http://www.jstor.org/stable/41684048>.

⁶ Weinstein, D. (2014). Snowden and U.S. Cyber Power. *Georgetown Journal of International Affairs*, 4–11.

of government property. In this case, the limit on freedom of expression for the sake of national security went too far because the government had violated citizens' right to privacy and therefore freedom of expression was necessary to protect our other fundamental rights. It is thus concluded that limits should be imposed on freedom of expression for national security only in exceptional circumstances where there is a genuine interest and no potential violation of other basic human rights.

c. Defamation

Freedom of expression ought to be limited when it constitutes defamation and infringes upon a person's reputation. For example, the media may spread false rumours about an individual which causes loss of earnings. Alternatively, defamation could be waged between two individuals, as in the case where Johnny Depp is suing Heard, his ex-wife, after she published an article in the Washington Post about being a survivor of domestic abuse.⁷ Although it was later alleged that Heard had actually been the perpetrator of domestic abuse, many career opportunities for Depp have passed because of the allegations. Therefore, when a person's reputation and consequent career is impacted by defamation, limits on freedom of expression should be imposed to protect the livelihood of the claimant.

Moreover, the impact of misinformation is magnified when it is spread by companies which have a large influence in society. With the rise of capitalism, a few powerful people control the world's largest companies, which subsequently controls the information we are exposed to, setting the agenda by popularising certain topics while restricting the popularity of others. For example, prior to the 2016 Brexit referendum, Cummings used Cambridge Analytica to amass public data to tailor ads to influence the public towards voting for Brexit. This shows how powerful companies can use their influence to manipulate the genuine wishes of the public, diminishing the freedom of

⁷ Heard, A. (2018, December 19). Opinion | Amber Heard: I spoke up against sexual violence - and faced our culture's wrath. That has to change. The Washington Post.

expression of the people.⁸ As such, due to their mass influence, it is arguable that companies should have stricter limits on their freedom of expression and a higher duty than individuals to ensure that published information is accurate.

2. How limits can be controlled

Having identified what limits can justifiably be imposed on the right to freedom of expression, this essay now proposes a potential solution as to how such limits could be controlled. With regards to companies, such as media outlets, it should be required that a certain level of evidence must be substantiated before publication. Governments could catalyse this protection not only by passing laws to regulate businesses, but also by encouraging the growth of multiple companies in each industry to prevent monopolies within industries.

Additionally, we can rely on international watchdogs to regulate individuals, companies, and governments alike to ensure people's rights to freedom of expression. An international watchdog need not be limited to a single authority as existing international organisations, like Amnesty International or the United Nations, could be modified to tailor for regulation of limits placed on the right to freedom of expression. Representatives of every country should be allowed to express their opinions on limitations of expressions of other countries anonymously, to allow honest opinions without power imbalance. Special care should be made so that policies would not be solely dictated by Western beliefs. Therefore, laws and watchdogs can be used to regulate the limits on freedom of expression to ensure they are not imposed unjustifiably.

3. Conclusion

Although the right to freedom of expression is a basic human right in itself, it may impede on other parties' interests, and therefore the line of protecting the "right" interest may be difficult to draw. This essay has explored three situations where limits should be imposed, including hate

⁸ Heldt, A. (2019). Let's Meet Halfway: Sharing New Responsibilities in a Digital Age. *Journal of Information Policy*, 9, 336–369. <https://doi.org/10.5325/jinfopoli.9.2019.0336>

speech, defamation, and national security. Each country ought to strive for an equilibrium on limits on the right to freedom of expression depending on their individual cultures. It has been suggested that international watchdogs and legal regulations are desirable to control such limits to ensure that the fundamental right of freedom of expression is upheld. Ultimately, a balance must be stricken – there is no absolute freedom.