

WHAT CAN WE POST?

Free Speech in a Digital World

The 2021-2022 Atkins Center for Ethics High School Essay Competition

————— *the* —————
ATKINS CENTER
FOR ETHICS

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ATKINS CENTER FOR ETHICS

The Atkins Center for Ethics at Carlow University is committed to bringing ethical reflection to bear on important social issues through teaching, community engagement, and scholarship. Furthermore, it is designed to raise awareness about the importance, complexity, and consequences of incorporating ethics in all that we do throughout our lives and careers.

The Atkins Center was founded with a generous endowment by Michele Atkins, a Carlow alum (1982) and former chair of the Carlow University board of trustees, and her husband Dr. Pat Atkins. In their words, “Pat and I are committed to raising the level of awareness of ethical issues for this region and for the country. The examination of issues involving what is right, fair, just, legal and moral is becoming increasingly critical to the future of our world.”

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ESSAY PROMPT

If there is a “public square” for speech in our world, it will not be found on the corner of Main Street; it will be found online. Social media platforms, video hosting sites, collaborative encyclopedias—these have become the principal sites for the open and public exchange of information, opinions, and ideologies. And yet, these sites are far from truly and entirely free. As private companies, social media giants like Twitter, Instagram, TikTok, and YouTube decide for themselves what speech is or is not permissible on their platforms. And so, these online platforms have become a strange hybrid—legally private companies functioning as our de facto public square. How, then, should we think about free speech in these digital spaces?

What kind of speech, if any, should be limited? Are there certain circumstances where speech can be harmful or dangerous? How do we think about advertising, libel and slander, pornography, images or videos of death and violence, biased news reporting, false scientific claims during a pandemic, bigotry, and hate-speech? Who decides what is dangerous content, and using what criteria? Do these private platforms have a responsibility to monitor or take down harmful content? Conversely, as the de facto public square, do they have an ethical responsibility to broadly uphold free speech? More complicated still, these platforms have a global reach; what is understood as acceptable satire in one part of the world, might be unacceptable slander or an instigation of violence in another.

In light of these manifold complexities, in this essay students should address the following question: What ethical principles should guide our legal and moral decisions about who limits free speech, how they limit it, and what speech is limited?

Judges:

Michael Balmert, PhD

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Kate Garfinkel, JD

Frances Kelley, PhD

Kevin McNair

Cynthia Nicola, EdD

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What Ethical Principles Should Guide Our Legal and Moral Decisions About Who Limits Free Speech, How They Limit it, and What Speech is Limited?

First Place Essay

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British novelist and cultural-thinker John Berger once said, "Without ethics, man has no future." Foundational ethical principles are some of the most resolute, guiding properties that affect decisions made all over the world. Examples of such principles include autonomy, veracity, privacy, confidentiality, beneficence, non-maleficence, fidelity, and justice (Byrd et. al.). Looking specifically at free speech in social media, however, there are some ethical principles more applicable than others – and those are the ones that must structure the legal and moral decisions surrounding the limitation of certain speech in the digital world. A combination of ethical autonomy, procedural justice, veracity, beneficence, and non-maleficence will best guide what speech is limited, who must be in charge of developing those limits, and how these limits are implemented.

An initial solution to answer what speech must be limited begins with an application of autonomy and procedural justice. Autonomy – a principle that obliges the respect for the self-determination of adults (Jahn) – must be preserved in whatever the outcome is of any form of limitation of speech on social media. In other words, limits on free speech must not inhibit the ability of users to make decisions for themselves about their own lives. In a similar capacity, though, speech that inhibits users from making informed decisions must be limited to uphold the principle of autonomy that each and every individual should be guaranteed on any social media platform. If users begin to consume inaccurate information, whether it be unintentionally inaccurate or intentionally misleading, they are losing their personal freedom and autonomy to make the best, most accurately-informed decisions for themselves and the ones they care about (Sharif). Therefore, misinformation and disinformation must be regulated in the name of preserving personal autonomy. To do this, algorithms used by social media platforms to foster user engagement – the systems that “decide a post’s position on the news feed based on predictions about each user’s preferences and tendencies” (Oremus and Alcantara) – have been modified to attempt to combat the spread of this false information with an efficiency far beyond our human capability. Instead of limiting the spread of false information, though, these algorithms actually facilitate it. By nature of their design, they favor the spread of inaccurate information over true information (Cusumano et. al.) – so much so that according to a study done by three MIT scholars on how information travels via social media, “it took the truth

approximately six times as long as falsehood to reach 1,500 people” (Vosoughi et. al.) – because false information garners more user-interest than the truth does. Since these algorithms choose which posts users see, with little to no input from the users themselves, these algorithms must be either modified or re-envisioned completely so that they do begin to allow users to make their own accurately-informed decisions. Additionally, the application of procedural justice would ensure that social media platforms are responsibly enforcing regulations in a way that affects all users equally. Hate speech, while technically protected by the First Amendment, can inherently not be protected on social media platforms. It must be limited because it disproportionately affects minority groups (OHCHR) – whether they’re in the minority because of their race, gender identity, sexual orientation, interests, or otherwise – and regulation (or the lack thereof) that doesn’t affect each user equally is not aligned with the guidance presented by the concept of procedural justice.

Veracity, the ethical principle that emphasizes transparency and honesty, must also guide social media platforms’ regulation considering the impactful implications of the decisions that users make based on information they consume on social media. When it is clear who regulates the information on the platforms they choose, users are better able to understand the effects that the content that does make it through to them has on their thinking and decision-making. For social media, the responsibility falls on the platform itself to ethically regulate content uploaded by its users. Some argue that government should play a role in this process and that the platforms can’t be trusted to effectively regulate themselves, but data shows that the majority of Americans actually trust social media companies more than the government when it comes to regulation (Knight Foundation 19). If we were to task the government with the regulation of social media, it could easily begin to censor those who hold opinions in opposition to their own. With the companies themselves, there is less of a chance for political motivations, which ensures that regulation can be done more fairly. Daphne Keller, the Director of the Platform Regulation Program at Stanford and former Associate General Counsel at Google, also argues that social media companies have the ability to act on potentially harmful speech in some instances that the government cannot, since social media companies are freer as a result of their terms of service (Knight Foundation 10).

Beneficence and non-maleficence similarly play an important role in upholding the right to informed decision-making on social media platforms. Both principles must influence how the information on platforms should be regulated because of the guidelines they propose for the actions of regulators. Regulating information in accordance with beneficence, the moral obligation to act for the benefit of others (Jahn), would ensure that social media platforms act in the best interest and for the benefit of the billions of users that have access to and use their products and services. Similarly, adherence to the principle of non-maleficence would ensure that platforms do not disregard their obligation to not inflict harm on users (Jahn). This isn’t as easy as it might seem, however, because, being for-profit organizations, these companies are looking to do just that: make a profit. Having to make this choice between ethics and profit can be prevented, though. By creating a way for social media companies to act ethically and make a profit, a sustainable version of social media can be reached that appeals to the interests of all parties involved. In fact, studies have shown that it is more profitable for companies to act ethically (Horton, Georgescu), which will further incentivize social media platforms to act in

accordance with these ethical principles.

Regulating misinformation, disinformation, and hate speech equitably and fairly for each and every individual that chooses to use a digital platform is a significant goal, but it's one that must be achieved. Years from now, we will look back at this complicated time in our human history in one of two ways. Without using autonomy, procedural justice, veracity, beneficence, and non-maleficence to guide our legal and moral decisions surrounding speech in social media, it will be a dismal reflection from a place where social media has transitioned to a desolate forum overtaken by hateful messages and rampant misinformation. If we do take the necessary action now, though, we will look back in a positive light after reaching a reality where the hate speech, misinformation, and all other problems presented by social media have faded into nothing more than a distant memory. The digital world will not be conducive to toxic rhetoric but will instead be a place of healthy, creative exchanges that fosters our desire to speak, listen, and share with each other.

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The Right to Post and Exceptions

Second Place Essay

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Social media has been rapidly expanding ever since its creation, and today over 72% of U.S. adults use social media (Social media fact sheet, 2021). Because of social media's major influence, it needs to be approached with caution both morally and ethically. In 1996, the U.S. government established technological standards in the then new world of social media as the Communications Decency Act says, "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider" (Caplan, 2018, p. 22). This act establishes that social media companies are not responsible for what users say, and they also have the right to censor that with which they do not agree (Hickey, 2021). Tech giants should not have this much freedom over individual users. Free speech on social media should be approached with specific ethical principles as officials should be permitted to remove violent or explicit content, or censor it from younger viewers, but content should not be removed based on its conceived level of truth.

The first ethical principle to consider is the issue of individual rights and autonomy, and because of this, people should be free to speak what they believe is true no matter how popular that opinion may be. For example, Facebook's "Statement of Rights and Responsibilities" states, "You will not post content that: is hate speech, threatening, or pornographic; incites violence; or contains nudity or graphic or gratuitous violence" (Heins, 2014, p. 325). On the surface, Facebook's statement seems just, and limiting content like this is beneficial, especially when younger users are involved. The problem comes because this category of content is broad, particularly the area of hate speech. In regard to the First Amendment, exceptions do exist, like many of the ones Facebook mentioned, to free speech, but speech that one may deem offensive just because he/she disagrees with it should not be censored. In terming one person's opinion as "hate speech" or "misinformation," when no other exceptions to free speech are met, social media is being biased and unfair towards their users, and they are ultimately not following the ethical principle of rights as someone's entitlement to their opinion (Jones, n.d.). In the case of misinformation, one's words should not be limited if he/she believes them to be true regardless of other's opinions. Hate speech should not be approached on the basis of negativity towards another's actions or opinions, but instead keeping in mind that "unless hateful speech is likely to spark violence, the [First] amendment protects it on grounds that the best way to counteract it is to explain why that speech is wrong" (Caplan, 2018, p. 23). Rather than limiting someone else's opinion through censorship on social media, people should seek civil discussion to learn from

others and express their own opinions. In this way, people will be able to enjoy the ethical principle of rights on social media by expressing their opinion without the fear of being silenced.

In addition, the ethical principle of rights through the First Amendment should also take precedence as social media should constitute as the public sphere just as much as physical locations do as a place of free speech. As private institutions, social media corporations have some say over the speech posted on their platforms, but according to the Supreme Court, the First Amendment has power in this institution. In the case *Marsh v. Alabama*, the Supreme Court upheld the right to free speech in a company-owned town (*Marsh v. Alabama*, 1946). Despite the speaker, a Jehovah's witness trying to gain followers, speaking on private property, the Court upheld his right to free speech. Social media should be treated in the same regard. Because of the Constitution and the ethical principle of rights, people should be free to voice their opinion as they please, considering they are obeying the law and not promoting violence.

Although the ethical principles of rights and autonomy are important, the government should be able to use social media to target and catch criminals and terrorists on the ethical principle of justice. In 2015, Facebook was used by extremists "to openly recruit and train terrorists to plan violent attacks calling for the murder of Israeli Jews" according to a court case out of New York (Guiora & Park, 2017, p. 957). People do have a right to free speech, but this right is overruled when laws are broken and innocent people threatened. The task of using ethics to bring justice should be given to government, and leaders should have the right to censor and criminalize individuals who are using speech on social media to break laws or incite violence on others. As the government is the handler of justice, they should be permitted to respond to criminal activity on social media and deal with it accordingly. The purpose of government is to protect individuals and punish evil, and by upholding the ethical principle of justice this will be accomplished.

Some point to the First Amendment and use it as a means to say "anything goes," but some speech should be deemed inappropriate or off limits for the safety of others in accordance with the ethical principles of respect for persons and Utilitarianism. In one case, the Supreme Court decided the First Amendment was not applicable in all circumstances citing, "'fighting" words -- those, which by their very utterance inflict injury or tend to incite an immediate breach of the peace" is one example of an exception (*Chaplinsky v. New Hampshire*, 1942). This case determined obscene language, such as profane, explicit, and violent speech, could be excluded from the category of free speech. They rightly point out that by slightly limiting the First Amendment, they are able to uphold ethical principles such as a respect for others (Basic Ethical Principles, n.d.). People must respect others, especially when it comes to using obscene language that might be particularly damaging. This idea is supported by Utilitarianism because more people ultimately benefit through a more peaceful and decent society. In the area of social media, speech can and should be limited when it is particularly explicit or violent. Furthermore, free speech should not protect individuals who wish to use social media to harm others in bullying and abuse (Bennett, 2019, 230). Under the ethical principles aforementioned, victims on social

media must be protected, so speech should therefore be limited in order to uphold the rights and safety of the innocent.

As social media continues to expand, the issue of ethics in regard to free speech online will only become more complex and undefinable. Because of this growing concern, strict principles and guidelines must be put in place now to prevent future conflicts. Because of Supreme Court precedence, social media must be regarded as the new public sphere. Explicit, violent, and obscene content should be censored to uphold the ethical principles of respect and justice, but the ethical principle of rights and autonomy must also be considered. In regard to this concern, “misinformation” or “hate speech” should not be censored, but the question of the truthfulness of information should be left to social media users.

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Ethics That Should Guide the Future of the Internet

Third Place Essay

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As technology becomes further integrated into everyday life and more and more people around the world gain access to the Internet for the first time, the number of total users online is only projected to increase as time proceeds (Freeze). With so many individuals active daily online, there is a question on whether or not the virtual world, a marketplace for sharing ideas and connecting people of various backgrounds, should be regulated like the physical world. Currently, under the ruling of the United States Supreme Court Case *Reno v. ACLU*, the Internet is declared to be a free speech zone that is protected under the First Amendment (“Technology and Liberty”). While content expressing an individual’s thoughts and opinions in a civilized and appropriate manner should continue to receive protection under free speech laws, content made in a threatening manner or to incite violence as well as posts intentionally made to spread disinformation should become more seriously regulated by companies under stricter government guidelines.

Threatening speech should be restricted from online services due to the harm they bring into everyday life. According to studies conducted by the Council on Foreign Relations, “Hate speech online has been linked to a global increase in violence toward minorities...mass shootings, lynchings, and ethnic cleansing”(“Laub”). A clear instance of this case is seen when inspecting the planning of the riots on the United States Capitol building, where extremists from across America planned and directed a violent raid through lesser-known, right-leaning social media platforms, notably Gab and Parler (Frenkel). This, and other acts of organized violence, are in large part only possible due to the lax rules and regulations provided by these smaller media platforms in an attempt to attract more users. Without these platforms, radicalized people would not have had such an easy ability to connect with others through these thoughts in the first place, nor be able to amplify and spread their ideas, such as through videos validating violence and death, without any restraint from outside forces. While some may mistakenly argue that the government would be unable to regulate these violence-invoking posts due to the Constitution’s protection of freedom of speech, this same law allows the government to legally intervene due to the violence threatening content invokes. In addition, only “the right of the people peaceably to assemble” is protected under the words of the First Amendment; therefore, preparations and encouragement of violence online can be legally restricted. Considering this, creating stricter government guidelines is crucial for enforcing speech laws and removing illegal posts from online.

Furthermore, intentionally misleading information should also be regulated by the government due to the negative impacts it has on the members of society. With many new users on the web, studies have shown that most users, especially younger individuals, are unable to determine fake news from actual news (“Fake News”). This lack of digital literacy has detrimental effects, for individuals can be misled to believe something false, especially if the content is created to be intentionally deceiving, such as false scientific claims during a pandemic. This disinformation could potentially cause chaos, as seen in 2021 when a TikTok video spreading news of a nationwide school violence threat caused many school districts throughout the nation to panic and shut down (Fung and Sands). Misleading information is even seen to influence elections and political thoughts. This is clearly discerned in the 2020 Presidential Election where there was a widespread of deep fakes, fake AI generated videos of the presidential candidates on social media platforms made intentionally to mislead potential voters and unfairly portray candidates to make them look incompetent or unethical (Johnson; Moore and Hinckle). Even more detrimental, once an individual is exposed to such false information, they only continue to receive information to reinforce those false claims rather than information to disprove those ideas due to personalization algorithms established by private companies in a way to grow their platforms (“Digital Media”; Pariser). While some may argue it is unrealistic for private companies to sort all content posted and identify misinformation and other deceptive writing, technology, such as artificial intelligence and other identification systems, is improving daily, making this goal a realistic accomplishment in the near future (Marr). Furthermore, private companies have legal authority to identify and remove disinformation to protect individual users on the Internet under the existing legislature regarding deception, which aim to punish individuals whose lies have caused another harm (Trunley).

Having greater government involvement and guidelines about content on the Internet is increasingly more necessary, as relying solely on individual private companies, per the current system, is unsuccessful. Connecting back to the spread of hate, if only one platform restricts certain, malicious content, those individuals can easily access another platform and continue spreading their ideas elsewhere. Hence, there is a need for standardized regulations by the federal government, with special regulations made to protect the interests of children (California). Furthermore, some critics claim that certain private businesses are “either unwilling or unable to act against” disinformation and hostile posts based on the reports of whistleblowers and former employers of these private media sites, such as Frances Haugen, a whistleblower that provided testimony against Facebook’s (now known as Meta) policies for handling misinformation (Perrigo). One such circumstance that expresses these critics’ worries is Facebook’s failure to remove hate speech which incited violence against the Rohingya, a persecuted minority group in Myanmar. Even lawyers in the United States have started to question the company’s actions, “accusing [Facebook] of being ‘willing to trade the lives of the Rohingya people for better market penetration in a small country in Southeast Asia’”(“Rohingya”). Even after these situations, Facebook and other similar companies continue to function the same way, indicating that their self-interest in expanding their company will keep them from changing their policies on their own. Any type of agape, a sense of love for others because they are human, is completely absent. To guide social media companies into prioritizing the protection of human beings, not solely platform growth, Section 230 of the Communications

Decency Act must be amended to hold companies accountable over harmful actions, such as acts of violence, that can be traced back to content placed on their sites (Reed and Steyer). Ethically, Facebook and other social media platforms tend to work within rule utilitarianism approaches to their platforms, allowing subjectively relevant ethics to give users the largest array of speech viewpoints, therefore attracting the largest amount of customers. While this arguably is a concept inherent to these businesses, the leeway provided by the current system is too loose, and a more humanitarian social contract, one encouraged to be put into place by the government, is necessary. This change in the social contract can help incentivize companies to take actions that fit their morals while continuing to exist as their own businesses.

With a few changes to the current policies of media companies, the future of the Internet is bright. As government guidelines, based upon love and truth, get introduced and enforced by businesses, the Internet can exist as desired: a public square connecting the ideas of people from around the world.

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