**A Comparative Perspective on Online Speech Regulation**

Regulating online speech has become a key concern for lawmakers in several countries. Various social media efforts surrounding the 2016 U.S. presidential campaign set the stage domestically. The spread of predominantly right-wing populism in Europe—and the proliferation of its messages online—is increasingly alarming to national governments and the EU. Reflecting the divergent regulatory frameworks for speech, European lawmakers have already enacted, or are contemplating, legislative responses. Criticisms of laws regulating online speech are plenty, but a common mistake is merely to reiterate critiques of speech regulation, including prohibitions of hate speech, in general. Drawing out the old debate over whether to regulate speech in the first place, however, is unhelpful in designing or assessing new regulatory regimes for online speech and obscures deeper theoretical concerns raised by the nature of online speech.

The normative balance between speech protection and speech regulation has been struck in different ways around the world, and I suggest that this fundamental balance is unlikely to be upset by new speech mediums. Though there may be some contestation and renegotiation at the margins, the entire universe of online speech likely will not be governed by a different set of rules than speech offline. Democratic values, however understood by nation states and their citizens, will be expected to equally apply in both spheres. National or supranational legal systems that have struck the balance in favor of hate speech regulation, for example, will likely seek such regulation to be mirrored online as well. Thus, it will not likely be the American understanding of free speech—an outlier in its protection of hate speech and other forms of expression impermissible elsewhere—that will govern all online speech around the world. The real challenge, rather, lies in identifying whether, or to what extent, online speech regulation is different, and how new regulatory regimes should account for that difference. This first requires understanding the national and supranational frameworks of speech protection and their respective limits in which regulation of online speech occurs, before assessing whether such regulation is compatible across systems to the extent that this is required by the nature of speech online.

To illustrate, I examine two sets of German regulatory measures targeting various forms of online speech to investigate how such legal responses are shaped by existing national constitutional frameworks. First, the *Netzwerkdurchsetzungsgesetz*, (“NetzDG”), in force since January 2018, aims to better enforce the country’s hate speech prohibitions on social media platforms. Second, a recent initiative, supported by the *Bundesrat* and parties of the governing coalition in the *Bundestag*, seeks to target bots on social media. The concern here is that democratic discourse is distorted by non-human actors that are used to amplify certain messages, drowning out others. One key aspect of the proposal is a disclosure requirement that would identify bots as such. While the NetzDG seeks to implement existing law governing certain messages offline, the bot legislation would target a type of speaker unknown offline.

This paper proceeds in three parts. Part One starts from the premise of largely settled normative arrangements regarding the scope and limits of constitutional speech protection that differ among nation states. Against this backdrop, it traces national and supranational efforts to regulate online speech through the lens of Jack Balkin’s distinction between “old school” and “new school” speech regulation. The primarily relevant question, I argue, is not whether the constitutional balance itself is struck correctly, but what the regulatory regimes look like and how they interact with free speech values.

Part Two takes a comparative perspective, putting the German initiatives into conversation with the currently predominant American approach that has been widely adopted by the largest online platforms as their guiding standard. And while regulation of online hate speech is unlikely in the United States, scholars in the United States have just begun to address the First Amendment implications of bot speech as a few state legislatures (such as New Jersey) are contemplating regulation that would require disclosure similar to the German bot measure.

Part Three sketches a framework for thinking about online speech regulation in comparative perspective with the aim of guiding policy, suggesting that ultimately, it might be easier to align the regulation of truly distinctive online speech (such as bot speech) across divergent constitutional speech frameworks than online speech that largely replicates types of speech already subject to regulation offline (such as hate speech).

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