

N Doe—written evidence (FEO0090)

House of Lords Communications and Digital Committee inquiry into Freedom of Expression Online

Executive Summary

“If we do not have the capacity to distinguish what’s true from what’s false, then by definition the marketplace of ideas doesn’t work. Our democracy doesn’t work. We are entering into an epistemological crisis”. ~Barack Obama¹

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1. Response to Enquiry Questions

1.1. Is freedom of expression under threat online? If so, how does this impact individuals differently, and why? Are there differences between exercising the freedom of expression online versus offline?

Answer: Yes, Freedom of Expression is under threat online. A small cache of powerful tech barons gets to decide whose words can be seen and amplified. I think in particular of the transgender debate, where women who are “gender critical” find their voices silenced when talking about biological realities, under the mistaken notion of females being credible witnesses to the realities of their lives being seen as “transphobic”.

Who gets to decide who is no-platformed or silenced in supposed interests of ‘inclusion’?

Whereas Trans Radical Activists, often biological males, spew a constant torrent of misogynistic bile.²

I am scared about how any attempt to discuss this in the public sphere, is also shut down as “transphobic” and could end up being career limiting³, which is why I am compelled to make this submission.

1.2. How should good digital citizenship be promoted? How can education help?

¹ Jeffrey Goldberg, Why Obama Fears for Our Democracy, <https://www.theatlantic.com/ideas/archive/2020/11/why-obama-fears-for-our-democracy/617087/>

² <https://twitter.com/RahulKohli13/status/1334751284327378944?s=20>

³ Suzanne Moore defended my views on sex and identity. Now it’s my turn to stand up for her, <https://www.thetimes.co.uk/article/suzanne-moore-defended-my-views-on-sex-and-identity-now-its-my-turn-to-stand-up-for-her-xp3ztr5g9>

Answer: Manners and the teachings of good civics. The University of Chicago has one of the clearest statements of the importance of preserving extensive free expression and engaging in debate within universities, but I also think the below points apply equally to online discourse conducted in a civil manner:

“A good education gives students the intellectual skills and approaches essential to success in much of human endeavour. To imagine alternatives, to test their hypotheses and to question the accepted wisdom. One word summarizes the process by which universities impart these skills: questioning. Productive & informed questioning involves challenging assumptions, arguments and conclusions. It calls for multiple and diverse perspectives and listening to the views of others. It requires understanding the power and limitations of arguments. More fundamentally, the process of questioning demands an ability to rethink one’s own assumptions, often the most difficult task of all.”

“This underscores the importance of diversity among students, faculty and visitors—***diversity of background, belief and experience***. Without this, students’ experience becomes a weak imitation of a true education, and the value of that education is seriously diminished.”

I found this point exceptionally pertinent, “Free expression and the unfettered exchange of ideas do not always come naturally. Many people value the right to express their own ideas but are less committed to granting that right to others. Demanding compliance with various forms of “moral” behaviour. The silencing being advocated today is equally as problematic. Every attempt to legitimize silencing creates justification for others to restrain speech that they do not like in the future.”

- Robert J. Zimmer, President of the University of Chicago⁴

I would like to see less instances of this.⁵

Or this.⁶

1.3. Is online user-generated content covered adequately by existing law and, if so, is the law adequately enforced? Should ‘lawful but harmful’ online content also be regulated?

User Content online is covered adequately by sections 127(1) or (2) of the Communications Act (CA) 2003, which carries a 6 months’ maximum sentence if intent to cause distress or anxiety can be proven. I imagine it would be hard to regulate ‘lawful but harmful’ without clear definition of what is counted as harmful? Incitement of hatred, or speech that undermines public health should not be amplified, but it’s about recognising context and nuance, and having clear terms of reference as to what constitutes the above.

⁴ <https://cpb-us-w2.wpmucdn.com/voices.uchicago.edu/dist/3/337/files/2019/01/Free-Speech-Is-the-Basis-of-a-True-Education-WSJ-1v5hqit.pdf>

⁵ https://www.dailymail.co.uk/news/article-9021739/amp/Open-University-student-silenced-support-JK-Rowling.html?__twitter_impression=true

⁶ <https://www.spectator.co.uk/article/eton-was-right-to-sack-will-knowland>

1.4. Should online platforms be under a legal duty to protect freedom of expression?

Yes. Whilst the views expressed by some may insult the sensibilities of others and be intolerable to accept, a mature, democratic and truly tolerant society should be able to negotiate robust and even rude and insulting public and social discourse without recourse to censorship or criminal law, other than in the most extreme and genuinely harmful circumstances.

As noted by Lord Bingham in *R v Shayler* [2003], he emphasized the connection between freedom of expression and democracy. He observed that 'the fundamental right of free expression has been recognized at common law for very many years' and explained:

"The reasons why the right to free expression is regarded as fundamental are familiar, but merit brief restatement in the present context. Modern democratic government means government of the people by the people for the people. But there can be no government by the people if they are ignorant of the issues to be resolved, the arguments for and against different solutions and the facts underlying those arguments. The business of government is not an activity about which only those professionally engaged are entitled to receive information and express opinions. It is, or should be, a participatory process. But there can be no assurance that government is carried out for the people unless the facts are made known, the issues publicly ventilated ...".⁷

1.5. To what extent should users be allowed anonymity online?

A large extent. Increasingly in the public debate on transgender rights, many women have found themselves bullies and hounded and "doxed" exposing their identities for the sole purpose of sacking them from their jobs. In order for these women to contribute fully to civic life on a debate that will affect the lives of 52% of this nation, it's important that a degree of anonymity is preserved. As detailed here, by Alessandra Asteriti:

"I know many women decide to be anonymous on Twitter because they are afraid of losing their jobs, or of the threats of violence and rape that accompany expressing feminist opinions"

- Alessandra Asteriti is a Junior-Professor for International Economic Law at the Leuphana University Lüneburg. She is also a post-doctoral researcher at the University of Glasgow, School of Law. She taught at the University of Strathclyde, the Lucerne Academy for Human Rights Implementation at the University of Lucerne. Alessandra has an LL.M. (distinction) and Ph.D. in International Law from the University of Glasgow, an MA in the Theory and Practice of Human Rights from the University of Essex and an MA (summa cum laude) in Ancient History from the University of Rome. She has worked as an archaeologist in Syria (Tell Mozan) and in Rome (Temple of the Magna Mater). In July 2017 Alessandra Asteriti became Programme Director for the Master in Governance and Human Rights at Leuphana Professional School.

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<https://www.bailii.org/uk/cases/UKHL/2002/11.html>

She is a member of the European Society of International Law and of the American Society of International Law.

She has now been banned from Twitter for her gender critical views, which are still a legitimate form of expression under UK Law.

1.6. How could the transparency of algorithms used to censor or promote content, and the training and accountability of their creators, be improved? Should regulators play a role?

Being able to speak to a human might work. At present with Twitter, there is simply no way to speak to an actual person, if you have a complaint about how your account has been flagged, so you have no means of knowing exactly which offence has been caused.

1.7. To what extent would strengthening competition regulation of dominant online platforms help to make them more responsive to their users' views about content and its moderation?

As we've seen with the shutdown of Parler, it is very important, to have healthy competition to amplify a range of views and not just one set of beliefs. Otherwise we become a nation of dangerous echo chambers, like America has become. Where genteel conversation is held in one place, whilst radicalised people go elsewhere, and we don't discover and challenge their beliefs until it's too late. Censorship is never the answer.

"Twitter has become the ultimate editor, & Truth is no longer a process of collective discovery, but an orthodoxy already known to an enlightened few whose job is to inform everyone else. Stories are chosen & told in a way to satisfy the narrowest of audiences, rather than to allow a curious public to read about the world & then draw their own conclusions.

But yet the people still hunger for news that is accurate, opinions that are vital, & debate that's sincere."

– Bari Weiss resignation letter, when leaving New York Times last year over Censorship issues.⁸

2. Conclusion:

The necessity of resisting tribalism, and the centrality of the free exchange of ideas to a democratic society is what led to the Enlightenment period & the Industrial Revolution, paving the way for Western prosperity and eventually, peace & security. In forging our future, via ensuring responsive, inclusive, participatory and representative decision-making at all levels through the means of robust debate and free exchange of ideas, let's not forget our past.

⁸ <https://www.bariweiss.com/resignation-letter>

3. Bibliography

Women who have been banned:

<https://grahamlinehan.substack.com/p/silence-woman>

<https://www.thetimes.co.uk/article/suzanne-moore-defended-my-views-on-sex-and-identity-now-its-my-turn-to-stand-up-for-her-xp3ztr5g9>

<https://bariweiss.substack.com/p/the-great-unraveling>

<http://webcache.googleusercontent.com/search?q=cache:dd0PXxeIvn4J:https://uncommongroundmedia.com/woman-twitter-alessandra-asteriti/&hl=en&gl=uk&strip=0&vwsrc=0>

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