December, 2014

Is Social Media a Human Right? Exploring the Scope of Internet Rights

Brian Christopher Jones, *Academia Sinica*

IS SOCIAL MEDIA A HUMAN RIGHT? EXPLORING THE SCOPE OF INTERNET RIGHTS

Brian Christopher Jones, PhD·

Earlier this year Jason Tenenbaum penned an interesting piece for this blog about a general right to access the internet.[1] Mr Tenebaum's focus on international covenants, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), nicely laid out the basic arguments for such a protected right. However this comment provides a potentially more pressing view of Tenenbaum's argument, asking a slightly more difficult question: should social media be recognized as a human right?

Social media has become (or is sometimes perceived as) one of the most significant threats to not just authoritarian and quasi-authoritarian governments, but even at times to liberal democracies. When wanting to suppress free speech and the possibility of insurrection an initial step governments often take is shutting down not necessarily the whole internet, but social media in particular. Turkey did this earlier this year, temporarily blocking Twitter after the Prime Minister attacked the site.[2] Recently an Iranian prosecutor gave the government thirty days to block social media such as Whatsapp and other services.[3] According to a 2013 study of sixty countries by Freedom House, nineteen countries block some types of social media or other communication applications.[4] Countries that did so included: India, Turkey, China, Iran, Syria, Pakistan, and Ethiopia, among others. But social media bans, or threats of

· Postdoctoral Research Fellow, Institutum Iurisprudentiae, Academia Sinica. The author thanks Kay Goodall and Shun-Ling Chen for their insightful comments.

1 Jason M. Tenenbaum, *Is There a Protected Right to Access the Internet?*, Int'l J. Const. L. Blog, 6 June 2014, *available at*: http://www.iconnectblog.com/2014/06/is-there-a-protected-right-to-access-the-internet.

2 Kevin Rawlinson, *Turkey blocks use of Twitter after prime minister attacks social media site*, The Guardian (21 March 2014), available at: http://www.theguardian.com/world/2014/mar/21/turkey-blocks-twitter-prime-minister.

3 Mehrdad Balali, *Iran prosecutor gives government 30 days to block social media*, Reuters (21 September 2014), available at: http://in.reuters.com/article/2014/09/21/iran-socialmedia-idINKBN0HG0OI20140921.

4 Freedom House, *Freedom on the Net 2013: A Global Assessment of Internet and Digital Media*, available at https://freedomhouse.org/sites/default/files/resources/FOTN%202013_Full%20Report_0.pdf.

such bans, have also been linked to less controversial and long-standing democratic governments. During the London 2011 summer riots, Prime Minister Cameron debated blocking Twitter and other messaging applications.[5] In December 2012 Australian Liberals were advised to close their social media accounts ahead of the 2013 general election.[6] Many backbench Australian MPs deprecated the proposal and refused to do so. In May of this year Thailand's military junta threatened to block social media for inciting violence or criticizing military leaders,[7] and the Malay government has also threatened to block Facebook because of a rising level of abuses.[8] Most recently, popular photo-sharing application Instagram was blocked during the Umbrella Movement protests in Hong Kong.[9]

These actions raise a number of difficult questions. In particular, are there times when governments can legitimately block social media services (such as during crises or riots), or do citizens have an unfettered right to social media no matter the circumstances? If such services are determined to be a right, what are bases for acknowledging this? Additionally, what role has social media played under authoritarian governments and where is it likely to lead? This comment attempts to briefly answer some of these questions.

Although this piece primarily focuses on contemporary social media (i.e. Facebook, Twitter, Wikipedia, etc.), it is important to note in particular cases such platforms could potentially include other internet based services, such as email, and even non-internet based services, such as SMS or other telecom messaging services. The

---

[5] BBC News, *England riots: Government mulls social media controls* (11 August 2011), available at: http://www.bbc.com/news/technology-14493497.

[6] Jessica Wright, *Liberals slap social media gag on officials*, The Sydney Morning Herald (9 December 2012), available at: http://www.smh.com.au/federal-politics/political-news/liberals-slap-social-media-gag-on-mps-20121208-2b2eo.html. Although this had little to do with violence or governmental control, and mostly concerned politicians being perceived as "hurting" their re-electoral chances.

[7] Associated Foreign Press, *Army threatens social media block*, Bangkok Post (23 May 2014), available at: http://www.bangkokpost.com/tech/computer/411323/army-threatens-social-media-block.

[8] Global Voices, *Malaysian Government Threatens to Block Facebook Over "Abuse" Reports* (13 August 2014), available at: http://globalvoicesonline.org/2014/08/13/malaysian-government-threatens-to-block-facebook-over-abuse-reports/.

[9] Harry Tucker, *Hong Kong Protests: Instagram and other social media blocked in mainland China*, News.com.au (1 October 2014), available at: http://www.news.com.au/technology/online/hong-kong-protests-instagram-and-other-social-media-blocked-in-mainland-china/story-fn5j66db-1227075649941.

primary service Mr Cameron thought about blocking during the 2011 London riots was a Blackberry Messaging application, a special feature of such phones which shielded users' messaging from authorities more significantly than regular SMS. Additionally, Shirky notes that SMS messaging has at times been instrumental in ousting governmental leaders.[10]

The Basis for Social Media as a Human Right

The Internet (and social media, in particular) is not technically considered a public forum because private ISPs provide the basic means of access and private tech companies often control the content.[11] If individuals or companies are denied access or have content censored by these private entities, it is understandable that freedom of expression issues are not engaged. But when the Internet, social media or other messaging applications are intentionally disconnected or disrupted through deliberate government intervention, such rights are engaged. Of course, this line remains murky, considering many social media companies cooperate with governments, providing vast amounts of personal information to governmental agencies.

Recognition of social media as a human right is distinctive because of the number of important rights which converge into it: namely, freedom of: association, expression, and information. Firstly, members using social media are participating in an associative right. They have chosen to join particular platforms and have often chosen the friends or followers they interact with on those sites. Some platforms, such as Facebook, even provide groups outside of the "friends" or "followers" users interact with (i.e., members can potentially follow their church, writing group or book club on such services…but do not have to be "friends" or "follow" all associated members). Many informal and traditionally formal groups are now based-on social media and interact with members exclusively or in conjunction with their social media accounts. While not all citizens join such interactive platforms, for the many who do access is essential to daily life, and exclusion from such services can be harmful.[12] If such access is hindered or severed, even for a short period, citizens lose a valuable associative right. But of course that is not all they lose.

---

[10] Clay Shirky, *The Political Power of Social Media: Technology, the Public Sphere and Political Change*, 90 Foreign Affairs 28-41 (January/February 2011). Shirky notes Philippine President Joseph Estrada (2001) and Spanish Prime Minister Jose Maria Anzar (2004) were both brought down largely through SMS organising.

[11] Eric Barendt, *Freedom of Speech* (Oxford: OUP, 2005), p. 456.

[12] (unpublished manuscript) Kay Goodall and Brian Christopher Jones, *Expressive socialising online: A rights analysis of cognitive and legal conceptions of public and private in social media*.

The cognate expressive and informational components remain vastly important to social media, particularly because these platforms revolve around conversation and information: the opportunity to engage in conversation (i.e., expression) and to have access to the information you choose to follow, is fundamental: these rights are highly valued offline, and there should be no difference in the virtual world. After all, "[f]ree expression on the Net and open access to websites is crucial."[13] Tenenbaum previously acknowledged that freedom of expression under the ICCPR includes the right to information; in particular, Article 19(2) states that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."[14] Though the ICCPR was adopted in 1966, seeking, receiving, and imparting information are the key components of social media, just as such acts are key components of daily (offline) social life. The temporal elasticity of social media is also unique: conversations can be held in real time or can be intermittent throughout the day/month/year; they can even be archived and responded to years, or potentially decades, later.

Democracy-Enabling or Rights-Infringing?

Some push for social media to be recognized as a human right exists, but most of it came shortly after the Arab Spring, when the services were perceived as "democracy-enabling". In 2012 the Council of Europe posted a discussion paper about the topic,[15] and before this Human Rights Watch advocated for laws to protect such activity.[16] Even the famed Austin, TX music festival *South by Southwest* took up a panel exploring the issue.[17] Recently however, the conversation has changed. In part this occurred because the Islamic State ("ISIS" or "ISIL") has been so adept at social media, posting videos broadcasting propaganda, beheadings, and other gruesome/disturbing images among a variety of international social media outlets. As the Islamic State began gaining ground throughout Iraq this past summer, the Iraqi

---

[13] Barendt, *Freedom of Speech*, p. 453.

[14] International Covenant on Civil and Political Rights, art. 19(2) G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

[15] Commissioner of Human Rights, *Social Media and Human Rights*, Council of Europe, CommDH (2012) 8, available at: https://wcd.coe.int/ViewDoc.jsp?id=1904319.

[16] Kenneth Roth, *New Laws Needed to Protect Social Media*, Human Rights Watch, available at http://www.hrw.org/news/2011/04/15/new-laws-needed-protect-social-media.

[17] Available at: http://schedule.sxsw.com/2012/events/event_IAP13149.

government banned many social media providers for seventeen days.[18] However the ban was largely ineffective, and even in the face of airstrikes the Islamic State has strengthened its position in Iraq. Since the expansion of the Islamic State and the already disconcerting evidence of widespread online abuse (including rampant bullying, hate speech and sexism, amongst other things), social media has now come to be perceived by many as potentially damaging or "rights-infringing", as opposed to "democracy-enabling". This significant cultural shift has hampered governmental abilities to find best practices, not only in terms of access to such services, but also as regards its content.

Social media content has received a good deal of attention from journalists, scholars, and governments, but starkly little consistency has emerged regarding principles such as free speech and the line between criminal/non-criminal material. The consensus among western social media companies (Twitter, Facebook, Google, etc.) appears to be that beheadings and other gruesome videos are not a form of free speech.[19] But acts of terrorism or brutality are not the only items getting blocked. Messages related to child abuse, criminal activity, and even political action statements often get blocked. Regarding this type of censorship, the Council of Europe report noted significant difficulties:

> [D]ue to the limitations inherent in these restrictive measures, Internet blocking does not serve the aim of removing targeted content from the Internet (and does little, for example, to protect children from abuse). It is highly intrusive; ineffective in preventing determined users from accessing illegal content; inevitably blocks legal content; and can sometimes assist those against whom it is used.
>
> Moreover, it is often based on vague, arbitrary laws (or no law at all); usually relies on secret lists, unknown to the public and drawn up by unaccountable bodies; and is seriously lacking in due process, both when applied as prevention – with exclusion of stakeholders, notification and a right to object to blocking – and after the fact, in terms of challengeability

---

[18] Matt Smith, *Iraq lifts social media ban, some websites still blocked*, Reuters (1 July 2014), available at: http://www.reuters.com/article/2014/07/01/iraq-telecomunications-idUSL6N0PC3CB20140701.

[19] Jeff Bercovici, *YouTube's Policies Are Clear: Beheading Is Not An Act Of Free Speech*, Forbes (3 September 2014, available at: http://www.forbes.com/sites/jeffbercovici/2014/09/03/youtubes-policies-are-clear-beheading-is-not-an-act-of-free-speech/.

(would-be publishers and recipients are both unable effectively to challenge lists or decisions).[20]

The report goes onto emphasise one of this comment's major points: that blocking occurs "not only in manifestly repressive countries but also in modern democracies".[21]

Social Media and Authoritarian Regimes

While some western governments have had issues with social media, authoritarian regimes have undoubtedly had a complicated relationship with such services. Given that many platforms allow for easy and wide dissemination of opinions and information, as noted above, a number of regimes have blocked or heavily censored social media. The Arab Spring (also known as the "Twitter revolutions") brought this issue into prominent focus. The emphasis throughout these revolved around the freedom of expression for mobilisation efforts. Although there is on-going debate in regard to how integral social media was to the ensuing movements, there appears to be little doubt that outlets such as Facebook and Twitter played a significant, if not vital, role in mobilising citizens for particular demonstrations.[22] The ease with which information was shared on social media allowed for mass demonstrations to be scheduled in many countries.

Above it was noted that disruption to these social platforms violates citizens' basic rights to freedom of expression and information, but it also subsequently curtails citizens' rights to freedom of assembly, given that citizens may no longer have access to information regarding when and where demonstrations will take place. Smaller demonstrations may go undetected by the larger citizenry or the media, making it easier for governments to break-up or curtail such actions. Nevertheless, authoritarian governments have certainly recognised social media as an enabler of mass demonstrations, and have (sometimes) responded by blocking and censoring in order to preserve their hold on power, however fragile.

Many authoritarian regimes currently lack the technological capability to block or censor such services, but will eventually acquire the capabilities to do so.[23] Given their technological abilities, China is perhaps the best example of what other authoritarian regimes may become in this regard. Though wide-ranging Internet and

---

[20] Commissioner on Human Rights, Council of Europe, note15 above, p. 20-21.

[21] Id., p. 21.

[22] *See generally*, Sarah Joseph, *Social Media, Political Change, and Human Rights*, 35 Boston College Int'l and Comp. L. Rev. 145 (2012).

[23] Id., p. 167.

mobile access pervades most cosmopolitan areas, rights violations occur because of the denial of access to particular platforms or the censoring/blocking of information. Not only does China consistently block various social media outlets such as Twitter, YouTube, and Facebook (among others), but its own state-run social media outlet, Sina Weibo, censors a plethora of material. In this respect social media rights are doubly-violated: first by access to various platforms; then by censoring content on state-approved platforms.

Conclusion

I bring these issues up not to defend those posting gruesome or offensive material on social media services or to criticise governments attempting to curtail (sometimes brutal) insurrection, but to start a conversation among academics, governments, and the private sector about finding best practices going forward. Clay Shirky raised some of these questions over three years ago,[24] and today answers seem even more muddled. At present social media appears to be perceived as a luxury, allowed by governments during relative calm and yet impeded or restrained during times of insurrection. Further, blocking particular content on social media in many countries, including modern democracies, is often governed by vague and arbitrary laws. Of course the complexity of these questions contains inherent difficulties, but there is little reason for social media to remain such an opaque legal domain.

[24] Clay Shirky, *The Political Power of Social Media: Technology, the Public Sphere and Political Change*, Foreign Affairs (January/February 2011).