The Inner Conflict of Liberalism in Defining the Limits to State Coercion in relation to Social Media

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The genesis of the problem between social media and State regulation can be seen as an issue relating to competing rights – on the one hand the rights of users to use this technology unfettered from State interference and on the other, the right of society to be protected from the myriad of harms that are alleged to stem from the use of social media. As such, even if one is to accept the tenets of liberalism as a legitimate political philosophy, it is arguable that liberalism itself is predisposed to an inner conflict when assessing the limits of State coercion and individual rights. This is due in part to the inherent flexibility or benefits, some would assert, within liberalism to allow for varying interpretations of the same social phenomena. That is to say, even within a society where liberalism is the accepted hegemonic system there is no uniform determination of what constitutes a legitimate level of State control as this would vary according to the social context and question for consideration.

Proponents of a liberalist philosophy could still be at odds due to the possibility of a number of contrasting interpretive outcomes, the culmination of which must be seen as valid as the next one since it could be seen that there would still be conflict between those who advocate varying degrees of State intervention over others who do not. This is despite both groups being proponents of a liberalist philosophy. The same could be applied to the issue of regulating social media. One could assert that the multiplicity of the levels of State intervention within liberalism is predicated on the varying degrees of acceptability that the State exercises with respect to possible infringements upon an individual's freedom to express one's self unfettered by restrictions from the State. It is this notion of freedom or liberty that is at the cornerstone of liberal democracy and that which creates the greatest conflict for the State.

On the one hand there exists the idea that an individual should be free to use social media while at the same time the State has a responsibility to ensure that society is free from the socially destructive elements that have been attributed to social media. The challenge for the State lies at the realms of understanding the nature or

the role of the State in an environment so heavily characterised by rapid developments in social media technology. The only way to fully understand this role is to engage the issues at a fundamental level which takes into consideration a range of philosophical positions. Otherwise all that can be achieved is ad hoc solutions that attempt to patch the symptoms of the problem rather than address the core of the issue.

In part, the cause of the juxtaposition between State understanding and technology relates to the gaps in contemporary legal understanding between social media and the function of the law. The apparent discord between the pace of the development of social media and our legal understanding of the phenomena at a jurisprudential level is evident by the lack of sophisticated discourse and engagement by the legal profession and the State. In achieving a better understanding of the way law operates with social media, it is submitted that the primary discord between the current use of this technology and our own understanding of how the law does and should interact with it, can be attributed to the fact that there is little understanding on a theoretical level, at least, of the law's function in regulating this sort of technology.

Any regulation would intuitively take into account a range of attributes that can be applied against a theoretical framework in order to determine the legitimacy (or illegitimacy as the case may be) of creating a legislative regime for social media. In the absence of engaging in such a process, law is created void of any philosophical basis for its justification, other than its own existence being used to justify it in a positivist sense; that is, it exists, therefore it is valid. To date, there has been very little research undertaken at the theoretical level that looks at the various attributes which form part of the social networking media phenomena and the advantage of doing so now represents opportunities to assist law makers. As such, it would appear the means by which to regulate and whether it should be regulated, remains unsettled.

Since any imposition of regulation in one area may have consequences in another; freedom of expression, criminalization of marginal anti-social behaviour and general subjugation of personal freedoms, for example, are possible consequences resulting from greater regulation of social media. Therefore, an essential part of this discussion will seek to understand whether the imposition of regulation is justified in terms of an appropriate philosophical or theoretical basis while keeping in mind that any greater regulation than what presently exists, might unduly restrict society as a whole. Certainly a dominant position might be described as a utilitarian balance

between the individual's 'right' to use this technology versus the harms this technology may cause? That is, is a utilitarian perspective a suitable framework in which to assess the matter, or should we look beyond this to an ethics-based approach?