Free Speech in the age of Social Media
3 December 2018

<u>Dr Myriam Hunter-Henin</u> (MHH), UCL, Reader in Law and Religion and Comparative Law, UCL Laws

<u>Dr Saladin Meckled-Garcia</u> (SMG), UCL, Director of UCL Institute for Human Rights and Associate Professor in Human Rights and Political Theory

<u>Mr Colm McAuliffe</u> (CMA), UCL, PhD candidate at Birkbeck College, University of London and Archive TV curator

<u>Professor Margaret O'Brien</u> (MOB), Chair, UCL, Director of Thomas Coram Research Unit, UCL Institute of Education

Notes written by Nenna Orie Chuku (PhD student at UCL and RA with UCL Grand Challenges)

Welcome and introduction

MOB welcomed and introduced speakers to attendees, highlighting that the context of the event was topical and pertinent. MOB presented a short summary on how the growth of globalisation has created, and continues to create, more opportunities within communications but do address the specifics of free speech. MOB commented on the lack of reflections on and actions towards free speech can be seen across different sectors, including higher education as exemplified by the decision to move the Central European University from Budapest to Vienna, following the ban of gender studies and critical sciences by the Hungarian government.

<u>Clip of UCL President & Provost Professor Michael Arthur</u>

MA summarised the importance of free speech, how HEIs are bastions of free speech and HEIs have a responsibility to it due to the legislations. MA praised the work of the Grand Challenges in examining free speech by bringing people across many disciplines together.

Opening remarks

CMA summarised his research into 1970s and 1980s British culture, and suggested that the 1970s was a golden age for public intellect due to the range media (namely TV programmes) that encouraged public debates. Examples of the latter includes *Deconstructing the News*, *It Ain't Half Racist, Mum*, and *Deconstructing the Art World*. CMA argued that contemporary social media platforms, like YouTube, present

a false "archive" of television and visual documentation. CM presented a clip from a February 1989 episode of *Hypotheticals*, where Yusuf Islam (Cat Stevens) vocalised Islam's belief that Salman Rushdie should be murdered, a comment that Islam would later go on to deny saying. CMA summarised his various attempts to retrieve a copy of the footage from the BFI, then later to the BFI's referral to the production company of *Hypotheticals*, then the production company's referral suggestion to the BBC, which declined to release the footage. In context of the *Hypotheticals* clip, CMA closed with two questions:

- How would we react if those views were then shared on social media during/ following the broadcast?
- What role does the law play in such events?

Following on from CM's contextual framing for the event, MOB introduced the MHH and SMG who were in dialogue for the event.

Dialogue

SMG opened with questioning the definition and protection of freedom of speech by suggesting the need to understand why freedom of speech and expression exists, and what purposes it serves. SMG historicised how freedom of speech is based on the greater will, and how will eventually clash with the greater good. SMG suggested that 'liberal' view of freedom of speech focuses on the individual, and values the right that individuals have to determine how they wish to live their life. SMG commented on how liberalism believes the right to choose and to determine one's own life is precious, and forms the structure on how life should be lived. Through this, SMG suggests that freedom of speech allows people to swap ideas on how to live life, thus enabling people to live differently if they wish to. SMG suggests that this idea is more robust than serving the social good. SMG goes on to stress that there is not a limited definition to freedom of speech, as in order to protect one from another (freedom from speech, and speech from freedom), a definition and terms are needed - this is what freedom of expression achieves.

SMG summarised the history of freedom of expression as attempts to get the balance right, with a resolution including a way to balance the difference between speech as communication versus speech as action. SMG concluded that the law prevents the action but not communication, however they are used interchangeably, and that the notion of 'harm' has at times been an amorphous idea.

MHH responded to SMG's opening remarks with comments on how law has underlined the importance of freedom of speech through distinctions. Through a generalisation of law within liberal democracies, MHH highlighted that speech is split over whether speech incites violence or not, whether speech is being used as hate speech or not, and whether speech violates or conflicts with other rights. MHH commented that under the liberal perspective, hate speech is more problematic as it is hard to draw a definitive as it is based on context. More often than not, MHH suggested that hate speech demeans a group, and hate speech laws support and entrench liberal goals.

MHH illustrated that unlike the United States, European states are reluctant to pass laws on freedom of speech, and that states within the Europe, like England and Wales have the Racial and Religious Hatred Act.

MHH expanded on what type of speech amounts to hate speech by exemplifying the difference between speech that targets religion versus speech that targets religious groups, and that under a liberal framework, religious groups fall under hate speech laws. The reason for this, MHH mentioned how secular states do not get involved in religious debates as it will impact on people's autonomy to believe what they want. MHH stressed that this stance does not mean that states have do not have blasphemy laws, as shown across European states that are now abolishing or relaxing blasphemy law, most recently seen in the recent removal of blasphemy from the Irish constitution in 2018, which exemplifies how freedom of speech still clashes with religion and religious views. To illustrate this further, MHH summarised a case taken to the European Court where a member of a far-right Austrian freedom group was charged on the basis of that seminars that the group organised were not objective and educational as presented, therefore ruling in protection of religious groups and hate speech. MHH highlighted that the religious peace and tolerance conclusion of the case, received a lot of media attention, and because of social media the content of the case was disseminated more widely and quickly.

Based on MHH remarks, SMG proposed questioning what social media is and where it sits. SMG summarised how mass means of communications allow people to interact with each other across geographical locations and time differences, and how social media has been a liberating force for many people, for example the Egyptian/ Arab Strings uprising and (although less successfully in) Iran.

SMG highlighted that private corporations provide social media platforms. therefore these private corporations do not have the same obligations towards human rights. However, SMG pointed out that many of these social media private corporations are starting to adopt human rights concepts within their policy, for example, the code of conduct on Twitter.

By using the case of Packingham v. North Carolina (2017), SMG commented on how concepts of the public square were discussed and concluded that people can express themselves within certain limitations in public spaces, and stated and defined social media as a public space. SMG also added that within the case of Marsh v. Alabama (1946), where flyering in a market town (where a town is heavily funded and supported by a private business) was debated and the court upheld the right to disseminate leaflets. SMG highlighted that the moves to change how social media spaces and perceived, and how this change presents an important challenge on how, and to what extent, can these private corporations restrict what users can do on these platforms. With Twitter, SMG suggested that the code of conduct contains good intentions but lacks detail on its application. SMG questioned:

- How the code of conduct was and is applied?
- How many moderators are there, and who is eligible to be a moderator?
- How can users appeal decisions? Who hears the appeals?

SMG exemplifies this undefined area by summarising Twitter's decision to act upon the Saudi Arabian government request to close the Twitter account of Washington Post columnist Jamal Khashoggi, who was a critic of the Saudi Arabian government. SMG pointed out that private ownership equates to self-regulation, and public ownership equates to public regulation. SMG ended his response with a question on how should we treat these bodies?

MHH followed up SMG's comments by summarising the passing of a law in October 2017, which addressed ethical elements at social media service providers that have over 200 million:

- React to complaints
- 24-hour window to remove flagged content
- 7-days window to remove unlawful content
- Produce yearly reports on how the service provider has eliminated criminal activities, and the success rates of removal
- Create easily recognisable procedures for complaints

- Around a €15 million fine if there is a breach of the law

MHH presented a summary of the difference between self-regulation and safe spaces as follows:

- Self-regulation

In the case of the press this materialises as self-restraint, therefore self-censorship in the content they produce. MHH suggested that these pre-emptive actions limit judicial investigations, and follows a consequentialist approach to freedom of speech whereby freedom of speech should be restricted if likely to cause certain consequence. MHH suggested that self-regulation is a debate between individual rights and social conformation

- Safe space

MHH mentioned the statements made by the President of the SUCU on safe space and no platforming, and the aims to embrace engagement, inclusion and accessibility for all. MHH commented that in the liberal framework, safe space does not work as it puts social conscious ahead of individual rights, and because it does not create opportunities for democratic debates thus blurs the distinction between speech that is for action versus speech for communication.

The Prevent Duty, MHH proposed, contain similar pre-emptive approaches as under this guidance, public authorities have the duty to report people who are perceived as a risk of or to terrorism. MHH presented that the problem with the at 'risk' definition under this Duty, which includes the rejection of fundamental British values, is that it becomes an issue with freedom of speech because in learning environments, such as schools, debates and freedom of speech may be hindered.

MHH concluded that social media often encourages and limits users to set silos based on their beliefs or how they think, therefore notions of democracy are being tested by conflicting views. It creates a dilemma on whether it has a public good versus individual freedom.

Q&A
1. How much is social media inherent of American free speech that other states?

- SMG: There is not a clear hate speech protection in the US constitution. Twitter goes beyond the US Constitution and the EU Protected Categories.
- MHH: Social media providers choose to be under US legislation. The internet has no borders but territorial reach comes into play, for example, the EU case with Google in 2017 on the Right to be Forgotten. However, the outcome is probably unconstitutional in US law.

2. Social media organisations' belief and statements that they are not media or news organisations
- SMG: Social media companies present themselves as communication companies and not publishers. Publishers are responsible for the content they produce and release, therefore can be accused and charged of hate speech. A communication company can hire representatives, and these individuals are liable for hate speech not the communication company. The Communication Act addresses malicious communication, which includes communication agencies/ companies but individuals are the ones liable for malicious communications not the communication agency/ company. Ultimately, the question now is not if social media will be regulated, it is a matter of when and how will social media be regulated?

3. The impact of the written constitution, in particular the 1st Amendments in the US
- MHH: A written constitution can help with freedom of speech but more needs to be done to elaborate upon it. The US Constitution is reluctant to have a horizontal approach to human rights due to the impact it will have on private companies. The European Convention on Human Rights is better as it has a horizontal approach therefore applies on to private business. The European states has to have legislation based on this. A similar approach could be applied to social media too.

4. Public shaming and Facebook, in particular the role Facebook has in facilitating this, and does it need to be regulated differently
- SMG: Facebook has looked into 'true identity' conditions in their live streaming. Suggestion to review Jon Ronson's *So You've Been Publicly Shamed* (2015). Even if the accused individual could clear their name, it is hard to do so before it manifests into something viral

on social media. Thinking about social media as a public square shows some similarities, but social media does not have a boundary or limits. Public shaming on social media is similar to dragging people in the streets - it is a premodern mentality approach to treating those of alleged crimes. Social media shaming has no due process - if it goes beyond getting judiciary process then it becomes an ethical problem. With this in mind, social media becomes a weapon. Freedom of speech was supposed to protect you from the 'mob', but people will argue that these are consequences that come with freedom of speech. Social media companies could incorporate prevention on social shaming and giving people readdress.

- MOB: Social Science of children there are 2 paradigms: (1) agency building and (2) protection (framing them as vulnerable and the need to protect them from harm). There is a lot of hesitation with the use of devices with children and how it impacts on development but then also developing other skills.

- MHH: The problems with social media is the idea of volume- this has implications for freedom of speech as postings on social media are magnified.