

Revisiting the limits of free speech: Lavik's ban on climate denialism

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The argument that there are compelling moral reasons to make climate denialism illegal might not only have legitimacy but could also offer a sense of relief to an annoying social problem: toleration and freedom of speech could pose a hindrance to implementing the climate and global justice agenda. Indeed, the harmful effects of climate change on developing countries are real. This reality causes the problems posed by climate change deniers to be more strongly felt because they can influence public perception and eventually government policies. In so doing, international agreements and local environmental laws that seek to address the global climate problem may be hampered. Thus, Trygve Lavik's proposal to make climate denialism illegal – despite invoking John Stuart Mill's Liberty Principle, which guarantees social freedoms unless they impede on the freedom of others, balanced with T.M. Scanlon's conceptions about global justice – provides potential relief to the difficulty posed by climate denial.

Lavik provides a nuanced presentation of how freedom of speech could be exploited by introducing the idea of "illegal climate denialism." While speeches denying climate change are legitimate, other speeches arise from well-funded hired operators who campaign for the interests of companies that could be affected if national and international policies took effect to mitigate climate change. By bombarding the public with misinformation, the multi-media campaigns sow scepticism about climate change, which could eventually result in public apathy and a nonchalant attitude towards government initiatives to counter climate change. Without public clamour and pressure, governments might take no action.

While putting a premium on Mill's defence of free speech as "the best means for producing more truth" (Lavik 2016, p. 82), Lavik also contends that while some people may argue that open discussions do not result in immediate consensus, the very process of exchanging ideas is good for society in the long run. Nevertheless, he also underscores that although Mill recognizes the importance of free speech, limiting this freedom becomes necessary if an expression causes undue harm. In conjunction with Mill's harm principle, Lavik invokes Scanlon's framework on evaluating what makes moral judgments reasonable based on who would be significantly harmed amongst participants, audience, and bystanders. Lavik concludes that the ruse that climate change is not real, which is generated mainly by the actions of participants (those who sow disinformation) and the audience (the

general public), could cause harm to bystanders (people in developing countries and future generations). Thus, he believes the harm that bystanders might incur warrants banning speeches that sow doubt about climate change.

Although alluring, his proposal to make climate denialism illegal could do more harm than good in the long run because it goes against international human rights standards and most national bills of rights, which have evolved through history and are grounded in the need for social, political and economic reforms. One could say that an affront to one human right is an affront to them all. Also, free speech is free speech, whether coming from well-oiled propaganda machinery or a passionate individual who has fallen for conspiracy theories. Especially in democratic systems where deliberation is crucial, basing legal actions solely on experts' scientific opinions might set a precedent that could have long-term repercussions. This situation is similar to what mass vaccination programmes encountered with Covid-19 deniers and anti-vaxxers. One could also argue that free speech should be curtailed during pandemics because conspiracy theories and anecdotal findings spread by anti-vaxxers – with their "participant interests," using Scanlon's categories – could cause adverse effects on innocent "bystanders." Many people may have died because of anti-vaccination propaganda. However, it is also possible that the potential harm resulting from making certain speeches illegal that usually have protected status might far outweigh the harm that banning these speeches would. Cherry-picking acceptable speeches might damage the general principle's ontological importance.

Moreover, because the subject matter of the speeches could fall into classifications whose boundaries overlap, this lack of exact demarcation makes it more difficult to legislate their banning. For instance, some people deny the ontology of climate change on religious grounds. One such example is the statement that "Climate change is not real because it is not compatible with what the Bible says." One could argue that religious speech is a protected constitutional right under the headings of freedom of speech and religion, no matter how irrational, as long as it does not incite or cause immediate harm. The state cannot penalize someone for being ludicrous. In the case of anti-vaxxers, they cannot be penalized for not believing in the pandemic or the vaccine or for not taking the jab. Although Lavik presented a well-argued case using Scanlon's framework, the framework could also be used against Lavik's argument. The problem is not with Lavik's proposal but with how loosely Scanlon defined his criterion of reasonableness. By adopting a contractarian view where an adopted general principle is evaluated based on how the primary participants' actions would affect the interests of audience and bystanders on the receiving end, Scanlon could just as well disagree with making climate denialism illegal. For Scanlon, after weighing the difference between the effect of the general principles on those who directly participate and those who are on the receiving end, "if it would be reasonable to reject any principle that would permit a certain action, then that action would be morally wrong" (Scanlon 2014, p. 96). Sadly, there is no precise way to determine an exact measurement of reasonableness. One could also find it reasonable that curtailing fundamental social freedom might eventually cause more harm than good to the greatest number of people. Arguing for and against climate denialism thus becomes caught in a stalemate. One could also argue that declaring climate denialism illegal is immoral because it could have a chilling effect on other speeches.

This argument is exemplified by the protection of pornography in the United States: censorship is regarded as more immoral than pornography itself. Although Scanlon is right to advocate for the welfare of bystanders, he also recognizes the complexity of coming up with a principled argument for restricting pornography that would be consistent with other national policies that protect it (Scanlon 2003, p.112).

One of the problems with "legalized intolerance" is that it appears to give up on the possibility of changing public perception through the potency of the deliberative process. In a democracy, conversations often work, and if they do not, respecting minority opinions is as crucial as enforcing majority views. After all, having minority views is necessary to bring about social change, since majority views often hold on to the status quo. Moreover, outlawing an unscientific view deemed harmful could also undermine the need for the public to understand and process information before giving consent, which is essential in a democracy.

If climate denialism could have an adverse effect on the public, its effects would be indirect. Climate denialism is not similar to hate speech that could incite immediate public harm or to libellous speech that might damage someone's reputation. Climate denialism would have a harmful effect primarily if governments do not act due to public apathy. However, ignorance about climate science facts or even imprudence about the political consequences could be solved by other means. Intensive information campaigns and dialogue have the potential to change people's minds. Enhancing educational programmes could also help address the supposed propaganda by corporations. Shifting the burden from policy implementors and experts to the public is not right, and it is unfair to penalize the public for not fully grasping scientific data. In this sense, Scanlon's own criterion - that simply having a reasonable objection could render a normative claim immoral - could also be applied to Lavik's argument.

It is important to understand that international declarations and conventions guarantee the right to free speech. The potency of such rights lies in their vagueness regarding the scope of what constitutes an acceptable opinion. To enumerate what is or is not allowable might lead to perfunctory compliance that authoritarians could exploit for selfish interests. State intrusion, no matter how sincere in its desire to limit expressions of free speech for the public interest - especially those that might result in future harm - could have unforeseen consequences, especially if less earnest leaders were to replace sincere ones. The concept of "public harm" can be exploited just as anti-terrorism laws are being used by authorities who do not respect human rights. It has taken decades for governments and nations to understand the power that social freedoms can wield against any form of totalitarian ideologies and regimes.

Lavik premised his argument on the existence of a "denial industry," a term referring to the concerted effort of scientists, analysts and corporate people with vested interests to instil scepticism. Because this industry's main objective is profit at the expense of the environment, Lavik finds it necessary to ground illegal climate denialism on "bad faith" (Lavik 2016, p. 77). However, the existence of self-interested profit-oriented groups could hinder populist authoritarians interested in retaining power at all costs. Free speech hinders these leaders in their desire to perpetuate power, because truth-telling is still a powerful tool against oppressive governments. While banning speeches that deny climate change may be pragmatic, this action could be exploited by those who find freedom of expression a hindrance

to their ambitions. This proclivity to silence opposing views is evident through the demonization of the press by populist demagogues and through trolling on social media by followers of conservative right-wing politicians (Waisbord 2020, p.1036). One possible effect of banning "illegal" free speech is that it could become easy for authoritarians who desire perpetual power to go after journalists and truth-tellers by simply branding them as belonging to a profit-oriented industry, similar to what Lavik refers to as denying climate change in bad faith. Declaring the existence of paid trolls and fake news peddlers illegal might be advantageous in controlling the spread of lies, but authoritarians could exploit it for their gain. Indeed, it is paradoxical that declaring the right to say something contrary to the facts as illegal could be inimical to the desire to arrive at the truth. Thus, we revert to Mill's adage that free speech is still the best means to arrive at more truth.

Lavik's proposal is an excellent addition to the debate on how appropriating freedom of speech should be handled in light of the proliferation of misinformation and disinformation in traditional and current social media outlets. However, in considering his suggestion, I believe there is an urgency to recognize that authoritarian leaders are on the rise and what usually follows are human rights violations. In such situations, curtailing freedom of expression could have deleterious effects. While making some speeches illegal in order to avert harm to "bystanders," such a proposal could also precipitate more harm to the already fragile human rights regime.

Reference

- Lavik, T. (2016). Climate change denial, freedom of speech and global justice. *Etikk i Praksis - Nordic Journal of Applied Ethics*, 10(2), 75-90. <https://doi.org/10.5324/eip.v10i2.1923>
- Scanlon, T.M. (2014). *Being Realistic About Reasons*, Oxford: Oxford University Press.
- Scanlon, T.M (2003). Freedom of expression and the categories of expression. *The Difficulty of Tolerance. Essays in Political Philosophy*. Cambridge: Cambridge University Press, 84-112.
- Waisbord, S. (2020) Mob Censorship: Online Harassment of US Journalists in Times of Digital Hate and Populism, *Digital Journalism*, 8:8, 1030-1046, <https://doi.org/10.1080/21670811.2020.1818111>