

California's Bill Restricting Speech Is Authoritarian

California is one step away from going down the unconstitutional road of government-mandated censorship of Internet speech. The California Senate and State Assembly recently passed S.B. 1424, the "Internet: social media: advisory group" act. This fake news advisory act is now [on the desk of Governor Jerry Brown](#) for his signature.

According to Section 3085 of the legislation:

The Attorney General shall, subject to the limitations of subdivision (d), establish an advisory group consisting of at least one member of the Department of Justice, Internet-based social media providers, civil liberties advocates, and First Amendment scholars, to do both of the following:

(a) Study the problem of the spread of false information through Internet-based social media platforms.

(b) Draft a model strategic plan for Internet-based social media platforms to use to mitigate the spread of false information through their platforms.

It's hard to imagine those voting for the bill were motivated by good intentions. In any case, [good intentions are not enough](#). Is it hard to imagine the results of the law will be censorship of views that politicians disagree with and views critical of politicians?

Most likely, Californians are not concerned about "fact-checking" content like "a mile is 5290 feet" or an appeal to form a flat Earth Facebook group; such content poses no threat to entrenched interests. Instead, "fact-checking" will be deployed against those who express doubt, for example, about

climate change, vaccine safety, or “educating” children about gender dysphoria.

In a world where most [scientific studies can't be replicated](#), a consensus should not be confused with an immutable fact.

If you doubt that censorship is the aim of the bill, consider the even more draconian measures that an [earlier version of the bill required](#). Social media sites would have needed to develop “a plan to mitigate the spread of false information through news stories, the utilization of fact-checkers to verify news stories, providing outreach to social media users, and placing a warning on a news story containing false information.”

The First Amendment makes no provisions for government judging the validity of speech either directly or through mandated “fact-checking.” In legitimate cases of defamation, [legal remedies are available](#), but the bar for a successful lawsuit is high.

Concern Over Fake News is Old News

Concern over “fake news” is not new. Elbridge Gerry, who became the fifth vice president of the United States, [despaired at the Constitutional Convention](#) about the impact of “false reports”:

The people do not want virtue, but are the dupes of pretended patriots. In Massachusetts it had been fully confirmed by experience, that they are daily misled into the most baneful measures and opinions, by the false reports circulated by designing men, and which no one on the spot can refute.

There have always been “false reports,” but Thomas Jefferson believed in the [wisdom of the public to discern the difference](#):

It is so difficult to draw a clear line of separation between the abuse and the wholesome use of the press, that as yet we have found it better to trust the public judgment, rather than the magistrate, with the discrimination between truth and falsehood. And hitherto the public judgment has performed that office with wonderful correctness.

What Jefferson observed in his time is no less true today. It is impossible to “fact-check” the limitless amount of Internet speech. It is no more possible to “fact-check” than it is to centrally plan; in either case, the power of reason is not able to deal with the unforeseeable complexity one would encounter. Knowledge, by its nature, is vast and [decentralized](#).

In [Conjectures and Refutations](#), philosopher Karl Popper observed: “There are no ultimate sources of knowledge. Every source, every suggestion, is welcome; and every source, every suggestion, is open to critical examination.”

In contrast, California’s politicians seem to believe only some ideas are welcome—if those ideas have been “fact-checked” by the heavy hand of government-sponsored boards.

Why Authoritarians Always Suppress Speech

In his new discussion paper, “[The Mirage of Democratic Socialism](#),” economist Kristian Niemietz of the Institute of Economic Affairs counts “more than two dozen attempts (not counting the very short-lived ones) to build a socialist society.”

“They all,” Niemietz writes, “led to varying degrees of economic failure.” With that economic failure always came “varying degrees of repression and political authoritarianism,” as well as severe limitations on “freedom

of choice and personal autonomy in the economic sphere.”

Authoritarians, including so-called “democratic socialists,” must always suppress speech. Why? Human beings have boundless preferences and competing goals. These preferences and goals are sorted out by either socialist planners or impersonal market processes.

As central planning fails, a scapegoat must be found. If only the people were united and working towards the same goals, our plans would succeed, reason the planners. Thus, observes Niemiets, all socialist regimes seek to enforce compliance with their plans:

One of the most persistent features of socialism is the paranoia about imaginary saboteurs, wreckers, hoarders, speculators, traitors, spies and stooges of hostile foreign powers. These phantoms are always accused of ‘undermining’ the economy (although it never quite becomes clear how exactly they do that), which would otherwise work just fine. More generally, the oppressive character of socialist societies was generally linked to the economic requirements of a centrally planned economy. Socialist states did not oppress people for the sake of it. They did so in ways that enforced compliance with the aims of the social planners.

In a future dystopian “democratic socialist” California, the search for “false information” could be weaponized against those arguing for free markets. After [Google provides a censored search engine](#) in China, they can no doubt use their new expertise in California to keep up with the latest laws.

Free Speech Keeps Government in Check

The Founders saw the press as an absolute necessity to keep government in check. [In 1765, John Adams wrote](#) that the people

have “an indisputable, unalienable, indefeasible, divine right” to “knowledge... of the characters and conduct of their rulers.” Adams explained why such knowledge is crucial:

Rulers are no more than attorneys, agents, and trustees for the people; and if the cause, the interest and trust, is insidiously betrayed, or wantonly trifled away, the people have a right to revoke the authority that they themselves have deputed, and to constitute abler and better agents, attorneys, and trustees.

What are the sources of crucial information about our “rulers”?

None of the means of information are more sacred, or have been cherished with more tenderness and care by the settlers of America, than the press. Care has been taken that the art of printing should be encouraged, and that it should be easy and cheap and safe for any person to communicate his thoughts to the public.

What if the news was “speculative” and unproven? No matter. Adams praised newspaper publishers, and to them he wrote:

[W]hatever the tyrants of the earth may say of your paper, [you] have done important service to your country by your readiness and freedom in publishing the speculations of the curious. The stale, impudent insinuations of slander and sedition, with which the gormandizers of power have endeavored to discredit your paper, are so much the more to your honor; for the jaws of power are always opened to devour, and her arm is always stretched out, if possible, to destroy the freedom of thinking, speaking, and writing.

Yet, as president, Adams couldn't resist the human temptation to silence his critics. In 1798, Adams sang a different tune about the press as he signed the [Alien and Seditions Acts](#),

criminalizing the speech of his opponents, including Ben Franklin's grandson.

Ironically, in the process of criminalizing speech, Adams proved his earlier writings were correct: freedom of the press is always to be zealously guarded.

California is on the verge of going down the slippery slope of placing authoritarian restrictions on speech. Whether Governor Brown signs the bill or not, a mindset-inimical to a free society—is on full display for the rest of America to see and, hopefully, reject.

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