

Importance of a Theoretical Framework in the Regulation of Social Media

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Any form of regulation that may impact upon communication, freedom of expression and other personal freedoms, generally evokes stringent criticism with regards to censorship and State dominance over the rights of individuals. A fundamental philosophical tenet of Western liberal democracy is that the less intervention from the State, the better it is for society as a whole.

This has long been supported by traditional liberal theorists such as John Stuart Mill.^[1] Mill, in his seminal text, 'On Liberty',^[2] stresses this concept; however in doing so, Mill argues that any liberty bestowed upon an individual is subject to the 'harm principle'.^[3] Mill States,

That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. ... He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right.^[4]

In respect to the present discussion, harm could be seen as the spectrum of harms emanating from the use of CMC and SNS and the question is whether such harm is worthy of the imposition of regulation or whether it is irrational to regulate the majority over the actions of a possible minority? Again, Mill deals with this by looking at the concept he describes as the tyranny of the majority.^[5] John Rawls in 'A Theory of Justice' provides a useful insight into the area of moral philosophy in relation to what is an extension of the classic utilitarianists such as Mills, Bentham and Hume.^[6] Such a discussion is useful, however Rawls is able to build on the discussion with reference to the teachings of Immanuel Kant.

Virtue ethics, too, can play an interesting role in assessing whether there should be greater regulation with regards to social media. Johnson provides a good description of virtue ethics and leading figures associated with the theory.^[7] Vallor looks specifically at the application of a virtue-based normative framework in relation to the ethical consequences of SNS, and in doing so, selects three ethical virtues:

patience, honesty and empathy and assesses whether social media violates these ethical principles.^[8]

[1] See generally, Marcy, ; *Drug Policy : History, Theory and Consequences* ; Baker, ; F R Posner, *Economic Analysis of Law* ; Baum, ; Gray, *Why Our Drug Laws Have Failed and What We Can Do about It : A Judicial Indictment of the War on Drugs* ; Carpenter, .

[2] John Stuart Mill, *On Liberty* (1859) in Ross Fitzgerald, *A History of Queensland* (University of Queensland Press, 1984) 310-13.

[3] *Ibid*, 310.

[4] *Ibid*, 310-11.

[5] Above n 17.

[6] Charter of the International Military Tribunal for the Far East Article 1, 'GHQ, SCAP' (26 April 1946) .

[7] Loyd E Lee, *World War II in Asia and the Pacific and the War's Aftermath, with General Themes : A Handbook of Literature and Research* (Greenwood Press, 1998) 54-93, 420-33.

[8] Liz Reed, *Bigger Than Gallipoli* (2004)157