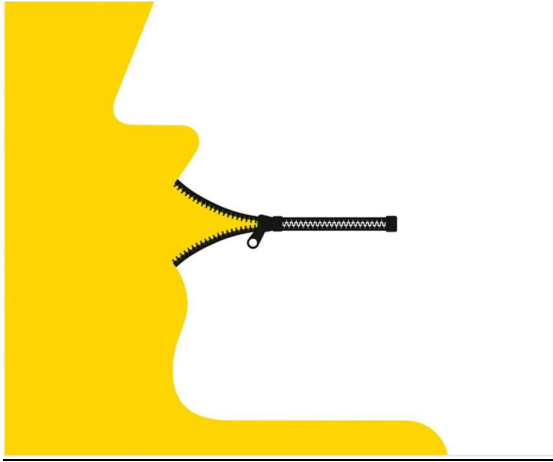


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Say it how it is : Europe's free-speech problem

J. D. Vance was right



Full text :

When America's vice-president accuses Europe of failing to protect free speech, the obvious retort is that he is a hypocrite. The White House in which J.D. Vance serves is an energetic foe of speech it dislikes, deporting students for their political views, harassing critical media and bullying universities. But just because he is a hypocrite does not mean he is wrong. Europe really does have a problem with free speech.

That problem is not evenly distributed. By far the worst offender in the European Union is Hungary, where the government has crushed or co-opted most independent news outlets. (Curiously, its pro-MAGA ruling party escapes Mr Vance's barbs.) Other notable offenders include Germany and Britain. Germany's ban on denying the Holocaust is understandable, given its history, but its law against insulting politicians is a travesty. The powerful wield it shamelessly. A former vice-chancellor has pursued hundreds of criminal complaints against citizens, including one who called him an "idiot". Last month a right-wing newspaper editor was given a hefty fine, plus a seven-month suspended jail term, for sharing a meme of a doctored photo showing the interior minister holding a sign reading "I hate freedom of opinion".

All European countries guarantee a right to free expression. However, most also try to limit the harms they fear it may cause. This goes well beyond the kinds of speech that even classical liberals agree should be banned, such as child pornography, leaks of national secrets or the deliberate incitement of physical violence. It often extends to speech that hurts people's feelings or is, in some official's view, false.

In some places it is a crime to insult a specific group (the king in Spain; all sorts of people in Germany). In Britain it is a crime to be "grossly offensive" online. Blasphemy laws still exist in more than a dozen European countries. The whole continent criminalises "hate speech", which is hard to define but keeps being stretched to cover new groups. In Finland it is illegal to insult a religion, yet quoting scripture can also be risky: [an MP was prosecuted](#) for posting a Bible verse on homosexuality.

Fuzzy logic

Britain's police are [especially zealous](#). Officers spend thousands of hours sifting through potentially offensive posts and arrest 30 people a day. Among those collared were a man who ranted about immigration on Facebook and a couple who criticised their daughter's primary school.

The aim of hate-speech laws is to promote social harmony. Yet there is scant evidence that they work. Suppressing speech with the threat of prosecution appears to foster division. Populists thrive on the idea that people cannot say what they really think, a view now shared by more than 40% of Brits and Germans. The suspicion that the establishment stifles certain perspectives is heightened when media regulators show political

bias. France fined a conservative TV channel €100,000 (\$112,000) for calling abortion the world's leading cause of death—a commonplace view among pro-lifers, from which the public must apparently be shielded. Online-safety laws that slap big fines on social-media firms for tolerating illegal content have encouraged them to take down plenty that is merely questionable, infuriating those whose posts are suppressed.

Things may get worse. Vaguely drafted laws that give vast discretion to officials are an invitation for abuse. Countries where such abuse is not yet common should learn from the British example. Its crackdown was not planned from above, but arose when police discovered they rather liked the powers speech laws gave them. It is much easier to catch Instagram posters than thieves; the evidence is only a mouse-click away.

When the law forbids giving offence, it also creates an incentive for people to claim to be offended, thereby using the police to silence a critic or settle a score with a neighbour. When some groups are protected by hate-speech laws but not others, the others have an incentive to demand protection, too. Thus, the effort to stamp out hurtful words can create a “taboo ratchet”, with more and more areas deemed off-limits. Before long, this hampers public debate. It is hard to have an open, frank exchange about immigration, say, if one side fears that expressing its views will invite a visit from the police.

Because this point is made stridently by the populist right, many European liberals have grown queasy about defending free speech. This is foolish. Not only because laws that can be used to gag one side can also be used to gag the other, as can be seen in draconian responses to Gaza protests in Germany. But also because believing in free speech means defending speech you don't like. If democracies fail to do that, they lose credibility, to the benefit of autocracies such as China and Russia, which are waging a [global struggle for soft power](#).

What, practically, should Europeans do? They should start by returning to the old liberal ideas that noisy disagreement is better than enforced silence and that people should tolerate one another's views. Societies have many ways of promoting civility that do not involve handcuffs, from social norms to company HR rules. Criminal penalties should be as rare as they are under America's First Amendment. Libel should be a civil matter, with extra safeguards for criticism of the mighty. Stalking and incitement to violence should still be crimes, but “hate speech” is such a fuzzy concept that it should be scrapped.

Privately owned digital platforms will have different content-moderation policies. Some will be stricter than others; users are free to choose the platform they prefer. Legally, online speech should be treated the same as offline speech. Though there are obvious differences, such as the possibility of going viral, police should generally stay out of private chats. Clearer, less sweeping laws would help all platforms to focus on removing genuine threats and harassment.

Europeans are free to say what they like about Mr Vance. But they should not ignore his warning. When states have too many powers over speech, sooner or later they will use them. ■