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Liberating User-Generated Content from the Garden of the Faithful: - An Examination of the YouTube Ban in Three Developing Constitutional Regimes in Asia

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Introduction

On May 19, 2014, Tehran police arrested six Iranians for their participation in the production a video uploaded to YouTube in which they could be seen engaging in “illicit relations” with one another. Additional charges against the youth were based on materials confiscated from their homes by police at the time of the arrests and included “contact with foreign television networks,” distribution of content on “the vulgar YouTube channel,” failure to wear prescribed Islamic attire, and “dancing.” Before being charged, the accused individuals appeared on Iranian state television and stated that the director of the video had told them that the video was not meant for publication. The Chief of Police stated that the authorities had identified the suspects within six hours of the uploading of the offensive video on YouTube.

On February 26, 2014, actress Cindy Lee Garcia successfully appealed the 9th Circuit Court of Appeals in the United States to and obtained a injunction ordering YouTube’s to take down the controversial anti-Islamic video Innocence of the Muslims, which had been uploaded to the website on July 1, 2012. Garcia asserted an independent copyright interest in her contribution to the film Desert Warrior, a film that was never completed. Instead, clips from Desert Warrior were dubbed over and used in Innocence of the Muslims. Garcia claimed that she had been tricked into appearing in the video and the unauthorized inclusion of her performance led to ongoing and serious threats to her

2 Happy” Video Participants to Go on Trial in September (August 12, 2014) Campaign for Human Rights in Iran., at http://www.iranhumanrights.org/2014/08/happy-trial/ International
3 Id.
4 Id.
6 Id.
life. The 9th Circuit stated that the provocative voice-over—in which the character played by Garcia asks whether Mohammad, the Prophet of Islam, was a child molester—were “fighting words to many faithful Muslims and, after the film aired on Egyptian television, there were protests that generated worldwide news coverage.” The case will be re-heard by a full bench of the 9th Circuit sometime next year.

Government regulation of how citizens create and view online content demonstrates a growing convergence between nation-states on the interests that a government might invoke in order to practice censorship in cyberspace. In part, this convergence has been prompted by the substantially similar benefits and challenges posed through the rise of social media. Online content-sharing platforms such as YouTube allow users to freely submit and view content without prior screening by site administrators. Governments can regulate this content by monitoring uploads for illegal activity, ordering content providers to disclose personal information about their members, or by attempting to block citizens’ access to certain websites. As in other forms of censorship, a government’s ideological commitments shape the way in which it chooses to regulate constitutionally guaranteed rights, including the freedom of expression.

Unlike the United States, China, Iran and Pakistan expressly mention various ideological commitments within the text of their constitutions. This paper shows how these express constitutional commitments impact citizens’ speech rights within these developing constitutional regimes. Part One of this paper describes the development of online speech rights in the United States and how YouTube has adapted its “Community

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7 Id., 1263-1264.
8 Id., 1261-62.
9 Chaplinsky v. New Hampshire, 315 U.S. 568, 62 S. Ct. 766, 86 L. Ed. 1031 (1942) (“fighting words as a limited class of speech which the state can prevent without raising a constitutional issue. These words inflict harm through their very expression or ‘incite and immediate breach of peace’.”).
Policy" in the face of legal challenges and other pressures. Part Two will explore how the freedom of expression is burdened by YouTube bans in China, Iran, and Pakistan. Part Three illustrates the interplay between ideology and social rights by discussing the evolution and structural characteristic of the Chinese, Pakistani, and Iranian constitutions. The paper will conclude by looking at how current global events that are likely to impact citizens’ constitutionally guaranteed speech rights given the ideological commitments of each of the three regimes.

Part One

On Home Turf: YouTube in the Crosshairs of Judicial Scrutiny

Like other forms of speech rights that can only be exercised in the course of a speaker’s access to a particular medium, a user’s uploading of a video on YouTube implicates several First Amendment protections. YouTube practices self-censorship primarily at its own discretion. If another user flags the upload as a violation of the website’s Community Guidelines, it will be reviewed by YouTube staff and removed.10 Some of the uploads on the website will be age-restricted even if they do not violate the Community Guidelines.11 Some content is available in certain countries, but not in others.12 YouTube will remove content alleged to be a violation of copyright laws, if the copyright owner submits a takedown notice to the website’s Copyright Agent under the Digital Millennium Copyright Act (DMCA).13 YouTube also cooperates with law

11 Id.
enforcement and will collect and retain personal profiles of users. Prosecutors may try to use the uploaded content as evidence in the course of a criminal prosecution.

Under the Constitution, Congress has the power to give exclusive rights to authors and inventors to their writings and discoveries. Since the passage of the Digital Performance Right in Sound Recordings Act of 1995, musicians are entitled to compensation for their work unless it is broadcasted through satellite radio or by websites where such use was presumed to have a beneficial, promotion affect on sales. When it was first founded in 2005, YouTube was a video-sharing website. A significant amount of uploads included unattributed clips of copyrighted video and audio materials. Commentators have argued that member’s ability to use YouTube “as on-demand radio” was the main engine for the website’s subsequent litigation woes. At first, YouTube primarily featured music uploaded by users. The site would remove content when copyright owners issued a take down notice under the Digital Millennium Copyright Act (DMCA). Since 2007, YouTube has adopted a practice of prescreening all new content for potential copyright violations and entering into licensing agreements with major record labels and other content-providers without consent from the copyright holder. As uploads are not prescreened by staff, a copyright holder must issue a takedown notice under the Online Copyright Infringement Liability Act.

14 Google Privacy and Terms http://www.google.com/policies/privacy/ (Google retains two kinds of information for individuals using its services, including YouTube: (1) information voluntarily provided when signing up; and (2) information collected through the use of the service.)
16 17 U.S.C. art. 1, § 8, cl. 8.
19 Id.
YouTube has defended this policy by arguing that it owes no legal obligation to assist owners in protecting copyrighted material. As a result, legal challenges based on allegations of non-compliance with U.S. intellectual copyright law have continued. In March 2014, YouTube settled its seven-year lawsuit for copyright violation with Viacom "for an undisclosed amount." During this litigation, an order by a court to hand over records of the viewing habits of users who had viewed Viacom’s proprietary material raised concerns about users’ privacy rights. In a separate case, the Supreme Court held that prior to issuing a demand for removal for copyright violation under the 2007 DMCA, copyright holders have a duty to determine whether a suspected violation of their copyright—in this case a 30-second video of a toddler dancing to a song by Prince—"reflected fair use." While the liability of YouTube for copyrighted material posted by users remains an unsettled issue in the United States, a German court ruled against the firm in a lawsuit initiated by GEMA, a performance rights group. Consequently, YouTube is now blocked in Germany pending a licensing agreement between the parties.

A. Hate Speech and Terrorist Recruitment Videos

The ability of user to upload content within reach of individuals outside his state implicates issues relating to governments’ long-standing duty to regulate the health, safety, and morals of their citizens. Even where a legitimate government interest is promoted through the elimination of certain harmful forms of expression—such as slander, libel, and obscene speech—the Supreme Court has consistently struck down

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overbroad legislation burdening all speech. Indeed, any form of speech that is burdened or chilled by an overbroad law may trigger a constitutional challenge. In such cases, courts will generally assess whether the impact on protected speech could be avoided through a more tightly crafted law.

YouTube's Community Guidelines appear to reflect free expression tempered by pluralistic values that discourage intolerance. It discourages hate-speech and other content intended to promote violence against individuals or groups. On the other hand, YouTube's policy of only removing material flagged by users raises two important First Amendment concerns. First, discriminatory takedown policies, coupled with the tremendous volume and diversity of public interests hosted on YouTube, raises questions about whether the Federal Communications Commission should extend its jurisdiction over certain sites hosting user-generated content. The hotly debated issue of Net Neutrality has so far focused on the FCC's ability to regulate broadband networks, not websites such as YouTube.

B. Should YouTube Be Subject to A Nondiscrimination Rule?

In Verizon v. Federal Communications Commission, the D.C. Circuit held that the FCC could not impose the "anti-blocking and anti-discrimination obligations" on

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26 Riley v. National Federation of Blind of N.C., Inc., 487 U.S. 781, 795 (1988); Schenck v. Prochoice Network of Western N.Y. 519 U.S. 357, 375 (1997); McCullen v. Coakley, 134 S. Ct. 2518, 189 L. Ed. 2d 502, 573 U.S. (2014). (A Massachusetts law maintaining buffer zones outside abortion clinics was invalid because the government could not show that it had explored viable alternatives to burdening anti-abortion "counselors" from approaching and talking to women seeking abortion.).
broadband service providers who, like mobile companies and cable operators" were not classified as common carriers and, therefore, could not be treated as such.29

In *Turner Broadcasting System, Inc. v. FCC*, the Supreme Court declared that a public broadcaster's exercise of journalistic editorial discretion in selecting and presenting its programming is a protected First Amendment interest.30 On the other hand, in *Red Lion Broadcasting Co. v. FCC*, the Supreme Court channeled its jurisprudence upholding press rights to decide that, for the purpose of assessing First Amendment protections, the rights of viewers and listeners are superior to those of broadcasters, who hold a "fiduciary duty" to the public to provide representative "views and voice" that "would otherwise be barred from the airwaves" as result of the limited number of licenses issued.31 Whether YouTube will have an affirmative obligation to preserve a variety of content online depends, in part on whether it should be classified as a distributor or a publisher. As passive conduits of information, such as a library, distributors are usually not held liable as intermediaries for the content they receive.32 On the other hand, publishers wield actively edit their works and, therefore, can be held liable for published content. In *Cubby Inc. v. CompuServe*, the Southern District of New York found that the online service provider, CompuServe, was a distributor rather than a publisher of the defamatory statements uploaded through its network and, consequently, it did not wield sufficient editorial control over the contents of the newsletter to be held liable for defamation.33 In *Stratton Oakmont v. Prodigy Serv. Co.*, the New York Superior Court relied on the finding that the service provider's attempts to edit content submitted to its

network were sufficient to hold it liable for defamatory content posted by a contributor.\textsuperscript{34} Further inquiry over whether YouTube is a passive distributor of important public information or a publisher will require a deeper understanding of its discriminatory screening policy and might serve as topic for another paper.

C. Does YouTube Have an Obligation to Maintain a Public Forum for Speech?

While Google will certainly continue to fight Mrs. Garcia's dubious ownership of the clip, its hesitance in taking down the video raises more serious concerns given the relative vigilance it exercises in removing other forms of objectionable content. Given the speech-chilling effect created through recent disclosures of widespread surveillance by the United States government, does YouTube's decision to selectively cooperate with the government over criminal investigations and takedowns of videos allege to promote terrorism constitute an undue burden on speech?\textsuperscript{35} Another issue implicated by unscreened content to the YouTube channel is the uploading of propaganda videos by terrorist organizations, including ISIS. In December 2010, YouTube acquiesced to Congressman Anthony Weiner's request to remove some videos showing speeches by Anwar al-Awlaki and later added "promotes terrorism" to the list of that could be content removed at the request by another user.

Criminal prosecutions based on material uploaded online video-sharing sites raise legitimate concerns about chilling effects on speech. In United States v. Jeffries, the 6th Circuit upheld Jeffries criminal conviction under 18 U.S.C. 875(c), which authorizes federal prosecution for "conveying a threat to injure or kidnap a person through interstate

commerce.” To be sure, YouTube could not have been held liable under 875(c), which does not include an express mens rea requirement. Recently, Federal trial courts, have given some attention to the testimonial potential of YouTube videos by allowing for uploaded content to be admitted as evidence upon certification from Google. The discussion above raises concerns about the Supreme Court’s practice of drawing a line between prior restraint and subsequent punishment in making an assessment of whether legitimate First Amendment rights are restricted by state action. Ordinary citizens have raised questions about the continued relevance of traditional media by breaking some of the most significant stories of our time through online video uploads and Facebook status-feeds.

D. Press Rights and the Public Forum Doctrine

An understanding of how the First Amendment protects press rights is central to any discussion of the regulation of You Tube in the United States. Federal circuit courts have generally recognized that, while citizens do enjoy a First Amendment right to videotape public officials, this right is subject to reasonable time, manner, and place restrictions. While it is unclear whether a person is ever protected from filming the police, the ability to upload videos directly to a public forum is precisely what has transformed

36 United States v. Jeffries, 692 F. 3d 473 (6th Cir. 2012)
37 Smith v. California, 361 U.S. 147, 154-55, 80 S.Ct. 215, 4 L. Ed. 2d 205 (1959)
38 See US v. Hassan, 742 F. 3d 104 - Court of Appeals, 4th Circuit 2014 (Upholding the trial court's decision to admit YouTube videos documenting the defendants terrorist activities in Pakistan as self-authenticating evidence under Federal Rule of Evidence 902(11), and thus that they were admissible as business records.)
39 Lovell v. City of Griffin, 303 U.S. 444, 58 S. Ct. 666, 82 L. Ed. 949 (1938) (Insisting that “editorial advertisements” carrying political messages are protected under the First Amendment in order to preserve “an important outlet for the promulgation of information and ideas by persons […] who wish to exercise their freedom of speech even though they are not members of the press); Associated Press v. United States, 326 U.S. 1, 65 S. Ct. 1416, 89 L. Ed. 2013 (1945) (states that the First Amendment is designed to ensure "the widest dissemination of sources from diverse and antagonistic sources").
the idea of traditional reporting in the age of video-sharing.\textsuperscript{40} However, this analysis must also consider whether the Internet can be understood as a public forum under prevailing Supreme Court doctrine, one that allows government to restrict speech on public fora—such as streets and sidewalks—, but only if certain conditions are met.

Contemporary constitutional scholars express concerns about the “problem of the hegemonic free speech clause” over the five other rights enumerated in the First Amendment.\textsuperscript{41} In \textit{Borough of Duryea, Pa. v. Guarnieri}, the Supreme Court declined to use a distinct analysis for an alleged violation of the right to petition the government over a grievance, applying instead a speech-specific balancing test to find that, where no matter of substantial public concern was implicated, a public employer’s interest in effectiveness and efficiency trumps an employee’s right to engage in free speech.\textsuperscript{42}

Similarly, in \textit{Thomas v. Collins}, the Supreme Court observed that the “not identical,” yet “inseparable” rights of the people “to assemble and to petition for redress for grievances” were implicated in the issue of whether a union organizer had the right to inform workers

\textsuperscript{40} \textit{Smith v. City of Cunningham} 212 F.3d 1332, 1333 (11th Cir. 2000); \textit{Kelly v. Borough of Carlisle}, 622 F.3d 248 (3rd Cir. 2010) (existing case law did not establish a clear right for a passenger of a car to record the police in the course of a traffic stop); \textit{Johnson v. City of Rock Island}, 2012 WL 5425605, at *2-3 (C.D. Ill. 2012) (The Illinois version of the eaves-dropping statute requires all parties to consent to the recording and imposes a higher sentence when a policeman is recorded while performing official duties.); \textit{Gilk v. Cunniffe} 655 F.3d 78,80 (1st Cir. 2001) (Defendant’s open use of a cell-phone to film police misconduct was sufficient to establish that the recording was not secret even though the cell phone possesses capabilities other than recording.); \textit{ACLU v. Ill. V. Alvarez} 679 F.3d 583 (7th Cir. 2012) (Held that the Illinois Eavesdropping Statute was invalid as applied to the American Civil Liberties Union’s announcement that it would collect and circulate audio-visual recordings of police officers in order to deter misbehavior by the Illinois police.)

\textsuperscript{41} John D. Inazu \textit{Liberty’s refuge: the forgotten freedom of assembly}. Yale University Press (2012)(Arguing that the Supreme Court’s prevailing doctrine on the freedom to assemble prevents groups from controlling their membership has stifled the possibility of meaningful dissent.). Also see Ronald Krotoszynski, \textit{Reclaiming the Petition Clause: Seditious Libel, “offensive Protest, and the Right to Petition the Government for a Redress of Grievances}. Yale University Press, 2012 at 158-159 and Aaron H. Caplan "Review Essay—The First Amendment’s Forgotten Clauses. "\textit{Journal of Legal Education} 63.3 (2014): 532-553, (observes additional fears that the freedom of press, and the establishment and free exercise clauses may be similarly diluted if Supreme Court continues to protect certain journalistic and religious activities using existing free speech doctrines of “pure speech” versus other, less privileged, speech acts.)

of the benefits and drawbacks of union-membership.\textsuperscript{43} Some scholars have interpreted the Thomas decision to mean a "repudiation" of Presser v. Illinois, where the Court asserted that the right to assembly is only protected if the right is asserted to petition the government.\textsuperscript{44} Writing for an undivided bench in McCullen v. Coakley, Justice Roberts struck down buffer zones preventing anti-abortion counselors from engaging with patients outside abortion clinics.\textsuperscript{45} In the discussion of its line of cases exploring the government’s duty to respect sidewalks and streets as privileged sites reserved for expressive activity, the McCullough opinion implicitly recognized the "forgotten" First Amendment protections of petition and assembly.\textsuperscript{46} The selection from the Roberts opinion in McCullen excerpted below raises two implicit points implicit to our discussion of how First Amendment rights are implicated in the regulation of YouTube and other online fora featuring user-generated videos and comments:

"It is no accident that public streets and sidewalks have developed as venues for the exchange of ideas. Even today, they remain one of the few places where a speaker can be confident that he is not simply preaching to the choir. With respect to other means of communication, an individual confronted with an uncomfortable message can always turn the page, change the channel, or leave the Web site. Not so on public streets and sidewalks. There, a listener often encounters speech he might otherwise tune out. In light of the First Amendment’s purpose ‘to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail,’ FCC v. League of Women Voters of Cal., 468 U.S. 364, 377

\textsuperscript{43} Thomas v. Collins, 332 U.S. 516, 532 (1945) (observing that press and speech rights were "coupled in a single guaranty with the right of the people peaceably to assemble and to petition for redress of grievances.")

\textsuperscript{44} Aaron H. Caplan Review Essay—The First Amendment’s Forgotten Clauses, discussing the effect of Thomas on the holding in Pressler v. Illinois, 323 U.S. 516, 532 (1945) to assert that assembling and petitioning have since been regarded as distinct rights.


\textsuperscript{46} United States v. Grace, 46 U.S. 171, 180 (1983) (Such public fora are "historic sites for discussions and debates" Perry Ed. Assn. v. Perry Local Educators’ Assn., 400 U.S. 37, 45 (1983); "[t]raditional public fora have immemorially been held in trust for use of the public" to be used “for purpose of assembly, communicating thoughts between citizens, and discussing public questions”); United States Postal Service v. Greenburg Civic Assns, 453 U.S. 114, 453 U.S. 133 (1981) (Congress may not destroy the status of streets and parks as public forums.); But see, Greer v. Spock (Supreme Court declining to extend public forum status to streets and sidewalks within an enclosed military reservation).
(1984) (internal quotation marks omitted), this aspect of traditional public fora is a virtue, not a vice."\textsuperscript{47} (emphasis added)

First, the opinion implicitly confirms that the cognate rights under the First Amendment are distinct, but related. Secondly, given Justice Roberts' eloquent vindication of the right of anti-abortion counselor's to confront abortion-seekers outside abortion clinics, it is clear that the Supreme Court may not readily accept that videos uploaded on You Tube should be recognized as "pure speech," a category that forms the first tier under the Supreme Court's prevailing hierarchy of speech acts. As Enrique Armijo has pointed out, the Supreme Court is indeed not likely to extend public forum status to cyberspace because the "modernity, or recency of a space, and its availability, renders it a "nontraditional" forum as a matter of course."\textsuperscript{48} The Supreme Court's reluctance to settle on a "definitive choice among competing analogies" is understandable given the experimental character of "the law, the technology, and the industrial structure related to telecommunications.\textsuperscript{49}

While the Supreme Court has not yet extended its doctrine of public forum to user-generated sites, the fact that YouTube hosts an enormous quantity of expressive activity supports three important propositions relating to this judge-created doctrine. First, the Government may not impose content-based restrictions on YouTube uploads.

\textsuperscript{47} Justice Roberts relies on a number of decisions that incorporate the "forgotten" First Amendment protections of petition and assembly. \textit{United States Postal Service v. Greenburg Civic Assns}, 453 U.S. 114, 453 U.S. 133 (1981)(Congress may not destroy the status of streets and parks as public forums); \textit{United States v. Grace}, 46 U.S. 171, 180 (1983) (Such public fora are "historic sites for discussions and debates" have immemorially been held in trust for use of the public" to be used "for purpose of assembly, communicating thoughts between citizens, and discussing public questions"); \textit{Greer v. Spock} (Supreme Court declining to extend public forum status to streets and sidewalks within an enclosed military reservation), "reasonable time, place restrictions may be placed on restrictive activity


Secondly, both the government as well as the website's administrators are entitled to place reasonable "time, place, or manner restrictions" on uploads as long as they are narrowly tailored to serve a compelling interest.\textsuperscript{50} Additionally, if the narrowly tailored restrictions affect speech rights protected by the First Amendment, the government must take care that it does not preclude the communication of the information being restricted.\textsuperscript{51} Typically, the abridgment of these rights is only justified where the exercise "promotes illegality" or "injustice" or where competing claims to a commonly available, but scarce resource justifies judicial intervention to address the merits of the competing interests.\textsuperscript{52} YouTube's encounters with the American judicial system illustrate the applicability of the public forum doctrine to online videosharing.

E. A Return to First Principles

The public's interest in preserving YouTube as a public forum for the free exchange of political ideas is at its apex in the absence of procedural safeguards against government's chilling of legitimate expressive activity.\textsuperscript{53} The ongoing tribulations of Edward Snowden, Julian Assange, Chelsea Manning, John Kiriakou, and Thomas Drake shows how an online content-provider's promises of "bullet-proof hosting" to informants

\begin{itemize}
\item \textit{Pacific Gas & Elec. V. Public Utils. Commn. of Cal.}, 475 U.S. 1, 8 (1986); \textit{Police Department of Chicago v. Mosley}, 408 U.S. 92, 95 (1972).
\item \textit{Ward v. Rock Against Racism}, 491 S. Ct., at 2744, 2760 (1987) (Municipalities may prohibit noise in public parks).
\item Article 2 ICCPR, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967). "Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers." The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19, paragraph 3 and article 20.
\end{itemize}
provides not protection for whistleblowers, journalists, and web-based publishers who report clandestine surveillance and wartime excesses by executive agencies without preclearance from the very executive officials that authorized the cover-ups.  

Government may not engage in content-based restriction of speech in a public forum. It may not selectively screen the public from speech it deems to be "more offensive than others" in a public forum, While a government can place reasonable "time, place, or manner" restrictions on protected speech, courts appear to require restrictions on expressive activity to be narrowly tailored to the service of a compelling interest identified by the government. Additionally, government must take care that it does not absolutely preclude the communication of the information being restricted.  

Whatever doctrine one chooses to apply, the public's fears of arbitrary punishment for voicing dissident ideas have been enhanced in recent times. The goal of the Amendment is to promote "an uninhibited marketplace of ideas in which truth will ultimately prevail." Advocating for the Virginia state legislature to oppose the enactment of the Sedition Act, through which Congress imposed fines and imprisonment for "knowing" and willing" publication of "false, scandalous, and malicious writing [...] against the government," James Madison stated that a "law inflicting penalties on printed publications would have a similar effect with a law authorizing a previous restraint on

54 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, A/HRC/13/37, 28 December 2009. (Noting that-- in addition to wrongful arrests and failure of due process which may result through warrantless surveillance—the public's generalized fear of surveillance also chills a number of fundamental rights, including "freedom of expression, association and movement." Consequently, government interference of communication must occur "on the basis of a warrant issued by a judge on showing of probable cause or reasonable grounds. There must be some factual basis, related to the behaviour of an individual, which justifies the suspicion that he or she may be engaged in preparing a [criminal offense]."
55 Police Department of Chicago v. Mosley, 408 U.S. 92, 95 (1972).
57 Ward, 491 U.S., at 791.
58 Id.
them.\textsuperscript{60} In his report to the Virginia legislature, Madison argued that allowing the government to prosecute speech amounts to protect state actors, "if they should at any time deserve the contempt or hatred of the people, against being exposed to it."\textsuperscript{61} On the other hand, the fact that the government retains its ability to punish subsequent to an illegal publication is frequently cited as a justification for maintaining a high burden against prior restraint except in a narrow set of instances implicating national security, obscenity, and other threats to the public. The government's future attempts at commandeering what content should be removed from a user-generated site must observe these fundamental rationale behind the constellation of rights preserved by the First Amendment.

Part Two:

We Prefer Your Freedoms Chilled: Origins and Impact of the YouTube Bans

A. China: A Great FireWall Surrounded by Rumors

China enforces its internet censorship regime (1) by directly blocking websites through a government maintained Golden Dome system, (2) directly negotiating with content and service providers to ensure compliance with regulations issued by agencies, and (3) maintaining nearly 2 million paid censors and volunteers who use key-word filtering system to identify and delete offensive content from state-approved websites. Under the Computer Information Network and Internet Security, Protection, and Management Regulations, public security agencies investigating violations of the law mat secure assistance from online businesses.\textsuperscript{62} Legitimacy through creating participation of citizens as censors for resource

\textsuperscript{60} James Madison, Report on the Virginia Resolutions (1800), \textit{reprinted in} The Debates in the Several State Conventions on the Adoption of the Federal Constitutions 569 (Jonathan Elliott ed. 1891).


\textsuperscript{62} §§§, 12 (1997)
starved administrative structures. Under a 2002 licensing order, service providers must be licensed through the Ministry of Information Industry (MOII) and have a duty to supervise the internet use of their customers closely by installing monitoring software that allows them to transmit records of illegal online activity to the Ministry of Information Industry, the Ministry of Public Security, and the State Secrecy Bureau. Signed pledges required companies to refrain from producing, releasing, or spreading “harmful” and “illegal content” in March, 2002, and was expanded in December 2003 to include violations of Chinese cultural traditions and moral codes.

In a 2005 record-keeping order order the MOII further streamlined its supervision of online activity by prohibiting content providers to provide services to non-commercial users in an attempt to streamline its supervision of internet activity. Compliance under the 2005 regulation has proved to be especially challenging YouTube, Facebook, and other platforms featuring user-generated content, which has led to a total blocking of these sites. On the other hand, China has developed heavily monitored alternatives to blocked social media websites including Youku (a video-sharing site), Renren (facebook), and Seina Weibo (twitter). While many Chinese citizens have continued to use Hong-Kong based virtual proxy networks (VPNS) to access blocked websites.

Chinese journalists were already subject to significant restrictions by the state. In April 2013, in a secret document sent to major government agencies, the party expressed a list of concerns about the growth of

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64 “Interim Regulations on Internet Publishing Administration.”


66 The Administrative Measures on Record-Keeping in Non-Commercial Internet Information Services §18 and §19 (2005).

anti-government tendencies within China including the threat posed to the media by "western ideas about journalism." In May, 2013, the Yenglish Evening News announced that members of the local Communist parties would replace Li Yhang, editor-in-chief of New Express, after an order for his removal was issued by the press regulator of the Guangdong province. He was accused of accepting money in return for using his position as a "frontline reporter" to fabricate stories alleging financial fraud by a powerful Hong-Kong based construction company Zoomlion. Chen Yongzhou, the main reporter assigned to these stories, appeared on China Central television to confirm that he had been paid to defame Zoomlion. The national press regulator instructed local affiliates to be vigilant against "fabrication, paid news, and blackmailing" and recommended that journalists reach out to the public to solicit reports of journalistic overreach.

On October 10, 2014, China's Supreme People's Court announced that civil courts handling certain cases could order internet and social media firms to furnish personal information of users to help the government identify "rumor-mongers." The Court's announcement was prompted by China's anxiety over the inability of censors to shield China's half a million internet users from reports describing the clashes between the Chinese military and Hong Kong protestors who overtook the city's financial district to agitate against Beijing's attempts to preselect candidates for Hong Kong's upcoming

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69 Id.
70 Id.
71 Id.
elections.\textsuperscript{73} Having already blocked mainland China’s access to foreign social media, President Xi Jinping’s regime dispatched its censors to trawl cell-phone records and micro-blogging sites such as Weibo to remove any unwanted reports on the protests. However, given the volume of online activity faced by China’s censors, videos and other media documenting the protests would likely have been seen by millions of mainland viewers before being removed.

However, under the Chinese legal system, such pronouncements by the judiciary— including the Supreme Tribunal—remain ineffective in the absence of support from the National People’s Conference, China’s elected legislative body, which has exclusive jurisdiction over the interpretation and enforcement of the Chinese Constitution.\textsuperscript{74} Moreover, even though the Constitution expressly guarantees an independent judiciary, Chinese judges face tremendous practical difficulties in managing trials including an inability to require “witnesses to come to court and be subject to questioning and cross-examination.”\textsuperscript{75}

A pledge committing YouTube to censorship based on the overbroad standards imposed by ideologically motivated governments and individuals would be contrary to the website’s stated mission of providing “a forum for people to connect, inform, and inspire others across the globe” serving as “a distribution platform for original content creators and advertisers large and small.” It would have to require any users who uploaded content that could be viewed in China to obtain a license through the MOII. YouTube would also be required to keep records of the users who uploaded or accessed videos using its platform and would be duty-bound to report to various government agencies.” Moreover, under the proposed 9\textsuperscript{th} amendment, it could not simply remove or

\textsuperscript{74} Article 67 of the Chinese Constitution.
\textsuperscript{75} Jerome A. Cohen, Struggling for Justice: China’s Courts and the Challenge of Reform World Politics Review: Courtroom Politics: Rule of Law in China, Russia, and Turkey (2014)
alter objectionable material under its own Community Guidelines which is enforced through reviewing material flagged as offensive by users.\textsuperscript{76}

B. Pakistan and Its Entrenched Regulators

In Pakistan, the YouTube ban has persisted despite Parliamentary resolutions and offers of mediation by the judiciary, because an entrenched cohort of bureaucrats across several executive agencies has singlemindedly pursued a policy of “evidence-based” policy making. Under the organic 1996 Act, the Pakistan Telecommunications Authority is charged with creating “a fair regulatory regime to promote investment, encourage competition, protect consumer interest and ensure high quality information and Communication Technology Services.”\textsuperscript{77} Article 31 of the Act contains a number of broadly-drafted criminal prohibitions of categories of speech. Section 31(d) states that it is a criminal offense for a person to “unauthorisedly transmits through a telecommunication system or telecommunication service any intelligence which he knows or has reason to believe to be false, fabricated, indecent or obscene.”\textsuperscript{78} The PTA’s prohibition against “indecent or obscene material,” is not inconsistent with Article 19(3) of the ICCPR, which allows for limits on freedom of expression for materials in order to protect public morals. Nevertheless, the United Nations has consistently noted that a state may not deploy public morality to suppress non-dominant ideas. Consequently, it has consistently advocated that restrictions based on preserving public morality must observe “principle of nondiscrimination” under Article 18 of the Covenant, which primarily secures everyone’s right to an uncoerced “freedom of thought, conscience, and religion,”

\textsuperscript{76} https://www.youtube.com/t/community_guidelines
\textsuperscript{78} Pakistan Telecommunications Act 31(d).
subject only to limitations “as prescribed by law” which “are necessary to protect public
safety, order, health, or morals or the fundamental rights and freedoms of others.”

In May 2007, bar associations across the country initiated a campaign to restore
Chief Justice Iftikhar Chaudhary. Chaudhary had been summarily fired by General
Pervaiz Musharraf who had ruled Pakistan since a military coup in 1997. By November
2007, fearing a coup, Musharraf issued a Provisional Constitutional Ordinance (PCO),
firing over 60 judges and banning private television news channels. The banned networks
responded by using YouTube and other social media to continue their broadcasts. On
February 24, 2008, the PTA ordered internet services providers to block access to
YouTube after a user uploaded of a trailer for Fitna, a short anti-Islamic film made by
Danish politician, Geert Wilder. A spokesman of the authority stated that the ban would
continue until YouTube agreed to remove the “highly profane and sacreligious footage
[... ] offensive to Islam.” The ban coincided with the uploading of footage allegedly
showing vote-rigging by a pro-Musharraf political party during the parliamentary
elections held earlier that week. Users across the world experienced were blocked from
accessing YouTube over the weekend because other networks mistakenly used the
address provided by ISP’s complying with the PTA orders. The ban was removed in
February, 2008 after PTA officials announced that YouTube had complied with their

79 Committee in General Comment No 34: 8 United Nations, Economic and Social Council, U.N. Sub-
Commission on Prevention of Discrimination and Protection of Minorities, Siracusa Principles on the
Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex,
freedoms recognized under Article 18, which primarily seeks to preserve religious diversity.
80 Fitna: Full Movie https://www.youtube.com/watch?v=kIKCgRlwQUA.
81 Ryan Singel Pakistan’s Accidental YouTube Re-Routing Exposes Trust Flaw in Net. Wired (February
request to remove the trailer for Geert's video.\textsuperscript{82}

The Authority was given a second opportunity to continue experimenting with censorship when a group of Pakistani lawyers obtained an injunction from the Lahore High Court to prevent access to Facebook because it refused to Draw Muhammad Day, a competition encouraging users to make drawings of the Muhammad. The ban was extended and PTA ordered ISPs to ban both Facebook and YouTube. In September 2012, following the release of a video defaming the Prophet Muhammad, Innocence of Muslims, a large number of Muslim countries, including the Islamic Republic of Pakistan, blocked access to YouTube. While the ban has been removed elsewhere, it has been maintained in Pakistan despite the unanimous adoption (May, 2014) of the Pakistani assembly of a non-binding resolution lifting the ban. Article 19 of the Constitution of Pakistan permits reasonable restrictions on speech "in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court."

Bytes for All versus Federation of Pakistan, a nonprofit citizen’s action group, filed in the Lahore High Court seeking removal of the ban. The lawyer for Bytes for All argued that blocking access to internet content deprives citizens of the right to access information as well as the ability to respond to damaging propaganda against their beliefs. Asserting its lack of expertise in resolving the dispute, the judiciary invited the Ministry of IT to form a committee to help address alternatives to an outright ban. PTA rejected all three alternatives proposed by the committee were rejected as insufficient. Shortly thereafter, the case was removed to Pakistan's Supreme Court.

Since 2011, PTA has instructed Internet Service to ban virtual privacy networks and encryption as anti-terrorism measure and both security agencies and individual persons are empowered to investigate and report violations, thus enhancing the possibility of criminal action against millions of citizens bypassing the YouTube ban. More disturbing, PTA has led scores of raids in the past three years in its effort to prosecute individuals providing virtual proxy networks.

C. Iran: Between Khamenei and Rouhani

YouTube has been subject to intermittent bans in Iran since 2006. Google: Transparency Report (https://www.google.com/transparencyreport/traffic/#expand=IR) In 2009, when reports of a stolen election erupted on social media, the world watched in horror as Iranian military cracked down on protestors demanding resignation from Mahmoud Ahmadinejad, the victorious incumbent. Uploads on YouTube featured harrowing images of unarmed protestors being shot to death on Iran’s increasingly bloody streets. Testimonials from Iran demonstrated the rise of a precious commodity, the citizen journalist, braving bullets and threats of incarceration to broadcast abuses that government-licensed journalists are unable to reach.

Iranian online policy is overseen by the Supreme Cyberspace Council, which is commandeered by Ayatollah Khamenei and supervised by a Prosecutor General. The Telecommunications Ministry blocks websites identified by a 13 member Working Group to Determine Instances of Criminal Content. Four basic kinds of content are targeted for removal: (1) immoral; (2) contrary to Islam; (3) contrary to security and

84 The Supreme Council of Cyberspace: Centralizing Internet Governance in Iran - See more at: http://iranmediaresearch.org/en/blog/227/13/04/08/1323/#sthash.yjVzRzNN.dpuf.
public peace; and (4) anti-government. Following China, Iran hopes to have a national internet running soon which will allow it to monitor and prosecute criminal activity with ease. Iran has already developed its own web-browser (Saina) and operating system (Zamin) which allows it to collect information on any citizen who uses these services. The Cyberspace Council has been closing down private virtual proxy networks (VPNs) since March, 2013 and encouraging the use of government provided VPNs. FATA, Iran’s Cyberpolice and members of Iran’s Revolutionary Guard aggressively monitors websites for criminal activity and signs of espionage. In June 2013, moderate Hassan Rouhanni’s election as President, and his subsequent statements indicating an enthusiasm for social media, created a rift in Iranian politics. On September 9, 2014, the Chief Prosecutor of Iran gave Rouhani and his ministers 30 days to block access to social media.

Part Three: Ideology Trumps Freedom

A. China: Constitutional On Paper

Chairman Mao Zedong’s practical elaboration of the Marxist-Leninist doctrine of contradictions made a distinction between contradictions raised by forces hostile to Socialism (which must be eliminated) and contradictions that had the ability to strengthen “correct ideas” by exposing them “to method of discussion, criticism and reasoning that we can

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88 Hannah Chartoff Iran’s Internal Battle for Internet Control (August 19, 2014) Center of Internet and Society, at http://cyberlaw.stanford.edu/blog/2014/08/iran%E2%80%99s-internal-battle-internet-control-president-rouhani-and-supreme-leader-khamenei
really foster correct ideas and overcome wrong ones, and that we can really settle issues. ⁹⁰ Mao’s incitement of propagandistic speech through his elaboration of the theory of the Four Great Freedoms formed the spearhead for the purging of political rivals.⁹¹

While it is regarded as the Supreme Law of the People’s Republic, the Chinese Constitution presents a veritable enigma of Constitutionalism in its impermanence and susceptibility to change. Article 35 of the Chinese Constitution guarantees the four freedoms of speech, association, procession, and demonstration. However, it has rarely been enforced.⁹² China’s long isolationism and adherence to party rule assured that the standing committee of the people’s congress maintained a monopoly over the interpretation of constitutional values.

Despite the rejection of Maoism in recent times, China has continued to preserved the values of ad hoc executive rule. A new Constitution was promulgated in 1975, which severely narrowed the list of fundamental rights and announced the predominance of Mao-Zedong Thought. While the 1978 Constitution attempted to abridge executive power, it was replaced in 1982 by the current Constitution of the People’s Republic of China which nominally restored fundamental rights under the 1954 Constitution, devolved executive functions to provincial and local authorities, and created a unified executive regime elaborated by an army of executive agencies and semi-volunteer party agents directed by the Standing Committee of the National People's Congress and (NPSC). The 1982 Constitution also removed the power of judges to address

⁹⁰ Mao Zedong, Guanyu zhengque chuli renmin neibu de wenti [On Correctly Handling Contradictions Among the People], 1957, translation available, Marxists.org
<http://www.marxists.org/reference/archive/mao/selected-works/volume-5/mswv5_58.htm> (describing how political posters such as dazibao were
⁹¹ Roger Creemers The Privilege of Speech and New Media: Conceptualizing China’s Communications Law in the Internet Age, available at file:///Users/jiazahmad/Downloads/Privileged_Speech_and_New_Media-libre.pdf 4-5.
⁹² Const. of China, Art. 35.
Constitutional questions. Amendments to the Constitution have generally tracked the introduction of economic reforms by the state, including the preservation of private property rights and respect for human rights (2004).

Throughout October of 2014, the Eleventh National People Conference discussed the Ninth Amendment to the Chinese Criminal Law. This amendment seeks to eliminate the fabrication and spreading of false information through online websites and holds websites criminally liable for a failure to monitor and report false information. On the other hand, websites will also be held accountable for "loss of evidence" if they attempt to remove or alter the offensive material. The amendment also expands the power of courts by criminalizing the refusal to comply with a court issued injunction or engaging in conduct that insults, slanders, or threatens participants in proceedings. Human Rights Advocates fear that these vague arbitration provisions will serve to chill advocate's opposition to procedural inconsistencies during trials such as the suppression of relevant evidence and reliance on ex parte procedures.

B. Pakistan: Where Blasphemy Can Never Be Speech

In Pakistan, Blasphemy laws and the Hudood Ordinance permit severe punishments for violators. Despite Pakistan's founders' express goal to maintain Pakistan as a secular state the country's deep ethnic resentments and inability to create a long-standing Constitution resulted in religion becoming the default ideological glue binding the country's majority Muslim Constitutions. In its 1949 Objectives Resolution, the

94 Id.
95 On his election as the President of the Constituent Assembly of Pakistan, Mohammad Ali Jinnah declared:
Constituent Assembly—Pakistan’s governing body from 1947-1954—laid out the principles for a future Constitution for the State:

Whereas sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the State of Pakistan, through its people for being exercised within the limits prescribed by Him is a sacred trust; [...] the state shall exercise its powers and authority through the chosen representatives of the people; [...] principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam shall be fully observed; [...]the minorities freely to profess and practice their religions and develop their cultures; [...] guaranteed fundamental rights including equality of status, of opportunity before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality; [...]independence of the Judiciary shall be fully secured [...] 96

The notion that God has granted a limited authority through the people to the State as a “sacred trust” is a central fact of 20th Century Islamic Constitutionalism. 97 Unlike Iran, where the trusteeship of God to the ulema traditionally limits their ability to exercise legislative power, the notion that the State of Pakistan itself is entrusted with the sacred trust of authority is consistent with traditional Islamic division between transient secular law the God’s permanent law as written in the Qur’an. 98 While the Constitutions of 1956, 1962 and 1973 treated this Resolution as a preamble to the Constitution, it has since been integrated into Article 2(A) of the 1973 Constitution through the 8th Amendment which includes an “annexure” providing that the Resolution remains in

You may belong to any religion or cast or creed—that has nothing to do with the business of the State... Now, I think we should keep that in front of us as our ideal and you will find that in course of time Hindus will cease to be Hindus and Muslims will cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State.”


97 Art. 35. Of the Iranian Constitution of 1906 (The sovereignty is a trust confided by the people to the person of the King.)
effect even if the Constitution is suspended.\footnote{Hassan Abbas, \textit{Poleaxe or Politics of Eighth Amendment, 1885-1997} (Lahore: Watondost, 1997), 77.}

Between 1977 and 1988, Zia Ul Haq introduced a number of Islamic laws and organized the Islamic Ideology Council empowered to review existing and future laws for compliance with Islam. These changes were constitutionalized in 1985 when the passage of the Eight Constitutional Amendment placed legislation and ordinances passed during martial law outside the scope of judicial review. Section 295-C of the Pakistan Penal Code, the blasphemy law, like other religious offences incorporated in to the Penal Code, criminalizes the insult or affront to Islam.\footnote{295-C [Criminal law Amendment Act, (111 of 1986) s.2.]}

The mens rea requirement of “malicious intent” contained in the original Colonial law was eliminated, as was the ability of non-Muslims to seek relief against discrimination and insult to their religions.\footnote{Siddique, Osama, and Zahra Hayat. "Unholy Speech and Holy Laws: Blasphemy Laws in Pakistan-Controversial Origins, Design Defects, and Free Speech Implications." \textit{Minn. J. Int’l L.} 17 (2008): 303. At 339.}


Scores of Pakistanis, Muslims and non-Muslims have been tried, convicted, and sentenced to death under the Blasphemy laws by Pakistani courts. More troublingly, accusations against blasphemy, usually motivated by personal vendettas, often lead to violent mob outbursts against accused persons. Most recently, the extra-judicial burning of two Christians highlights the potential risks that citizens undertake in speaking out against regulatory measures premised on a religious premise.
Despite the passage of the 1986 amendments, the Supreme Court of Pakistan (SCP) has consistently declined to elevate compliance with Sharia over other constitutional provisions.\textsuperscript{103} The Federal Shari’a court can exercise power by taking up cases on its own motion, but its jurisdiction is limited to certain cases and can be appealed to the Shari’at Appellate Bench of the Supreme Court.\textsuperscript{104} More importantly, when it seeks to overturn a law for lack of compliance with Shari’a, the FSC has been instructed by the Supreme Court to consider federal supremacy over provincial laws in addition to observing a cohesive view of the Constitution.\textsuperscript{105} Nevertheless, blasphemy cases continue to be brought against individuals.

Article 19 of the Pakisani Constitution states:

"[e]very citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in there interest of the glory of Islam or the integrity, security, or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, commission of or incitement to an offense."\textsuperscript{106}

In a 1949 case, while Pakistan’s Constituent Assembly was still trying to draft a Constitution, Justice Cornelius of the Lahore Supreme Court ruled that mere criticism of religious practices could not be restricted by the state as promoting hate or contempt against citizens.\textsuperscript{107}

\textsuperscript{103} Hakim Khan v. Government of Pakistan P.L.D. 1992 S.C. 595 (All provisions in the Constitution would be given equal weight and status.); Qazi Hussain Ahmed et al. v. General Pervez Musharraf P.L.D. 2002 S.C. 853; (The Court’s principles for interpreting the Constitution required that "all provisions should be read together and harmonious construction should be placed on such provisions so that no provision is rendered nugatory.").

\textsuperscript{104} Pak, Cost. Art. 19.1.

\textsuperscript{105} Muhammad Siddique et al. v. dGovernment of Pakistan (decision release on Nov. 5, 2004).

\textsuperscript{106} In the matter of the Daily Ehsan, (1949) P.L.D. 282, 296 (Lahore)(Pak.).
In *Working Muslim Mission and Literary Trust Lahore v. The Crown*, the Supreme Court held that there was no role for courts to intervene in discussions over religious controversy unless there was indication of malice.\(^{108}\) In one of the earliest cases tried under the 1973 Constitution, still unadorned by the Zia-era Islamic flourishes, the Court made a distinction between speech that was merely disparaging towards the government and remarks that would bring "the Government under hate and contempt."\(^{109}\) Significantly, post-Zia ul Haq, Pakistani courts have applied a case-by-case, policy-centered analysis to assess whether a restriction proposed by the government in restricting an important speech interest is justified.\(^{110}\)

The courts have, on occasion, been protective of press freedom. On the other hand, the current Supreme Court has been particularly harsh on broadcast networks rights. In June 2014, the Court directed the Pakistan Electronic Media Regulatory Authority (PEMRA) to suspend the licenses of two large television networks: ARY for making slanderous remarks against the judiciary, and GEO News for playing a religious song during its broadcast of the wedding preparations of an actress. As Ossama Siddique notes, the Supreme Court's jurisprudence on blasphemy cases never appears to implicate speech rights, a fact that makes the stalemate between the regulatory agencies and Bytes4All an anomaly. On November 14, 2014, the owner of Geo News was sentenced to 26 years in jail for permitting blasphemous content to be aired on the network.\(^{111}\)


\(^{109}\) Ilyas Rashidi v. Chief Commissioner, Karachi (1975) P.L.D. 890, 891 (Karachi) (Pak.)


C. Iran: Rule by Trust

Before the Islamic Republic of Iran, there was Ayatollah Rohulla Khomeini’s Velayat-e-Faqih. In this treatise, characterized a a prototype for the Islamic State, Khomeini asserted that the fuqaha (or Islamic jurists), as trustees of the Prophet Muhammad, were entrusted to perform the same adjudicative and executive functions performed by the Prophet in the earliest Islamic state. A single faqih-- a jurist with knowledge of Islamic law and possessing “the faculty of justice--” would rule the Islamic state according to God’s law as written in the Qur’an. After the expulsion of the Shah in 1979, the ulema (or religious scholars) rejected the draft Constitution suggested by the provisional government because it provided the scholars with a very limited role as part of a Council of Guardians primarily composed of lay judges.

The draft finally approved in a referendum by the Iranian people centralized power in a single Faqih “acquainted with the circumstances of his age; courageous, resourceful, and possessed of administrative ability.” Article 110 granted the Faqih with powers to select and remove military and judicial officials and preselect political candidates based on religiosity. Article 107 created an Assembly of Experts authorized to select a successor for the ruling Faqih. The now removed Article 108 empowered a Council of Guardians composed of 12 members appointed by Khomeini, the Supreme Judicial Council, and an elected Majles (Parliament) and authorized to scrutinize all laws

\[114\] Constitution of Iran, Article 5. [Office of Religious Leader]
for Shariah compliance. In 1989, the Constitution was amended to include a Maslahat, or Expediency Council, appointed by the Faqih, and empowered to mediate between Parliament and the Council of Guardians in order to ease the grip of Shariah-compliance on law-making. While the Constitution allows for Fatwas, or decrees based on reliable teachings, to help judges fill gaps in the absence of a codified law, Irani clerics are too divided in their views on social media to offer meaningful fatwas."

While freedom of speech is not expressly mentioned in the Iranian Constitution, it is implicitly recognized in the guarantees under Article 12, which provides that “all citizens of the country, both men and women, equally enjoy protection of the law and enjoy all human, political, economic, social, and cultural rights of Iranian.” On the other hand, the Constitution provides for a press rights under Article 24, but expressly subjects them to restriction where the published content is considered “detrimental to the fundamental principles of Islam or the rights of the public.” Under Article 168, cases against judges are resolved by the Islamic Revolutionary Court, which has emergency jurisdiction over issues touching on “State security.” Iran’s 1986 Press Law allows for freedom of expression for journalists unless the published material violates the Iranian Civil Code.” Article 175 guarantees expression and dissemination through Iran’s Radio and Television as long as it is “in keeping with Islam and in the best interests of the country.” The Iranian Constitution also expressly prohibits eavesdropping and other

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116 Constitution of Iran, Article 112.; also see Alex Schank. “Constitutional Shariah: Authoritarian Experiments with Islamic Judicial Review in Egypt, Iran, and Saudi Arabia. Geo L.J. 102 (2013): 519. (discussing how the Islamic legal concept of Maslahat, or promotion of the public interest, allows Islamic constitutional regimes to reconcile the division between religious obligations and modern governance.
117 Constitution of Iran, Article 20.
118 Id., Art. 24.
119 Id., Art. 168.
covert invasions of privacy under Article 25, which forms the basis of the country’s strict Computer Crimes, which criminalizes “training in unauthorized access, surveillance, computer spying disrupting and damaging data or computer and telecommunications systems.”

Conclusion

Websites hosting user-generated content, including Youtube, have stretched states’ ability to practice censorship based on concerns relating to ideology, security, health and safety, or intellectual property rights, all states are becoming adept at recruiting internet firms to identify, monitor, preempt, and punish violators of an increasingly vague set of laws governing internet content. While stable constitutional regimes with a tradition of civil law primarily allow individuals, businesses, and governments to sue violators for damages, governments with weak constitutional traditions enforce their laws by blocking their citizens’ access to objectionable content and criminalizing the viewing and dissemination of censored materials. China, Pakistan, and Iran are all relatively recent Constitutional regimes. These populous Asian governments have chosen very similar paths, of nationalizing their web infrastructure through blocking access to foreign websites, selectively deleting online content, and affirmatively prosecuting attempts to circumvent censorship. But the world is no longer shrinking through the introduction of internet technology. It has already shrunk. We are all eyeballs away from each other. Despite profound differences in values, all governments monitor cyberspace. Maybe that is what citizens have to give up in order to secure the cyberspace as a public resource.

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120 Computer Crimes Law of Iran, Article 25 (c).