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## REGULATION OF FREE SPEECH IN THE DIGITAL ERA: THE RULE OF LAW, NATURAL LAW AND THE MORALITY OF LAW

*As new technology continues to expand, states across the world are grappling with the need to regulate different aspects of the technological realm. Recently, there has been a proliferation of new technology regulations restricting freedom of speech. There is an undeniable distinction between the rule of law and the rule by law. Directing government power through statutory law requires adherence to specific formal characteristics of lawful regulations. The rule of law, however, is not satisfied by technical and formal requirements only. While demanding these requirements, an exercise of legitimate government power furthermore requires that the law be substantively just. This means the law must be rational, align with the natural law, possess the morality of law, and inherently respect fundamental human rights. In terms of the doctrine of natural law, it is the principal duty of the State to protect and improve the fundamental human rights of its citizens. The government acts contrary to its natural purpose, the function for which it exists, if it enacts irrational, unjust laws that violate fundamental human rights. A government's contempt for basic human rights is a convincing indicator of the lack of the rule of law in that nation.*

**Keywords:** New technology regulations, freedom of expression, rule of law, natural law, morality of law.

### 1. INTRODUCTION

“Digital rights” is generally used to allude to the manner in which the basic fundamental human rights guaranteed in the legally binding International Covenant on Civil and Political Rights (the ‘ICCPR’) are interpreted in the contemporary digital age, where vast aspects of human existence are mediated by recent digital technological advancements such as social media and the internet. Digital rights mirroring fundamental human rights are central to protecting fundamental human rights, as few aspects of modern life are

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unaffected by continually advancing technology, social media, and the internet, which determine how individuals converse, take part in public discourse, and work.

Digital technologies and communication networks were mostly free and unregulated when they first appeared. While the European Union (EU) and its Member States have since enacted various laws regulating the digital arena, it still presents unique opportunities for both the advancement and violation of fundamental human rights. The internet and social media have created vast opportunities for freedom of expression and for ordinary citizens to present facts and truth in the face of monopolized and government-controlled media. At the same time, digital technology statutes have been abused to advance anti-human rights legislation and practices that severely limit freedom of expression and silence those who speak truth to power (Media Defence, 2025). In recent years, it has become clear that bureaucrats in many so-called Western democracies have abused digital legislation to advance their interests at the expense of fundamental human rights under the guise of combating online hate speech, disinformation, and misinformation. It has been postulated that the real intent of some of the technology-related legislation is to silence critics, those contradicting the official false narratives with facts, and those asking fundamental questions relating to the ruling elite's legitimacy to govern and their contentious policies and practices (Lewis, 2025, p. 7). The impact of this spurious technology-related legislation is that the fundamental human right to freedom of expression on social media and the internet is violated, often excessively and illegally (Lewis, 2025, p. 7). The European Digital Services Act ('DSA'), enacted in 2024, has been welcomed as a pioneering law intended to "govern the content moderation practices of social media platforms" and eradicate illegal content and misinformation. However, underneath the cover of safeguarding democracy, fundamental human rights and freedoms are at risk of being eroded. The EU Commission avers that the DSA is necessary to "protect democracy" from online "hate speech", "disinformation", and "misinformation" in the digital era. It aims to establish a safer electronic environment by holding very large online platforms such as Alibaba, Amazon, Apple, Google, Meta, TikTok, and X responsible for any violations. However, by directing the elimination of vaguely defined "harmful" information and "illegal content," the DSA establishes a regulatory framework for the extensive suppression and restriction of truthful and legal speech under the banner of protecting democracy. The result may well be a sterilized and illegally controlled and manipulated internet and social media, where the fundamental human right to freedom of expression is illicitly repressed and violated (Portaru, 2025).

The EU and its various Member States have been at the forefront in passing a panoply of laws in the face of rapid technological advancements. In terms of a slew of new legislation to combat online disinformation and hate speech, criminal behaviour, subject to arrest and detention, in the EU now includes:

- praying silently near an abortion clinic (even in your own home) (Lu, 2025);
- quoting a bible scripture in public (Korpar, 2022);
- misgendering a biological male 'identifying as a female' (Shaw, 2021); and
- insulting someone online, reposting fake quotes, or spreading malicious gossip (Alfonsi *et al.*, 2025).

Important questions that need to be addressed include whether International Human Rights Law ('IHRL') guarantees the right to freedom of expression and opinion in the digital sphere, what are the requirements for a law to be just, what is an unjust law, and whether the current legislation curbing free speech in the digital era, (resulting in the prosecution of citizens voicing opinions contrary to the acceptable mainstream narrative), are aligned with the rule of law, the natural law and the morality of law.

## 2. INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAW

### 2.1. *International Human Rights Law*

Article 2(1) of the ICCPR determines States Parties “undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, or other status”. The positive legal obligations of the Covenant in general and Article 2(1) to 2(3) are binding on every State Party as a whole. It applies to all branches of government (executive, legislative, and judicial) (Orakhelashvili, 2006, p. 50).

Article 19 of the ICCPR explicitly specifies that “1. Everyone shall have the right to hold opinions without interference,” and that “2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Among the other articles that contain guarantees for freedom of opinion and/or expression are articles 18, 17, 25, and 27.

The UN General Comment No. 34 on Article 19: Freedoms of opinion and expression importantly notes that:

*“Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society...Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.”*

The comment further notes that although freedom of expression is not one of the “non-derogable” rights mentioned in article 4 of the ICCPR, “...there are elements that (...) cannot be made subject to lawful derogation under article 4”. According to the comment, freedom of opinion is such an element. In a 2016 resolution, the UN Human Rights Council (UNHRC) confirmed that:

*“[T]he same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice...”*

The UN Human Rights Council's Rabat Plan of Action republished in 2020 also advocates for a significantly elevated threshold for any restraints on the right to freedom of expression (United Nations Human Rights Council, 2020). While it is evident that freedom of expression is protected by a substantial body of treaty law, it is also regarded as a key principle of customary international law, which is recurrently pronounced in treaties, as well as quasi-legal instruments. The Universal Declaration of Human Rights Article 19, the Convention on the Rights of the Child Article 13, as well as the Convention on the Rights of Persons with Disabilities Article 21, all specifically protect the fundamental human right to freedom of expression.

## **2.2. EU Regional Human Rights Law**

### *2.2.1. The European Convention on Human Rights*

The European Convention on Human Rights ('ECHR'), signed by 47 Member States of the Council of Europe, protects freedom of expression through Article 10. The European Court of Human Rights ('ECtHR') has asserted numerous times that the internet provides an extraordinary platform for the exercise of freedom of expression, holding that:

*“in view of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information generally.” (ECtHR 2009, 2015).*

Article 10 of the ECHR protects not only the “content of information” but also the “means of transmission or reception” (Bayer *et al.*, 2021, p. 27). The ECtHR interprets the right to freedom of expression broadly and derogations to it narrowly. In *Handyside v. the UK*, the court asserted that the basic right to freedom of expression relates not only to “information” or “ideas” that are well received or considered as innocuous, but also to those that disrupt, insult, shock, or offend the Government or any segment of the populace. Such are the dictates of multiplicity, open-mindedness, freedom, and tolerance, without which a “democratic society” cannot exist. The ECtHR also confirmed in *Salov v. Ukraine* that protecting freedom of expression under Article 10 of the ECHR also encompasses the distribution of information that is highly likely to be mendacious (Bayer *et al.*, 2021, p. 24). In *Dink v. Turkey*, the ECtHR held that Member States have a positive legal duty to “create a favourable environment for participation in public debate, (...) enabling [people] to express their opinions and ideas without fear.”

### *2.2.2. The Charter of Fundamental Rights of the European Union*

The fundamental human right to freedom of expression, which is also enshrined in Article 11 of the Charter of Fundamental Rights of the European Union, includes the “freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”.

The Court of Justice of the European Union ('CJEU') in *Connolly v. Commission*, also affirms the critical significance of the right to freedom of expression as an indispensable cornerstone of an open and democratic society, relevant to all communication, including

communication that ‘disturb’, ‘shock’, and ‘offend’. In close alignment with the ECtHR case law, the CJEU held that any limitations to this important right must be interpreted restrictively.

### 2.2.3. EU Human Rights Guidelines on Freedom of Expression

The Council of the European Union’s 2014 “EU Human Rights Guidelines on Freedom of Expression Online and Offline” expressly determines that:

*“The ...arbitrary arrest of ...individuals because of his or her exercise of the freedom of expression constitutes a violation of Article 19 UDHR and ICCPR...*

*Any legislative restriction on freedom of expression must be provided by law, may only be imposed for the grounds set out in international human rights law, and must conform to the strict tests of necessity and proportionality...*

*All human rights that exist offline must also be protected online, in particular the right to freedom of opinion and expression.” (Council of the European Union, 2014).*

According to these guidelines, examples of the unjust legislative actions include:

- Inconsistent and abusive application of legislation used to censor criticism and debate concerning public issues;
- Laws that foster a climate of fear and self-censorship among media actors and the public at large;
- Regulations that allow for the total or partial, ex post-facto censorship and banning of certain forms of speech; and
- Laws imposing prohibitive, levies, fines or other forms of economic sanctions (Council of the European Union, 2014).

## 3. RULING THROUGH LAW VERSUS RULING IN TERMS OF THE RULE OF LAW

When regulating different aspects of the technological realm, it is crucial to discern that “ruling through law” and ruling under “the rule of law” are two vastly different constructs. All government is necessarily by law, as a power that fails to be permitted by law is not government power. All laws enacted by the executive cannot automatically be categorized as morally just or governance in accord with the “rule of law” (Young, 2012, pp. 259-280). The Nazi-era laws enacted in Germany in the 1930s met the formal conception of law but lacked the substance and the virtue of law aligning with the “rule of law.” In the words of Martin Luther King Jr, there are just laws and unjust laws. “A just law is a man-made code that squares with the moral law, or the law of God. An unjust law is a code that is out of harmony with the moral law. An unjust law is a human law that is not rooted in eternal and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust” (King, 1963).

Directing government power through statutory law in the digital era requires adherence to specific formal characteristics of lawful regulations. The formal element of law is satisfied when laws (regulations) conform to specific technical and formal requirements. Laws should *inter alia* be:

- properly promulgated;
- general in application;
- forthcoming;
- unambiguous;
- stable;
- transparent;
- fair; and
- be presided over by an independent judiciary.

The rule of law, however, is not satisfied by technical and formal requirements only. While demanding these requirements, an exercise of legitimate government power furthermore requires that the law be substantively just (Young, 2012, pp. 259-280). Characteristically, this means the law must be rational, align with the natural law, possess the morality of law, and inherently respect *jus cogens* norms and fundamental human rights.

In regulating electronic communication in the current epoch of technological innovation it remains essential to distinguish between laws that hold the “efficacy of the law” – which entails lawful, moral, rational, statutory acts by the executive – and laws that lack morality and efficacy yet possess the “force of the law” – which involves immoral and irrational, legislative acts by the executive (Agamben, 2008, pp. 37-39). In Roman doctrine, these legislative acts had “the force of law because it pleased the sovereign” (*quod principi placuit legis habet vigorem*) (Agamben, 2008, p. 39).

From a modern-day moral and legal perspective, statutes regulating new technologies and communication on social media platforms that lack “the efficacy of the law” (morality of law) do not qualify as “law” that aligns with the “rule of law” even though they contain the “force of the law” given that they meet the formal requirements of law and are enforced by the executive. Put differently, for a law to align with the “rule of law” it requires an inherent moral value in addition to meeting the formal criteria of law. Agamben encapsulates the principle well:

*“...the concept of ‘force of law’ as a technical legal term defines a separation of the norms vis obligandi, or applicability, from its formal essence, whereby decrees... which are not formally laws nevertheless acquire their ‘force’.”*  
(Agamben, 2008, p. 38)

An example of this phenomenon was the fascist Third Reich, in which Adolf Eichmann repeatedly propounded that “the words of the Führer have the force of law” (Agamben, 2008, p. 39). During the first six years of Hitler’s reign, the government at every level – Reich, State, and municipal – adopted hundreds of laws (regulations) that violated the human rights of the Jews in Germany. The first significant law to violate the human rights of Jewish citizens was the “Law for the Restoration of the Professional Civil Service of April

7, 1933” which eliminated Jews and the “politically unreliable” (those with contradictory views) from the public service. The numerous inhumane antisemitic Nazi-era laws that the German Reichstag duly passed between 1933 and 1939 had the “force of law” even though they lacked the “efficacy of the law”.

History shows that laws and regulations that violate fundamental human rights lack the “efficacy of the law,” and as such create an anomic society in which there is a disintegration or disappearance of the juridical norms and values, where the “force of law” is applied without the “rule of law”(van Aardt, 2022a, p. 288).

#### 4. THE DOCTRINE OF NATURAL LAW

Natural law offers the necessary moral foundation on which all authorities should structure just juridical laws in regulating new technologies. All fundamental human rights come from God through natural law, which is absolute and unalterable (Swarts, 2010, pp. 145-148). Natural law is the basis of all legitimate human laws, and any law related to technological innovations and freedom of speech that breaches the natural law principles is unjust and illegitimate.

Plato (c. 428–347 BC) linked the “rule of law” tenet with the “natural law” (Márquez, 2012, pp. 341-364). In supporting the rule of law in his book “Laws”, he assumes laws should be capable of mirroring the requirements of reason (Stalley, 1983). Laws defend the rule of law insofar as the governing laws are in accordance with natural law (Annas, 2017, p. 72). Plato asserted that law must have “virtue” or “complete justice” as its goal to conform with the “rule of law”. Laws should always be “sound” or “good” and not “unsound” and “bad” as the latter are not laws, but “spurious laws” with no legal authority. According to Plato, “the state in which the rulers are most reluctant to govern is always the best..., and the state in which they are most eager, [through the proliferation of legislation] the worst”. Plato deemed tyranny the “worst disorder of a state” as tyrants lack “the very faculty that is the instrument of judgment” (sound reason) and used the term “Anomia” to refer to people who do not know the moral law. In determining whether a government system has become tyrannical, a good test is “sound reason” (Annas, 2017).

Aristotle (384–322 BC), whose arguments in support of the rule of law are the arguments of a natural law theorist, in his book “Politics” posited that, “He who commands that law should rule may thus be regarded commanding God and reason alone should rule” (Letvin, 2005, p. 21). Law [as the pure voice of God and reason] is defined as “Reason free from all passion” (Letvin, 2005, pp. 21-46). Aristotle classified the different systems of government as either “right” or “wrong”. “Right” constitutions adhere to the rule of law (natural law) and serve the common interests of all citizens, while “wrong” constitutions serve only the selfish interests of a particular person or group of persons. To Aristotle, tyranny is the illogical, capricious, and arbitrary power of a government that is “...responsible to no one, [and that] governs with a view to its own advantage, not to that of its subjects, and therefore against their will”. Aristotle believed that tyranny is the “very reverse of a constitution”. He noted that where the laws have no authority, there is no constitution or legitimate legal construct. Laws should reign supreme “when good” but when “laws miss

the mark” they are not binding (Zanghellini, 2016, pp. 13-14). Aristotle emphasized these laws must uphold just principles and standards, such that “true forms of government will of necessity have just laws, and perverted forms of government will have unjust laws” (Tamanaha, 2004, p. 9). According to Aristotle, any form of government will be perverted when the “rule of law” (natural law) is not respected and adhered to where the “rule of law” becomes the “rule of men” (Wexler, 2006, pp. 116-138).

Cicero (106 BC–43 BC) confirmed that the natural law, present in each man’s heart and determined by reason, is universal in its principles, and its authority extends to all human beings; it expresses the dignity of the person and determines the basis for their fundamental human rights:

*“For there is a true law: right reason. It is in conformity with nature, is diffused among all men, and is immutable and eternal; its orders summon to duty; its prohibitions turn away from offense .... To replace it with a contrary law is a sacrilege; failure to apply even one of its provisions is forbidden; no one can abrogate it entirely.” (Cicero, Liederbach, 2007, p. 782)*

According to Thomas Aquinas (1225–1274), all state power should be a ministry or service because it is derived from God for the happy ordering of the life of its citizens. The purpose of the State is, therefore, moral because of its origin and originator (Aquinas, 1274). Aquinas explains that a “law is nothing but a dictate of practical reason emanating from the ruler who governs a perfect community” (Liederbach, 2008, p. 785). As Charles Rice correctly postulates: “Morality is governed by a law built into the nature of man and knowable by reason. Man can know, through the use of his reason, what is in accord with his nature and therefore good ...” (Rice, 1999, p. 30)

In regulating the technological realm, it is the duty of the government to enact rational laws so that individuals may live a happy and fulfilling life, which is the true end of civil society. The State must lay the foundations of the happiness of its citizens by maintaining law and order through just, rational governance that aligns with natural law (Swartz, 2010, pp. 145-157). Aquinas categorically submitted that:

*“Human law is law only by virtue of its accordance with right reason, and thus, it is manifest that it flows from the eternal law. And in so far as it deviates from right reason, it is called an unjust law; in such case, it is no law at all, but rather a species of violence.” (Aquinas, 1274).*

In terms of the doctrine of natural law, it is the principal duty of the State to protect and improve the fundamental human rights of its citizens. The government acts contrary to its natural purpose, the function for which it exists, if it hurts rather than helps a single one of its citizens for the sake of benefiting all the others (Swartz, 2010, pp. 149-150). The State is always subject to the rule of law in relation to what type of regulations it may issue (*quantum ad vim directivam*), and the “*vim directivam*” is directly related to the rule of law. All just human laws, also in the era of technological innovation, are nothing more than “the expression of the natural order of justice”, which limits the State’s authority (Swartz, 2010, p. 150). The concept of the rule of law is inseparable from the concept of natural law.

State must always obey the natural law and cannot exercise power over anyone unless the law permits it (Swartz, 2010, pp. 149-150). State cannot create or abolish inviolable human rights, such as the right to freedom of expression, by law, mandate, or convention; they can only confirm the existence of fundamental human rights and protect these rights. The State, therefore, cannot lawfully act erratically, irrationally, or arbitrarily when regulating different aspects of the technological realm (Swartz, 2010, p. 150). To do so would be incompatible and contradictory with the basic concept of the rule of law, which is a central value of any constitutional democracy.

The misuse of the law may occur in two ways:

- First, when that which is mandated by law is opposed to the object for which that law was constituted. A digital law that violates fundamental human rights, such as the right to freedom of expression, is opposed to the object of the law and, therefore, unjust. According to Aquinas, in such a situation, not only is there no obligation or responsibility to obey the law, but one is obligated to defy it (Swartz, 2010, p. 148).
- Second, when those in authority enact laws that exceed the competence of their authority. When a government demands adherence to a digital law law, that violates basic human rights, that it did not have the legal and constitutional authority to make in the first place (Swartz, 2010, p. 148).

The aim of the rule of law is always to protect individual rights by requiring the government to act in accordance with the natural law. This is a fundamental principle of the rule of law.

Natural law affirms the reality of an omnipresent moral law, ascertainable through reason, while legal positivism suggests that the legality of law originates solely from human decree and human enforcement, denude of morality (Green, 2008). In the social media era, where freedom of speech is being eroded through many unjust laws that violates basic fundamental human rights, the natural law serve as a reminder to the positive legal order that it is not the final benchmark or arbiter of the rule of law and justice and that the positive law is subject to assessment, and possibly annulment, by reference to the higher standard of the natural law.

## 5. THE MORALITY OF LAW

In his 1964 book “The Morality of Law”, former professor of Law at Harvard University, Lon Fuller, asserts that for regulations to be moral, they must promote the objectives of humanity (Fuller, 1964, pp. 33-91). In expanding his theory of the rule of law, Fuller emphasized legislators must respect rationality and human autonomy as a logical necessity for those who seek to create a legitimate legal system. For regulating new technologies in public and private law to succeed as a form of social ordering, States must appeal to the rational dimensions of individuals by empowering those individuals to understand why the law has been enacted and what the law demands so they can conform their actions to its demands (Fuller, 1964). Only when the State treats the law’s subjects as rational, self-regulating agents will its directives lead to compliance, thereby supporting a culture of legality

(Fuller, 1964, Fox-Decent & Criddle, 2018, pp. 765-781). According to Fuller, there is an inner morality that makes law viable. If citizens do not feel a moral compulsion to observe the law, the law could not endure. Government regulations relating to new technologies must contain specific moral standards to “create law” and to be regarded as moral and legitimate. The regulations in the digital era must therefore:

1. express general, not *ad hoc*, commands;
2. be announced and published;
3. not be enacted retroactively;
4. be comprehensible and rational;
5. not conflict with other laws (such as binding IHRL and EU Law guaranteeing the right to freedom of speech);
6. not demand the impossible or conduct that violates fundamental rights of the affected party (such as laws prosecuting individuals for exercising their fundamental human rights to freedom of speech and freedom of religion);
7. be fairly constant and not be regularly altered; and
8. be administered in a just, congruent manner (Fuller, 1964, p. 39; also see: Dworkin, 1965; Finnis, 1980, pp. 270-271; Rawls, 1999, pp. 208-210; Raz, 1977, pp. 214-218).

A law aiming to regulate new technological advancements, the internet, and social media that does not meet any of these eight *sine qua non* would be ineffective from the perspective of contributing to a legitimate “legal system” since it would offer no rational basis for citizens to adjust their behaviour in response (Fuller, 1964, pp. 38-41). The eight essential *desiderata* are also morally important and sequential since a person’s moral imperative to obey edicts depends on whether the regulations could rationally attract conformity. As Fuller explains,

“[T]here can be no rational ground for asserting that a man can have a moral obligation to obey a legal rule that does not exist, or is kept secret from him, or that came into existence only after he had acted, or was unintelligible, or was contradicted by another rule of the same system, or commanded the impossible, or changed every minute.” (Fuller, 1964, p. 39).

Fuller observed that these foundational principles of a lawful “legal system establish a kind of reciprocity between government and the citizen with respect to the observance of rules” (Fuller, 1964, p. 39). Should authorities fail to regulate with mandates that meet the eight *sine qua non*, their bond with their citizenry would lack the mutuality required to establish legal authority (Tucker, 1965, pp. 272-276). When the State breaks this “bond of reciprocity”, nothing is left to ground the citizen’s duty to adhere to laws (Fuller, 1964, p. 40).

To merit recognition as legitimate, laws enacted by Member States must offer rational grounds for compliance. Laws that unreasonably violate fundamental human rights, such as the right to freedom of speech, that are essential to the functioning of an open and democratic society based on human dignity, equality, and freedom, cannot satisfy this requirement. For example, there is no rational basis for concluding that people have moral obligations to comply with laws that authorize their own torture, enslavement, arbitrary detention, being subjected to criminal prosecution for voicing an opinion online,

quoting a bible scripture, or praying in your own home in the vicinity of an abortion clinic. These kinds of laws do not offer rational grounds for compliance and cannot credibly be interpreted as actions taken in the best interest of the individuals being subject to them. (Fox-Decent & Criddle, 2018 pp. 765-781). Consequently, arbitrary detention and prosecution pursuant to the enforcement of unjust laws that violate the fundamental human right to freedom of expression undo the reciprocity that is essential to sustain legal order.

## 6. CONCLUSION

As eloquently asserted by John Stuart Mill; “*the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error*” (Mill, 1863, p. 33).

The fundamental human right to freedom of speech is indispensable for the practical fulfilment and realization of a wide spectrum of fundamental human rights, including freedom of thought, conscience and religion, freedom of assembly, the right to hold opinions without interference, the right not to be subjected to arbitrary or unlawful interference with privacy, family, home, or correspondence, nor to unlawful attacks on honour and reputation, the right to participate in public life, as well as the right to vote and all related political rights. Democracy cannot exist devoid of these rights. Although not absolute and subject to lawful restriction in exceptional circumstances, freedom of speech comprises one of the foundations of an open and democratic society based on freedom, equality, and human dignity. Without freedom of expression, a cognizant, active, and involved citizenry is not possible. Therefore, even untruths and misinformation should be allowed since they are part of the procedure of learning the truth in the battle of ideas (Bayer *et al.*, 2021, p. 18; van Hoboken *et al.*, 2019, p. 39). Limitations on free speech can only occur under narrowly defined derogation criteria that comply with IHRL and the principles of proportionality and balancing.

Any State or Union of States that criminalizes free speech through a plethora of unjust laws and prosecutes its own nationals for speaking, writing, or holding “unacceptable” opinions can no longer contest it stands for protecting fundamental human rights and the rule of law.

In “De Monarchia” (1312–1313), Dante Alighieri asserts that “...who-ever intend to achieve the end of [the] law, must proceed with the law (*quicumque finem iuris intendit cum iure gratitur*)”. Central to the conception of the constitutional legal order is that the executive and every sphere of government are constrained and restricted by the principle that they may exercise no power and perform no function outside that conferred upon them by the rule of law. The State cannot exert control over its citizens unless the law permits it to do so. Every law should be enacted for the common protection of citizens’ basic human rights. If it fails in this aspect, it does not have the capacity to bind (*virtutem obligandi non habet*) (Agamben, 2008, p. 25).

If the State acts without authority emanating from the rule of law, it acts lawlessly, something a constitutional democracy cannot tolerate. When State laws violate peremptory norms of international law, such laws are illicit and unlawful. They are void *ab initio*, as embodied in the doctrine of *jus cogens* (Fox-Decent & Criddle, 2018, , Sinclair, and Sinclair, 1984). The peremptory norm designates the ascendancy of the law, which even the sovereign can neither abrogate nor modify, and renders any contradictory state edict illegitimate. (Yarwood, 2009, pp. 146-181; Meron, 1986, pp. 25-27; Stephens, 2004, p. 2).

There is an undeniable distinction between the “rule of law” and the “rule by law” (Tamanaha, 2004, p. 3). The rule of law elevates genuine law above politics. The law stands above every powerful politician, philanthropist, and government agency. Rule by law, in contrast, implies the selective use of law as an instrument of governmental power. It means that the State uses the law to dominate its citizens but does not allow the law to be used to control corrupt State officials (Waldron, 2002, pp. 137-164). The law, so applied and measured through the lens of natural law and the morality of law, is exposed: not as a rational juridical system but as an ideology that supports and makes possible an unjust political system. The law is merely a tool used by a corrupt establishment to achieve its political and financial objectives while maintaining its power and covering the injustices perpetrated with a mask of legitimacy (Unger, 1986; Hutchinson, 1989; Oetken, 1990; Tushnet, 1990). But this type of “law” is not “law” but a type of pseudo-law devoid of the essence of law.

The principle of rationality and non-arbitrariness is an important ordering principle in IHRL (van Aardt, 2022, p. 280). The rule of law demands rationality. In determining whether a law is just, a good test is “sound reason” or, put differently, the reason of law (*vim et rationem legis*). Can government laws be rationally explained and defended when confronted with independent, objective facts? To merit recognition as legitimate law, regulations from states must offer rational grounds for compliance. If laws lack reason, it has no capacity to bind (*virtutem obligandi non habet*). Legislation that unreasonably violates citizens’ fundamental human rights cannot satisfy this requirement. Unjust laws that penalize citizens for praying in their own homes, that prosecute citizens for quoting bible scriptures, and that imprison citizens for factually referring to a biological male as a male, are patently absurd and devoid of any reason. These kinds of regulations do not offer rational grounds for compliance and cannot credibly be interpreted as actions taken in the best interest of the citizenry.

Lawlessness (“anomia”) ensues not where the citizenry commits crimes, but where law itself is perverted by those in power. In normative terms, the rule of law requires that states rule through substantively just, ethical, moral, and justice-orientated laws that align with the natural law. All governments across the globe must respect and adhere to the rule of law, as the rule of law shields citizens against oppression and tyranny. A government’s contempt for basic human rights evidenced by enacting myriads of immoral laws that violate natural, or God-given, rights to life and liberty, is a convincing indicator of the lack of the rule of law in that nation. This deprivation of lawfulness is also a breakdown of justice, as respect for fundamental human rights is definitive to the requirements of lawfulness. On the contrary, respecting fundamental human rights means that law and justice essentially rule.

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