"Freedom vs. Democracy: The Normative Dilemma of Social Media Restrictions in Europe"

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Introduction

This thesis will be centered around uncovering the link between social media (SM) and democratic backsliding (DB) in a European context. Through doing so, the paper seeks to expose a normative and legal paradox in European norms and values that has enabled actors to contribute and facilitate DB via SM platforms. The main actors implicated are governments, populations, European institutions and lastly SM companies. The years 2000 to 2024 will be of focus here, due to the exponential growth of SM in terms of both scale and technological advancement. The research question is the following : *Are current restrictions on SM, that limit SM based on threats to democracy, justified ?*

In this paper, the term 'social media' refers to all forms of digital platforms and technologies that enable individuals and communities to create, share, and exchange user-generated content, information, and ideas in virtual social networks. Furthermore, the notion of complicity in this context refers to the normative dilemma which sees an actor "induce, enable or encourage" a wrongful act through his actions or omissions (voluntary or involuntary) (Theuns, 2024b, p. 96). Finally, when talking of 'dissenting actors,' this paper is referring to any type of European actor who has or is engaging in DB.

The core normative puzzle this paper seeks to explore is how SM can cause the fundamental norms of freedom of expression and democracy to clash. Indeed, while SM is a legitimate tool to express oneself online to a large audience, certain actors can take advantage of this and use SM in order to enable and facilitate the DB of certain European states. This leads to the question of which norm should prevail, upholding freedom of expression, or ensuring the democratic quality of all member states ?

Not only would this research fill a sizeable gap in the current literature, its understanding would ensure that democratic norms are continuously upheld. In addition, one would first have to answer this research question in order to then be able to determine whether the Commission has the normative right to limit SM in order to slow the spread of autocracy. Indeed, since this paper aims to determine whether it is normatively acceptable for the EU to regulate SM, it will also therefore determine whether it can take legal action against actors who diffuse anti-democratic ideas via these platforms. Finally, this research could shed light as to whether SM could be used to politically isolate and alienate dissenting states, notably by exposing their use of SM platforms to circumvent European norms and perpetuate DB.

This paper will be guided by the following thesis statement : Current restrictions on SM aiming to limit SM based on the threat it poses to democracy cannot be fully justified, as they are too restrictive and ultimately undermine freedom of speech (FOS).

Literature review

In addition to exposing the potential negative consequences that could arise from limiting SM, this research question also aims to uncover a normative paradox. This paradox arises from the fact that the use of SM leads to the questioning of whether anybody can post anything they want on these platforms, even anti-democratic ideas. On one hand, this seems to go against the notion of democracy enshrined in the treaties of the EU. Whilst on the other hand, censoring and limiting what people or entities can express online goes against the fundamental value of free speech of the EU. What is the adequate response to this ? Although many see limiting and regulating SM as the adequate response, this paper will argue how limiting SM, even in an effort to uphold democracy, actually contributes to eroding democratic norms. The core puzzle at hand therefore being whether limits on SM fall in line with European norms and values. To better comprehend this puzzle, imagine the Commission were to adopt strict regulatory measures or standards for online content in the name of upholding democratic values. Doing so could inadvertently restrict freedom of expression by silencing political arguments or limiting the diversity of viewpoints. Furthermore, Theuns (2024b) argues in chapter 4 of *Protecting Democracy in Europe* that if the European Commission were to impose regulations (such as on SM) on a single EU country, it would be "normatively incoherent," as it undermines the principle of equality upon which the EU is founded (p. 61). If this normative logic is followed, the Commission would prioritize democratic pluralism and equality for all, notably by making sure that freedom of expression is upheld within the EU on equal terms.

Two normative premises justify the relevance of SM in this context. The first one is that multiple European treaties (ex: TEU, TFEU & CJEU) establish equality and FOS as key norms of the EU. Firstly meaning that all those within the EU should have an equal access to SM, and should also be able to publish the same content on these platforms. Secondly, this also means that the same restrictions and limitations in regards to what can be said or done online must apply to all European entities regardlessly. Additionally, this premise also entails that all EU citizens have the same right to express their ideas online, especially their (even anti-democratic) political opinions. The second premise is that one of the goals of normative

theory is "recommending specific institutional, constitutional or societal changes to better live up to certain values or ideals" (Theuns, 2024b, p. 62). In this context, putting an end to efforts to limit SM with potentially reckless consequences would constitute this institutional change, and doing so will contribute towards more democracy and avoiding DB.

In order to better comprehend the risks of limiting SM, it is essential to determine and understand how SM can be used for DB in the first place. Clearly uncovering how SM is used, and which actors are involved, would help determine which appropriate regulations are required, and whether these regulations infringe upon FOS. Furthermore, determining this could also shed light as to whether other solutions besides regulations could be possible, therefore possibly negating the need to impose limits on SM in the first place. This following section will be dedicated to exploring the existing body of academic literature surrounding the role of SM in DB, as well as which actors are implicated.

While much attention has been allocated to how European actors have engaged in DB legally and politically speaking, almost no authors explore how this can be the case via SM specifically. This can be explained in part by the fact that SM is a new and unprecedented global phenomenon, which is rapidly evolving in both scope and scale.

In fact, most literature surrounding DB by EU actors focuses either on EU institutions such as the Commission, or on national and European parties in the larger context of party politics. Key authors such as Wolkenstein (2020) put forward the case of "transnational complicity" by demonstrating how the European People's Party (EPP) has used it position and influence in order to shield Hungary's Fidesz party (member of the EPP) from sanctions by the EU (p. 118). This is a clear case of DB by complicity where the intentional actions of a European actor led to the advancement of DB within Hungary. Interestingly, Wolkenstein points out the link between party politics and complicity, yet does not delve deeper by asking how parties can act this way all the while remaining legitimate in the eyes of their constituents. General disinterest in European politics can explain how Europarties like the EPP have been able to pursue virtually unchecked (Gyárfášová, 2014). Therefore, while Europarties are responsible for a secondary complicit wrongdoing, voters are actually responsible for a third wrongdoing that led to Europarties detaining so much power in the first place. SM is worth factoring into the discussion, as greater transparency and communication via SM can be an effective way to inform constituents and therefore hold European parties accountable for their actions. Therefore, limiting SM would only diminish

voters' capacity to counteract this phenomenon, potentially perpetuating the dominance of Europarties.

Other authors such as Theuns (2024b) successfully point out how major European institutions can be found guilty of DB. For instance, he explicates how the Commission, in particular, is guilty by omission. More specifically, the Commission was tasked with ensuring that member states enact and respect EU law; however, dissenting states such as Hungary and Poland continue to exist, indicating a failure on the part of the Commission to effectively prevent DB (p. 102). This insight is relevant to the research question, as the Commission plays a central role in determining the limits that must be applied to SM. American law specialist Jack Balkin's (2021) work can be cited here, as he contends that establishing content moderation for SM requires absolute "neutrality" (p. 20). Since the EU Commission could potentially address its complicity by countering DB through regulations on SM, it does not fulfill this condition.

Although these authors make valid points and successfully point out the democratic flaw that is complicity, few authors seem to have explored the link between SM platforms and DB.

Despite the lack of specific literature concerning the subject at hand, many authors have in part explored or simply alluded to the role SM can play in DB.

Perhaps most notably and directly, Theuns' (2024b) work in chapter 6 of his book *Protecting Democracy in Europe* successfully portrays how public messages via SM can have unwanted consequences. More specifically, chapter 6 looks at the congratulatory statements posted on twitter by Ursula Von Der Leyen and Charles Michel following Victor Orbán's reelection, and argues that such messages are more than a simple formality in the sense that they legitimize the unfair elections that took place (p. 137). This is an instance where high ranking EU officials became complicit in the DB in Hungary due to their actions online. Interestingly, Theuns also mentions how other high ranking officials such as Roberta Metsola decided to remain silent on twitter after Orbàn's reelection, which hints to the possibility that officials are aware of the potential consequences a congratulatory message can have (p. 138). European actors aside, Euractiv's article by Sarantis Michalopoulos (2022) posted in April 2022 helps to understand the fundamentally political attribute of SM via an analysis on national parties. Indeed, the article describes how far-right and nationalist political parties from all over Europe are the only ones that took to SM to congratulate Orbàn. This truly puts into perspective the polarizing political tool SM has become, and how it has tended to favor

backsliding states up until now. By ignoring its potential, European actors are unintentionally diminishing their odds at successfully containing DB.

Few authors to date have written specifically about the role of SM in the modern political context. One of these authors is Marco Bünte (2020) who offers interesting insight into how SM has contributed to DB in Southeast Asia. Although the geographical zones of interests differ significantly, Bünte proposes arguments that can be used to better understand the potential effects of SM in the EU. The main argument put forward by Bünte is that autocracies have adapted to new technologies by "weaponizing" SM in order to increase censorship and repress critics in order to legitimize their rule. Additionally, Bünte explains that SM is used by all parties during elections to spread disinformation with the end goal of furthering polarization and sectarianism (p. 196). Bünte's work is relevant here, as it portrays the possible ways via which European governments could use SM as a means to limit FOS. In order to counter this, enacting laws that protect SM across the EU could ensure that FOS is continually upheld.

This second part of the literature review will explore the various authors that have discussed limiting SM. This is important as not only does it show that the field of research is profoundly one-sided, it also lays down key empirical and theoretical groundwork in determining whether SM does more harm than good to democracy.

Jack Balkin (2021) provides crucial insight in his paper *How to Regulate (and Not Regulate) Social Media*, where he explores how SM can be instrumental for democracy, followed by a discussion on possible regulations. The main idea Balkin puts forward is that SM companies are becoming crucial in entertaining a healthy public sphere where ideas and opinions can freely circulate (p. 1). By imposing SM regulations in order to incentivize SM companies into maintaining a proper functioning of the public sphere, Balkin ultimately makes the argument that SM regulations are a means to ensure democracy (p. 7).

Later in his work, Balkin makes the following statement : "Social media platforms must engage in content moderation. They may do it badly or well, but they will have to do it nevertheless." By this, he means that regulations are necessary in order to shape the SM industry in a way where SM companies are actively incentivized to work towards public and not private ends. Balkin goes on to list three policy levers that can be used to regulate SM (p. 20). "Antitrust and competition laws" proposed by the author aim to foster smaller companies and protect SM startups in order to safeguard democracy by ensuring diverse sources of information and culture (p. 21). Moving on, "Privacy and consumer protection law" would

regulate SM companies by forcing them to enact care, confidentiality, and loyalty toward users, with the aim of shifting SM companies' perspectives from viewing users as commodities to recognizing their rights and needs (p. 22). Lastly, "Intermediary liability" laws would ensure legal liability for internet intermediaries such as search engines or messaging services, which governments can then use as leverage in order to encourage responsible behavior from SM companies, such as treating users' data with care and transparency (p. 23).

Most importantly, Balkin assures that if handled and carried out properly, none of these policies violate FOS (p. 20). Although this provides insight as to the potential options for limiting SM, it very clearly omits to explore the possible negative consequences that could arise. While Balkin does state that "you shouldn't regulate social media unless you understand why you want to regulate it," he does not develop to the point where he warns policymakers that many limits on SM not covered in his work have important potential to limit FOS (p. 26). This paper will be dedicated to arguing that certain limits on SM, despite their democratic intentions, can lead to unintentional secondary effects that limit FOS and erode democracy.

On the same subject, law and economics Professor Donato Vese (2022) from the University of Turin published the following article : *Governing Fake News: The Regulation of Social Media and the Right to Freedom of Expression in the Era of Emergency*, where he argues that recent government administrative measures aimed at regulating fake speech have in large part undermined the right to FOS (p. 477). After providing an extensive analysis of multiple countries' administrative measures aimed at containing the spread of fake news, Vese spends most of his argument arguing that these measures were fundamentally necessary in order to contain fake news in a context of global crisis. Indeed, he argues that the COVID-19 epidemic was leading to an uncontrolled spread of misleading information (p. 491). The particularly grave nature of the epidemic is used by the author to justify infringing on FOS as a reaction to this exceptional situation. However, such actions, regardless of their intent, remain illegal and fundamentally anti-democratic. Especially considering that regulations imposed during the pandemic will likely remain active indefinitely, leading to a lasting negative effect on FOS. Towards the end of his article, Vese proposes a "reliability rating" solution consisting of determining by a third-party the reliability of the content posted on a SM (p. 512). While this article partly addresses the limits on SM as being harmful to FOS, the important focus on fake news renders the article very narrow-sighted and does not

allow for an in-depth analysis as to what concrete factors within governmental measures are responsible for limiting FOS.

By studying scholarly material on the subject, it becomes evident that a majority of authors have followed a similar path of advocating for limits on SM. Even authors such as Vese who set out to argue that limits on SM are also limits on FOS, still omit to specify the concrete negative effects that could arise. Therefore, it is crucial to balance this one-sided scale and explore the reasons as to why limiting SM should be refrained, or at least which specific factors must be taken into account whilst deciding on regulations to ensure that FOS is not infringed upon. Lastly, the existing literature on this subject is disproportionately focused on the United States and global perspectives, with almost no authors having limited their interpretation of the issue to the EU. It is important to also conduct research on the EU solely, as its complex supranational nature composed of diverse sovereign members is incomparable to any other regional organization or country.

Theoretical framework

The following section will proceed to lay down the theoretical basis upon which is supported the following research and arguments. This paper will be based on a contemporary Western perspective of liberalism, with liberal democracy being defined as "a political system marked not only by free and fair elections but also by the rule of law, a separation of powers, and the protection of basic liberties of speech, assembly, religion, and property" (Zakaria, 2004, p.17). Particular emphasis will be placed here on the "freedom of speech" aspect, as this paper's main argument relies on the premise that all entities within the EU are guaranteed the right to express their political opinions and ideas in accordance with European law. To quote Thomas Keck (2023), "Democratic governance is impossible in the absence of freedom at least for political speech" (p. 913).

The European laws in question are of fundamental relevance, as not only are they responsible for protecting FOS, they also establish its limits and conditions where it no longer applies. This section will therefore enumerate the relevant legal Articles. Most prominently, Article 10 of the European Convention on Human Rights states that : "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers" (European Convention on Human Rights, n.d., Art. 10). Therefore, all attempts to

limit FOS further than what is specified by Article 10 will be considered as normatively wrong and anti-democratic in this paper.

Moving on, Article 21 of EU Charter of Fundamental Rights protects non-discrimination, and "forbids discrimination on grounds of sex, race, color, ethnic or social origin, genetic features, language, religion or other belief, political opinion, membership of a national minority, property, birth, disability, age or sexual orientation" (European Union Charter of Fundamental Rights, n.d., Article 21). This means that individuals cannot be treated differently based on their political opinion, and therefore that no targeted regulations of SM based solely on political opinion are legal.

Finally, Article 52 states that "Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others" (Charter of Fundamental Rights of the European Union, n.d., Art. 52). Therefore, if it is ruled in the future that DB via SM goes against the "general interest recognised by the Union" or "rights and freedoms of others," then imposing new limits on SM would fall within legality. Meaning that Article 52 opens up to the possibility of imposing regulations on SM in cases of DB.

A different plausible approach to this subject would have been from a libertarian standpoint, which advocates for minimal state power and maximal civil and individual liberties, including absolute FOS free from any bans or regulations (Communication theory, n.d., para. 3). Furthermore, completely free media is possible for libertarians as they believe that people are capable of determining the good from the bad (Communication theory, n.d., para. 4). Although one could make the democratic argument that absolute FOS leads to better informed choices, American law Professor Toni Massaro and sociologist Robin Stryker (2012) explain why libertarianism is ultimately detrimental to democracy. They highlight the conundrum that protecting one's complete FOS can impose costs on another's liberty, such as compromising safety or dignity through the spread of hate speech or false information. As they put it : "there are liberty costs to liberty" (p. 398).

Liberalism remains a better fit for this research question. While libertarianism advocates for maximal FOS, its lack of regulation could result in SM being exploited for harmful purposes beyond merely expressing political opinions. Instead, liberalism recognizes that there may be legitimate reasons to restrict or regulate certain types of speech in specific

circumstances, particularly when it poses a threat to public safety, individual rights, or the functioning of democratic society. No scholar or law specifies that FOS can be exercised without any risk of being regulated. Therefore, this paper argues that current limitations on SM are already restrictive enough, and most importantly that no additional limits should be imposed.

The premise that all entities within the EU are guaranteed the right to express their opinions and ideas in accordance with European law will serve as a basis for the argument that FOS should not be further limited, even if it is used as a tool for DB.

Conceptual framework

For the sake of clarity, this next part will be dedicated to defining the term of DB in this specific context. Although the use of this term is steadily rising in parallel to the decreasing levels of democracy within certain EU countries, the comparative politics scholar Nancy Bermeo was right when stating that "The term DB is frequently used but rarely analyzed." She then proceeds to define the term as "state-led debilitation or elimination of any of the political institutions that sustain an existing democracy" (Bermeo, 2016, p. 5). This paper will move beyond this towards a more normative definition, entailing that DB consists of any state-led action that actively limits or works against the fundamental values of the EU. These values include but are not limited to free and fair elections, human dignity, equality, rule of law and freedom of both association and expression (Mechkova, Lührmann & Lindberg, 2017, p. 163). Hence, actions taken by European institutions and member-state governments to restrict, suppress, or block SM platforms will be deemed anti-democratic. This is especially true in cases where such endeavors seek to extend the bounds of existing European law concerning regulations on SM.

Methodology / Research design

The following section will outline the methodological approach adopted to achieve the goals of this research. A case study and content analysis was deemed most suitable for the research at hand, as a profound qualitative study allows for an in-depth examination of the current restrictions on SM, and whether they undermine FOS. The following argumentation will be structured in three main bodies. A first section will review the current restrictions on SM. Subsequently, a second section will argue why current limits on SM are too restrictive

and ultimately undermine democracy by limiting FOS. Finally, a third section will address possible counter-arguments.

The main case study will be the Digital Service Act (DSA), which is a significant piece of legislation enacted by the EU to regulate digital services and platforms. To be specific, the Commission defines the DSA as a regulation for "online intermediaries and platforms such as marketplaces, social networks (...) Its main goal is to prevent illegal and harmful activities online and the spread of disinformation. It ensures user safety, protects fundamental rights, and creates a fair and open online platform environment" (European Commission, 2024, "The Digital Services Act: Ensuring a safe and accountable online environment"). The DSA can be perceived as the most important contemporary effort by European institutions to further strengthen and expand limits on SM. Consequently, the DSA is highly relevant in this context, as it enables an examination of whether these regulations infringe upon FOS, potentially undermining European democracy.

I.   Overview of current limitations

Both EU and European Convention on Human Rights (ECHR) law will be cited here, as not only do they demonstrate how FOS is perceived and protected, they are also responsible for imposing limits and deciding which forms of political expression go beyond the law and are therefore no longer permissible. On one hand, ECHR law applies to all forty-six members of the Council of Europe, and can be credited with ensuring compliance with human rights standards (such as FOS) and providing remedies for violations (Harris, O'boyle, Bates & Buckley, 2023). On the other hand, EU law applies to EU member states and their institutions, and can be credited with deciding on policies and regulations (such as SM limits) relevant to the functioning of the EU. Furthermore, EU law takes precedence over national laws, while ECHR law does not take precedence over national laws but requires states to ensure their laws comply with the Convention (Craig & De Búrca, 2020). This is important as it affects how these legal frameworks influence national legal systems and their compliance with European standards. When analyzing the potential impacts of the DSA on FOS, it will therefore be essential to consider both the regulatory framework of EU law and the human rights protections under the ECHR.

When it comes to ECHR law, Lawyer Dominika Bychawska-Siniarska's (2017) book *Protecting the right to freedom of expression under the European Convention on Human*

*Right*s clearly defines in which situations FOS can no longer be applied. She explains that FOS does not apply in specific cases of hate speech, incitement to violence, racism, or Holocaust denial and reference to Nazi ideology (pp. 23-27). Hate speech being defined here as a derogatory attitude specifically targeting minorities (p. 25). Additionally, Bychawska-Siniarska discusses extensively the case of permissible restrictions, where domestic courts can enforce limits on FOS as long as they are permissible according to paragraph 2 of Article 10. This Article deems limits necessary in a democratic society for reasons such as national security, public safety, the prevention of disorder or crime, the protection of health or morals, the protection of the reputation or rights of others, the prevention of the disclosure of confidential information, or for maintaining the authority and impartiality of the judiciary (p. 31). Therefore, FOS via SM can be limited in the specific aforementioned cases, or if a domestic court rules that the content violates paragraph 2 of Article 10. Again, this opens to the eventuality of a court ruling that anti-democratic ideas expressed via SM goes against this Article, and that it must therefore be banned.

On the other hand, EU law will be studied here through the analysis of the DSA act and its efforts to limit SM. In order to fulfill its purpose, the DSA presents multiple reasons and remedies as to why and how certain SM content will be limited. Although the Act in itself entered into applicability on the 17th February 2024, Goanta, Bertaglia and Iamnitchi (2022) were right to point out that "one aspect remains highly unclear: how digital enforcement will actually take place in practice" (p. 1341). With the DSA being in its early phases of application, it is not fully clear as to how it will function in practice, and how exactly will it target the content which must be limited. In fact, the Commission's website page entitled 'The enforcement framework under the Digital Services Act', merely talks of "investigative" and "sanctioning" powers, without specifying under which conditions would the Commission launch a "request for information" (European Commission, 2024, "The enforcement framework under the Digital Services Act").

While the DSA does not overtly aim to impose restrictions on SM that would further curtail FOS beyond existing EU law, its interpretative flexibility raises concerns about the inadvertent potential for such limitations to occur. However, in order to avoid unwanted and potentially un-democratic situations, the following sections will explore the possible ways in which the DSA could come to limit SM.

For starters, the DSA (2024) requires increased accountability for SM platforms, with measures including obligations to remove illegal content promptly and to implement

transcribent content moderation practices (Preambles 45 & 48). In order to meet these requirements, SM platforms will need to enforce stricter policies and allocate resources towards enhanced moderation tools and resources. While this would result in the intended restrictions on content such as hate speech and misinformation, it also raises the possibility of SM platforms adopting an overly cautious approach to avoid the numerous fines outlined in the DSA (European Commission, 2024, "The enforcement framework under the Digital Services Act"). If this were to happen, it would be in the best interest of SM platforms to censor content which they could come to consider as violating the DSA, even if such content falls within the bounds of legal FOS. This would only further blur the distinction between extreme yet lawful political expression, and genuinely illegal content like hate speech or incitements to violence.

A second less obvious potential way through which the DSA (2024) could come to limit SM would be via the increased costs for SM platforms to maintain strict compliance mechanisms (Preamble 49). Obligations such as conducting regular risk assessment or providing transparency reports to the Commission could impose significant costs and other administrative burdens upon SM platforms. While this probably would not lead to the bankruptcy of SM giants such as Facebook or Twitter, smaller platforms may struggle to comply with these requirements, leading to limitations on their operations or services (Sartor & Andrea, 2020, p. 33). If smaller SM platforms were to cease operations, this could still lead to many EU citizens being deprived of one of their sources of information and means to express their ideas publicly. Although the DSA does not aim to get to this point, it remains a very possible outcome.

All in all, while the DSA aims to address key issues such as hate speech, disinformation and harmful content online, there are concerns that overly broad or vague regulatory provisions could inadvertently restrict freedom of expression and online speech. Platforms may err on the side of caution by implementing overly restrictive content moderation policies to avoid regulatory scrutiny, potentially leading to limitations on legitimate speech and expression. In addition to this, the important financial and administrative costs emancipating from the DSA provisions could lead to the decrease in operations and services of certain SM platforms.

II.   Why social media should not be limited

The main democratic argument this paper aims to put forward is that SM must not be limited in the future, despite its potential as a tool to advance DB and the fact that it would be permissible by law. SM must continue to be used as a way to express one's political ideals (even anti-democratic), as doing so upholds the European value and norm that is FOS. In fact, many negative consequences would arise if SM were to be limited. The following paragraphs will dive into these.

Before proceeding, a discussion on 'militant democracy' is warranted, as it provides insight into the rationale behind efforts to limit SM and questions the legitimacy of such approaches. Theuns (2024a) defines the term as "responses to anti-democratic actors that prima facie undermine democratic values" (p. 106). Research done on militant democracy is relevant here, as it aims to determine the justifiability of anti-democratic restrictions for protecting democracy. This paper contends that EU policies aimed at preventing SM from undermining democratic institutions and values are themselves anti-democratic because they limit FOS. Moreover, militant democracy cannot be justified in this context, as the potential anti-democratic threat posed by SM does not align with the "existential threat condition" and "principle of limited intervention" formulated by Theuns and Kirshner (Theuns, 2024a, p. 108; Kirshner, 2014, p. 47). Meeting these principles would require that the anti-democratic actions of SM "plausibly threaten the continued existence of the European Union as a polity committed to democratic government" and thus constitute a real existential threat to the EU (Theuns, 2024a, p. 120). This paper argues that this is not the case and, furthermore, that not limiting SM demonstrates the EU's commitment to democracy by upholding the fundamental value of FOS.

Moving on, this paper will now explore the negative consequences of limiting SM from a democratic standpoint. First of all, limiting SM leads to reduced access to information. Indeed, SM platforms serve as key sources of news and information for many individuals across the EU, and even worldwide. Limiting these platforms would result in reduced access to diverse perspectives and information sources such as news outlets, NGOs, political parties or community organizations, which all utilize SM as a form of communication. A study carried out in 2022 by Statista showed that 25% of European citizens used social networks as their principal media to inform themselves on European politics (Watson, 2023). The reduction in access would lead to a less informed citizenry and voters, as people would turn to traditional media sources that may have their own biases or limitations, such as political bias or lack of diversity (Lichter, 2017). Moreover, if traditional media outlets are controlled

or censored by the government, SM may be one of the few avenues for accessing alternative viewpoints and dissenting voices (Benkler, 2007, p. 101). Overall, reduced access to information would constrain FOS, as EU citizens would lack the necessary information to make informed decisions. Additionally, reduced access to information would create important information silos and polarization, due to the fact that when SM usage is limited, individuals may be forced to seek out alternative sources of information, potentially gravitating towards sources that align with their existing viewpoints and exacerbating polarization (Garrett, 2009). This polarization would further divide society, making it difficult to find common ground and would undermine efforts to promote social cohesion and dialogue.

Going forward, limiting SM can lead to less FOS by significantly curtailing activism and mobilization. In 2024, SM platforms constitute powerful tools for grassroots activists and civil society to organize protests and mobilize citizens for diverse social and political causes (Gerő, Fejős, Kerényi & Szikra, 2023, p. 19). Limiting these platforms would inhibit the ability of civil society organizations and grassroots movements to effectively advocate for change and hold authorities accountable. Without the ability to coordinate and communicate via SM, it would be considerably more challenging for activists to reach a wide audience, organize demonstrations, and garner support for their causes. Svensson and Wahlström (2023) present a compelling case study on "Fridays for Future", the European global climate movement initiated in 2018 by Swedish activist Greta Thunberg (p. 1). This social movement is highly relevant here as it uses Facebook to coordinate strikes, share information, and amplify its message, notably by organizing school strikes and protests to demand action on climate change (p. 12). Overall, limiting SM would restrict activists' FOS by hindering their ability to quickly and effectively communicate with large audiences, which is essential for bringing their cause to fruition (Gerbaudo, 2012).

Furthermore, undermining accountability and transparency is yet another negative consequence that would arise from limiting SM. Indeed, SM brings transparency and public scrutiny, allowing citizens to hold their governments and public officials accountable for their actions. Posts, videos or live streams uploaded to SM can document instances of police brutality, government corruption and abuses of human rights, all the while offering a platform for whistleblowers to expose wrongdoings. Bringing such instances to public attention pressures authorities to remain within the boundaries of democracy. For instance, Facebook and Twitter were used to coordinate demonstrations and share information during Romania's anti-corruption protests in 2017 (Adi, Gerodimos & Lilleker, 2018). In this case, the people used SM to hold the Romanian government accountable for its attempt to weaken

anti-corruption law (p. 17). Ultimately, being able to fully hold governments accountable promotes FOS as it ensures that citizens have the information and tools necessary to engage in meaningful political discourse, participate in decision-making processes, and challenge authority when necessary, thereby safeguarding their fundamental right to FOS.

Lastly, limiting SM would lead to an erosion of trust in institutions, as the public perceives such limits as authoritarian measures aimed at controlling access to information and suppressing opposition. Increased skepticism, political apathy and alienation from both domestic and European politics would all be consequences of a population disillusioned with the government's commitment to democratic principles (Mounk, 2018). In the end, a population that has lost trust in its government may doubt the government's commitment to ensuring their FOS, which can inadvertently lead to citizens expressing their opinions and concerns less freely. A relevant case study is Hungary under Orbán's government, where the administration exercises significant control over both traditional and SM. Measures such as consolidating media outlets under pro-government ownership, passing restrictive laws and engaging in propaganda campaigns are some of the administration's many attempts to suppress dissent and control information. This has led to widespread distrust in Hungarian democratic institutions and the government, and indeed resulted in increased skepticism, political apathy, and alienation from politics (Krekó & Enyedi, 2018, p. 46). The Hungarian experience underscores how limiting SM can undermine democracy, erode public trust, and discourage free expression, making it difficult to uphold European norms and values.

Needless to say, these negative consequences, especially once combined, show that limits on SM would lead to an even more limited statute of FOS, and therefore a deteriorated version of democracy.

A last key point worth mentioning here, is that by establishing legal pathways to restrict what they perceive as appropriate, moral, or democratic, states or institutions inadvertently risk sliding down a slippery slope where limitations on SM could progressively intensify. The DSA is a prime example with the potential to lead to such a situation.

This is all the more important when put into the context of constantly shifting political landscapes across the EU. Indeed, political agendas, partisan interests and ideological biases of policymakers and regulatory bodies influence how regulations are interpreted and applied. For instance, a regulation is passed with the intention of combating hate speech or disinformation, however, the interpretation of what constitutes these may vary depending on the prevailing political climate or values of those in power. To illustrate further, traditional

'leftist' politicians often define hate speech broadly to encompass speech targeting marginalized or vulnerable groups, whereas traditional 'rightist' politicians tend to prioritize individual responsibility for verifying information and express concerns about potential government overreach (Mello, 2021, pp. 337, 345).

A second important dimension to keep in mind when acknowledging this 'slippery slope', is the fact that limitations on SM would be determined in a context of important technological change and innovation. Today's digital age presents unique technological challenges that policymakers and regulatory bodies must navigate alike, starting with the sheer volume and diversity of billions of posts posted everyday by the world's 5.04 billion SM users (Kemp, 2024, para. 1). As the task of monitoring and moderating vast amounts of content becomes increasingly challenging, policymakers and regulatory bodies may feel overwhelmed. In response, they could be tempted to impose more or stricter limits on SM in an attempt to regain a sense of control. In parallel to this, the increasing predominance of artificial intelligence (AI) presents a dual challenge. On one hand, imposing restrictions on the use and authenticity of AI presents a challenge in itself due to the rapid pace of technological advancement and evolving capabilities (Fredheim & Pamment, 2024). On the other hand, efforts by SM companies to employ their own AI and other learning algorithms for content moderation purposes raises concerns about accuracy, bias, and unintended consequences (Gongane, Munot & Anuse, 2022). Indeed, the inability to accurately distinguish between various types of content can result in both over- or under-enforcement of regulations.

While this perspective may not offer an optimistic outlook on the DSA and similar attempts to regulate SM, it underscores the importance of finding effective solutions. To prevent the potential consequences outlined earlier from materializing, regulatory bodies must prioritize the development of clear and precise policies that rule out any legislative overreach or vagueness, thereby mitigating the risk of excessive limitations on SM.

III.   Addressing counter-arguments

To make the argument as airtight as possible, this following section will address and attempt to rebut possible counter-arguments. Although limiting SM constraints FOS, it is necessary to acknowledge the various drawbacks that can arise from free media. However, this paper contends that none of these potential drawbacks outweigh the importance of ensuring the full practice of FOS. This paper will address three key points.

A counter-argument to the concern that limiting SM reduces access to information, is that SM must indeed be regulated due to its prevalent role in spreading misinformation. Two points must be mentioned here. Firstly, it can be argued that misinformation can constitute an opinion or interpretation rather than a false statement of fact, which in this case would be protected by the FOS norm (Rasser, 2020). Secondly, effectively limiting misinformation on a large scale is challenging and carries the risk of overreach, potentially censoring legitimate content (Lim & Bradshaw, 2023, p. 1). Allowing misinformation to circulate ensures a free flow of ideas and protects FOS, even when it includes misinformation. In fact, misinformation can only be legally sanctioned if it violates certain principles, such as spreading hate speech or inciting violence (Bychawska-Siniarska, 2017, p. 23). Instead of imposing restrictions, a more effective solution would be to increase awareness and caution about misinformation and fake news online, enabling citizens to recognize and account for misinformation when making informed decisions in a democratic context. Indeed, making an optimally-informed decision also involves understanding the various ideas individuals seek to spread via SM, even if they are factually false.

A second counter-argument regarding the earlier point on grassroots activism raises the question as to why restricting activists' rights to promote anti-democratic ideologies on SM is problematic from a democratic standpoint. Here, we can refer to the core normative paradox at hand. While it may seem practical to limit the dissemination of anti-democratic ideologies on SM platforms and to condemn those who propagate them, such actions pose significant challenges from a democratic standpoint for two main reasons. Firstly, it introduces a form of differential treatment based on political views, which undermines the principle of equality in a democratic society (European Union Charter of Fundamental Rights, n.d., Article 21). Moreover, censoring or restricting the FOS of these activists weakens overall commitment to democratic values. This is because democracy thrives on the diversity of opinions and the free exchange of ideas, even those that may be contentious or unpopular. Therefore, any measures taken to limit these freedoms must be carefully balanced to preserve the integrity of democratic principles.

Lastly, regarding the concern that limiting SM might erode trust in institutions, it is only natural to consider whether promotion of extremist and anti-democratic ideologies on SM does not also undermine trust in these institutions. While the spread of extremist, anti-democratic, and false content can tarnish SM's reputation and dissuade users from recognizing its benefits, it is crucial to consider the bigger picture. To mitigate these negative effects, institutions, states, and SM companies must implement appropriate regulatory

measures. However, the downside is that users may lose more trust if they perceive their right to free speech as significantly restricted, rather than viewing SM platforms as free spaces, even for extremists. Key scholars such as Tarleton Gillespie (2018) explain how transparency and accountability in content moderation are fundamentally crucial to maintaining user trust (pp. 140, 198). On one hand, institutions are not primarily responsible for the spread of extremist and anti-democratic content. On the other hand, these same institutions would be directly responsible for imposing limitations on SM that constrain FOS. Therefore, limiting SM is likely to generate more distrust than allowing the presence of extremist and anti-democratic content. Although such content is democratically problematic, its existence underscores the EU's commitment to respecting FOS.

Conclusion

This paper set out to answer the following question : *Should social media be limited in order to uphold democracy*. The research and findings show that SM is in part responsible for the upkeep of FOS in the EU, and therefore that using SM for DB is normatively and legally possible. The following enduring paradox must be remembered : SM serves as a platform for FOS and democracy, yet it can also be exploited for DB. If states curtail SM and FOS, they risk undermining the very democratic principles they seek to protect, potentially becoming inherently anti-democratic.

In fact, this paper should be considered as a warning regarding the potential consequences of limiting SM. To be more specific, it is argued that enacting limits on SM can involuntarily undermine FOS by leading to reduced access to information, curtailment of activism, reduced accountability and transparency, an erosion of trust in European institutions and the risk of a recurring cycle of SM restrictions. Additionally, the analysis of the DSA demonstrates that important legislative action is currently underway, with a very high possibility of leading to more limits on SM.

The implications of this paper are multiple. In theory, refraining from limiting SM is a sure way to make sure that SM remains a platform for political expression, and that FOS is continuously ensured in the EU. While in practice, a greater awareness of the negative consequences of limiting SM can be taken into account by policymakers in order to avoid infringing on FOS.

However, this paper is not without its limitations. Generally speaking, avoiding stricter controls on SM can lead to the intensification and propagation of fake news and

misinformation. This can have grave consequences, such as misleading the public, creating confusion or inciting panic. Furthermore, dissenting actors could exploit the protections offered by FOS to subtly insinuate or imply illegal ideas, such as hate speech or racist remarks. By doing so, they could circumvent direct violations while still spreading harmful content. Unfortunately, these drawbacks seem to be the inevitable cost of ensuring adequate FOS in the EU.

Moving forward, further research should explore innovative approaches to leverage SM in combating DB, offering a potential solution to its own challenges. The significant potential of SM as a platform for extensive activism cannot be ignored. Raising awareness, promoting civic engagement, monitoring elections or encouraging international solidarity are just some of the ways via which SM can be used to counter DB in the EU.

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