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Lex:lead 2021 annual scholarship winning articles

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An introduction from the Lex:lead President

Celebrating our 100th award-winner last year, Lex:lead is now looking to its next 100 scholars. Each year conducting an essay competition on topics of law and development open to the world's least developed countries, we have been generously supported throughout by leading law firms and foundations including the International Bar Association (IBA) Foundation, which was the source of our first and some of our most generous grants over the years.

Lex:lead made another 17 awards this year recognising the top essays this year on the question: 'How can laws protecting (or restricting) free speech impact upon economic development?' which you can read here. Each year our essay questions juxtapose an area of law with the effect it can have on economic development and the reduction of poverty, challenging our writers to think beyond the texts they learn in their academic environments and apply it to their lived

experiences. The results are often thought-provoking insights into the nature of law and how law affects all of our lives and particularly those in developing countries. Of particular note - what we shall call the 'President's Pick' - I want to highlight the essay of Joseph DG Matimba (University of Zimbabwe, Zimbabwe) for its balance and rigour in addressing the issue posed. It and other essays included here are well worth the read.

Lex:lead has many times recognised contributions to it with honorary awards and this year made an award in honour of its patron, the Honourable Dame Linda Dobbs DBE, to Mwendabai Kaitwa (University of Lusaka, Zambia) who was both our top female award-winner as well as our top award-winner overall. Our patron has many times funded awards from her own funds and we felt that making an honorary award was the least we could do to thank her for her continued support of our initiative.

Happy reading.

Anne Bodley
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How can laws protecting (or restricting) free speech impact upon economic development?

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'Freedom of speech and the right to free expression directly affect economic progress. A society that restricts freedom of speech will restrict freedom – squelching the creativity that leads to the invention and innovation necessary to bring about a higher standard of living'

Steve Forbes

'I doubt if one can cite a single example of any people engaged in both manufacture and trade, from the men of Tyre to the Florentines and the English, who were not a free people'

Alexis de Tocqueville

Introduction

It is an undeniable fact that in one way or another, law shapes our lives and, depending on what a particular law seeks to achieve, it can either advance a cause or restrict it. From this, it appears that a close relationship subsists between laws either protecting or restricting free speech and economic development. And for this reason this essay endeavours to analyse this relationship and to discuss how the said laws that aim to protect or restrict free speech impact upon economic development. In addressing this theme, the essay shall begin by defining key terms including economic development and free speech. Thereafter, it shall identify laws that protect and those that restrict free speech. The essay shall then analyse the relationship between free speech and economic development and, finally, draw a conclusion from the discussions.

Economic development

The first step in defining economic development is to differentiate it from economic growth. Economic growth has a strong theoretical grounding and is easily quantified as an increase in aggregate output. Economic development, on the other hand,

is focused on quality improvements, risk mitigation, innovation and entrepreneurship that place the economy on a higher growth trajectory. It ultimately means improving the standard of living of people. Economic development occurs when individuals have the opportunity to develop the capacities that allow them to more actively engage and contribute to the economy. The greater the number of individuals able to participate in the economy and in society, the greater the opportunity for new ideas to circulate and be put into action.¹

Free speech

Freedom of speech principles date back as far as ancient Greece. These days, freedom of speech is well established as a human right, as well as, in many countries, a constitutional right. It is recognised in the Universal Declaration of Human Rights (UDHR), as well as the International Covenant on Civil and Political Rights (ICCPR), among other foundational international covenants. Article 19 of the UDHR² provides that 'everyone has the right to freedom of opinion and expression; this right includes, freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers'.

According to the philosopher John Milton, freedom of speech is understood as a multi-faceted right that includes not only the right to express or disseminate information and ideas, but three further different aspects: the right to seek information and ideas; the right to receive information and ideas; and the right to impart information and ideas.³ Freedom of opinion and speech are fundamental rights that contain both a personal and social dimension. They are considered 'indispensable conditions for the full development of the person', 'essential for any society and a foundation stone for every

free and democratic society.’ The enjoyment of other rights is unattainable without freedom of speech. For instance, freedom of speech alongside freedom of assembly and association are essential for the effective exercise of the right to vote. If citizens, candidates and elected representatives cannot exchange ideas freely, the right to vote is compromised.

In the United States, freedom of speech is strongly protected and guaranteed by the First Amendment of the US Constitution. The First Amendment guarantees the right to express ideas and information. It provides that ‘congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press or the right of the people peacefully to assemble, and to petition the Government for a redress of grievances.’⁴ In Zambia, free speech is also protected and guaranteed under Article 20 of the Zambian Constitution.⁵ Article 20 provides that ‘except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinion, receive ideas and information without interference’. However, like all other modern democracies, both the US and Zambia place limits on freedom of speech.

Limitations on the freedom of speech

Notwithstanding its foundational importance, freedom of speech is not recognised as an absolute right. Both international and domestic law empowers states to impose limitations on the freedom of speech in order to advance similarly-important aims such as national security, public order, public health and public morals. Article 19(3) of the ICCPR⁶ states that the exercise of freedom of expression carries with it special duties and responsibilities; it is subject to certain limitations, with such limitations necessary for ensuring respect for the rights and reputations of others. In the case of *Chaplinsky v New Hampshire*⁷, the US Supreme Court held that ‘the First Amendment does not protect “fighting words” – those [that] by their utterance inflict crying or tend to incite immediate breach of peace.’ It was similarly held in the case of *Schenk v US*⁸ that a restriction is legitimately imposed if the speech in question poses a ‘clear and present’ danger. Thus, the First Amendment to the US Constitution does

not protect speech that would be deemed a true threat. A ‘true threat’ was defined by the US Supreme Court in the case of *Virginia v Black*⁹ to mean ‘statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals’. The court also held that speech becomes intimidation when it is ‘a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.’

Further, the First Amendment does not protect speech that incites people to break the law or commit illegal activities. It was held in the case of *Brandenburg v Ohio*¹⁰ that the government may proscribe ‘incitement’ – that is, speech directed at producing imminent lawless actions, such as a speech to a mob to attack a nearby building. There is no right to incite people to break the law, including to commit acts of violence.

Similarly, in Zambia, the Constitution, as the Supreme Law of the Land, provides for circumstances under which freedom of speech may be circumscribed. Article 20(2) and (3) of the Zambian Constitution¹¹ provide that ‘nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that it is shown that the law in question makes provision that is reasonably required in the interest of defence, public order, public morality or public health or that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons [...]’. Free speech does not extend to conduct or statement which incite war, genocide, crimes against humanity or other forms of violence.

The relationship between free speech and economic development

As stated in the introduction above, law shapes society and, therefore, laws that encourage free speech do actually promote economic development. This is done by sharing ideas, which in turn lead to innovation and, consequently, to economic development. The United States offers an example where Mark Zuckerberg, a young entrepreneur, created a social media platform called Facebook where people share ideas in furtherance of free speech with, as of February 2022, a net worth of \$561bn.¹² The emergence of Facebook has

not only benefited the company itself, but has also created millions of jobs around the world as its user-friendly platform has empowered content creators and others, thereby raising more revenue and, as a result, promoting economic development. As it stands, the US is not only one of the most economically competitive countries but is also the most supportive of free speech, and it is no coincidence that the US' unique commitment to free speech and the open exchange of ideas has given its entrepreneurs a competitive advantage.¹³

New ideas and innovation are essential for the development of a country's economy. Innovation in economic terms 'describes the development and application of ideas and technologies that improve goods and services or make their production more efficient'.¹⁴ Individuals, not countries, innovate. The large amount of specialised knowledge in countries and cities, along with the rapid dissemination of information, is what fosters innovation. Economists Curtis Simon and Clark Nardinelli state that 'the creativity of the market economy – the increasing return so important in modern growth theory – in large part arises from what happens when people with information get together and talk. The talk is necessary to turn information into productive knowledge.'¹⁵ Real innovation requires tolerating all speech that does not incite violence.

Furthermore, when divergence of viewpoints is properly considered, the result is a more inclusive solution. Social views heard can have a direct impact on a feeling of satisfaction. If people feel their views are not being heard, they will not be as productive as they should be. They will not feel that they are recognised as part of the community or team, and that will certainly have an impact on productivity and, hence, impede development. 'Unless people can participate meaningfully in the events and processes that shape their lives, national human development paths will be neither desirable nor sustainable. People should be able to influence policymaking and results and young people in particular, should be able to look forward to greater economic opportunities and political participation and accountability.'¹⁶ Economic development is dependent upon the creativity of individuals and encouragement on individual creativity.

Free speech can, however, also cause harm. Using South Africa as an example, the riots which were incited by a group of

Jacob Zuma's supporters following his arrest on 7 July 2021, have greatly affected South Africa's efforts to rebuild the economy. The widespread violent protests have disrupted key trade routes and have seen businesses from banks and supermarkets to small-time traders shutting down. More than 200 shopping malls were looted, factories and warehouses were robbed and burned and, according to the South African State Insurance Company, 'the riots have caused damage worth \$1.7 billion'.¹⁷

In addition, free speech, if not restricted to a certain degree, can cause serious damage, not only to economic development but also to human lives. The Rwandan genocide may illustrate some of the dangers where unrestricted speech can lead to the loss of millions of lives. The brutality of the massacres was preceded by a deep-seated economic crisis.¹⁸ Though the country has now largely recovered, the genocide led to a total disruption of economic activity and thus inhibited economic development. Having carefully balanced laws that restrict free speech is equally good for the economy so long as those restrictions are put in place for the whole purposes of maintaining national security, public order, public health and public morality.

Conclusion and recommendation

Free speech, like anything else, can be used to achieve great or horrific things. Having laws that protect as well as restrict free speech is important for economic development. An underpinning of free speech is essential to the wellbeing, prosperity and development of societies. It has been used as a tool to fight for change. For instance, when we talk about the right to vote, it cannot be achieved without free speech. Thus, free speech and the free exchange of ideas is vital for economic development. However, a balancing of rights is required. There is need for countries to set up clear guidance on the importance of free speech, as well as the importance of restricting it to a certain degree – that is, to protect the earlier stated public interests and the rights of others. In order to promote free speech, which leads to innovation and, as a result, to economic development, there is need for countries to increase spending on research and development, invest in education and encourage individual creativity by including innovative entrepreneurship as a contributing factor for economic development.

Notes

- 1 Maryann Feldman *et al*, 'Economic Development: A Definition and Model Investment' (2014).
- 2 Article 19 of the *Universal Declaration of Human Rights, 1948*.
- 3 Andrew Puddephatt, *Freedom of Expression, The Essentials of Human Rights (Holder Arnold 2005)*, p 128.
- 4 US Constitution Amendment 1.
- 5 Act No 18 of 1996.
- 6 Article 19(3) of the ICCPR, 1976.
- 7 (1942) 315 US, 568,572.
- 8 (1919) 249 US, 47.
- 9 (2003) 538 US, 343.
- 10 (1969) 395 US, 444.
- 11 Act No18 of 1996.
- 12 Raju Choudhary. 'Facebook Net Worth 2022: (Meta Platforms), Revenue, Assets', available at: <https://caknowledge.com/facebook-net-worth>, accessed 7 Mar 2022.
- 13 Adam Millsap. 'Free Speech Is Good for the Economy' (2016), available at: www.usnews.com/opinion/articles/2016-05-23/free-speech-is-good-for-the-economy, accessed 19 Dec 2021.
- 14 European Central Bank, 'How does innovation lead to growth' (2017), available at: www.ecb.europa.eu/ecb/educational/explainers/tell-me-more/html/growth.en.html, accessed 17 Nov 2021.
- 15 Adam Millsap. 'Free Speech Is Good for the Economy' (2016), available at: www.usnews.com/opinion/articles/2016-05-23/free-speech-is-good-for-the-economy, accessed 19 Dec 2021.
- 16 *The Human Development Report, 2013*.
- 17 Africa News, www.africanews.com/2021/09/09/south-africa-last-riots-damage-worth-1-7-billion-state-insurance-company-handling-claims-s, accessed 23 Dec 2021.
- 18 Michel Chossudovsky, 'Economic Genocide in Rwanda', *Economic and Political Weekly*, vol 31, no 15, 1996, pp 938–941, www.jstor.org/stable/4404024, accessed 18 Dec 2021.

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How can laws protecting (or restricting) free speech impact upon economic development?

'Our lives begin to end the day we become silent about things that matter'

Martin Luther King Jr

'If the freedom of speech is taken away, then dumb and silent we may be lead like a sheep to the slaughter'

George Washington

Introduction

Freedom of speech is globally recognised as a human right. This essential human right is enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR) which states that 'everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers'.

What comes out clearly from Article 19 of the UDHR and the quotes of both Martin Luther King Jr and George Washington is the fact that free speech is essential

for human beings to live a dignified and meaningful life. Free speech facilitates accountability and transparency and it guards against unconscionable behaviour of public functionaries. Enshrining this principle does not, however, mean that free speech does not have its dangers. Certain types of speech (eg, seditious speech) have the capacity to incite violence and instability and have therefore often been censored.

Ultimately, free speech – with both its advantages and disadvantages – can have positive or negative impacts on economic development. This paper, therefore, discusses the impact of laws protecting or restricting free speech upon economic development. For this discussion to be practical rather than abstract, this paper is contextualised to Malawi as a case study. However, the points discussed can also be made in reference to other similarly-situated countries. In terms of the outline, this paper first lays out a conceptual framework of the terms 'free speech' and 'economic development' as understood and applied in the paper. It

then proceeds to discuss the impact of laws protecting or restricting free speech on economic development.

Free speech

The Cambridge Dictionary defines free speech as the right to express one's opinions publicly.¹ This term is often times used interchangeably with the right of 'freedom of speech' and as such, this paper will, sparingly, also use them interchangeably.

There is a sea of literature on the concept of freedom of speech, but John Stuart Mill's *On Liberty* is perhaps the most famous liberal defence of free speech.² The conceptual understanding as applied in this discussion is, therefore, greatly influenced by Mill's pronouncements on individual liberty.

Mill is of the view that any doctrine should be allowed to see the light of day no matter how immoral it may seem to everyone else. He asserts that if all mankind minus one were of one opinion and only one person were of a contrary opinion, mankind would be no more justified in silencing that one person than that one, if they had the power, would be justified in silencing mankind.³ Therefore, the only purpose for which power can rightfully be exercised over any member of a civilised community against their will, is to prevent harm to others.⁴ Granted, the term 'harm', as used by Mill, has sparked a great deal of debate as to what exactly it encompasses, but for the purposes of this paper, it will be taken to mean an act that directly invades the rights of another. Therefore, the discussion in this paper proceeds on the understanding that freedom of speech will only be lawfully limited where and when it causes a direct and clear violation of the rights of others.

Economic development

According to Panth,⁵ the concept of 'development' is ambiguous and has, for decades, been the subject of continued debate and discussion. There remains no clear picture of what constitutes 'economic development' or how to achieve it. Be that as it may, economic development is broadly taken to be the structural transformation of an economy by introducing more mechanised and updated technologies to increase labour productivity, employment, incomes and the standard of living of a population.⁶ Economic development is ordinarily accompanied by improvements in infrastructure, as well as by

changes to social, political and institutional factors to facilitate a transformation of the economy.⁷ Considering how important the wellbeing and socio-economic capabilities of peoples are for states, the philosopher Van Mill⁸ asserts that, economic development is easily the most crucial social task for countries across the globe.

The impact of laws protecting or restricting free speech on economic development

Firstly, this paper acknowledges the centrality of free speech to the economic development of a country. According to Mcleod,⁹ free speech provides the essential foundations of a democratic society. It is one of the basic conditions for the progress of democracy and for the development of every person.¹⁰ However, freedom of speech does not work in a vacuum but rather works together with other human rights, such as those of freedom of association, freedom of conscience, freedom of opinion, freedom of press, the right of access to information and freedom of assembly. The synergy between these rights fosters good governance, aimed at the betterment of all citizens. Therefore, when these rights are exercised together against a government, they can make strides towards government accountability.

In Malawi, the exercise of these rights – specifically the right of access to information and the right to freedom of expression – allowed social justice and human rights campaigners such Idriss Nassah to inquire into and question the apparent misuse of Covid-19 response money that was allocated to different government departments and agencies.¹¹ The inquiries by Civil Society Organisations (CSOs) and Malawians in general led to revelations that money amounting to 6.2bn Malawi Kwacha (approximately US\$7.6 million) had been abused.¹² The exercise of the right to freedom of speech by Malawians, as guaranteed in section 35 of the Constitution of Malawi, exerted pressure on the government to account for the Covid-19 response funds. This led to the arrest of a number of government officials and the firing of the then Minister of Labour, the Honourable Ken Kandodo, who had misused about \$800 of the said money.¹³ Commendably, the minister paid back the misappropriated funds. The events surrounding the arrests, the firing of the minister and the return of some of the money

was made possible because the Constitution of Malawi guarantees free speech.

From this example, this paper submits that laws that promote freedom of speech can have a positive impact on economic development. As can be seen, the exercise of the right to free speech and other related rights was enough to spur necessary reactions from the Government of Malawi to deal appropriately with the acts of its officers. This paper argues that the opportunities created by the right to free speech and the resulting pressure on the government should be used to springboard prosecutions of errant public functionaries. Further, this paper recommends that the approach taken in *Republic v Chinthiti* (Criminal Case No 17 of 1997), where the Malawi High Court ordered the seizure and sale of the defendant's property to realise the stolen funds, should be adopted in all cases of misappropriation of state funds. This will safeguard state resources against abuse and see that they are used for their intended purposes. The positive impacts of the prudent utilisation of state funds will then spill over and, ultimately, lead to economic development which will be evidenced through improvements in the provision of basic services such as health, education, and social security, and spur participatory economic growth. All this stems from laws promoting free speech.

Secondly, it is trite that many human rights documents give a prominent place to the right to free speech and conscience.¹⁴ However, such documents also place limits on what can be said because of the harm and offence that unlimited speech can cause.¹⁵ According to Fish,¹⁶ the phrase free speech does not mean that speech should never be limited. No society has existed where speech has never been limited to some extent. It is thus important to decide how much value is placed on free speech in relation to other equally important ideals such as privacy, security, democratic equality and prevention of harm.¹⁷ This is in line with Mill's argument that the only purpose for which an individual's rights can be rightfully limited is to prevent harm to others. In Malawi, section 44(1) of the Constitution provides that restrictions or limitations on any rights provided for in the constitution shall be recognised by international human rights standards and shall be necessary in an open and democratic society.

Conclusion

As Martin Luther King Jr aptly puts it, human beings must speak on things that matter to them. This is recognised as a fundamental human right and cannot be taken away from them unless it causes a direct violation of other rights. The social contract between citizens and the state can, among other things, be enforced through the exercise of rights such as freedom of speech or expression. These rights enable the citizenry to place checks on how governmental powers are exercised and how state resources are being utilised. Those checks ensure that public functionaries and the government in general are focused and financially prudent in their spending. Where this is not the case, the right to free speech, as demonstrated in the paper, will provide the necessary incentives for the government to prosecute errant public functionaries and also to recover misappropriated funds. The spill-over effects of this leads to economic development. There are, however, certain types of speeches that are harmful to economic development. The law is justified on both the constitutional yardstick found in section 41(1) of the Constitution of Malawi, and J S Mill's harm principle to censor and limit such speeches. Such restrictions ensure that there is economic prosperity by criminalising harmful speech capable of causing instabilities which are detrimental to economic growth. All this demonstrates how laws protecting or restricting free speech can impact upon economic development.

Notes

- 1 Cambridge Dictionary.
- 2 Van Mill D 'Freedom of Speech', *The Stanford Encyclopedia of Philosophy (Spring 2021 Edition)* E N Zalta (ed), at: <https://plato.stanford.edu/archives/spr2021/entries/freedom-speech>, accessed on 14 Dec 2021.
- 3 J S Mill, *On Liberty*, Indianapolis: Hackett Publishing (1978) p 16.
- 4 See note 3, p 9.
- 5 Prabha Panth 'Economic Development: Definition, Scope, and Measurement'. Available at: www.researchgate.net/publication/346379002, accessed on 17 Dec 2021.
- 6 *Ibid.*
- 7 H Myint and A O Krueger, 'Economic Development' (2016). Available at www.britannica.com/topic/economic-development, accessed on 17 Dec 2021.
- 8 See note 2.
- 9 K Mcleod, 'Freedom of Expression: Resistance and Repression in the Age of Intellectual Property', *Minneapolis: University of Minnesota Press* (2007).
- 10 *Ibid.*
- 11 C Pensulo, 'Malawi Sacks Heads of Covid-19 Taskforce Amidst Audit of Funds', *The Guardian*, 16 February 2021. Available at: www.theguardian.com/global-development/2021/feb/16/malawi-heads-covid-19



taskforce-audit-funds-lazarus-chakwera.

12 *Ibid.*

13 L Masina, 'Malawi President Fires Cabinet Minister Over COVID Funds', *VOA News 19 April 2021*. Available at: www.voanews.com/a/africa_malawi-president-fires-cabinet-minister-over-covid-funds/6204774.html.

14 See note 2.

15 *Ibid.*

16 S Fish, 'There's No Such Thing as Free Speech and It's a Good Thing Too', *New York: Oxford University Press (1994)*.

17 *Ibid.*

How can laws protecting (or restricting) free speech impact upon economic development?

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Introduction

To understand the rationale and significance of free speech, it is useful to read one of the greatest political philosophers, Immanuel Kant. In one of his political treatises, Kant states that 'to try to deny the citizens this freedom [of the pen], means withholding from the ruler all the knowledge of those matters which, if he knew about them, he would himself rectify, so that he is thereby put in a self-stultifying position'.¹ These words by Kant are instructive on the importance of free speech not only for political purposes, but also economic progress. But it should be noted that the law plays a pivotal role in either protecting the right to free speech or places some restrictions on its citizens in the exercise of this freedom. Both the protection and restriction of free speech can have a direct or indirect impact upon the economic development of a country. This essay strives to analyse how laws protecting or restricting free speech can impact upon economic development.

Free speech

The concept of free speech has been defined by various scholars. Johnson and Fish describe free speech in terms of verbal behaviours having the substantive purpose of advancing a particular political agenda.² This definition is somewhat confusing as not every speech has political connotation. On the other hand, Emmanuel Elau provides a more

encompassing definition of this phraseology. Alau's definition, thus, includes both verbal and non-verbal utterances as forming part of free speech. He defines free speech as 'a right to express one's opinion by word of mouth, writing, printing, pictures or in any other manner'.³ For the purposes of this paper, Elau's definition will be kept in mind in the process of analysing the concept of free speech and that of economic development.

Economic development

Economic development has been understood to denote a robust acceleration of a country's economic activities which is thought to also trickle down to the less privileged.⁴ This development consists of improving the performance of various revenue-earning entities such as industries, entrepreneurship, small and medium enterprises and fostering job creation. However, the Economic Association of Malawi noted, in 2019,⁵ that some countries, including Malawi, are facing economic turbulence from limited sources of revenue which have negatively affected the economic lives of people. It is also clear from experience that most African countries lack diversification of production. As we are now living in an information age, it is advisable that national governments think of capitalising on human rights approaches as a route toward improved economic development.

Laws relating to free speech

The term ‘law’ has been defined as a body of rules, regulations and principles that govern human conduct in a community and which members of the particular community feel bound to follow.⁶ Law regulates human behaviour by, inter alia, restricting certain conduct deemed harmful to the proper functioning of society. Furthermore, law applies sanctions for transgressions against established rules, regulations and principles. In this vein, Roscoe Pound⁷ describes law as social engineering which aims at ensuring the efficient operation of society.

Bearing this in mind, laws have been promulgated both at the international and local levels in protecting free speech. At international level, the first notable body of laws is the Universal Declaration on Human Rights (UDHR). Article 19 of the UDHR enshrines the right to freedom of expression by stating as follows: ‘everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’. This ideology was incorporated in the International Covenant on Civil Political Rights (ICCPR) by the United Nations General Assembly. Thus, Article 19(2) of the ICCPR repeats the provision of Article 19 of the UDHR as it stresses the obligation of States Parties to promote free speech among nations.

With this overarching framework, it is noteworthy that restrictions on these rights can be seen more clearly in the statutes of individual states. This has made regional blocs come up with regulatory frameworks to respond to inter-country challenges in the realisation of the right. For instance, Article 10 of the European Convention on Human Rights (ECHR) provides rights and responsibilities with regard to the right of freedom of expression. What is clear from Article 10 of the ECHR is the fact that states have a margin to limit particular conduct or speech deemed an affront to national security or a threat to economic progress. As such, a state may restrict certain aspects of freedom of expression to promote national safety and the public interest. At the local level, it has been noted that the issues of promoting moral uprightness and controlling revolutionary attitudes has led to a muzzling of free speech in different countries.⁸ However, free speech remains one of the fundamental pillars

of democracy, which is itself a catalyst for national economic development, as discussed below. The realisation of this significance has prompted many democratic societies to include the right to freedom of expression in their constitutions and other Acts.

The nexus between free speech and economic development

Economic development remains a thorny issue across the globe. Though most governments put an emphasis on material production to spur economic progress, the relevance of free speech cannot be overlooked as one of the catalysts of development. The 1993 Vienna Declaration and Programme of Action recognised the importance of adopting human rights approaches in development policies. Specifically, the 1993 conference noted that development projects cannot adequately address economic challenges if citizens are denied their right to free speech. In this vein, it is clear that free speech is seen as integral to improving economic development.

The promotion of citizen participation in development

The ICCPR, ECHR and other human rights instruments have included free speech as a fundamental right. The right to freedom of expression is significant as it enables citizens to express their opinions on (inter alia) various aspects of development. Where a community is able to have a say on matters of development, there are prospects of encouraging the people to make a meaningful contribution towards the attainment of developmental goals of their communities.⁹ This, coupled with a sense of ownership and the right to dignity, encourages the prudent utilisation of the developments in question. Furthermore, citizens will have direct access to the economic benefits of the projects on which they have had a say. This will improve the economic status of individual families thereby leading to overall national economic development.

Facilitating the free flow of ideas and the search for truth

The rationale behind laws protecting free speech is to create a conducive environment where there is free flow of ideas and an ability

to search for truth. In the past, governments were afraid of its own people becoming aware of their rights. This kept many people in the dark until the UDHR laid the groundwork worldwide. The UDHR challenged laws that censored free press, thereby keeping out revolutionary ideas that have transformed the economic landscape of many countries. Most developed economies, such as Canada, Germany, the United Kingdom and the United States, owe a great deal to free speech as their economies have flourished from a sharing of ideas and the discovery of truth without legal impediments.¹⁰ In addition, where there is free speech, government does not strictly control the importation of foreign literature which, among other things, enlightens people on how other countries beyond the borders have achieved their economic development. In fact, we learn from others and as such this enables people to think and innovate ways of alleviating poverty, which has the potential of leading towards economic development.

Enhancement of entrepreneurship and employment opportunities

The political and legal structures of the past decades have seen the promulgation of laws that grant media freedoms. Dr Agnès Callamard¹¹ views the development of a free media and the protection of people's right to expression as priorities in the fight against poverty. In contrast with post-colonial governments which did not tolerate the establishment of private media houses, the 21st century has seen a proliferation of privately-owned newspapers, radio stations and tele-centres in the prevailing liberalisation of press freedom. This has had economic importance for most countries as it has led to the promotion of entrepreneurship in the communication sector. For instance, business-minded people have established broadcasting institutions like radio and television stations, newspapers, and internet cafes. These institutions have employed people and enabled them to live economically independent lives. Furthermore, when enough people are employed, government revenues in form of tax improves the possibility for most states to solve the socio-economic challenges of its citizens by adequately providing needed social services. This can be contrasted with countries whose laws do not permit media freedom and restricting the establishment of private entities.

Promoting democratic principles: access to information, transparency and accountability

One of the aspects of economic development rests with upholding democratic principles and constitutionalism. This position was reiterated by Coy J in the case of *Edmonton Journal v Alberta*¹² who stressed that the hallmark of free speech is the ability of the citizens to access information and the enjoyment of human rights. In fact, evidence suggests that most countries which are not established democracies face economic hurdles despite having abundant resources. One of the cited reasons is that autocratic states shut out the voices of civil society and of ordinary citizens. This has made those governments less accountable to its citizens. Consequently, national resources tend to be abused by a few ruling elites, derailing the economic performance of the countries in question. On the other hand, democratic countries enact laws and policies that promote the enjoyment of free speech for citizens on matters of national importance.¹³ For example, in 2016, the Government of Malawi passed into law the Access to Information Act which, inter alia, gives people power to access information held by public officials regarding issues of development and others. The significance of this legislation is that it is capable of reducing theft of public funds as citizens have a mandate to interrogate public officials and publicly expose them. Moreover, the media, which is regarded as the watchdog, is able to access information and write stories concerning the abuse of national revenues. In this way, this law entrenches the rights of free speech and promotes transparency and accountability in public life.

Attraction of donor aid from development partners

Since free speech is a human rights issue, any attempt to stifle it will definitely not be smiled on by the donor and international community. After the signing of the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR), member states are under an international obligation to respect human rights enshrined in these covenants. Thus, in order to ensure respect for human rights, the United Nations (UN) has made it clear that donor funding from international agencies for various development programmes must be attached to the country's

observance of human rights principles.¹⁴

This was apparent in 2011 in Malawi when the International Monetary Fund (IMF) and the World Bank, two leading development partners across the world, withheld funds meant for budgetary support to Malawi due to the Bingu Wa Mutharika administration's systematic suppression of the right to freedom of expression, which, among other things, involved the closure of radio and television stations belonging to opposition parties, the harassment of journalists and the frustration of public gatherings.¹⁵ To strengthen its grip on muzzling free speech, the Mutharika administration facilitated the amendment of an Act of Parliament¹⁶ which had granted the right to sue government where there were infringements or threats of human rights violations. This, together with the arrest of a same-sex couple, did not please Amnesty International or the UN Human Rights Commission. Consequently, the IMF and World Bank withdrew their financial aid to Malawi. Since 60 per cent of Malawi's economy comes from donors, the withdrawal of the budgetary aid had a retrogressive impact on the delivery of social services to the citizenry.¹⁷ Poverty levels among the people reached the worst levels, inflation soared and there was a scarcity of basic goods. The economy was in total shambles, leading to economic underdevelopment. This situation also prevailed in Zimbabwe where the economy collapsed when the UN Security Council imposed economic sanctions on it in reaction to Robert Mugabe's disregard of human rights, including the right to free speech. On the other hand, if a government respects free speech and gets donor assistance, it will be able to fund development projects such as education, health and the construction of infrastructure, leading to poverty reduction and seeing an increase in economic development.

Laws restricting free speech and economic development

As noted in his article, Aleu states that a good number of governments continue to view freedoms and human rights with resentment.¹⁸ Many rulers view the right to free speech as an impediment to national unity and development. As such, they enact criminal laws with the aim of stifling critical opposition. For example, the Malawian Penal Code proscribes comments or remarks directed at the government and the

incumbent president as these are deemed seditious. A critical review of this law reveals that it aims at preventing alternative views from political rivals. At a deeper level, these kinds of laws are potentially retrogressive as the ruling elite is confined in its approaches to economic development. In Uganda, opposition leaders and authors have spent years in incarceration due to the laws on sedition.¹⁹

It is argued herein that these laws cannot contribute to economic development for two reasons. Firstly, as Kant envisages above, the government has a limited source of information or ideas on how to turn around economic development. Secondly, instead of focusing on finding solutions to economic challenges, the governing entity will be busy vesting its time and energy on the enforcement of these politically-motivated penal laws, thereby derailing economic progress.

Conclusion

The right to free speech has both democratic and economic significance to a country. In this regard, attention was given to the fact that free speech respects the right to dignity, promotes individual autonomy and facilitation of development activities such as entrepreneurship, provision of employment opportunities and enhancement of active citizen participation on decision-making processes for economic development. Furthermore, it has been argued that, where a country respects human rights, it attracts donor assistance which shall be channelled towards poverty alleviation programmes, thereby improving economic performance.

Notes

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How can laws protecting (or restricting) free speech impact upon economic development?

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'Our lives begin to end the day we become silent about the things that matter'

Dr Martin Luther King, Jr

Introduction

Free speech and freedom of expression are fundamental rights under international human rights law and similarly recognised as such by most national constitutions.¹ Free speech supports the realisation of personal autonomy and is important for the protection of other rights, and for the progress of knowledge and human development.² The right aids in the dissemination of information, the expression of the people's will and their general ideas.³ This essay will discuss what free speech covers and its correlation to economic development, a discussion on the law protecting or restricting free speech in Africa, perspectives from Uganda and how these laws have and can impact economic development.

Free speech

Free speech is the right to self-express without hindrance.⁴ This right is an important foundation for every free and democratic society.⁵ Free speech enables people to look for, receive and communicate ideas freely, at

any given point in time through any possible means.⁶

Freedom of expression or free speech is internationally recognised as a fundamental human right and is enshrined in international statutes, including: the Universal Declaration of Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR); the European Convention on Human Rights (ECHR); the African Charter on Human and People's Rights (ACHPR); the Convention on the Rights of the Child; the American Convention on Human Rights; the Association of Southeast Asian Nations Human Rights Declaration; and The International Convention on the Elimination of all forms of Racial Discrimination.⁷

Economic development

Economic development is defined as the process through which an economy transforms to a more advanced one when social and economic conditions are improved.⁸ Economic development is primarily focused on improvements in quality, reduced risks, innovation and entrepreneurial ideas that propel the economy to grow.⁹ Economic development occurs when individual capacities are developed and

people have the opportunity to actively participate and contribute to their economy.¹⁰ For economic development to take root, therefore, free speech has to be protected so that people can share information, develop ideas and get information that can lead to the creation of business opportunities, creating employment and reducing poverty and inequality. It will also improve on the delivery of service by the government since people have the chance to express their opinions about government services, and it promotes public participation and trust in their government and the way it works. All these contribute to improving the standard of living, thereby impacting economic development positively.

Correlation between free speech and economic development

Free speech and economic development are linked and the acceptance of free speech promotes the free exchange of ideas and information which propels innovative ideas, thus impacting economic growth and economic development.¹¹ Restricted free speech in the form of protecting the national ideology, religion and security creates an environment where free speech cannot thrive which, in turn, affects innovative ideas that can contribute to economic development.¹² Free speech is heavily relied on for the exchange of ideas and information which have the potential to increase one's standard of living and also promote innovation.¹³ Therefore, it's important to note that a country cannot economically develop if free speech is restricted and people cannot freely share information and innovative ideas.

Analysis of laws protecting or restricting free speech

This part will focus on the international human rights instruments protecting or restricting free speech and also on the national laws in Uganda for a country perspective.

There has been progress in the promotion of free speech and this right is embedded in the UDHR which provides that everyone has a right to freedom of opinion and expression; this right gives people the freedom to hold opinions without interference, the right to seek, receive and impart information and ideas through any media and regardless of frontiers.¹⁴ The UDHR seeks to promote access to information and freedom of

expression, which includes protecting free speech for all persons and is universally recognised.

Free speech is also recognised under the ICCPR, which stipulates under Article 19, clauses 1 and 2, that everyone shall have the right to hold an opinion without interference and have the right to freedom of expression.¹⁵ However, clauses 3(a) and (b) of the Article put restrictions on the enjoyment of this right. By and large, the ICCPR offers a benchmark on the protection of this right.

Furthermore, the European Convention for the Protection of Human Rights and Fundamental Freedoms also protects the right to freedom of expression. This instrument also offers guidance that the exercise of the right comes with duties and responsibilities, which are prescribed by law and are important in a democratic society.¹⁶ Notwithstanding the place freedom of speech has in international and regional law, some states have imposed restrictions. Those moves have been heavily criticised by human rights organisations.

The right to free speech is also protected by the African Charter (the ACHPR), which provides that every individual has a right to receive information and can within the law express or disseminate his/her opinions.¹⁷ Under Article 30,¹⁸ the ACHPR also provides for the establishment of the African Commission on Human and Peoples' Rights whose mandate is to promote and protect human and people's rights in Africa, including freedom of speech and expression.

Uganda is a signatory to the ICCPR and the ACHPR. This Charter is also embedded in the Constitution of the Republic of Uganda,¹⁹ which is the supreme law of the land and provides for freedom of expression as one of the fundamental human rights.¹⁹ The Ugandan Constitution provides for the right to free speech and expression, freedom of thought, conscience and belief, which includes freedom of the press, media and academic freedom in learning institutions and the right to access information.²⁰ For instance, in Uganda, the government shut down the internet ahead of the 2021 general election and Facebook is still currently shut down indefinitely.²¹

It is clear that the Ugandan Constitution is progressive in nature in the realisation of the right to free speech of all Ugandans. However, Article 43²³ of the constitution provides for the general limitations on the enjoyment of these fundamental rights and freedoms,

including free speech. It further provides that as one enjoys these rights, they shall take into consideration the fundamental and other human rights of others or public interest. It is clear that the above provision is restrictive in nature and the government should take into account the *Siracusa Principles* in emergency situations when they want to restrict these rights.²⁴

The rationale behind the enactment of the Ugandan Press and Journalist Act²⁵ is to ensure press freedom to establish a council responsible for regulating mass media and the establishment of an institute for journalists in Uganda.²⁶ This Act protects journalists as they carry out their mandate and it guarantees the access to official information, subject to any law relating to confidentiality of information, national security and secrecy.²⁷ However, there have been incidents where journalists have been stopped from carrying out their work and the Inspector General of Police Martin Okoth Ochola is quoted to have said: ‘You are insisting you must go where there is danger. Yes, we shall beat you for your own sake to help you understand that you do not go there. Yes, we shall use reasonable force to ensure that you don’t go where there is risk. Actually, I have no apology.’²⁸

The Uganda Communications Act 2013 was enacted to harmonise and implement the Uganda Communications Act Chapter 106 and the Electronic Media Act Chapter 102. The Uganda Communications Act, under section 3,²⁹ provides for the establishment of the Uganda Communications Commission whose mandate is to supervise and regulate communications services in Uganda (among other roles). This Act empowers the commission to monitor communications on different platforms by limiting hate speech and sharing of any information that could be harmful to the general public.

The enjoyment of the right to free speech is interlinked with the right to access of information. Access to information in Uganda is governed by the Access to Information Act 2005. The purpose of the Act is stated under section 3, which is promoting an efficient, effective, transparent and accountable government.³⁰ Furthermore, this Act gives effect to Article 41,³¹ which protects persons disclosing information, it helps in promoting accountability and transparency, and also empower citizens to scrutinise decisions made by government.

However, Uganda has also passed some laws which restrict the right to free speech such

as the Anti-Terrorism Act 2002 which was passed after the frequent terror attacks post 9/11.³² The Act under section 9(1)(b)³³ is to the effect that any person who publishes and disseminates news or materials promoting terrorism commits an offence. This position of the law promotes self-censorship, especially for media practitioners and as such is not acceptable in a democratic society.³⁴

Furthermore, The Regulation of Interception of Communications Act 2010 is another law which curtails free speech in Uganda. Its intention is discerned from its long title, which is to provide lawful interception and monitoring of certain communications in the course of their transmission through any means (eg, telecoms and postal, inter alia). This Act gives mandate to the government of Uganda to listen to any conversation when the relevant body makes a successful application to the courts of law. However, the Government of Uganda has on several incidents been accused of voice and data surveillance on its citizens violating this fundamental right.³⁵

The Computer Misuse Act 2011 is another act which has been used to restrict free speech in Uganda. Its main objective is to secure a trustworthy electronic transactions and information systems environment. However, the Government of Uganda has continued to use this law to restrict free speech, and this was seen in the last general elections held on 14 January 2021, which saw the government shutdown the internet totally and it’s estimated that Uganda lost over \$9bn.³⁶

The Penal Code Act Chapter 120, Laws of Uganda, restricts free speech and prescribes different offences that are provided under sections 39, 40, 41 and 42.³⁷ These are: intent to commit sedition, sedition, promoting sectarianism, and seditious publications, respectively. All these provisions are aimed at restricting freedom of expression and free speech.

The government also passed the Public Order Management Act 2013 whose main goal is to regulate freedom of assembly and peaceful demonstrations in Uganda. This law is restrictive in nature by putting stringent rules on assembly. It should be noted, however, that the Constitutional Court case of *Muwanga Kivumbi v AG*³⁸ declared this law inconsistent with the 1995 Constitution of the Republic of Uganda and, by restricting freedom of assembly, free speech is directly hindered and this has negative effects on

economic development.

Lastly, when laws that promote free speech are properly implemented, they will have a positive impact on economic development.

How these laws protecting/restricting free speech impact upon economic development?

The laws protecting or restricting free speech impact economic development in different ways as discussed below.

They provided a level playing field for all businesses to thrive

The right to freedom of expression gives opportunity to journalists and civil society organisations (CSOs) whose mandate is to investigate and expose corrupt officials and other foreign companies who don't want to play by the rules set in that particular country,³⁹ thereby levelling the business environment for everyone to thrive, including local companies, and thus contributing to economic development.

They help to stabilise business operations

Some of the restrictive laws used against activists can be also used to penalise corporations. Additionally, laws protecting freedom of expression promote lucidity and information access to everyone thereby reducing uncertainty and unnecessary litigation.⁴⁰ This helps to improve the business and investment environment and, in the long run, impacts economic development.

They promote innovation

Free speech helps in the promotion of innovation by making it easy for people to share information and exchange ideas freely.⁴¹ These ideas help in driving growth of individual companies and the whole economy, thus positively impacting economic development.⁴² It should be noted that societies that don't promote free expression destroy the trust in the society and discourage innovation and investment at large; this restricted environment impacts economic development negatively.⁴³

They help in avoiding conflicts with host communities when new business projects are being set up

Free speech increases the stability of new business projects in a new community. This is key, especially in the extractive industries sector since environmental impact assessments and proper consultations with the local community are essential for the locals to understand the impact of the project in their area and also to be able to raise concerns on anything that may affect them.⁴⁴ Their voices are important since it helps them embrace the projects and contribute to them, which will in turn improve their standard of living, thereby impacting economic development.

However, it is also important to note that restricting free speech has negative impacts on the economy and, in the long term, affecting economic development – especially internet shutdowns and blocking of social media sites by African governments which are used by people to get in touch with their customers.

Way forward

In order to promote free speech and impact economic development positively all the different stakeholders have a role to play in the realisation of this right as discussed below.

To the courts of law

The African Commission and the Africa Court on Human and Peoples' Rights, whose mandate is to protect and promote human and people's rights, should dispense justice freely, timely and fairly. Furthermore, the different regional courts, like the East African Court of Justice, ECOWAS Community Court of Justice and, at a national level in Uganda, the judiciary, is mandated with the administration of justice and in case of any violation of the right to free speech it should take into account the right to a free hearing provided under Article 28⁴⁵ when handling any matter arising out of any abuse of this right.

To governments

Governments, in their role of promoting peace and national security, should not violate the right of its citizens and they should carry out their mandate with regard to the international standards set for freedom of expression and, in case of emergency situations where this right should be restricted, the government should take into account the *Siracusa Principles*. Governments

should also fast-track the passing of laws that promote free speech, as well as amend laws that curtail this right.

It's important for the media and citizens to exercise self-regulation as they exercise their fundamental right of free speech. However, this doesn't mean that self-censorship should be encouraged.

Conclusion

In summary, laws promoting free speech ultimately impact economic development positively, as discussed above. It is important to note that there is a lot of strong scepticism about different types of free speech and this cuts across most countries.⁴⁶

It should be noted that there are many progressive laws that promote free speech and once these laws are effectively implemented and free speech is not restricted, this will encourage free sharing of information, innovative ideas, easy access to information, public participation and trust in government programmes and services will be restored. Among other things, these will contribute to improving the standard of living of the people through increased business development, entrepreneurship and improved service delivery, which contribute to the growth of the economy and thereby positively impact economic development.

Notes

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How can laws protecting (or restricting) free speech impact upon economic development?

Freedom of speech is not usually included in the factors thought to underpin economic development. This paper will, however, argue that free speech plays a pivotal role in fostering economic development and has a profound impact on the trajectory of an economy. While laws protecting free speech have the net effect of growing a country's economy, the opposite can be equally true. Laws restricting free speech create an environment where economic activities are suffocated, frustrating and stagnating the prospects of economic development.

What constitutes free speech?

Article 19 of the Universal Declaration of Human Rights provides for the right to freedom of opinion and expression. It states that: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'¹

Similarly, Principle 1 of the African Commission on Human and People's Rights states that: 'Freedom of expression and access to information are fundamental rights protected under the African Charter of Human and People's Rights and other international human rights laws and standards. The respect, protection and fulfilment of these rights is crucial and indispensable for the free development of the human person, the creation and nurturing of democratic societies and for enabling the exercise of other rights.'²

While freedom of expression is a

fundamental right as expressed by Principle 1, it is not an absolute right beyond limitation. The African Court of Human and People's Rights in *Konaté v Burkina Faso* put forward the limitation that the right to freedom of expression 'shall be exercised in respect of the rights of others, collective security, morality and common interest.'³ This limitation is provided for under Article 27(2) of the African Charter.⁴

Therefore, the phrase 'laws restricting free speech' is not to be construed as any law that places any manner of limitation on the right to freedom of speech. In this context, laws restricting free speech are those laws placing onerous, odious and unreasonable curtailments on the freedom of speech.⁵ These laws are unreasonable in their limitations and constitute a violation of the right to free speech. This is the serving definition of 'laws restricting free speech' in this paper.

The impact of laws protecting free speech on economic development

After an 'extensive review of the literature', Feldman *et al*⁶ defined economic development as 'the development of capacities that expand economic actors' capabilities. These actors may be individuals, firms or industries.' From this definition, it is prudent to note the importance of individuals as economic actors active in economic development. It is these individuals to which free speech is mostly ascribed. Of course, firms and industries by their juristic nature as legal persons can, arguably, be considered to have some form of free speech. The discussion on

corporate rights to free speech is, however, too extensive to fit within the ambit of this paper. Therefore, this paper will concern itself mostly with the free speech of individual persons and the impact of laws affecting free speech on economic development.

Laws protecting free speech can be credited with creating a conducive environment for economic growth and development.⁷ In the article *The Interplay of Free Speech & Economic Growth*, Hassan Mujtaba argues this point:

‘While a lot has been written and said about the pernicious effects of censorship on democracy, civic rights, and political freedoms, what is usually ignored is the interplay of free speech and economic growth, especially in the context of emerging economies. Although the link is imperceptible at first glance, the fact is that greater acceptance of free speech facilitates the free exchange of ideas and information, which drives innovation, thus resulting sustainable economic growth.’⁸

It is generally accepted that innovation drives advancement in the fields where it thrives. This is evident in the medical and technological sectors of the world that have grown exponentially in the 21st century. For illustration, Silicon Valley (arguably the technology capital of the world) grew by leaps and bounds over the years through innovation – ‘ideas were recognised as paramount achievements.’⁹ Joseph Schumpeter’s *Creative Destruction* aptly explains the indispensable role that innovation plays in driving economic development,¹⁰ the results speak for themselves in the world’s most developed economies.

Therefore, it is only logical to conclude that innovation, by extension, is an important driver in our economies. Innovation is impossible in situations where free speech is not encouraged. It is imperative that economic actors are able to meet and exchange ideas without the ever-present danger of offending one law or the other; this is the situation prevalent in societies where there are onerous restrictions on free speech. On that note, laws protecting free speech are of paramount importance and thus a prerequisite to an environment that breeds innovation by allowing the free exchange of ideas by economic actors.

The impact of laws restricting free speech on economic development

Whereas laws protecting free speech foster an environment conducive to economic

growth, those restricting free speech create an environment that is toxic to prospects of economic development. It has been established that for economic development to take place there has to be some manner of innovation through the exchange of ideas by economic actors. This is not facilitated in societies where laws limit free speech to the point of discouraging or preventing it. Unreasonable restrictions on free speech create a culture of excessive self-censorship. While unreasonable restrictions on free speech amount to censorship, the aggressive self-censorship that results is arguably a more serious phenomenon.

The situation described above arises where one no longer feels free to express an opinion regardless of its content. For instance, in countries where political speech is heavily censored, an AfroBarometer survey established among its key findings that the citizenry adopts a culture of self-censorship whereby people generally avoid publicly expressing an opinion on things like the economy in places where free speech is heavily regulated.¹¹ This is largely as a result of the fear that any speech can be regarded as being against the law. This phenomenon is best illustrated by studying the effects of the Zimbabwe Access to Information and Protection of Privacy Act (AIPPA) of 2002 and the Public Order and Security Act (POSA) of 2002. Section 16 of the POSA ‘criminalised the making of any negative comments against the President in his personal or professional capacity.’¹² AIPPA was vague to the point of denying free speech altogether; it restricted freedom of expression on the basis of the accuracy of information as perceived by the state.¹³ Any comments on the state of the economy could easily be perceived as illegal under AIPPA or POSA. Under POSA, such comment can be an insult against the President who is presiding over a failing economy; under AIPPA the state could perceive any such comment as it deemed fit.

Curtailing free speech also leaves maladies like corruption, bad economic policy and mismanagement unchecked and unchallenged by the citizenry. According to a 2019 article by Transparency International, these are some of the major factors limiting economic development in countries like the Democratic Republic of Congo, Liberia, Sierra Leone, Zimbabwe and others.¹⁴ Free speech plays a pivotal role in checking the excesses of government and driving informed economic policy. In this sense, free speech is a requisite

for sustainable economic development. Laws restricting free speech impede economic development by removing the platform that allows economic actors to help develop economic policy and deter corruption and mismanagement of economic resources.

Apart from the domestic impact of laws restricting free speech on economic development, there are human rights considerations that have profound ramifications on economic development prospects. Free speech is a right protected by international law through the Universal Declaration of Human Rights. A breach of this right attracts international attention to the offending country by human rights organisations, often leading to the shunning of the offending country internationally. The resulting negative human rights record may attract sanctions from economic superpowers like the European Union and the United States – economic sanctions are one of the US's most-used foreign policy tools. In *The Sanctions Paradox*, Daniel Drezner explores the effects of sanctions on the targeted country's prospects for economic development.¹⁵ Sanctions often have the effect of stagnating economies and greatly affect the targeted country's prospects for economic growth.

On the same note, countries with bad human rights records often fail to attract foreign direct investment (FDI) which is a major factor in economic development. 'Foreign Direct Investment is crucial for developing nations... It is very important because it provides a unique combination of long-term finance, technology, training, technical know-how, managerial expertise and marketing experience.'¹⁶ This is complementary to the point above – sanctioned countries have greater trouble attracting crucial investments to bolster the development of their economies. Export markets are closed up and unreceptive to countries sanctioned for violating free speech and other associated universal human rights.

Conclusion

This paper has provided an expository view of the impact, negative and positive, of laws protecting (and restricting) free speech on economic development. The facts posited speak for themselves; laws protecting free speech have the net effect of providing a conducive environment for ideas to germinate and be shared. They allow for innovation through the exchange of ideas.

Further, when free speech is protected maladies such as corruption, mismanagement and bad economic policy can be freely challenged, exposed and rectified. The net effect of the above drives economic growth.

It has also been established that, in the case of laws restricting free speech, the opposite is equally true. Laws restricting free speech create a toxic environment for the economy. There is no platform to challenge corruption, bad policy and mismanagement – it is illegalised. Such censorship encourages a culture of self-censorship, the effects of which have been covered above. Laws restricting free speech suffocate innovation by discouraging the exchange of ideas, innovation is a crucial component of economic development. The consequences of a poor human rights record as a result of such laws are equally dire on the international front. The net effect of these laws is to discourage the economic development of a country.

Notes

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- 2 African Commission on Human and People's Rights.
- 3 *Lohe Issa Konate v The Republic of Burkina Faso (4 of 2013) [2014] AfCHPR 43*.
- 4 *The African Charter of Human and People's Rights*.
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- 7 It is argued that economic growth and economic development are two different concepts warranting different definitions in Feldman *et al*, (*see n 6*) To avoid 'splitting hairs', this paper will treat the two concepts similarly considering they serve the same purposes in this particular discussion.
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How can laws protecting (or restricting) free speech impact upon economic development

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Introduction

Free speech is a democratic concept that originated from the ancient Greek civilizations. It gives people the right to express their ideas and opinions freely without fear of prosecution, restraint or censorship.¹ The ancient Greek word ‘parrhesia’ literally means ‘to speak freely’ or ‘to speak boldly’. During the classical period, freedom of speech became a fundamental part of Athenian democracy and hence leaders like Solon, philosophers like Socrates and playwrights such as Aristophanes were able to speak the truth for common good – even at personal risk, as noted when Socrates was forced to drink poison after being accused of corrupting youths.²

Economic development on the other hand, is defined as the process by which countries with low standards of living become nations with higher standards of living.³

A majority of the world’s constitutions protect free speech, at least in writing. In this essay, I will explore how laws protecting free speech can impact on economic development. I will argue that free speech facilitates the exchange of ideas and information among people, and that this promotes innovation, dampens conflicts, promotes political participation, and artistic and academic freedom. This essay will first provide a brief background about free speech and economic development as viewed in the modern world and, secondly, will explain how laws protecting free speech can foster economic development.

Free speech is recognised as within the broader right to freedom of expression. At international law, free speech is in civil and political rights classifications of human rights. It is recognised in Article 19 of the Universal Declaration of Human Rights that states that, ‘everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless

of frontiers’, and other international laws such as the African Charter on Human and People’s Rights in Article 9.

While the two international laws stated above are protecting free speech, they also recognise that there might be circumstances where speech can be legally restricted. By contrast, the traditional notion of economic development focuses on economic aspects, emphasising growth, median income and consumption. Economic development thinkers, such as Amartya Sen and international organisations such as the United Nations, have embraced a broader definition of development that includes people’s civil and political rights of which free speech is an element.⁴ Economic development is part of economic, social and cultural rights classification of human rights at international law. This right is recognised by Article 22 of the Declaration on the Right to Development that states that ‘all peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind’. The African Charter on Human and People’s Rights also has a similar provision in its Article 22.

The first way that laws protecting free speech can impact upon economic development is by promoting innovations. Laws protecting free speech in a country facilitates free exchange of ideas and information as people are free to discuss and express their opinions freely without fear of prosecution, censorship and restraint by the government. The exchange of ideas and information between the people leads to new innovations.⁵ Innovation and progress happen in countries where laws protecting free speech have allowed even hate speech not to stifle debate and free expression of opinion. It is said the world’s great discoveries and achievements come not through one person’s single genius, but through collaboration with others. For example, Albert Einstein’s theory of relativity was based on the discussion which

Einstein had with two other innovators, Marcel Grossmann and Michele Besso.⁶ A study conducted on English cities by Simon and Nardinelli, using data from 1861 to 1961, also discovered that the cities which allowed the industrial owners (the bourgeoisie) to engage in the free exchange of ideas and information grew at a significantly faster pace than cities which restricted such activities. The authors concluded that 'it is the talk of the bourgeoisie not the smoke of the factory that leads to economic growth'.⁷ In other words, what contributes to economic growth is not production of goods in factories, but discussion of the bourgeoisie. When people are able to discuss and work with one another freely, they are combining their specialisation towards discovering, inventing or creating a certain thing. It is believed that the United States' commitment to free speech and open exchange of ideas guaranteed by the First Amendment of the US Constitution, which stated that, 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacefully to assemble and to petition to government for a redress of grievances', has given entrepreneurs in the country a competitive advantage.⁸

In contrast, laws restricting free speech stop the free exchange of information and ideas, stifling creativity and the generation of new ideas which are important in developing new innovations that help to sustain economic development. Thus, the world's most authoritarian countries that have the greatest restrictions on freedom of speech are usually not known for innovation, cutting edge research or technological breakthrough.⁹ Their economic growth is typically very slow or stops altogether. This shows that there is a need for countries to enact laws protecting free speech in order to facilitate the free exchange of ideas and information, which promotes innovation, fostering economic growth in a country.

A second way laws protecting free speech can impact upon economic development is by promoting public participation. The principle of public participation is that those affected by the decision of a company, government or an institution have a right to be involved in the process of making decisions.¹⁰ The right to public participation is guaranteed by Article 21 of Universal Declaration of Human Rights which stated that 'Everyone

has a right to take part in the government of his country, directly or through freely chosen representatives. Everyone has a right to equal access to public service in his country'. Laws protecting free speech have a capacity of promoting public participation in a country by allowing people to be able to debate on government policies and actions and then be able to expose their shortfalls without fear of prosecution or restraint by the government.¹¹ This will bring about sustainable development in a country by allowing the government to adopt policies and enact laws that are relevant to the people in the communities and that take into account their needs.

The promotion of public participation will also enhance accountability as free speech can be a means through which people can hold their representatives in government accountable for implementation of their policies and in carrying out their duties.¹² This will result in a decline in corruption rates and inefficiency of government resources. In regions where there is rampant corruption in government, such as some parts of Sub-Saharan Africa, curbing corruption can help to boost economic growth by reducing public resources lost through corruption or inefficiency. It also encourages innovation since inventors can be more certain that their inventions will be protected. The 1990 African Charter for Popular Participation in Development and Transformation that was adopted in February 1990, enshrines the role of public participation in economic and human development.¹³

The presence of laws restricting certain forms of free speech over time will have an effect on all speech, tending to create an environment of passivity among the people that will prevent them from participating in making decisions that affect their lives and holding their representatives accountable. As a result of this, a country will more likely experience corruption and the waste of public resources, which will hinder its economic development. This clearly shows the impact laws restricting free speech can have on economic development of a nation.

A third way laws protecting free speech can impact upon economic development is by preventing violent conflicts. Laws protecting free speech in a nation allow people to voice diverse opinions and grievances affecting their daily lives to the government. This can work as a safety valve for people's anger.¹⁴ This is one of the reasons why even autocratic leaders sometimes permit some freedom of

speech for their citizens in order to alleviate the pressures for political change.

Thomas I Emerson had also argued that free speech helps to provide a balance between stability and change. Without free speech, the real problems of the society may remain hidden and become worse as time passes.¹⁵ Therefore, by restricting free speech, censorship laws may transform small problems into revolutions. However, it has been argued that in liberal democracies the more protection of free speech there is, the less violent conflict there is likely to be, unlike in new democracies where protection of free speech is sometimes associated with higher prevalence of violent conflict. For example, in Rwanda during the genocide, the media executives used freedom of speech to spread hatred, dehumanise people and guide the perpetrators guilty of genocide (*génocidaires*) towards their victims during the 1994 genocide.¹⁶ The best way to respond to offensive speech is not to use violence or to censor it, but to counter it with persuasive speech of your own and respond to it with tolerance.

The next way laws protecting free speech can impact upon economic development is by promoting artistic freedom. This is referring to the ability to imagine, create and distribute diverse cultural expressions free of governmental censorship, political interference or pressures of non-state actors.¹⁷ The US Supreme Court has interpreted artistic freedom broadly as a form of free speech.¹⁸ The United Nations has argued that artistic freedom is of critical importance for achieving sustainable development goals (SDGs) on public access to information and protection of fundamental freedoms such as freedom of expression.¹⁹ Some artistic expressions such as songs and editorial cartoons can contain useful information which can spread to the public, while others can criticise injustices that are being committed in the community. For instance, songs sung by Hachalu Hundessa, the late Ethiopian artist, focused on the rights of the Oromo people who have long complained of being side-lined by the government.²⁰ Arts can lend voices to those who would otherwise not have any. Many artists have stood up to speak out and resist when the fundamental freedoms are being threatened, such as Ai Weiwei who has criticised the Chinese government's restrictions on freedoms.

The end result of all this is the creation of a marketplace of ideas for promoting

innovations and public participation that can lead to economic development. Laws restricting free speech can generate fear of censorship among artists, which can stifle artistic expressions and impoverishes the public sphere. In most cases, censorship of violent, sexual or other artistic expressions is not helpful, as it just gives them a wider publicity which enable them to reach a wider audience.

Promoting academic freedom is a final way in which laws protecting free speech can impact upon economic development. Academic freedom is the freedom of teachers, students and academic institutions to pursue knowledge wherever it may lead, without fear of censorship or retaliation or restraint from anyone including the government.²¹ This ensures that academics and students have freedom to express new ideas, even if they challenge traditional and widely held point of views, since it fosters discussion and exploration of concepts that can further understanding.

In the US, academic freedom is guaranteed as free speech under the US Constitution's First Amendment.²² Without laws protecting freedom of speech during the scientific revolution in Europe, for instance, Galileo Galilei was punished for sharing his heliocentrism theory that stated the earth and other planets revolve around the sun, rather than the sun and other planets revolving around the earth which had been taught by the Catholic church and was later proved to be wrong.²³ The religious leaders of Galileo's time thought heliocentrism theory was against the Bible and, therefore, constituted 'harmful speech'. This shows that laws restricting free speech can hold back science when they are applied to academics and the subjectivity of what 'harmful speech' actually means.

Recent cases involving universities suggests that academic freedom is under threat. Some students in these universities have argued that some concepts under academic freedom go too far beyond acceptable limits to be discussed,²⁴ for instance, public speeches about Holocaust denial and racial superiority. However, these students should note that academics and universities are committed to advancing human knowledge and enacting laws restricting freedom of speech could be seen as preventing progress to greater understanding of the world and which can affect the creation of new innovations, as free exchange of ideas underlies all intellectual development. As explained above,

innovations result in economic growth of a country.

This essay has argued on how laws protecting free speech can impact upon economic development. It has been argued that these laws can promote free exchange of ideas and information which impact upon economic development through promoting innovations, promoting public participation, preventing violent conflicts and promoting artistic and academic freedom. I believe the best description of the principle of freedom of speech is Evelyn Beatrice Hall's quote, 'I disapprove of what you say, but I will defend to the death your right to say it', in her 1906 biography of Voltaire.²⁵

Notes

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How can laws that promote or restrict free speech have an impact on economic development?

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Introduction

This paper discusses how laws that promote or restrict free speech can have an impact on economic development. In dealing with this topic, this paper will firstly conceptualise laws that promote or restrict free speech and economic development. From there, it will briefly highlight how laws that promote or restrict free speech and economic development can act as both a catalyst and a hindrance to economic development. The paper will conclude with a discussion as to how free speech laws can be better implemented in order to maximise economic development.

Conceptual framework: laws that promote or restrict free speech and economic development

Laws that promote or restrict free speech

Free speech refers to the freedom of an individual or a community to articulate their opinions and ideas without fear of retaliation, censorship or legal sanction.¹ Laws protecting free speech are those that secure this freedom, while those that restrict free speech are those that limit the extent to which this freedom is enjoyed. The right to freedom of expression is recognised in most national constitutions and human rights instruments.²

The 1948 Universal Declaration on Human Rights (UDHR) provides that every person has the right to freedom of opinion and expression without interference and to seek, receive and impart information and ideas in any form without fear of reprove or any other consequences.³ The UDHR is not a treaty, so it does not create direct legal obligations for countries. Nonetheless, the right to freedom of expression is regarded as an important principle of customary international law that has been enshrined in both the International

Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and People's Rights, as well as other human rights instruments.⁴

It must be noted that the right to freedom of expression is not an absolute right. Under Article 19 of the ICCPR, the exercise of the right to freedom of expression may be limited if provided for under the law and where it is necessary for the respect of the rights or reputations of others, for the protection of national security or of public order and for protections relating to public health and morals. Limitations on speech may include defamation, invasion of privacy, fraudulent misrepresentation, obscenity, the advocacy of imminent lawless behaviour and fighting words.⁵ While Article 9 of the African Charter does not contain the itemised grounds for limitation as contained in the other regional and international instruments, it does stipulate that the right to express and disseminate opinions is to be 'within the law'. In the case of the *Malawi African Association v Mauritania*,⁶ the African Commission held that the expression within the law has to be in line with international human rights law instruments and not as expressed in municipal laws. In light of this, it should be understood that the limitations to free speech that are permissible under international human rights instruments such as the ICCPR are also applicable to the African Charter.

Economic development

The economic development of any given country entails positive changes in the financial and social wellbeing of its citizens.⁷ Economic development is measured by looking at different factors including, but not limited to, life expectancy, levels of education, employment levels, literacy rate, levels of provision of healthcare and the increases or decreases in the gross national product

(GNP) and gross domestic product (GDP).⁸ For purposes of this paper, it is assumed that economic development is reflected by increases in the above-mentioned indicators.

It is further assumed that any impact of laws that protect or restrict free speech on the economic development of a country can be indicated by increases in life expectancy, employment, levels of education, literacy rate, levels of provision of healthcare and the increases in the GNP and GDP.

Free speech laws as a catalyst for economic development

Promotes effective learning and skills acquisition in institutions of higher learning

Free speech laws protect students' and staffs' right to explore views and express opinions on subjects that may not be politically correct, contrary to popular belief or even against community standards, without any fear of facing sanctions, suppression or retaliation.⁹ As a result, students are better equipped with holistic, top-quality education and skills that are unadulterated. Such an education enables students to effectively compete for economic opportunities with students from other countries. Where laws limit free speech, the effects go beyond the university corridors. The largest of these results would be economic stagnation.¹⁰ Students who graduate from universities where speech is highly restricted graduate with no opinions except those they have been taught. When they become business managers, they would bring nothing new to the table, they would have no fresh outlook on problems and no new product ideas; all they would have would be the ability to continue what is already old and that is a relatively worthless ability.¹¹

Additionally, freedom of expression and the collision of ideas in institutions of higher learning drive the pursuit of knowledge. Both lead to new insights, guard against complacent attachment to conventional wisdom, and help to uncover the rational grounds for and meaning of doctrines that are already well established but in danger of losing their vitality. The life of Galileo Galilei, the father of physics, is a classic example of what may happen where laws do not protect a person's right to advance what are seemingly unpopular opinions. In 1632, Galileo published *Dialogue Concerning the Two Chief World Systems: Ptolemaic and Copernican*,

which advanced the idea that the earth and five planets revolve around the sun. Galileo was brought to the Vatican in 1633 to face charges for his ideas which were contrary to the prevailing beliefs and free speech laws of the time. Under the threat of torture, Galileo recanted and was sentenced to house arrest for the rest of his life.¹² Today, Elon Musk, the richest man on earth, is building on Galileo's discoveries to conduct space exploration and, as result he is providing employment opportunities to different people across the world.¹³ These people are able to fully contribute to the increase in the GDP. Had it been that laws that protect free speech were in existence in the 1600s, the world economies would have benefited more from further discoveries from Galileo Galilei.

Fosters innovation and the generation of business ideas

Free speech laws promote innovation through the facilitation of access to information from other societies. Solow's neoclassical growth model asserts that one way for developing countries to achieve economic development is by imitating the inventions and innovations of industrialised developed economies.¹⁴ In other words, by not re-inventing the proverbial wheel and by merely recreating cars, computers, software, machinery and other capital goods, a developing country can also embark on a path of economic growth.¹⁵ By ensuring access to information from other societies, free speech laws foster innovation and, ultimately, jobs that come as a result.

However, there is a caveat to this form of economic growth as developing economies cannot continue to grow forever by merely copying innovations, as they will eventually run out of things to copy! This is what the economists call reaching an 'economic frontier' beyond which an economy cannot grow without further innovation.

Attracts foreign direct investment

Laws that protect free speech have a positive effect on foreign direct investment (FDI) inflows. Freedom of expression and an open media allow public access to the policy-making process and bring about relatively better monitoring of the decisions made by elected politicians.¹⁶ Citizens have a right to express their opinions on issues of public concern and have wider legislative representation on a wide range of social interests including

policies towards foreign investors. Essentially these policies can be questioned, criticised and rejected. Ultimately, government policies that may lead to encroachment on private property rights of multi-national enterprises may be curtailed, thus reducing risk of loss of property for foreign investors and encouraging FDI. Foreign investors can inject capital into local business ideas and even create job opportunities for the masses through multinational enterprises. Since the 1960s, multinational enterprises now account for about 70 per cent of world trade and the sales of their foreign affiliates have exceeded total global exports.¹⁷ Foreign production capital has dispersed to almost all developing countries since the 1980s and the number of foreign affiliates located in developing economies has reached 129,771, compared with 93,628 in the developed world.¹⁸

Free speech laws as a hindrance to economic development

Constrains government expenditure

The present generation of Africans believes that they have the right to speak their mind on political policies and that when their minds converge, they have a right to group together and express their discontent, be it in the form of strikes, blockades, march-ins or sit-ins. As much as people have found their voice and are actively invested in the direction of their country's development, some authors have argued that the rising number of road blocks and strikes on the continent has had a devastating effect on the economic development of the African continent.¹⁹

Freedom of speech in the form of protests is economically costly due to the fact that money is taken away from the protesters, government and the general population. Protests bring in unplanned expenditure due to the property that has been damaged or lost during the process. This takes away money that was budgeted for job creation and other development projects. This can be evidenced by the World Bank Report of 2019 on Malawi's economic monitor, which stated the Malawi's political impasse, with wide-scale demonstrations that continued since May 2019, constrained business activity and increased uncertainty, weighing on investment.²⁰ The government missed the revised fiscal deficit target in 2018/19 financial year. The fiscal deficit increased to 6.5 per cent of GDP, higher than the revised target of 5.8 per cent. The impact of election-related expenses, increased

interest payments and costs associated with the disaster response pushed recurrent expenditure beyond targeted levels by one per cent of GDP.²¹

Diminishes foreign direct investment

Laws that promote free speech give room for citizens to voice their opinions on any matter including governmental policies. It should be noted, however, that persistent criticism of government policies can portray the unreliability and ineffectiveness of the government to potential investors. The impact of persistent criticism may seem insignificant in the shorter term but have long-term implications, which may never be convalesced but rather place the country in the path of underdevelopment. The main trade-related benefit of FDI for developing countries lies in its long-term contribution to integrating the host economy to new markets and ultimately, higher exports.²²

Implementation of free speech laws to maximise economic development

Firstly, there is need to provide a more precise, detailed definition of the scope and content of the right to freedom of expression. As a matter of illustration, the African Charter on Human and People's Rights²³ does not contain the itemised grounds for limitation of the right to freedom of expression and the extent of these limitations is then left to the discretion of government agents.²⁴ While discretionary action or actions taken without a reference to existing legal authorisations might produce simple, cheap and flexible administrative results, such actions may also be unpredictable and arbitrary.

Secondly, there is a need to prescribe the exact responsibilities and functions of different spheres of government at the regional, national and provincial level in giving effect to the right to freedom of expression.²⁵ Legislation is not sufficient to ensure that the right to freedom of expression is fully realised. Governments need to establish explicit standards and such standards can be established as internal administrative requirements or may even be given the force of law. This would ensure that free speech is not limited to the point where it becomes difficult to carry out any speech and, before anyone realises, the web of censorship stymies free exchange of information, thus stifling creativity and the generation of new ideas.²⁶ Alternatively, it would also ensure that free speech is not used as a mechanism to stifle the economy of the country.

Conclusion

We are living in a global community where the individual's right to articulate their opinions and ideas without fear of retaliation, censorship or legal sanction is crucial to one's financial and social being.²⁷ Free speech entails having a full free, pluralistic and independent media; independent regulatory bodies for the implementation of laws regulating communications; an effective security policy for journalists; a fully operational democratic rule of law; a civil society that is strong and independent of economic and political power; to have a public, community and commercial media; to have good laws on access to public information; to have the right to demonstrate and guaranteed participation, along with open and accountable governments.

Notes

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How can laws protecting (or restricting) free speech impact upon economic development?

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Introduction

I disapprove of what you say, but I will defend to the death your right to say it.

Evelyn Beatrice Hall, (*The Life of Voltaire*, 1903)

Article 19 of the Universal Declaration of Human Rights (UDHR) provides that everyone has the right to the freedom of expression and free speech. This can be expressed through published articles, books or leaflets, television or radio broadcasting, works of art, internet and social media, public protest and demonstrations.¹ However, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) provides that the freedom may be restricted for the respect of rights and reputations of others or for the protection of national security, public order, public health and morals.² The right of free speech is also provided for in other human rights instruments such as in Principles 37(1) & 38 (1) of the African Commission Declaration of Principles on Freedom of Expression in Africa and Article 9(2) of the African Charter on Human and Peoples Rights. The First Amendment of the US Constitution also protects and guarantees freedom of speech.

The writer believes that free speech, to the extent that it does not cause harm to others or prevent others from exercising their rights and freedoms, should not be restricted in any way. Nonetheless, the curtailment of free speech has been on the rise. It has been even more alarming during the Covid-19 pandemic as the Global Expression Report for 2021 shows that governments have used the pandemic as an excuse to suppress critical information, and to place unreasonable and unnecessary restrictions on the media.

Clearly, as widely accepted as the principle of free speech or freedom of expression may seem, it is not always implemented. This paper addresses free speech and how the protection or restriction of free speech impacts upon economic development.

Free speech and economic development

Free speech is a fundamental principle that supports the right of an individual or a community to articulate their opinions and ideas without fear of retaliation, censorship or legal sanction.³ The freedom is also defined as the right to seek, receive and impart information and ideas of all kinds, by any means,⁴ although it is not an absolute right and may reasonably be subject to restrictions.⁵ It is important to note that political rights generate economic rights and economic rights lead to economic development. Political rights refer to an individual's ability to participate in the civil and political life of a society without fear of discrimination or repression.⁶

Political rights include the freedom of expression or free speech. Terms such as 'free speech' and 'freedom of expression' are used interchangeably.⁷ Free speech enables people to express, advocate or demand for their economic rights and it is the fulfilment of these economic rights which also lead to economic development. Examples of economic rights include, inter alia, the rights to education, health and work. The enforcement of economic rights is instrumental to the amelioration of the ubiquitous and damaging economic crises.⁸ Economic development is the means to achieve sustained increases in prosperity and quality of life realised through innovation, lowered transaction costs, and the utilisation of capabilities towards the efficient production and sale of goods and services.⁹

Basically, it is an improvement of the quality of life of the people and nation generally. The objective of economic development is to improve the quality of life and create a favourable environment for people, businesses or societies to innovate or develop new ways of production of goods in such quantities that may lead to exportation.

Relationship between free speech and economic development

Freedom of expression is not only a fundamental human right in and of itself, but it has ramifications for economic development as well.¹⁰ It has been established that new ideas and innovation are necessary for sustaining economic growth, and that the exchange of ideas is crucial for any booming and innovative economy.¹¹ New ideas and innovation can be generated only when free speech is guaranteed. There is therefore a strong correlation between free speech and economic development. For example, it is believed that the United States' prosperity and development in the rapidly changing technology sector is due to its commitment to the free exchange of ideas.¹² The market capitalisation of Facebook, an online social network, is twice the size of all European tech giants combined. Indeed, free speech directly encourages new ideas and innovation, and it is a long-established theory that ideas and innovation are vital to economic growth and development. Joseph Schumpeter's creative destruction theory helps to explain the role that innovation plays in the economy, in the sense that companies are driven by competition to constantly come up with new ideas, because companies which do not constantly innovate will be overtaken or replaced by companies which do. Indeed, freedom of expression acts as an agent of development to meet the development needs of the individual and the community.¹³

Impact of promoting free speech on economic development

Free speech enables people to express their social and economic needs, for example, through public discourses which ensures government accountability.¹⁴ This is important in any society seeking economic development.

Encourages demand, advocacy and implementation of economic rights

Economic rights include, inter alia, the right to education, right to work, right to adequate standard of living and right to health. As fundamental as these rights may seem, governments tend to ignore making provision for its people to enjoy these basic rights. The implementation of economic rights is important because they lead to economic

development by improving the quality of life generally.¹⁵ For example (in relation to the right to education), Article 21 of Ghana's 1992 Constitution guarantees the right to freedom of expression and free speech. In October 2021, some law students in Ghana embarked on a peaceful demonstration to be granted access to their right to education at the Ghana School of Law, which in the long run would improve their quality of life.¹⁶ They advocated boldly that they had passed the examination. The pass mark known to all the students before writing the entrance examination was 50 per cent, but some 499 law students who had attained 50 per cent were still denied access to their right to education. However, upon their advocacy and peaceful demonstration demanding for their right to education, the government and the school yielded to their demands and has given them access to their right to education at the Ghana School of law.¹⁷ But for free speech, that feat would not have been attained.

Attraction of investment

Foreign investors tend to prefer countries that guarantee basic human rights such as free speech. This is because it enables their businesses to grow with a myriad of opinions and contributions from everyone, and also enables them to avoid conflict with their host nations. This grants them a safe working environment, which boosts productivity and efficiency. This will further enable them to explore the market and to ensure that all businesses play by the same rules. In a country where free speech is not guaranteed, reporters and activists cannot pursue their work and foreign companies are more likely to contend with bribery and extortion. For example, due to Article 21 of Japan's Constitution, which protects free speech and prohibits censorship, Japan is now one of the top countries in the world which attracts many foreign investors.¹⁸

Promotion of innovation

Innovation, which is also known as the secret sauce of business success, drives economic development. Free speech enables businesses to brainstorm freely several ideas and select the best possible ones for implementation. Restricting free speech only encourages a narrow and rigid way of innovation, which does not enable the country to develop. For example, entrepreneurs in the US enjoy the

protection of free speech (as guaranteed by the US Constitution's First Amendment), which grants them a competitive edge because they are able to innovate, share new ideas and opinions to come up with new ways of doing things efficiently. This has enabled the US to become one of the most economically developed countries in the world.

Equitable distribution of public resources

Through the impact of laws that protect free speech, public discourse is organised to ensure that government is held accountable for the equitable distribution of public resources. This is very important because it enables individuals and communities to demand official action and intervention rather than being passive recipients of the leftovers or benefits of cunning development programmes.¹⁹ For example, in the United Kingdom (as guaranteed under Article 10 of the country's Human Rights Act 1998), free speech and expression of views are protected, and this has enabled the country to develop wholistically and together.

Impact of restricting free speech on economic development.

According to Amartya Sen, development is about creating freedom for people and removing obstacles to greater freedom.²⁰ Therefore, when certain fundamental freedoms such as free speech for everyone is not guaranteed but rather restricted, it hinders development.

A case study of Nigeria's Twitter ban

Section 39(1) of the Constitution of the Federal Republic of Nigeria protects the freedom of expression. However, Nigeria's famous Twitter ban occurred in 2021, when the President of Nigeria disagreed with the removal of his tweet and banned access to Twitter in Nigeria. Twitter, a social network platform, is one of the mediums through which people exercise their right to free speech. Clearly, the decision was made without a consideration of the numerous benefits free speech on such a platform contributes to Nigeria's economic development. For example, employers use the platform to circulate job openings, freelancers use it to advertise and promote their service, and its vibrant start up community uses it to

attract foreign investment. The ban greatly affected free speech and resulted in loss of jobs, investment hostilities, business collapse and cut information flow between business associates. It is important to note that the ban fuelled anger among the populace purposely for the economic benefit their right to free speech accorded them on Twitter.²¹ Also, with the unemployment rate in Nigeria standing at about 33.3 per cent, the Twitter ban will worsen unemployment. The ban of Twitter also affected Nigeria's economy severely. According to NetBlocks, in only three days, Nigeria lost approximately 7.5bn due to the ban. A massive loss of revenue which could have been used to improve the economic life of the people. This will also have ripple effects as it will affect foreign investments in Nigeria's technology sector, and even send a bad signal to international investors that Nigeria does not abide by its own laws and is generally not tolerant. This will affect the people's quality of life and general economic development – a clear case of how the restriction of free speech impacts economic development.

Other case scenarios

Article 29 of the Constitution of the Republic of Uganda 1995 guarantees free speech. However, the 2021 Ugandan elections were accompanied by an information blackout, shutdown of the internet to prevent Ugandans and, especially, the opposition from airing its views. Also, in Burundi there were two internet shutdowns in the wake of its elections. In 2020, the government of Ethiopia also imposed an internet shutdown. The internet is important because it grants people access to, for example, social media platforms where they can exercise their right to free speech. For countries like Guinea, the legal environment allows for censorship as there is even a law that allows security forces to fire guns in protests, and another that allows the President to interfere in the media regulation by appointing the chair of the media commission.²²

Some claim that the shutdowns are typically justified as necessary to ensure national security around sensitive periods, but they indubitably serve incumbent interests, by limiting democratic freedoms such as free speech.²³ Furthermore, the restriction of free speech leads to the unequal distribution of resources. In some countries, it is notable that one region or state is more developed

than the other because there is more focus on distribution of resources in that region. For example, the distribution of resources in Kenya has never depended on objective equitable criteria, but rather political connection and patronage.²⁴ Therefore, some regions, such as the former Central and Rift Valley provinces, were more developed than other regions. Nonetheless, Article 33 of the Kenyan Constitution guarantees free speech but, in practice, the restriction of this freedom has caused the people such deprivation of development. Lack of enforcement is a major problem, especially in Africa, and it is a major contributing factor which retards development in Africa as investors always prefer a stable climate and certainty of laws. In Ukraine, the law contains restrictions on free speech by providing language quotas for broadcasting, print and publishing media in languages other than Ukrainian.²⁵ This will deter foreigners or persons not familiar with Ukrainian from investing in Ukrainian media and ideas in this sector will be to an extent narrowed to Ukrainians as other languages are restricted. This will negatively impact economic development as foreign investment which is a source of revenue to the state will be lost.

The way forward

Limits of national security and public order, public morals

Governments have to ensure that the justifications for restriction must be clearly spelt out by law. This is to ensure that they do not exceed the ambit of what they term as national security and public order to arbitrarily infringe on free speech. Also, any restriction based on public morals should not be one in favour of a particular religion but should be a generally accepted standard clearly spelt out by law. The law must not be enforced only when it favours the government and its interest.

Refrain from arbitrary restrictions

Legal restraints upon individual freedom of speech should only be tolerated where they are absolutely necessary to prevent infliction of actual harm.²⁶ Some governments attempt to assume the role of a proper guide and takes advantage to censor free speech. This is where the government attempts to regulate what is said or displayed to the public, instead

of the public being given the opportunity to hear everyone and make their own informed decision. For example, in India certain films such as *Deshdrohi* (Traitor) had to fight against political censorship even after the film censor board's approval. Film makers have the right to express their views and give shape to their thoughts through their creations so long as it does not cause or inflict harm to others. Such restrictions go a long way to affect the movie industry which is a huge source of income sponsoring India's economic development.

Advocacy and empowerment

Governments, civil society organisations and individuals need to take up the role of empowering everyone to speak up, whenever they want to, regardless of fear or repression and stand up for their rights. Instead of censoring other people's right to free speech, they should be allowed to speak and left to the public to scrutinise themselves. This will enable people to have a culture of speaking up, which is very good for innovation as it helps businesses grow, because it enables the pros and cons of several ideas and options to be compared. It would encourage everyone to voice out their opinions, and also promote public discussions and healthy debates necessary for every democracy and development.

Transparent policies and procedures

Social media sites should develop policies and procedures to increase transparency surrounding government requests that affect freedom of speech on their services. This is because some entities or personalities sometimes tend to use these sites as mediums to restrict the views of others. For example, some sites, such as Facebook and Twitter, have adopted policies to show the number of requests which they have received to take down certain posts by individuals who are not in favour with it. It enables people to be aware whether a particular statement is a legitimate concern or certain individuals disapprove of it because it does not favour them. Also, companies and schools should adopt and enforce policies that address their own employees' right to free speech to create an open and free environment for the attainment of holistic goals and improvement of quality of life.

Having a robust, independent and vigilant news media

News media and outlets should aim at countering disinformation and hate speech rather than allowing themselves to be used as puppets to implement restrictive policies on free speech. Disinformation is false and misleading information that has been deliberately written and disseminated for the purpose of manipulation.²⁷ The media has a corrective function to bring corruption and inequitable practices to the public's notice and not what the government or certain individuals desire. Creating an independent and robust news media is very important because the absence of media freedom can shadow improper practices by both governments and businesses, which in the long run will retard economic development.²⁸

Conclusion

In summary, laws protecting free speech clearly have a positive impact on economic development, while laws restricting free speech tend to retard economic development. As indicated above, there are international and national laws protecting free speech. However, governments and some stakeholders tend to override these laws when they seem unfavourable to their political campaigns and aspirations. It is in the best interests of every government and stakeholder to ensure that free speech is guaranteed for everyone, because there is more utility in that as it comes along with many benefits through which economic development is attained. By protecting free speech, innovation, accountability, equitable distribution of resources and the enforcement of economic rights, such as right to education, right to health, right to work and the right to an adequate standard of living, *inter alia*, is attained and this eventually leads to economic development for everyone. Free speech is like something which people can decide to run from but can never hide from; although restricting free speech enables the attainment of selfish interest for government and stakeholders who desire it, its consequences are dire. It results in stagnation and narrow thinking, loss of jobs, poor standard of living and loss of revenue which, in the long-term, the government would have to fix, because the oppressed people cannot be oppressed forever as the yearning for freedom eventually manifests itself from within.

Notes

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How can laws protecting (or restricting) free speech impact upon economic development?

Abstract

Free speech promotes the free flow of ideas and information; economic development is regarded as an increase in output that improves the living standard of the population. This work looks at how the laws in place that protect free speech can impact upon economic development. By consultation from different works, it reveals that these laws can positively impact upon economic development.

Introduction

Free speech is a recognised human right principle under the Universal Declaration of Human Rights (UDHR) 1948, in which individuals and the community can express their opinions and ideas without fear of retaliation, censorship, or legal sanction.¹ 'It is the right to receive and impart information and ideas of all kinds, by any means'.² However, the right to free speech is not absolute and may be restricted for the respect of the rights of others, the protection of national security and public order, public health and morals. Justification for such includes what John Stuart Mill refers to as the 'harm' and 'offensive' principles to society.³ 'Economic development is referred to economic growth accompanied by changes in output distribution and economic structure'.⁴ It diversifies the economy, provides a greater variety of goods and services, and increases

the purchasing power of consumers. This combination results in a higher standard of living for more people. Economic development results in higher levels of education, greater employment opportunities and higher income levels.⁵ In this essay, I will discuss free speech in the context of economic development.

Laws protecting or restricting free speech

Free speech is constitutionally protected in many, if not all, economically developed countries in the world including Canada (at section 2 of the Canadian Constitution) and the United States (in the First Amendment to the US Constitution). Australia is a country that is also known for its well-developed economy and is a party to seven core international human rights treaties. Free speech is a fundamental right contained in Articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR), Articles 4 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), Articles 12 and 13 of the Convention on the Rights of the Child (CRC), and Article 21 of the Convention on the Rights of Persons with Disabilities. Laws that restrict free speech include Chapter 15 of the International Criminal Liability for Incitement and Hate Speech.⁶ These laws are examples of laws that protect and restrict free speech.

The scope of free speech includes the right to hold opinions and the freedom of their expression in any medium such as written and oral communication, the media, public protest, broadcasting, artistic works and commercial advertising.⁷ This right also extends to persons with disabilities to enable them to exercise their rights to freedom of opinion and expression by providing accessible formats and technologies.⁸ Free speech also covers unpopular information or ideas including those that may be harmful to society, such as incitement, which I will discuss more in subsequent paragraphs. However, this kind of free speech is often subjected to restrictions. Instances in which information or ideas may be subjected to restrictions are when it is necessary to protect the rights and reputation of others, national security, public order or public health and morals.⁹

From the above explanation, one may ask whether laws that protect or restrict free speech (some of which are mentioned above) can have an impact upon economic development?

How can laws protecting free speech impact upon economic development?

From the definition above, it is understood that free speech includes the free flow of ideas and information. Since spreading ideas and information requires communication – people talking to one another, attending lectures and presentations – it is highly likely that protecting free speech, either formally or informally, would have great effects on innovation and economic growth.¹⁰

Economists Curtis Simon and Clark Nardinelli, in their study of the growth of English Cities in the 19th and 20th centuries, state that; ‘the creativity of the market economy – the increasing returns so important in modern growth theory – in large part arises from what happens when people with information get together and talk. The talk is necessary to turn information into productive knowledge’.¹¹ Relying on the free exchange of ideas and information will lead to beneficial discoveries. This will increase the people’s standard of living and because of that, the long-term benefits of free speech upon economic development become larger than it is commonly recognised.

Another important aspect of free speech is the right to criticise government officials and policies. The right to disseminate information in the political market, as in the market for

goods and services, may enhance choice and in that way promote welfare.

Free speech in the form of public protests is important for the economy. ‘The most dangerous of monopolies is a monopoly of political power’.¹² In other words, political competition is enhanced if the government allows the expression of opposition views.

Free speech is an important prerequisite of democracy and is to an equal extent prized by the population of any democratic country. With free speech, a government will have no difficulty in trying to discover what the people are thinking; and being sensitive of popular opinions can result in appropriate calculations – ‘democracy is good for broader development objectives, such as equity, education and health’.¹³

Under democracy, politicians seeking re-election have an incentive to reflect the will and interest of the majority of the people’.¹⁴ This is a way of tackling corruption.

Corruption acts as a tax on productive activities in an economy, leading to the flow of resources to unproductive ones. ‘The presence of free press brings public corruption cases to voters while voters in a democracy in turn punish corrupt politicians by ousting them from public offices. Hence elected politicians react to the voters by reducing corruption’.¹⁵ People only become aware of important information (such as the plight of poverty of an ethnic minority) or understand the importance of some fundamental values (such as the right to basic education) in the process of a free public debate. Moreover, people only frame their own preferences in the context of dialogue. Famines are unlikely when there is a free press to report on it.¹⁶ The presence of free press also helps in transforming situations of conflict into coordination and allows politicians and the populace to coordinate on good conjecture leading to economic progress.¹⁷

How can laws restricting free speech impact upon economic development?

Protecting the rights and reputation of others, national security, public order or public health and morals are some of the examples for the justifications of laws restricting free speech. Notwithstanding the right to free speech, speeches that violate the above-mentioned justifications are accorded with certain restrictions. These kinds of laws can also have a positive impact upon economic

development.

The right to reputation includes the protection of dignity and preservation of individual respect in society. Reputation gives companies a competitive advantage by increasing customers and clients.¹⁸ Restricting speeches that violate the dignity and respect of individuals will encourage those individuals to invest more and provide employment opportunities and will improve the standard of living of the people. Therefore, it enhances economic growth.

Proper national security is a very important factor for economic development. This is because lack of national security can cause large scale internal and transactional migration and often has an impact on the lives and livelihoods of large segment of the population. In economic terms, security would be the absence or reduction of risk and a heightened predictability of future events. When national security is lacking, transactions become more time-consuming, riskier and expensive. Other effects include high direct and indirect costs, scarcity of goods, increasing prizes and higher taxes to fight the increasing lack of security. Even those who are not directly affected may feel threatened, which may lead to loss of expertise and capital.¹⁹ Therefore, putting in place laws that restrict speeches that would endanger national security will help economic development.

Violent conflicts have held back progress in many African countries. 'Economic harm can be caused by expectations of likely future conflicts and doubts about how they could be resolved or how high growth could be resumed in that environment. This uncertainty could [...] discourage investment, entrepreneurship and accelerate brain drain [...] and refugee children and women are at particular risk of rape and sexual exploitation'.²⁰ Scholars have found that the long-term effects of conflict most heavily fall on women, diminishing their access to health, social welfare services and education.²¹ Violent conflict destroys capital and some of what is not destroyed is diverted into destructive activities.²² It causes increases in unemployment.²³

Therefore, laws restricting free speech on the basis of the above-mentioned justification can successfully prevent or highly reduce risk of armed conflict likely to retard and set back progress. It facilitates conflict resolution, avoiding violence and doing so in a way that allows capabilities to grow. Thus, these laws

can positively have an impact upon economic development.

Case study

Incitement, as indicated earlier, is a form of free speech that the law restricts because it can cause conflict and endanger national security leading to lack of public order, health and morals. Rwanda is a good example.

In the UN case of the *Prosecutor v Theoneste Bagosora*,²⁴ Theoneste Bagosora issued orders for the extermination of the Tutsi population.²⁵ These orders were carried out 'sparing no one', including infants.²⁶ The killing was widespread,²⁷ leading to genocide.

This conflict led to consequences. A recent study shows that at least 800,000 people (ten per cent of the population) died in the 1994 genocide, and three million people sought refuge in neighbouring countries. The war led to widespread destruction of property, infrastructure and resources such as livestock. Large-scale migration into bordering countries and less populated areas of the country weakened social networks. A high incidence of rape contributed to the spread of HIV/AIDs, and the victims of rape and other violent crimes suffered extensive trauma. The study shows that without the genocide, its per capita gross domestic product (GDP) today would be up to 30 per cent above its current level.²⁸

Human capital was destroyed, including the youthful population which is the strength of countries. 'A youthful population is like a double edge-sword; it could be channelled into a dividend for economic and social transformation...'²⁹ Therefore, laws that restrict free speech can have a positive impact upon economic development.

Conclusion

Laws protecting or restricting free speech can positively have an impact upon economic development. On the one hand, laws that restrict free speech enhance the free exchange of ideas and information leading to beneficial discoveries. It gives rise to political competition that enhances choice and welfare. It also leads to democracy and a free press. It brings an end to (or high reduction of) corruption. On the other hand, laws that restrict free speech protect the rights and reputation of others, protect national security and prevent conflicts, thereby leading to law and order, good health and morals.

Therefore, it is right to conclude that laws protecting or restricting free speech lead to economic progress and, hence, they can impact the economy positively.

Notes

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How can laws protecting (or restricting) free speech impact upon economic development?

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Introduction

People are often denied their human right to freedom of expression. A government's fear of criticism and the threat to national security are two of the reasons advanced why governments unduly restrict this fundamental right. However, such unwarranted restrictions negatively affect economic development, as much of the economic activity is carried out through the internet and the media. For this reason, it is believed that the

further development of laws that protect free speech is needed, as it is crucial to economic development. Thus, this writer argues that countries have to strike a balance between individual constitutional right of free speech and public policy reasons before restricting the right by laws. Furthermore, the preconditions of legality, legitimacy, necessity and proportionality have to be complied during restricting the right to free speech. This paper, therefore, aims at establishing

the nexus between free speech and economic development, outlining the laws that protect (or restrict) free speech, highlighting the growing effects of these laws on economic development, and finally, putting the way forward on how laws protecting (or restricting) free speech impact upon economic development.

Definitions of terms: free speech and economic development

Free speech is one of the building blocks to the creation of a democratic society and to economic advancement, as it fosters discussion and therefore ideas which in turn can lead to technological innovations. With regard to its scope, the United Nations Human Rights Committee in its General Comment No 34 provides that free speech is a broad right, which encompasses diversified issues such as trade promotion and advertisement, among other things.¹ Free speech can be defined as the right of individuals to express their opinions, seek, receive and impart information in whatsoever mode (ie, writing, speaking and using signs, the internet or other social media).²

The early definition of economic development was as a growth of per capita income, but this definition, being based purely on growth of per capita income, is problematic and does not reflect the true definition of the current economic development. Economic development comprises not only per capita income growth through digging and ploughing works, but contemporarily innovations through discussions, artistic and scientific works, and oral as well as written expressions or exchanges between people. It is only when the living standard of the people is improved that we can say there is a sign of economic development. In short, economic development can be defined as reduction or elimination of poverty and unemployment, and improvement of individuals' participation in the affairs of the country.³

The nexus between free speech and economic development

Free speech and economic development may have both positive and negative relationships. At the very beginning, it must be known that free speech is a fundamental human right. It reinforces all other human rights, allowing society to develop and progress. The ability

to express our opinion and speak freely is essential to bring about change in society. It acts as a gateway to human improvement and the betterment of society through economic development.⁴ Free speech is a means to discussion and discussion leads to innovation. When we are able to discuss and collaborate with one another, we are putting together our own individual gifts and talents (a principle known as economics for specialisation) towards a broader purpose, which is discovering, innovating, or creating something novel and instrumental to the economic progress. Free speech is important for many other reasons. For instance, it is crucial for social change. This is demonstrated, among others, by a study conducted by Index Censorship.⁵ Rachael Jolley, the magazine editor, believes that free speech is crucial for change. Rachael Jolley stated, 'Free speech has always been important throughout history because it has been used to fight for change. When we talk about rights and developments today, they would not have been achieved without free speech.'⁶ In addition, free speech is important for a healthy society. Free speech is not just 'nice to have'; it is essential to the wellbeing, prosperity and development of societies. On a broad scale, anything a community or individuals (including politicians, You-Tubers, bloggers and other social media users) do to foster and create a healthy economy and living standard can fall under the auspice of economic development.

However, it has to be noted that free speech may have a negative relationship with economic development due to problems of proper regulation of the speeches made by individuals. Some speeches, particularly, fake news, hate speech and denials of historical facts, may bring gross political, economic and societal risks, such as mob justice. In this regard, in recent times, due to fake news distributed through Facebook, various human and economic damages occurred in the Oromia and Amhara Regions of Ethiopia as a result of riots and mob attacks.⁷

Existing laws protecting (or restricting) free speech: international and regional levels

Internationally, the Universal Declaration of Human Rights (UDHR)⁸ sets out individuals' civil and political rights including freedom of expression among other rights. With regard to free speech, the declaration under



Article 19 provides that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. However, the declaration under Article 29(2) provides that countries may place restrictions 'solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.' Secondly, the International Covenant for Civil and Political Rights (ICCPR) shared many of the provisions covered by the UDHR. Similar with UDHR, freedom of expression under ICCPR includes the freedom to seek, receive and impart information of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through other media of his choice.⁹ Yet, as per Article 19(3) of ICCPR, the exercise of the right could be subjected to two restrictions: firstly, for respect of the rights and reputation of others; or secondly, for the protection of national security, or of public order, or of public health, or morality.

Regionally, the Convention for the Protection of Human Rights and Fundamental Freedoms ('European Convention') is concerned with free speech.¹⁰ The European Convention's provisions regarding free speech are naturally very similar to those provisions in the ICCPR because both documents are based on the UDHR.¹¹ The one difference is the inclusion of long lists of limitations on free speech in the European Convention. Additionally, the American Convention on Human Rights ('American Convention') is another regional instrument governing free speech.¹² The right to free speech contained in the American Convention is almost identical to that found in ICCPR.¹³ The American Convention under Article 13(3) also prohibits indirect methods of restricting expressions, such as unfair allocation of newsprint or broadcasting frequencies, a restriction that applies both to private persons as well as to the government. On the other hand, under Article 13(5), it requires states to prohibit war propaganda and advocacy of national, racial or religious hatred. The African Charter on Human and Peoples Rights ('African Charter') is another free speech governing African regional Instrument.¹⁴ The African Charter establishes a framework for the protection of human rights that is generally considered

weaker than other comparable human right instruments.¹⁵ The African Charter under Article 9 guarantees every individual's right to receive information and to express and disseminate his opinions within the law. The right is subjected to a general restriction which provides, under Article 27, that individuals must exercise their freedoms with due regard to the rights of others, collective security, morality and collective interest.

The growing impacts of these laws on economic development

From the above-mentioned human rights instruments and national laws, we could take two basic premises, which are relevant to address this issue. Firstly, the human rights instruments give protection to the right to free speech as a matter of principle. Secondly, this right is not absolute and there are limitation clauses in almost all instruments. One legal scholar, Yohannes Enyew, puts at least four reasons why free speech is necessary and relevant for the contemporary developments.¹⁶

Firstly, it helps for discovery of truth in markets of idea. Free speech helps for transfer of information and ideas, which in turn are means of discovering the truth. It is true that truth is crucial for societal change and economic development. In the market place of ideas, truth is discovered as a result of the conflicting idea of individuals.¹⁷

Secondly, free speech increases individuals' self-interest and active participation in every developmental affair of their country. Individuals will be enriched with positive attitudes as a result of their sharing of information or ideas to others freely. This is beneficial not only to individuals, but also to the public.

Thirdly, but related to the second reason, is that free speech makes citizens take an active, participatory role in the democratic and development process.¹⁸

Fourthly, it enables individuals to criticise government activities, particularly when the government acts through conspiracy, contrary to public interest and overall economic development of a country.

An unwarranted restriction of laws may impede discussion of elites, scholars and other ordinary individuals and, in turn, deter innovation. The modern effective way of trade mechanism, that is electronic trade promotion and advertisement, will be discouraged if the restrictions are very high

and rigid. Unwarranted limitation of free speech by laws will diminish the diversity and the overall living standard of society, which is a good input to the economy. Furthermore, the government will not be accountable and transparent, and therefore, corruption will rampant as there are no effective mechanisms for exposing it if the laws impose unwarranted restriction on free speech. Moreover, restriction of free speech may result in internet shutdown and it will harm the revenue of the government that is driven from the internet through the internet service provider institutions such as telecoms. In these situations, it is difficult to think that economic development will be realised. Thus, to bring a true and effective economic development, free speech has to be properly and reasonably protected, and unwarranted restrictions have to be discouraged. Laws restricting free speech have to be made after a proper study of the cost-benefit analysis.

The way forward

Now that the connection between free speech and economic development has been inextricably established, and the various laws that protect and promote the former and latter respectively have been laid out, this writer emphasises the importance of further developing laws protecting (or restricting) free speech and, most importantly, putting a way forward on how they can support economic development. The student writer finds that the following are most important indicators proving how laws protecting (or restricting) free speech impact upon economic development.

Enhancing discussion that leads to innovation

Free speech is the gateway for discussion and discussion in turn leads to innovation. When we are able to discuss and collaborate with one another, we are putting together our own individual gifts and talents towards a broader purpose, which is discovering, innovating or creating something novel and instrumental to the economic progress. The creativity of market economy arises from what happens when people with information get together and talk. Thus, improper censorship of free speech harms innovation and holds society back as it undermines economic development. Furthermore, free speech encourages transfer of information and ideas,

which in turn are means of discovering the truth. Truth is crucial for societal change and economic development. In the market place of ideas, truth is discovered because of the conflicting ideas of individuals. Dissenting speech plays a critical role in a collective truth-seeking endeavour that, in turn, enhances societal development. If laws are enacted in a way that protect free speech, innovation will be enhanced through discussion, truth will be discovered easily and, ultimately, the economy of the nation will be developed.

Encouraging trade promotion and advertisement

The United Nations Human Rights Committee in its General Comment No 34, Article 11/12 provides that free speech is a broad right that encompasses diverse matters such as trade promotion and advertisement, among other components. In the present globalised and technologically advanced time, trade is transacted electronically through promoting and advertising it using the internet. Free speech through social media can benefit business owners and entrepreneurs in developing economies by reducing the cost of communication and increasing opportunities to find business partners and customers. Free speech through social media also provides opportunities for business to conduct experiments and to better understand how social networks affect consumer demand.

Ensuring accountability and transparency of the government and exposing of corruption

Countries with high levels of corruption, or which lack effective rule of law or accountability in government, are more susceptible to conflict, social unrest and persistence of poverty. Corruption is one among the chief diseases of economic development around the globe. In its Corruption Perceptions Index in January 2017, Transparency International found that over two-thirds of the 176 countries and territories surveyed scored below the midpoint of the scale of zero (highly corrupt) to 100 (very clean), with the global average score a mere 43, indicating endemic corruption in a country's public sector.¹⁹ Proper protection of free speech rather than unwarranted restrictions is one of the

foremost way of ensuring government's transparency and accountability, as well as a means of exposing corruption, which in turn promotes economic development.

Free speech is a means to work and a livelihood, and increases the labour force

Engaging in economic activities, such as artistic and scientific works, showing audio-visual information through YouTube, writing articles and other books which aim at criticising government activities and court decisions, teaching in schools, posting trade promotions and advertisements, journalists' releasing of news on the media, inter alia, are means of providing a livelihood to individuals and, in turn, it impacts upon the overall economic development, as the active participation of individuals in work is a contributing factor to development. This increases the labour force for countries to focus on economic development.

Increased government revenue from internet users

In countries and legal systems where free speech is properly protected, the government receives revenue through its service provider agencies such as Telecoms and other governmental institutions established for such functions. According to NetBlocks, a group that monitors internet freedom worldwide, Ethiopia suffered a loss of at least \$100m due to the internet shutdown the government imposed in July.²⁰ It calculated the daily impact of the cut in terms of direct economic costs. Thus, I recommend states to have laws that do not promote and support unwarranted restriction of free speech in general and internet shutdown in particular.

Reduced dependency rate as there will be active participation of individuals in the economic affairs

When individuals with different opinions and expressions are involved in developmental activities without recourse to their dissent views or without thinking they are discriminated against on the grounds of their views, they will be able to work to earn a living. If individuals feel free to speak, they will engage in works of their preference and will enhance their living standard rather than be dependent on the government. If this happens, there will be little or less

burden on the country to provide them with necessities. If laws are enacted to ensure that such persons are not isolated, discriminated against or restricted from expressing their views freely, they will also be economically eased and the per capita income of the country can rise.

Enhanced diversity of ideas is crucial for economic development

Free speech is the very important tool in order to foster diverse society, which can be a huge boost for the general wellbeing of the society. Protecting free speech can be considered as arranging a conducive environment for the proliferation of a diverse society that will have positive impact on the overall economy of any given society, bearing in mind that depriving the freedom in question will have fatal consequence the other way round. For diversity to be strong in any society, there must be a convenient arena for all the diverse ideas and creeds to flourish. Freedom of speech plays an irreplaceable role as the arena for people to sell their ideas. Suppression of the freedom will have the effect of weakening any trace of diversity and breeds resentment that will prompt groups to vent their suppression via protests, which destabilises harmony and this will severely affect the economy, as has been witnessed in many developing nations.

Additionally, this writer also recommends countries to use the following methods for the proper achievement of the above-mentioned findings.

Firstly, they should adhere to the four preconditions of limitation when they include a limitation clause to their national laws. The preconditions are legality, legitimacy, necessity and proportionality.

Secondly, they should apply the 'Dennis formula'²¹ to restriction of free speech. The Dennis formula requires a court called on to determine the constitutionality of a regulation that limits or restricts free speech to ask whether the gravity of the evil justifies such invasion of free speech as is necessary to avoid the danger. Thus, for the restriction of free speech to bring a positive objective, cost of the regulation (including any loss from suppression of the valuable information) must be less than probability that the speech sought to be suppressed will do harm and magnitude (social cost) of the harm.

Thirdly, they should strike a balance between individual rights and public policy.

This is related to the first and second recommendations. The decision to make limitations must be rational, balancing both interests, rather than being an emotional and sudden one.

Fourthly, this writer recommends countries to apply criminal punishment instead of censorship. Censorship is an ex ante administrative measure and criminal punishment is an ex post judicial measure on violations of laws dealing with free speech.²² Censorship is worse than criminal punishment due to the following major reasons: (a) censorship suppresses more expression than criminal punishment as it prevents free speech rather than punishing it; (b) as censorship is the mandate of administrative organs and criminal punishment falls under the mandate of judicial bodies, it is believed that criminal defendants do have more procedural safeguards than parties to the administrative proceedings; and (c) censorship is administratively more costly than criminal punishment after the fact, because it requires sifting through potentially a huge amount of material that may contain a small fraction of objectionable matter.²³

Conclusion

This writer concludes that for economic development to be realised at all levels, laws governing free speech have to be legislated through broad protection of the right to free speech and narrow restrictions. The writer suggests the need for further laws, which promote warranted protection of free speech for the proper realisation of economic development through the mechanisms mentioned below. The writer finds that laws protecting (or restricting) free speech impact upon economic development in the following ways: enhanced discussion that leads to innovation; increased trade promotion and advertisement, ensuring accountability and transparency of the government and exposing corruption; free speech as a means of work and livelihood which in turn increases the labour force; reduced dependency rate as individuals will take active part in economic affairs; diversity of ideas is crucial to economic development; increased government revenue from internet users; discovery of truth in the market of ideas.

Notes

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How can laws protecting (or restricting) free speech impact upon economic development?

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The law has an impact on every individual in society: society cannot function without law which regulates the conduct of each of us. This essay sets out the laws protecting (or restricting) free speech and will be accompanied by an examination of how these have an impact on economic development.

Free speech, freedom of speech, or freedom of expression are used almost synonymously. This freedom is recognised as a fundamental right and is one of the strongest attributes in a democratic society. Free speech can be defined as a principle that upholds the opportunity of an individual or a group to express its or their perspectives and thoughts, unfettered of reprisal, oversight, censorship or legal sanction.¹ Free speech basically involves having the right to express views with no limitations. However, free speech being recognised both locally and internationally, this right is nonetheless subject to certain limitations as it is not absolute. Free speech is important to majority rule governments because it involves an enunciation of thoughts and allows debate and discussion.² The right to free speech or expression must therefore work alongside limitations imposed and find an acceptable balance.

Economic development can be examined between the traditional approach and the new welfare-oriented approach. The traditional approach is also known as 'the stages of economic development' which developed in the early 1950s; the new welfare approach is also known as the 'structural-internationalist model' and developed in the late 1960s. According to the traditional approach, economic development was defined as a sustained annual increase in the gross national product (GNP) at different rates.³ However, the concept of economic development was redefined by economists such as Jacob Viner, who contended that an economy couldn't flaunt having accomplished monetary advancement if the rate of destitution in that economy had not lessened and, therefore, it became essential to redefine economic development in line

with the new welfare approach. Economic development was elaborated by Gerald Meier⁴ as the process whereby the real 'per capita income of a country increases over a long period of time subject to the stipulation that the number below an absolute poverty line does not increase and that the distribution of income does not become more unequal'. Therefore, some of the indicators of economic development in a country constitute high employment numbers, steady increase in gross domestic products (GDP), stable inflation, wage growth and interest rate rising.

Contrasting the two concepts globally, free speech is recognised as a human right through international treaties and, within countries, through constitutional law. Although international and constitutional laws recognise and protect freedom of speech, simultaneously the same right may be restricted on account of principles of public interest or in instances where free speech promotes (for example) segregation, when it abuses the privileges of others, or supports disdain and/or violence. In the international context, free speech is protected by the Universal Declaration of Human Rights (UDHR), notably its Article 19 which provides 'that everyone has the right to freedom of opinion and expression, including the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers'.⁵

Since the right of free speech and opinion was set out in the UDHR, the right has been protected in further international treaties such as the African Charter on Human and People's Rights⁶ and reaffirmed by a declaration under the African Charter called The Declaration of Principles of Freedom of Expression and Access to Information in Africa, which reaffirms the rights to free speech in accordance with Article 9 of the African Charter. The declaration caters for modern-day access to information and free speech through, notably, the internet.⁷

In addition, free speech is protected and affirmed in other international human rights treaties. Article 19 of the International Covenant on Civil and Political Rights, provides that everybody has the right to hold sentiments without obstruction and to freedom of expression including the freedom to seek, receive information and ideas of all kinds, regardless of frontiers, either orally or in writing choice. However, it further specifies that these freedoms may be dependent upon specific limitations on the grounds of the privileges or rights of others and for the insurance of public safety or of public order.⁸

Secondly, Article 13 of the Convention on the Rights of the Child⁹ further reaffirms the right to free speech and provides that the child shall have the right to freedom of expression (subject to certain restrictions). Additionally, the Convention on the Rights of Persons with Disabilities¹⁰ protects the right to freedom of speech pursuant to its Article 21 which obliges state parties to ensure that the right to freedom of expression and opinion is exercised by persons with disabilities and this includes receiving and having access to information.

In the context of territorial jurisdiction, the legislature in most democratic countries is vested with the power to promulgate laws and may enact laws that reaffirm free speech. However, most notably, the constitution protects and restricts the right to free speech in most democratic states. The First Amendment of the United States' Constitution provides for the protection of the right to free speech as it stipulates that 'Congress shall make no law abridging the freedom of speech, or of the press'.¹¹ Therefore, in most countries, the right to free speech is protected and restricted by the constitution.

While allowing for free speech creates an environment conducive to the exchange of ideas and, therefore, potentially innovation and economic growth, well-founded limitations can prevent harm including in economic terms.¹² In Rwanda between April and July 1994 for example, members of the Hutu majority, wielding machetes, firearms, and other weapons, killed at least 500,000 people. The vast majority of the victims were members of the Tutsi minority and in 1997 the United Nations International Criminal Tribunal for Rwanda (ICTR) indicted three Rwandans for incitement to genocide. The Rwandan genocide was promoted through free speech and this was detrimental to

the country's economic development - it destroyed the country's infrastructure and economy as well as nearly one-tenth of its population.¹³ Although the nation has made noteworthy headway in recent years, especially in terms of recovering some of the ground lost on education and health, GDP per capita remains much lower than what it would have been without the genocide. Per capita GDP today is estimated at likely between 25 and 30 per cent higher had the conflict not taken place. About one quarter of the population in poverty today can be said to be poor as a result of the genocide.

Other laws that restrict freedom of speech in most countries are defamation laws. Defamation means the publication of a statement that tends to lower a person's reputation in the opinion of thinking members of society generally, or which tends to make them shun or avoid that person.¹⁴ Where freedom of speech is not restricted through defamation laws it can have a negative impact upon the economy, in relation to business. A strong business reputation is crucial in today's online and social media environment. Maintaining a good business reputation assists a business in expanding a portion of the overall industry and developing the business organisation which helps in attracting new investors, customers and business opportunities. Thus, where free speech is not restricted through defamation laws this can be detrimental because false slander of organisations and people can cause obliterating harm, both to business and individual reputation, which may cause business misfortunes and resulting in a decrease in GDP. Where a business is affected through false defamatory remarks this may affect economic development as it may result in high levels of unemployment through redundancy.

Laws restricting free speech in most democratic jurisdictions include sedition laws. Sedition is an action or speech urging rebellion against the authority of the state.¹⁵ Where free speech is not restricted it can be used by individuals conspiring or plotting to overthrow the government by printing, publishing, selling, distributing or reproducing seditious material which can have an influence on the country's economy. Unrestricted free speech can allow for sedition, which may bring about disputes, which may result in war, and this will have a negative impact on the economic development of a country as there may be loss

of infrastructure, in the working population, uncertainty, rise in debt and disruption to normal economic activity.

Further laws restricting free speech which may have an impact on the economic development of a country are copyright laws. The rationale for copyright law is to protect the expression of the work as opposed to the idea behind the work. It exists to support the creation and investment in imaginative works and it protects specific expressions, not general ideas. Copyright law applies to literary, artistic, dramatic and musical works, sound recordings, broadcasts and films, which generate revenue in most countries, and this promotes economic development. With copyright laws restricting free speech in regard to literary, artistic, dramatic, musical works, sound recordings, broadcasts and films, this may have a positive impact on the industries as the copyright laws prohibit piracy and liability may be imposed. The South African printing, publishing and recorded media is one of the most influential copyright-based industries. The industry's direct effect on the economy has been a contribution to employment at 0.52 per cent and this is very essential for a country's economic development, as high employment levels of employment mean citizens will have more money to spend, and this will boost the economy and GDP. In addition, an increase in the printing published and recorded media industry has also influenced other sectors in the economy, such as the trading sectors, the energy sector and the employment sector.¹⁶

Other laws restricting free speech which have an impact on economic development are intellectual property laws regulating and governing trade secrets. Trade secrets are intellectual property (IP) rights on confidential information which may be sold or licensed. At an international level, the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights ('TRIPS Agreement') restricts free speech in order to protect trade secrets. The economic impact of trade secrets is that they can be used as tools in the public and private sectors which can be used as innovation policies. Trade secrets are highly valuable in the innovation and technology industries because if there is an increase in consumer spending or an increase in products produced this in return contributes to the country's GDP, strong employment numbers, wage growth, stable inflation and interest rate rises.¹⁷

In addition, trade secrets are a key factor in the successful internationalisation of a country and where a trade secret is a core to a business it can be detrimental to the business if such a secret is exposed in justification to the inherent human right, right to speech. Successful stories where secrets are the core of a business's success have inspired many multinational companies, which contribute to the country's economic development, having protected their valuable knowledge under secrecy. One of the world's most important trade secrets is Coca-Cola. The Coca-Cola Company has stimulated job creation in most countries and contributed to the economic development of local communities by employing local people, paying taxes to governments, purchasing goods, services and capital equipment from suppliers, and supporting social development programmes.¹⁸ Trade secrets are a preferred strategy for innovative UK firms as 70 per cent of UK firms who develop product and process innovations use trade secrets to protect these innovations.¹⁹ The UK is ranked above average for trade secrets protection and global litigation trends, for example, the 14 per cent annual growth rate in US trade secret litigation from 2001–2012. The theft or misappropriation of trade secrets may translate to an annual cost of one to three per cent of GDP in advanced industrial nations.²⁰

A non-disclosure agreement also places a restriction on the right of free speech. A non-disclosure agreement is a legally binding contract that establishes a confidential relationship, and these relationships include doctor-patient confidentiality (physician-patient privilege), attorney-client privilege, priest-penitent privilege, and bank-client confidentiality. The parties signing the agreement agree that sensitive information they may obtain will not be made available to any others.²¹ Non-disclosure agreements restricting free speech have an influence on the economic activities of the country. This is because non-disclosure agreements are used in organisations to maintain a competitive advantage by businesses keeping secret any work on projects, innovative ideas or exciting new products. The use of non-disclosure agreements by companies ensures that organisations add to nearby economies, by ensuring development and advancement to the local area in which the business is set up.²² Organisations additionally assist with invigorating financial development by giving work freedoms to individuals who may not be

employable by bigger partnerships.

Conclusion

In conclusion, laws restricting or protecting free speech can influence economic activities and the economic development of a country. It is essential that free speech is restricted within the confines of the law in order to protect the peace within a country, protect individuals, protect businesses and protect both the private and public sectors because, where freedom of speech is not restricted within the confines of the law, this may have a negative impact on society as this may result in disputes by virtue of verbal violence which may incorporate racial separation and discrimination of minority groups. The economic development of a country is dependent on national peace and cooperation between citizens, as a country cannot achieve economic growth where verbal brutality and discrimination are permitted through freedom of speech.

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How can laws protecting (or restricting) free speech impact upon economic development?

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Introduction

Article 19 of the United Nations Declaration of Human Rights states, ‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’.¹ This clearly denotes that freedom of expression, otherwise referred to as free speech, is a right afforded to everyone in a society. Unfortunately, more often than not, free speech is misconstrued to mean that a person can say whatever they please without restriction. It is important to note that this is a faulty judgement in view of the fact that there are laws in existence with the primary purpose of restricting free speech; these laws should be upheld. It is important that these restrictions are put in place for many reasons which include the advancement of economic development (as will be explored in this paper).

This paper, therefore, seeks to specifically discuss free speech and economic development; how laws protecting or restricting free speech impact economic development, taking into consideration the advent of social media; and some proposed ways by which laws protecting or restricting free speech could further promote economic development.

Free speech

‘If you offered to let me off this time on condition I am not any longer to speak my mind... I should say to you, “Men of Athens, I shall obey the gods rather than you”’. These were the words of Socrates at a trial. They state clearly that he valued free speech over his freedom. Free speech is expression that is relatively difficult to define, to the extent that the United States Supreme Court found difficulty in clearly explaining what it constitutes.² However, according to Amnesty International, ‘Freedom of speech is the right to seek, receive and impart information

and ideas of all kinds, by any means.’³ It is worth stating that the definition goes on to add that freedom of speech does not solely entail saying whatever one pleases, but is necessarily restricted. This paper stands in much agreement with Amnesty International and advocates for the use of restrictions in free speech.

Free speech has journeyed through time to evolve into what we may know it as today. It has journeyed from being expressed by Socrates, the United States’ Bill of Rights, the Universal Declaration of Human Rights, among many others, and has now evolved to become part of most country constitutions.⁴ It cannot go without saying that this is a very remarkable global achievement.

Economic development

Economic development, by contrast, is the process through which growing economies become more developed economies. Alternatively, it can refer to the process by which the overall wellbeing of the general population improve.⁵ This simply means that economic development factors in the wellbeing of individuals in a given community are in relation to all areas of life, including but not limited to health, finances and education. For the sake of this paper, much emphasis will be placed on the second definition. Hence, the question to be addressed in this paper is how do laws protecting or restricting free speech promote the overall wellbeing of society? According to the *African Economic Outlook 2021*, economic growth in Africa is relatively poor.⁶ Hence, there is an urgent need to promote economic growth (in this case promoting it by considering the laws that protect or restrict free speech).

Laws protecting or restricting free speech

This paper will now look at some laws protecting free speech, as well as those restricting free speech.

In the United States, the US Constitution's First Amendment states what free speech entails and does not entail. It entails being able to use offensive words to convey political expressions, engaging in symbolic speech and other rights, but does not entail making or distributing obscene materials, among other examples.

Article 19 of the United Nations Declaration of Human Rights protects free speech by affording everyone the right to hold opinions without interference and 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. Note that it goes further to state limitations which are that the exercise of the rights provided carries with it special duties and responsibilities and may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary. It is important to note that the previous sentence implies that limitations on the exercise of free speech are only valid once they are upheld by law and are necessary. This paper will refer to this as the twofold criteria for establishing whether or not restrictions should be employed in the exercise of free speech.

In South Africa, there are laws restricting free speech by prohibiting 'advocacy of hatred that is based on race, ethnicity, gender or religion'.⁷ These laws, protecting or restricting free speech, can also be found in country constitutions. In evidence, in Ghana, Article 21 of the 1992 Constitution provides for free speech and expression.

In addition, courts in other countries also make use of anonymous speech⁸ in their operation to protect free speech in circumstances where the witness may be endangered.

Though there are numerous laws instituted around the world to protect (and restrict) free speech, the advent of social media platforms has served as a major setback. In evidence, fake Coronavirus news was posted on Instagram and Twitter by some app users.⁹ This caused widespread fear and panic. Where abusive language is used on social media platforms, specifically Twitter, this also needs to be highlighted. Individuals hide behind computers and mobile phones to post rude, disrespectful and shameful content. In view of this, it is very alarming that Twitter does not screen content to remove potentially

harmful or offensive language as noted in their policies.¹⁰ Such language has been known to drive people to commit suicide or live in depression and that this affects the productivity of that individual in their community or workplace. Looking at the bigger picture, for every offensive post on Twitter or any other social media platform, there is a possibility of suicide or depression, resulting in a decline in productivity, and for every decline in productivity, a drop in economic development. If this cycle continues and expands, free speech would work to prevent or stymie economic growth rather than promote it.

The impact of these laws on economic development

Free speech is essential to economic development in diverse ways.

First, it affords a platform that facilitates the generation of new ideas that can be instrumental to societal growth. When individuals are afforded the liberty to express their views on important matters in society, they are better able to come up with new ideas on how to tackle national or global issues. This paves way for high levels of innovation.

Again, the existence of freedom of speech paves a way for news broadcasters to inform without bias on the shortcomings in a country. This may serve as a medium through which help is channelled to some underprivileged communities in a country. For instance, in Ghana, many underprivileged communities and needy people have been assisted after their stories were shared on television by TV stations. This factors into improving the wellbeing of citizens, hence economic development.

Laws restricting free speech, such as those in South Africa mentioned above,¹¹ prevent individuals from engaging in hateful communication or speech. This promotes societal bonds, thereby promoting economic development by preventing the menace of conflict and its negative consequences. It is safe to infer that such laws exist in South Africa as a result of the apartheid experienced in the country to prevent the occurrence of any similar form of discrimination. This clearly goes a long way to protect the general wellbeing of the citizens of the country by creating a peaceful living environment, thereby promoting economic development.

Proposed ways by which laws protecting or restricting free speech can further promote economic development

As elaborated above, laws protecting or restricting free speech promote economic development. However, it is important that we look into ways by which this can be sustained.

First, this paper proposes the establishment of secure information systems for conveying important information to the public. This point is made with reference to the spread of fake Coronavirus news on Instagram and Twitter.¹² Countries must recognise credible institutions as the sole providers of information on crucial national or global issues to prevent individuals from falling victim to false news, which may be as a result of the abuse of free speech. If this is done, there will be less spread of unnecessary fear and panic in societies, promoting the psychological wellbeing of individuals in a country and, by extension, promoting economic development.

This paper also proposes that the restrictions that countries adopt in the use of free speech be as specific as possible. Countries could adopt specific modules like that used by the US in the First Amendment to the US Constitution.¹³ Restrictions should not be left to the average citizen to decipher. They should be well spelled out. This will make their enforcement much easier, ensuring the smooth running of the society to facilitate economic development.

Furthermore, the media should be exempted from numerous restrictions on free speech in their course of disseminating information. This is because if such numerous restrictions are placed on them, it largely defies the purpose of free speech. The media works purposefully to directly convey information on the happenings in a country. As such, largely restricting them in their operation equals depriving citizens of vital information. This is not to say that there should be no limits, but rather to say that these limits should not be numerous or unreasonable. Countries, in view of this, have a duty to protect the right to freedom of speech of the media. It is thus unfortunate to note that the National Communication's Authority (NCA) in Ghana shut down about 130 radio stations in 2017.¹⁴ This took away their freedom of speech, preventing citizens from having access to vital information. With reference to the twofold criteria established earlier, this action can only be justified if

it was provided by law and was necessary. Arguably, it did not fall within those criteria. Restricting the media in free speech affects economic development because a less informed citizen is one who for the lack of essential knowledge is less productive by a small measure. This ultimately affects productivity and economic development.

In addition, with reference to the menace of offensive language used on social media platforms, this paper proposes that social media apps revise their policies to include the taking down of potentially harmful or offensive content. This will be a very sure way of controlling the abuse of free speech on social media.

Finally, this paper proposes that individuals be well educated on their rights to free speech, as well as the restrictions that come along with those rights. On one hand, if individuals know their rights with regards to free speech, their rights will be protected. On the other hand, knowledge of the restrictions prevents individuals from unknowingly or unnecessarily defying those restrictions. This creates a well-informed and educated society, paving the way for societal growth and economic development.

Conclusion

With due reference to all that has been mentioned above, this paper holds that restrictions on free speech promote economic development by facilitating the generation of new ideas, getting assistance for the needy and underprivileged in society, preventing individuals from engaging in harmful communication or speech, among many others not listed in this paper.

It also went on to indicate some proposals for further promotion of economic development through laws that protect or restrict free speech. They include the establishment of secure information systems to convey important national or global information to prevent the abuse of free speech to spread fake news; making restrictions as specific as possible; exempting the media from numerous or unreasonable restrictions; tracking and taking down of potentially harmful or offensive content on social media by social media app companies; and educating individuals on their right to free speech so as to protect it, as well as educating them on the restrictions applicable in the exercise of their rights.

Importantly, the term ‘twofold criteria’ was coined to determine whether or not restrictions are necessary in the exercise of free speech, with reference to Article 19 of the United Nations Declaration of Human Rights. This paper advocates that these two criteria – whether the restriction is within the law and whether or not it is necessary – will go a long way to promote economic development by providing a reliable method of controlling free speech.

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How can laws protecting or restricting free speech impact upon economic development?

Introduction

Freedom of speech is considered of foundational importance, and is established as a fundamental human right. When assessing the role of free speech, the tendency is to consider it in light of the effect it has on democracy, stability and governance. For this reason, the impact this fundamental right has on economic development is less easy to determine. This essay seeks to provide a new outlook by assessing how laws enacted to

protect or restrict free speech have an impact on economic development. In order to do that, it is essential to explain the concept of free speech and economic development and establish the correlation between them. After understanding the relationship between these two terms, existing laws on freedom of speech will be considered and how these laws can have an impact on economic growth.

Free speech

The Merriam Webster dictionary provides a legal definition of freedom of speech as ‘the right to express information, ideas and opinions free of government restrictions based on content and subject only to reasonable limitations (as the power of the government to avoid a clear and present danger) especially as guaranteed by the First and Fourteenth Amendments to the US Constitution.’¹ The term freedom of speech is derived from the ancient Greek word ‘parrhesia’ which means ‘free speech’ or ‘to speak candidly’.² Freedom of speech is recognised internationally as a fundamental human right. Freedom of speech falls under freedom of expression and are both related to freedom of the press. This is due to the fact that the press is often an outward utilisation of this fundamental right of the citizen.

Economic development

The International Economic Development Council (IEDC) defines economic development as the ‘international practice of improving a community’s economic wellbeing and quality of life.’ In simple terms, economic development is a deliberate effort to bring an increase in the economic welfare and living standards of the people.³ The deliberate effort is collectively done and involves all people of different levels of authority and their input. The need for the inclusive effort highlights the fact that legislature protecting or restricting freedom of speech can actively impact economic development. The question then arises what is the impact that these laws can have, and this is what this paper seeks to address.

Correlation between freedom of speech and economic development

Although freedom of speech is recognised as a fundamental human right, some countries accord it greater importance than others. These countries put fewer restrictions on free speech and protect it in more absolutist terms.

In 2015, research was conducted by the Pew Research Centre on 38 countries to engage citizens on their views on freedom of speech and if their freedom of speech was protected in their countries. In the United States, 73 per cent of people polled agreed that their freedom of speech was protected in the

country.⁴ In Sweden, 80 per cent of people are of the view that their freedom of speech was protected in their country.⁵ In African countries, the numbers dropped. South Africa found only 54 per cent of people who agreed that their freedom of speech is protected and Nigeria had only 51 per cent of people with that view.⁶

Another study was conducted to engage citizens on whether they had a good chance to improve their living standards. The countries with higher protection of their free speech had higher figures. In the US, 74 per cent agreed that most people had a good chance of improving their living standards;⁷ in Sweden 80 per cent were of the view that many people have a good chance to improve their standards of living;⁸ in Africa the numbers dropped again and South Africa had 64 per cent; Nigeria 62 per cent of people with that view.⁹

The Centre for Peace and Human Security (CPHS), supported by UNESCO, conducted a research project on the analysis of correlations between freedom of the press and the different dimensions of development, poverty, governance and peace. Using Cuba’s highly repressive regime as a case study, the CPHS came to the point that ‘the weaker the constraints on the press, the more developed the country will be. Similarly, the more heavily the press is gagged the poorer the country will be.’¹⁰

From the above, countries that have greater value placed on protection of their freedom of speech have a higher level of economic development.

Current legal outlook on freedom of speech

Freedom of speech dates as far back as ancient Greece where it was recognised as one of the major democratic principles. The Universal Declaration of Human Rights recognises freedom of speech as a fundamental human right in its Article 19, which states that 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 medium.¹¹

This position has been improved upon by the International Covenant on Civil and Political Rights, which states the freedom of speech as established by the Universal

Declaration of Human Rights in Article 19(2) and goes further to provide Article 19(3) which states that the exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may be subject, therefore, to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; or (b) for the protection of national security or of public order or of public health or morals.¹² Article 9 of the African Charter on Human Rights also recognises this freedom as it states that ‘every individual shall have the right to express and disseminate his opinions within the law.’¹³ Thus, the right of freedom of speech is not an absolute one but may be subject to certain limitations as allowed by law.

How economic development can be impacted by laws protecting free speech

So far, the paper has explained the terms freedom of speech and economic development, taken a look at the correlation between these two and provided the current legal outlook on freedom of speech. Now the writer will provide how the legislature protecting free speech can provide a positive impact on economic development and also consider in what ways freedom of speech can negatively impact economic development as well.

Trade of ideas for innovation

In countries that have legislation to protect free speech this allows for ideas to be exchanged and traded to promote innovation. For development to take place, there is the need for innovation and inventions to increase the living standard and make the day-to-day living easier. This is hindered if citizens are not allowed to freely seek information and also share the ideas they have. It is trite knowledge that no nation is self-sufficient. Ideas and different views can be traded by countries which lack the requisite equipment and tools to produce inventions to those countries who can. After this exchange and trade of ideas, there will be the creation of wealth, as well as new inventions and innovations to improve the quality of life, thus boosting economic development. This impact of freedom of speech on development was effectively summed up in the words of Steve Forbes that ‘A society that restricts speech will

restrict the freedom essential to the creativity and experimentation that lead to inventions and innovations that raise human standard of living.’¹⁴

Accountable use of resources to promote economic development

Through the protection of the fundamental human right of freedom of speech, the key stakeholders in charge of the distribution and utilisation of resources can be interrogated and held accountable on how they carry out this function for enhanced economic development. In many African countries, there have been difficulties in holding leaders accountable on how the resources of the countries are being used. There are also persons who see their positions of power as a means to improve their wealth at the expense of others. In such situations, the problem only intensifies if the people in the country do not have effective laws to protect their freedom of speech. At the International Conference on the Future of Legal Education in Ghana/ Africa, the Honourable Justice Dr Abou B M Binneh-Kamarah stated that there are still very repressive regulatory regimes that are still in place in some African states, with leaders taking advantage of their position and power for personal wealth creation and suggested that each person should be involved in the enforcement of fundamental human rights. This process can be initiated by laws that ensure the protection of free speech for accountability. This will shift the resources that are being used for personal wealth and misuse, to be used to promote economic development.

Constructive criticism for the improvement of existing business ventures

In a society where freedom of speech is protected, people are allowed the opportunity to provide their opinions on ways to improve existing business ventures to improve the economy. They are also allowed to point out the issues that exist with the current ways of going about business. In current times, there is the need for constant improvement, evolution and growth. This improvement and evolution will come from the acknowledgement of different opinions and views. This is recognised by the IECD’s view that ‘the practice of economic development comprises a collaborative effort involving industry, government and myriad community

stakeholders'. When all such persons are free to provide their views and opinions, they can ensure that the economy is on a constant path to evolve, thus boosting economic development.

Good governance to provide an auspicious environment for economic development

Most of the time, the argument brought up for the protection of free speech is for the ability to enable citizens to ensure political stability and good governance. This also goes a long way to impact economic development. This is a relationship between good governance and political stability and economic development, because poor governance and political instability in a state interferes with the economic development of the state. Thus, through laws protecting free speech, persons are allowed to have a say in governance and prevent autonomy. Therefore, by creating a conducive and safe environment, there is the space for attraction of investments and improvement of businesses to promote economic development.

Conclusion

In conclusion, the impact that laws protecting free speech can have on the economic development is a positive one, by allowing for the exchange of ideas for innovation, allowing citizens to hold leaders accountable for the effective utilisation of resources, helping improve and enhance existing economic

ventures, and ensuring good governance and stability, which allows for a safe environment for economic development. The fundamental right of free speech does not have to be an absolute one, but it should allow for persons to freely express their views and opinions to have a positive impact on economic development.

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- 12 Article 19, International Covenant on Civil and Political Rights.
- 13 Article 9, African Charter on Human Rights.
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How can laws protecting (or restricting) free speech impact upon economic development?

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Introduction

Free speech or freedom of speech is a fundamental right which lies at the core of every democratic society. Among the purposes that the freedom of speech serves is that it strengthens the capacity of an individual to participate in collective decision making and provides a mechanism for establishing a reasonable balance between stability and social change.¹ Freedom of speech is not

only critical to individuals but also has an impact on economic development because it fosters the circulation of ideas and accountability, and citizens and leaders need as much information as possible in order to make good political decisions.² In order to protect or restrict the freedom of speech, governments enact laws which may have an impact on economic development. Therefore, it is relevant to consider how the laws

protecting or restricting free speech impact upon economic development.

This essay will discuss how laws protecting or restricting free speech impact upon economic development. As a starting point, the essay will define free speech and economic development. Thereafter, the essay will discuss the laws protecting and restricting free speech and the impact they have on economic development.³

Free speech

Free speech is the right to seek, receive and impart information and ideas of all kinds, by any means. Freedom of speech and the right to freedom of expression applies to ideas of all kinds including all those that may be deeply offensive.⁴ Freedom of speech is the most basic component of the freedom of expression. Freedom of speech is recognised as a human right under the Universal Declaration of Human Rights. This right allows individuals to express themselves without the interference or regulation from the government.⁵

Economic development

In order to explain and understand how laws promoting or restricting free speech impact economic development, it is relevant to understand the concept of economic development. Economic development is defined as the creation of wealth from which community benefits are realised. It is more than a jobs programme; it's an investment in growing your economy and enhancing the prosperity and quality of life for all residents. Anything a community does to foster and create a healthy economy can fall under the auspice of economic development. In general, economic development is usually the focus of federal, state, and local governments to improve our standard of living through the creation of jobs, the support of innovation and new ideas, the creation of higher wealth, and the creation of an overall better quality of life.⁶ Similarly, economic development is defined as sustained, progressive change to attain individual and group interests (related to the economy).⁷

Laws protecting free speech

The freedom of speech is of fundamental importance in every society and several laws and instruments have reaffirmed the

importance of the right to hold opinions and express oneself without interference by providing for the protection of this right. One of the key instruments protecting free speech is the Universal Declaration of Human Rights which provides that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.⁸ Similarly, the International Covenant on Civil and Political Rights (ICCPR) provides that everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression which shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers.⁹ Further, this right has also been recognized and reaffirmed regionally. The African Charter on Human and Peoples' Rights provides that every individual has the right to receive information and express and disseminate his opinions within the law.¹⁰ Additionally, many countries around the world have recognised this right by its inclusion in their constitutions. For instance, the Zambian constitution in its Bill of Rights provides for the protection of the right to freedom of expression.¹¹

Laws restricting free speech

Among the laws restricting free speech are cyber laws and defamation. Cyber laws require some level of monitoring of activities in the cyber space. One example of such a law is the Zambian Cyber Security and Cyber Crimes Act, particularly, sections 27 and 28 which provide for the interception of communications by law enforcement officers. Additionally, the broad powers given to the enforcement officers can lead to the illegitimate surveillance of communications. While cybersecurity activities may require some degree of monitoring in order to be able to detect anomalies and protect cyber infrastructure and information, cyber security strategies and activities should not be an excuse for building massive surveillance regimes for unfettered monitoring and analysis of the personal information of individuals.¹² The freedom of expression envisages the right to communicate and hold opinions without restriction and, consequently, any illegitimate suppression of this right may result in a society where individuals cannot hold their governments

accountable for fear of being prosecuted.

Defamation laws also restrict free speech. Defamation is understood as the protection of persons against unlawful attacks on their reputations.¹³ The only legitimate purpose of defamation laws is to protect reputations. At the same time, the practice in many parts of the world is to abuse defamation laws to prevent open public debate and legitimate criticism of wrongdoing by officials. Additionally, in many countries, criminal defamation laws are abused by the powerful to limit criticism and to stifle public debate. The threat of harsh criminal sanctions, especially imprisonment, exerts a profoundly chilling effect on freedom of expression.¹⁴ The offence of criminal defamation is clearly a limitation to the freedom of expression, but one which seeks to give effect to the need to protect the reputations of others.¹⁵

How laws protecting (or restricting) free speech impact upon economic development

Laws protecting and restricting free speech can positively and negatively impact upon economic development as they determine how individuals participate in decision making and development. Laws protecting free speech seek to increase the capacities of individuals, as one of the purposes that the freedom of speech serves is that it helps an individual to obtain self-fulfilment and strengthens the capacity of an individual to participate in decision making.¹⁶ Additionally, freedom of speech allows ordinary people to participate freely in the spread of ideas and in the creation of meanings that, in turn, help constitute them as persons. The protection of the freedom of speech implies that everyone – not just political, economic or cultural elites – has a fair chance to participate in the production of culture, in the development of the ideas and meanings that make them and the communities to which they belong.¹⁷ Thus, individuals cannot reach their full capacities if they cannot freely exercise their freedom of speech. This is because it is through the freedom of speech that individuals are able to seek, impart and receive information. Additionally, through the freedom of speech, individuals can acquire the relevant knowledge and skills which, in turn, create employment opportunities and also help them to participate in civil and political decision-making processes.

In order to achieve economic development,

it is important to have in place laws that protect and enhance the exercise of the freedom of speech. It is through the exercise of free speech that individuals will have access to information contributing to development, which will in turn help individuals make informed financial decisions and engage in activities that will contribute to the betterment of the quality of life. Since economic development encompasses the creation of wealth from which community benefits are realised,¹⁸ this creation of wealth and participation in the benefits realised can only be done when individuals freely seek, impart, receive information and hold their opinions.

Additionally, individuals can only participate in activities that contribute to economic development, such as entrepreneurship, if they have access to proper information. Besides the creation of wealth, economic development also encompasses the enhancement of the quality of life for all residents and this can only be done if there is circulation of ideas and accountability and citizens need as much information as possible in order to make good economic and political decisions.

On the other hand, it can be said that laws restricting free speech can negatively impact economic development. For instance, in a nation where criminal defamation is illegitimately used by the government, citizens will be reluctant to air divergent views to public officers for fear of being prosecuted. Additionally, if individuals are constantly monitored on cyberspace this is likely to silence legitimate free speech and legitimate political dissenters. Since the freedom of expression is invariably connected with the right to communication as the only way we can express our thoughts, opinions and views in the process of deliberation and conversation with others, the unnecessary and illegitimate restriction of this freedom would result in an uninformed citizenry. Furthermore, economic development is directly linked to governance. This is because the kind of leaders that citizens elect will determine the kind of laws and policies that the government will put in place to ensure that economic development is achieved. Thus, free speech not only helps individuals to make political decisions but economic decisions as well.

Therefore, economic development is enhanced by laws protecting free speech and hampered by laws restricting free speech.

International, regional and national laws on free speech have an impact on economic development. It is in that regard that these various pieces of law, as discussed above, protect the freedom of speech by ensuring that individuals have the right to freely seek, impart and receive information, which, in turn, helps to empower individuals and to participate in economic development activities.

Conclusion

This essay has demonstrated that laws on free speech can impact either negatively or positively upon economic development. Laws protecting free speech can positively impact upon economic development, as the ability of individuals to participate in entrepreneurship, employment and innovation is closely linked to circulation of information which helps individuals make informed political and financial decisions. On the other hand, laws restricting free speech, can negatively impact upon economic development as they have the ability to restrict the circulation of vital information, which may be relevant for economic development.

Notes

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- 2 Oltmann Shannon, 'Intellectual Freedom and Freedom of Speech: Three Theoretical Perspectives' (2016) 86(2) Information Science Faculty Publications 162.

- 3 'What is Economic Development?', *California Association for Local Economic Development*, 2020. Available at: <https://caled.org/economic-development-basics>, accessed 18 Dec 2021.
- 4 'What is Freedom of Speech?', *Amnesty International UK* (2020). Available at: www.amnesty.org.uk/free-speech-freedom-of-speech, accessed 20 Dec 2021.
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- 9 International Covenant on Civil and Political Rights, Art 19.
- 10 African Charter on Human and Peoples' Rights, Art 9.
- 11 The Constitution of Zambia, Art 20.
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- 14 Article 19, 'Defining Defamation: Principles on Freedom of Expression and Protection of Reputation' (2nd edn, 2017), available at: www.refworld.org/docid/58b001204.html.
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Introduction

Galileo Galilei was the first to promote the idea of heliocentrism – the theory that the earth revolves around the sun. Religious leaders of the time had long since propagated the rhetoric that the sun revolved around the earth. Naturally, they thought that such speech was heterodox and harmful to the Christian order. Galileo was forced to renounce his scientific belief. Progress in science stagnated because Galileo was not allowed to hold his scientific opinions and

to express them freely without interference or censorship. This is a prominent example among historical anecdotes that present a cautionary tale of how restricting freedom of speech can be regressive to development in general, whether it be in science, the law, or economics.

There has been a slew of literature on the interplay between free speech and economics despite the seemingly rebarbative complexities in trying to find a correlation between the legal doctrine and economic principles. Be that as it may, we are in a



zeitgeist where policymakers are looking for ways to harness economic growth. New ideas and innovation are important to fostering economic growth. Consequently, the exchange of ideas is a key component of an innovative economy. This essay seeks to contribute to the history and current debates of the impact of laws protecting or restricting free speech vis-à-vis economic development. The discussion explores the dichotomous negative and positive implications of these laws and how they subsequently impact economic development.

Freedom of speech in a nutshell

The principle of free speech can be summarised by the axiom, ‘every person has a right to freedom of expression.’ Freedom of speech is a fundamental human right that is protected in many legislative texts. In some countries, it is a constitutional right. Freedom of speech is a recognised human right in international human rights law including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Free speech is a facet of the more holistic right of freedom of expression. The right to free speech encompasses one’s right to hold opinions and to express them freely without government interference, without fear of retaliation, censorship, or criminal sanction. It connotes the right to express one’s views aloud – I may add in parentheses that it also includes expressing one’s views on the internet and social media. Article 19 of the UDHR states provides: ‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.’

It is worth noting that the right to free speech also places an obligation on every person, a duty to use it responsibly and reasonably. The right to free speech is not absolute. It has limitations. Public authorities may limit this right where it is in the interests of justice, necessary and proportionate to protect national security, prevent crime, protect health or protect privileged information. Article 19(3) of the (ICCPR) provides:

‘The exercise of the rights provided in paragraph 2 of this article (that of freedom of speech) carries with it special duties and responsibilities. It

may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: for respect of the right and reputations of others; for the protection of national security or of public order or of public health or morals.’

The ideology central to any democratic society that is based on freedom and equality is that there is a need for freedom of expression – a society in which individuals are involved in the discourse concerning the developments of the country, whether it be on politics, the society, or economics. Stymieing anyone from speaking their mind is therefore counterintuitive to the idiosyncrasy of democracy.

Positive impacts of free speech on economic development

As alluded to above, laws regulating free speech have a dichotomous effect. Free speech can improve or harm sustainable economic growth. There is an inconspicuous interplay between freedom of speech and economic growth. This discussion seeks to explore and expound that correlative relationship. Free speech facilitates and enhances the free exchange of ideas and information which is important for innovation, thus resulting in sustainable economic growth. People should be allowed to openly criticise government economic policies. They should not always have to resignedly accept whatever government proposes or implements and to conclude that perhaps they know best while bereft of the opportunity to critique them. The civilian population needs to opine on government economic policies.

Economists¹ have pointed out that cities with large populations usually experience a lot of economic development. However, the exact mechanism through which the innovation takes place is often obscure – it is communication. Communication and uninhibited speech are crucial inputs in the production of innovation. There is empirical proof of the positive impacts of promoting free speech to assist economic growth. From data between circa 1860 and 1960 economists, Curtis Simon and Clark Nardinelli studied that between those years the rapid economic growth in English cities was as a result of the high bourgeois demographic who were allowed to engage in the free exchange of ideas and information – at the industry

workshops, fairs, coffee shops and lectures. The authors had an interesting conclusion to their research, they argue 'it is the talk of the bourgeoisie and not the smoke of the factory that leads to the economic growth.' This is one of the many graphic examples of how free speech impacts economic growth.

The question has been: what is so harmful about laws that censor or restrict speech that it negatively impacts growth and economic prosperity?

Limiting free speech can have a pernicious effect on innovation and can harm economic growth. Restricting free speech stymies free exchange of information and it also stifles creativity and idea generation. Ideally, laws that restrict free speech have a ripple effect spanning many generations after us. They inadvertently create an environment where it becomes inexorably impossible to carry out any discourse on any subject. Unnecessary restrictions on speech and online censorship are counter-productive. Policymakers, pre-eminently, the legislature, need to understand that data is a major asset to economic growth that is possessed by individuals and its free exchange subsequently leads to economic growth and should structure laws in such ways that free speech is afforded to all. Free speech promotes innovation through collaboration.

Additionally, it can be noted that in authoritarian countries there tends to be little economic innovation. If people are not provided with a means of sharing their ideas, policymakers will never be able to see things past their sense of what is right. Opening channels for discourse to exchange ideas proves to be an invaluable tool to improve economic growth.

Therefore, laws should not arbitrarily restrict free speech as this may impede sustainable economic growth.

Censoring harmful speech: importance of limitations to the right to free speech on economic development

Despite campaigns on the need to protect the right to free speech, there are significant signs that, where the right is not limited or restricted it may inhibit sustainable economic growth. Free speech should generally be restricted so as to avoid propaganda that is aimed at co-opting people into movements that directly harm economic progress. A society in which people are allowed to say whatever they want regardless of the veracity of such utterances is doomed to anarchy. A proliferation of fake

news can culminate into mass hysteria and consequently hamper economic growth. For example, misinformation about the stock market can have a huge negative impact on businesses and the economy. This example paints a *tableau vivant* of why it is important to ensure that inasmuch people are allowed free speech, that free speech should be limited to facts. Limitations on free speech, therefore, are necessitated by the same objective – to promote economic development. Moreover, vitriolic criticism has a negative impact on the development of the economy and disrupts the free exchange of ideas and information.

How the laws protecting and restricting free speech should be structured

Already it is clear at this point that draconian laws, that arbitrarily restrict free speech, hamper economic growth just as do those laws that give people unchecked freedom to say whatever they want to say. Both extremes have grave consequences for the economic development of any nation. The legislature should ideally make laws that enable people to speak freely on economic issues, debate and critique government economic policies. On the other hand, to balance the scale of equality these laws should also have limitations. These limitations should be reasonably justifiable in a democratic society and should not indiscriminately stymie people from speaking without just cause. This interstitial relationship should always be balanced and kept this way. If the scales tip more on one side than the other there can be grave consequences to economic development.

Conclusion

From the analysis, one can comfortably assert that the laws that protect and limit free speech have a dual impact. On the one hand, they have positive implications. They help in promoting sustainable economic growth by creating channels for discourse to share ideas and improve innovation. Conversely, these same laws, although to a lesser extent, may hamper economic growth, putting freedom of speech in a straitjacket laden with restrictions and limitations seems counterintuitive to the right. Nevertheless, the essay also expounds on the fact that these restrictions act as bulwarks of the right, to ensure that people do not abuse it or use it past what is reasonable. The complexities, therefore, are apparent. Free speech should be protected and likewise, it

should be restricted all in an effort to promote economic development. The correlative relation between sustainable economic growth and free speech is immutable. In a nutshell, this analysis gives impregnable proof that it is quixotic to work towards enhancing economic development while people are stymied from free speech.

Note

- 1 C Simon and C Nardinelli, 'The Talk of the Town: Human Capital, Information and the Growth of English Cities, 1861 to 1961', *Explorations in Economic History* (Elsevier, 1996, ISSN 0014-4983, Vol 33.1996, 3, p 384-413).

How can laws protecting (or restricting) free speech impact upon economic development?

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'If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter.'

George Washington

Introduction

Free speech is one of the most significant political values and fundamental rights in the contemporary world. Human beings need free speech to express their needs, wants, behaviour, knowledge, experiences, talents and capacity. People need free access to information to think, to hold and express their opinion, which has impacts on such individuals and others. Impacts of free speech can be both positive and negative. Due to this, free speech shall be regulated by law, to increase its positive impacts and to eliminate or mitigate its negative impacts. This is why we have many international and national laws to protect free speech and, at the same time, to restrict it. These laws have impacts on society's economy, culture, tradition and religion. Among these, this essay aims to answer the question of how laws protecting (or restricting) free speech impact upon economic development. Before that, it discusses free speech, economic development, and laws protecting (or restricting) free speech.

Free speech

Free speech is an elusive concept and, in literature, it is interchangeably used with freedom of speech and freedom of expression (as in this essay). The right to free speech has a long history; it was narrowly understood, due

to the term 'speech', freedom of expressing ideas by words or language, whether spoken or written or printed, which was seriously under-inclusive.¹ However, most liberal democracies now understand the right to include a wide range of symbolic and communicative but non-linguistic forms of public speaking and public protest, including marching, picketing, parading, sign-carrying, armband-wearing, flag-waving, flag burning, effigy-burning, and much more of this non-linguistic character, none of which can be described as speech in the ordinary English language sense of the word.

In response to the potential narrowness of the word 'speech', the drafters of many modern constitutions and human rights documents have replaced it with 'expression', a word that appears capacious enough to include various forms of non-linguistic communication, but this term is also overused because it is possible to express one's self in non-communicative ways.² Therefore, freedom of speech is a principle that supports the freedom of an individual or a community to articulate their opinions and ideas without fear of retaliation, censorship, or legal sanction.³ It includes the right to seek, receive and impart information and ideas of all kinds, by any means.⁴

However, free speech is not an absolute right because it is limited in order to protect other interests such as national security, public order, public health and public morals.⁵ Justifications for such include the harm principle, proposed by John Stuart Mill in *On Liberty*, which suggests that the only purpose for which power can be rightfully exercised over any member

of a civilised community, against their will, is to prevent harm to others,⁶ but there is disagreement on the extent and justification of limitation.

Economic development

Economic development has no clear-cut definition and is understood differently from different perspectives. For the purpose of this essay, we can say that economic development is the means to achieve sustained increases in prosperity and quality of life realised through innovation, lowered transaction costs and the utilisation of capabilities towards the responsible production and diffusion of goods and services.⁷ It is more than just economic development because it requires increased enjoyment of other non-economic goods, such as education and health services, as well as rights.⁸ The aim of economic development is to improve material standards of living by raising the absolute level of per capita incomes,⁹ which is the average income earned per person in a given area (city, region, country) in a specified year.¹⁰ This can be achieved when the government effectively and efficiently regulates the market to avoid or reduce the effect of market failure caused by the unavailability of public goods, time-inconsistent preferences, information asymmetries, non-competitive markets, principal-agent problems, or externalities in the unregulated market.¹¹ Economic development is characterised by stabilised prices, high employment, sustainable growth and sufficient infrastructures.

Laws protecting (or restricting) free speech

Free speech needs regulation by law, among others, for the sake of individuals' and society's wellbeing because law is a device that regulates human behaviour in certain societies.¹² Due to this, there are several national and international laws protecting and restricting free speech. Protection of free speech imposes the negative duty on government and others not to intervene in an individual's free speech, while those restricting free speech allow such intervention to advance other interests. Some of these legal documents are referred to as the following: Article 19 of the Universal Declaration on Human Rights states that everyone shall have the right to hold opinions without interference and everyone shall have

the right to freedom of expression. It gives an absolute right to free speech; Article 19 of the International Covenant on Civil and Political Rights (ICCPR) recognises the right to freedom of expression, which includes the right to seek, receive and impart information and ideas through any means without frontiers (it also provided for the restriction of free speech in subsequent sub-articles); Article 9 of the African Charter on Human and Peoples Rights; and Article 10 of the European Convention on Human Rights also recognised free speech almost in a similar way to ICCPR. Following these and other similar international and regional legal documents, most states have recognised this right in the domestic laws, especially the Constitution, though it is beyond the scope of this essay to discuss all of them. However, in most legal documents, protection of free speech is provided as a principle, while restriction of free speech is provided as an exception with sufficient justification(s).

Impacts of laws protecting free speech on economic development

Laws that protect free speech from the intervention of government or others have huge positive contributions to economic development. Since they allow individuals to seek, receive and impart information and ideas without fear of unjustified restriction, it impacts economic development in several ways. Some of them are discussed in the subsequent paragraphs.

Promotion of democracy and reduction of corruption

Free speech is commonly thought to promote democracy, which rests on the principle of self-government, whereby political decisions ultimately belong to citizens either directly or through representatives¹³ because government officials in a democracy are merely agents of the electorate.¹⁴ Therefore, laws protecting free speech enable citizens to access information and to express their ideas or opinions on actions of the government through media or public participation, and it promotes transparency, accountability, efficiency, rule of law and good governance. If these are promoted, the risk of conflict or war is rare because conflicting interests in the community can be identified and accommodated in favour of social stability, and individuals and minorities that openly

dissent may relieve frustrations and do not need to use violence as an alternative to get power, to fight government programmes or to gain attention for reformist claims,¹⁵ which, logically, is welfare-enhancing because it prevents unnecessary destruction of human beings and material assets.¹⁶

However, there is a counter-argument that economic development can be achieved under a non-democratic government, for example in China, but most developed nations achieved their development under a democratic government. Moreover, abuse of power and corruption can be denounced and may be prevented by fear of revelation.¹⁷ This means public funds raised through taxation are allocated to provide public goods and services, such as law enforcement, peace and security, national defence, the rule of law, among others, which cannot be supplied by the market because they are non-rivalrous and non-excludable,¹⁸ but economic development cannot be imagined without them. Generally, laws protecting free speech promote democracy and reduce corruption and abuse of power, which are very important for economic development.

Promotion of innovations and technology

Laws protecting free speech promote free access to information, which is very scarce but essential for the development of ideas, knowledge and experiences – a free exchange of ideas which drives innovation¹⁹ because most great discoveries and achievements come not through one person's sole genius but through collaboration with others since everyone has different talent, experience and capability.²⁰ This innovation describes the development and application of ideas and technologies that improve goods and services or make their production more efficient,²¹ which leads to higher productivity, meaning that the same input generates a greater output.²² This creates competition for capitalism and forces entrepreneurs to continually innovate and generate new ideas that help them stay afloat by conducting economic activity efficiently and effectively, which increases employment, income, saving and stabilises price. Thus, laws protecting free speech are important for economic development by promoting innovations and technology.

Promoting free market

The market is a structure that allows buyers and sellers to exchange any type of goods, services and information,²³ and participants of the market need free speech for several reasons. Suppliers or sellers need to access information on the demand and supply to decide on the time, place, price, quantity and quality of their supply. Additionally, to promote their business's goodwill, which is the reputation of goods and services they supply,²⁴ they use commercial speech, which is speech or writing on behalf of a business with the intent of earning revenue or a profit.²⁵ On the other hand, buyers need to access information on the price, quality and quantity of services and goods they want to buy, otherwise information asymmetry, which occurs when one party in the transaction has more information than the other,²⁶ is unavoidable, which causes market failure. They also need free speech to express their ideas or grievances on the market. Thus, laws protecting free speech are important to make the market stable, healthy and secure; and by which economic development can be achieved because employment, income, saving, inflation, health, among others, can be easily regulated.

Assurance of self-fulfilment and discovery of truth

Self-fulfilment and discovery of truth are also the justification for the protection of free speech. An individual's self-fulfilment, which can be interpreted to refer either to the development of the individual's powers and abilities – an individual realises their potential – or to the individual's control of their own destiny and, through making life-affecting decisions, an individual realises the goals in life that they have set.²⁷ An individual's faculties may develop by the receipt, as well as by the dissemination, of communication.²⁸ Therefore, the protection of free speech is important for an individual's self-fulfilment, which is important to get effective, competent and efficient human resources in every aspect of life of society. This is very important for economic development, which cannot be achieved without sufficient human resources in economic sectors and other sectors that influence economic development.

Discovery of truth is also another justification for the protection of free speech because if restrictions on speech are

tolerated, society prevents the ascertainment and publication of accurate facts and valuable opinion.²⁹ Thus, diversification of opinion is important for the discovery of truth. This has a positive impact on economic development because truth is important to make decisions, including economic decisions. Otherwise, individuals may be reluctant to engage in economic activities. Generally, laws protecting free speech have a positive impact on economic development by assuring self-fulfilment and by serving as means to discover the truth.

Impacts of laws restricting free speech on economic development

However, free speech can be limited when it is against public interest or others' rights, for example, in the case of libel, slander, obscenity, pornography, sedition, incitement, fighting words, classified information, copyright violation, trade secrets, food labelling, non-disclosure agreements, the right to privacy, dignity, the right to be forgotten, public security and perjury.³⁰ For instance, if third parties' rights of dignity, privacy, property, and so on, are violated under the pretext of such kinds of free speech, victims may resort to defend their rights through self-help, which may disturb public order. And restriction of disclosure of the information on national security is for preventing espionage or to protect military secrets to prevent the attack of the potential enemy. Perjury is prohibited and punished for the purpose of justice. Violation of copyright, patent and trade secret is to give incentives for individuals to produce such intellectual property without any fear because of their nature of non-exclusiveness and non-rivalrous because they are very important for economic development. Generally, protecting free speech in such circumstances affects economic development. Therefore, laws restricting free speech are necessary for economic development which cannot be achieved without protecting national security, public order, public morals, public health, and others' rights and dignity.

Conclusion

Free speech is a fundamental human right, whose regulation by law has several consequences on the life of individuals and society, especially on economic development. Laws protecting free speech impact economic development positively

by promoting innovation, promoting democracy and reducing corruption, promoting the free market, assuring self-fulfilment and enhancing the discovery of truth. Laws restricting free speech also impact on economic development positively by advancing public interests and others' rights and dignity. However, there is always a disagreement on the extent and justification of the restriction of free speech.

Notes

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How can laws protecting (or restricting) free speech impact upon economic development?

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Free speech (or freedom of speech) entails the right to seek, receive and impart information and ideas of all kinds, by any means.¹ It forms the basis for the full satisfaction of employing a wide range of human rights, including the right to development. Trubek (2012) outlines the key strands of the law and development movement; one such strand focuses on the instrumentality of the law for development or how the law can be used by states to foster economic growth.² It aids in providing an elaborative linkage between the law and development. This essay, therefore, seeks to provide a theoretical framework on this strand to discuss how laws protecting or restricting free speech impact upon economic development, both positively and negatively.

Free speech ensures that there is a smooth flow and exchange of ideas and information which drives innovation and results into sustainable economic growth. The reverse is also true. Censorship or restricted speech negatively impacts economic prosperity. These communicative restrictions deadlock free exchange of information, thus stifling creativity and the generation of new ideas.³ Building from this premise, it is plausible to argue that laws protecting free speech will encourage people to utilise and exchange information in order to create, innovate and invent. Such innovation of ideas and technologies will lead to economic development due to increased productivity, trade and investments. Laws restricting free speech, however, will make people fearful to innovate. This is evident by the world's most authoritarian countries which are

largely not known for their innovation, cutting edge research or new technological breakthroughs.⁴ On the contrary, there is good reason to believe that the United States' prosperity in this rapidly changing sector is due to its commitment to the free exchange of ideas.⁵ For instance, Facebook's market capitalisation alone is twice the size of all the large European tech giants combined.⁶ A singular entity, marked by innovation and nuanced thinking, has thus changed the face of the economic frontier with regards to the tech industry. This argument echoes the law and development movement, as laws protecting free speech can be used as a tool for development because such laws offer incentives for people and institutions to not only innovate but to positively impact their economic frontier for further development.

Further, laws protecting free speech allow people to demand accountability in their leaders, thus influencing policy making and decisions that stimulate economic growth. This is done through various mechanisms including protests, broadcasting and publications by which people communicate and receive opinions in a free manner. In many countries, leaders are elected by the people through a fair and democratic process; it is reasonable to argue that free speech is an extension of democracy as it empowers people to express themselves without being censored by government in order to bring about change in their society. In the same vein, a free and uncensored press or media constitutes one of the cornerstones of a democratic society as they are watchdogs of government in the development process.

Therefore, laws protecting free speech are essential as they encourage the media to inform public opinion, comment on public issues without censorship⁷ and to criticise state policies or actions that are retrogressive. For example, in Malawi under the one-party reign of President Hastings Kamuzu Banda, Malawi was described as a country where silence rules because of the regime's effective machinery for squashing dissent.⁸ Laws restricting free speech create an atmosphere where the citizenry cannot express their views when the government is taking steps that negatively affect the economy. Based on the law and development movement, laws protecting free speech help to facilitate economic development because they ensure that the citizenry and media hold their governments to account, reduce corruption and influence leaders to choose policies or make decisions that facilitate economic development.

Commercial advertising, among other forms of advertisement, employs the mechanisms of free speech. These largely involve speech that aims to influence consumers in their commercial decisions and often involves advertising products and services for sale.⁹ Laws protecting free speech play a key role in fostering economic development because the demand created by commercial advertising promotes job creation, revenue generation and increased productivity. This in turn stimulates economic growth. For example, a study reported that US advertising accounts for about 2.5 per cent of the country's \$14tn gross national product (GNP) as US consumers rely heavily on advertising to influence how they spend some \$9tn annually on various goods and services.¹⁰ Laws restricting free speech can, therefore, have a negative impact on the economy in a country where consumer spending determines the future of the economy and advertising motivates people to spend more.

The same study found that advertising played a key role in generating 18.2 million of the 126.7 million jobs in that year and contributed between 12 and 16 per cent of private sector revenues throughout the country in both rural and urban areas.¹¹ In tandem with the law and development movement, this shows that laws protecting free speech can be used as an instrument for development, as commercial advertising is a powerful tool of competition which helps the economy to function smoothly and expand.

On the other hand, laws protecting free speech also have the potential to negatively

impact upon economic development. Free speech or (freedom of opinion) is closely related with freedom of expression because freedom of expression provides the vehicle for the exchange and development of opinions.¹² This denotes that people can use various means, including protests, to voice their views and to impart information to the public, to their government or even to the world. Evia *et al* (2001) notes that 'it is great that Bolivians have found their voice and are actively interested in the direction of their country's development. However, a large number of protest methods, such as road blocks and strikes, have a damaging effect on the economy because they take time, effort and money away from both the protesters, the government and the general population. This trend has at times been estimated to have cost the government as much as a \$200m yearly, which equates to three per cent of gross domestic product (GDP).¹³ It is clear, therefore, that some protest methods have a negative impact on GDP growth and economic development. In as much as laws protecting free speech allow people to direct the country's development, free speech can be expressed in ways that can lead to destruction, looting and other disorderly conduct, which affect the economy. The reverse is true that laws restricting free speech will ensure that there is no such destruction that negatively impacts upon economic development. This demonstrates the linkage that exists between the law and economic development as posited by the law and development movement.

Laws protecting free speech can also negatively impact economic development on the basis that malicious public comments or negative reviews made in the pretext of free speech have the potential of hindering the performance of businesses that generate revenue, promote job creation and trade in the country. Hence laws restricting free speech could have the opposite effect. Business shaming leads to loss of revenue by undermining the business's reputation, thus denting the organisations public relations and leading to fewer customers and even fewer financial profits. This has led to the closure of some business franchises. In order to mitigate malicious public shaming, some organisations have opted to get their customers to sign contracts designed to prevent clients from making negative comments in print or online.¹⁴ However, these contracts have mostly been deemed

void by courts, due to infringement of rights. Hence, a business must prove that a consumer has malicious intent or has made false statements, otherwise the business cannot seek compensation for lost business.¹⁵ On the other hand, laws protecting free speech are still useful because they help level the playing field for businesses. For instance, journalists and other organisational entities that investigate and expose corruption ensure that all businesses play by the same rules.¹⁶ In places where the law does not guarantee such freedom, however, companies are more likely to be entangled in corruption, predatory behaviour and bribery, which are harmful to economic development. This resonates with the law and development movement as the argument delineates the interplay between laws protecting or restricting free speech and economic development.

Lastly, laws restricting free speech can impact positively upon economic development by the tactful prevention of hate speech. Hate speech (a well-known restriction of free speech) involves speech that is an expression of hatred of some group, especially in circumstances in which communication is likely to provoke violence.¹⁷ A study in Nigeria indicated that hate speech affected the economy negatively by 94.3 per cent and 71.7 per cent believe that there is capital flight away from hate speech-prone environments.¹⁸ Capital flight is characterised by the outflow of money or assets from a country by people and businesses due to certain events in the country, thereby resulting in negative economic consequences to the country.¹⁹ This denotes that a country riddled with hate speech translates into capital flight and negative consequences on the economy because hate speech instigates violence and hostility. With laws restricting free speech, there will be less capital flight, which means targeted groups or minority-owned businesses will continue to thrive, and there will be a reduction in the loss of labour and investments in the country, thereby preventing devastating effects on the economy. The above research indicated that hate speech continued to motivate political violence and downturn in economic growth in Nigeria.²⁰ From this stance, it is clear that hate speech is the undoing of a country's economic development. This implies that laws restricting hate speech would positively impact upon economic development. Even though imperceptible at the outset, the link between restricting free speech and economic

development is quite significant, hence laws restricting free speech also have the potential to be used as tools for impacting economic development.

Conclusion

In conclusion, laws protecting or restricting free speech impact a country's economic development both positively and negatively. Laws protecting free speech are key to facilitating economic development as free speech drives innovation, empowers people and subjects governments to public scrutiny. Such laws also help to increase productivity and to level the playing field between various businesses. Laws protecting free speech, however, can lead to destruction and decrease in profits for businesses. Laws restricting free speech impact economic development as they help preserve the reputation of businesses, prevent destruction as a result of protests and prevent capital flight. The solution, therefore, lies in creating a balance. I would thus opine that laws must protect free speech as it is essential to every democratic society. However, appropriate limitations must be set. Consumers must be allowed to give negative reviews whilst maintaining proper decorum by the removal and restriction of malicious commentary. Free speech must be permitted but must not include speech intended to incite hatred against any people, group or organisational entity. Though people should be at liberty to express themselves through protest or strikes, the law should only make permit for peaceable demonstrations that avoid property damage. Laws protecting or restricting free speech can be viewed as instruments for impacting economic development. Used in unison, and with appropriate balance and discretion, both the public and private sector can experience increased economic development through measured use of free speech.

Notes

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