

THE ORANGE COUNTY REGISTER

A practical case against censorship

Marc Joffe

August 1, 2023

In the late twentieth century, debates over free speech were typically resolved by citing the First Amendment and observing that freedom of expression was a basic human right. But today, that line of argument is no longer sufficient. Those of us who favor free speech must prove to a skeptical audience that it is a right worth protecting. Since people of good faith now find arguments for censorship persuasive, these arguments should be met on their own terms.

A common view both in California and nationally is that important matters can be resolved by duly elected officials and their appointed experts. The reaction to the COVID-19 pandemic provides an example. Many Californians agreed that the governor, state and county health officials, and the Centers for Disease Control (CDC) should handle the pandemic response. Once a state or county health officer promulgated a policy it was the citizen's responsibility to follow these pronouncements without objection.

This approach makes sense on its face. Qualified experts chosen by our elected leaders should tell us how to deal with a public health emergency. Anyone using misinformation, disinformation, or malinformation to oppose official policies is merely sewing confusion and potentially reducing compliance, leading to unneeded death and suffering. From this perspective, the logical response is to shut down opposing voices since they are jeopardizing public safety.

This vision of a wise expert class protecting the public from inappropriate information has deep roots in political thought going all the way back to Plato's *Republic*. Although Plato's ideal city did not hold elections, it was ruled by a highly educated and public-spirited elite empowered to control the flow of information.

But while in ancient Greece, it may have been possible for a small group of experts to accumulate all or most of the relevant information needed to make policy, this is no longer feasible in a complex, modern society. By March 2020, COVID-19 was affecting numerous countries where policymakers were taking different approaches and doctors were trying different treatments. An ideal response would require analyzing all these responses and their results.

This is beyond the capability of a small expert group but can be handled by pluralistic communities of journalists and academic researchers. Media, including scientific journals, can filter through myriad possible policies to help find those that are the best. Liberal intellectuals have made a similar critique of central economic planning: planners are simply unable to

accumulate and act upon sufficient knowledge to manage a whole economy. Only through the operations of the market can resources be allocated effectively.

Theoretically, a clique of elite public policymakers could read enough articles and consult with enough outside experts to make a semi-optimal decision. But there's a second problem. Advocates of top-down decision-making implicitly assume that the decision-makers are selflessly working on behalf of the community.

But this assumption does not hold. The skills needed to get elected and to rise through bureaucracies are not necessarily those possessed by the wisest and least self-interested decision makers. There is no reason to believe that those most anxious to obtain and wield power will make the best decisions.

Indeed, Nobel Laureate F. A. Hayek argued that the worst people tend to get to the top of government power structures. Hayek's analysis focused on totalitarian governments in the run up to World War II, but similar dynamics are at work in contemporary democracies.

A retrospective look at the state and federal COVID-19 response reveals a pattern of suboptimal communications and decisions. These include an initial lockdown that excluded big box retailers and public transit, needless beach and park closures that limited opportunities for exercise and fresh air, extended reliance on remote schooling, despite its obvious flaws, and vaccine mandates for high school and college students known to be at minimal risk of severe COVID outcomes.

Those of us who questioned these policies were often ridiculed but could not be completely silenced thanks to constitutional protections. Ultimately, public pressure forced the relaxation of lockdowns and the reopening of schools. Had policymakers been insulated from public debate, and, yes, even ridicule, these destructive policies could well have persisted.

Elites are not capable of governing optimally even if they are motivated to do so. Open debate serves as an essential check on power that often leads to better decisions. So even for those who are not persuaded that free speech is a natural right, it's worth defending as a tool for better governance.

Marc Joffe is a federalism and state policy analyst at the Cato Institute.