Limiting Freedom of Expression to Fight Radicalization: The 'Silencing' of Terrorists Does Not Always Allow Rights to 'Speak Loudly'

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Abstract : This paper addresses the relationship between freedom of expression, national security and radicalization. Is it still possible to talk about a balance between the first two elements? Or, due to the intrusion of the third, is it more appropriate to consider freedom of expression as "permanently disfigured" by securitarian concerns? In this study, both the legislative and the judicial level are taken into account and the comparative method is employed in order to provide the reader with a complete framework of relevant issues and a workable set of solutions. The analysis moves from the finding according to which the tension between free speech and national security has become a major issue in democratic countries, whose very essence is continuously endangered by the ever-changing and multi-faceted threat of international terrorism. In particular, a change in terrorist groups' recruiting pattern, attracting more and more people by way of a cutting-edge communicative strategy, often employing sophisticated technology as a radicalization tool, has called on law-makers to modify their approach to dangerous speech. While traditional constitutional and criminal law used to punish speech only if it explicitly and directly incited the commission of a criminal action ("cause-effect" model), so-called glorification offences – punishing mere ideological support for terrorism, often on the web – are becoming commonplace in the comparative scenario. Although this is direct, and even somehow understandable, consequence of the impending terrorist menace, this research shows many problematic issues connected to such a preventive approach. First, from a predominantly theoretical point of view, this trend negatively impacts on the already blurred line between permissible and prohibited speech. Second, from a pragmatic point of view, such legislative tools are not always suitable to keep up with ongoing developments of both terrorist groups and their use of technology. In other words, there is a risk that such measures become outdated even before their application. Indeed, it seems hard to still talk about a proper balance: what was previously clearly perceived as a balancing of values (freedom of speech v. public security) has turned, in many cases, into a hierarchy with security at its apex. In light of these findings, this paper concludes that such a complex issue would perhaps be better dealt with through a combination of policies: not only criminalizing 'terrorist speech,' which should be relegated to a last resort tool, but acting at an even earlier stage, i.e., trying to prevent dangerous speech itself. This might be done by promoting social cohesion and the inclusion of minorities, so as to reduce the probability of people considering terrorist groups as a "viable option" to deal with the lack of identification within their social contexts.

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