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The Christchurch Call: Censorship, Regulation and Civility



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The Christchurch Call:

Censorship, Regulation and Civility

Background and Context

On March 15, 2019, a white nationalist terrorist shot and killed 51 people and injured 40 more at two mosques in Christchurch, New Zealand, during Friday prayer. Shortly before the attacks, he uploaded a manifesto to seven file-sharing websites and shared the links on Facebook, then livestreamed the first 17 minutes of the attack on Facebook Live. It was viewed around 4000 times before Facebook took it down.

During the next 24 hours, Facebook removed 1.5 million copies of the video but it had gone viral, and copies were re-posted with altered digital identifiers. At one point, YouTube was removing one copy per second. Between March 15 and September 30, 2019, Facebook took down 4.5 million pieces of related content, reporting that 'the Christchurch attack was unprecedented in both the use of live streaming technology and the rapid sharing of video, image, audio and text-based content depicting the attack' (Rosen, 2019). The manifesto and livestream inspired subsequent actual or planned attacks in the US, Germany, Norway and Singapore, marking 'a grim new age of social media-fueled terrorism' (Warzel, 2019).

On May 15, 2019, New Zealand Prime Minister Jacinda Ardern and French President Emmanuel Macron hosted a summit in Paris that brought together government and technology sector leaders to adopt the Christchurch Call 'to eliminate terrorist and violent extremist content online' (NZ Ministry of Foreign Affairs & Trade, n.d.). Germany is a signatory to the Christchurch Call.

In New Zealand, Justice Minister Andrew Little initiated a review of 'hate speech' laws two weeks after the attack. (Currently, sections 61 and 131 of the Human Rights Act 1993 address inciting racial disharmony on the basis of colour, race, or ethnic or national origins, but not religion.) The Islamic Women's Council, the Federation of Islamic Associations of New Zealand and others have called for specific recognition of 'hate crimes' and 'hate speech', a safe system (with a single process) to report 'hate speech' and 'hate crime', and for that system to be linked to security agencies' databases. Any proposals emerging from this review, which was not consulted on publicly, failed to gain support among coalition parties before the October 2020 election.

The Government did, however, reform gun control laws and introduced amendments to censorship legislation to address regulatory gaps and to authorise an expanded web filter to block access to violent extremist and other 'objectionable' online content. And in December 2020, the Government released the report of a Royal Commission of Inquiry into the terrorist attack on Christchurch mosques (Royal Commission of Inquiry, 2020a), with a companion report on 'hate speech' and 'hate crime'-related legislation (Royal Commission of Inquiry, 2020b). The Government has accepted the Commission's recommendations in principle. Four of 44 recommendations concern 'hate speech' and 'hate crime'. They include creating a separate category of 'hate crime' offences in the Summary Offences Act and the Crimes Act, with hate motivation to be recognised as an element of (existing) offences; and repealing s131 of the Human Rights Act and inserting a new provision in the Crimes Act for an offence of 'inciting racial or religious disharmony'.

The latter recommendation and the Commission's proposed wording of a new provision in the Crimes Act will – and should – provoke debate, particularly because it recommends including religion as a 'protected characteristic' without any qualification along the lines of s29J of the United Kingdom's Public Order Act 1986 that would protect freedom to discuss, criticise or express antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or similar qualifications in s18(D) of Australia's Racial Hatred Act 1995 and s319(3) of Canada's Criminal Code. In April 2021, a NZ Cabinet paper detailing proposed 'hate speech' law changes became public. While it has not yet been endorsed by Cabinet as Government policy, public debate on the proposed law changes indicates challenging discussions to come.

Striking a fair balance in regulating social media and reducing harmful online and offline communication while protecting freedom of opinion and expression raises hard questions not just for the New Zealand Parliament, but for policymakers in any liberal democracy.

Questions I brought to CAIS included:

- When is state censorship justifiable – and how might responsible agencies make sound decisions quickly when online content is 'going viral'?
- What to make of the Christchurch Call and its prospects for success?
- Can / should states regulate the Wild West of the Web – and if so, how?
- How exactly to define 'hate speech'?
- How are other jurisdictions, including Germany, regulating harmful communication?
- How might policy makers strike a fair balance between freedom of expression and protection from harm?
- What alternatives are there to prohibition and censorship?

Intended Audience and Objectives

My intended audience was policy makers and those who advise them. My objectives were to stimulate and inform public policy debate in a timely way and support public sector colleagues who are developing and providing advice to Government on hard questions for public policy.

Approach and Method in the Time of Covid

For the last 17 years I have worked full-time in senior policy analysis and advice roles in central and local government. In addition, I am a Senior Associate of the Institute for Governance and Policy Studies (IGPS) and I teach (part-time) in the School of Government at Victoria University of Wellington. In my hometown of Christchurch, I am also an Adjunct Senior Fellow in Political Science and International Relations at the University of Canterbury.

What attracted me to CAIS was the opportunity to connect academic research with public policy practice. There are urgent questions for policy makers in New Zealand and elsewhere about the role and responsibilities of the state in relation to extremist online content, censorship and internet filters, regulation of social media and other digital intermediaries, 'hate speech', 'counter-speech' and civility in public life. It was enormously helpful to step out of my national context and to have time and space to read, think and write about these difficult issues with a clear head.

I approached my research as a public policy practitioner, drawing on political philosophy, because questions about freedom of expression and censorship cannot be addressed without reflecting on values and moral principles that govern a free, open and democratic society.

My time at CAIS largely coincided with Germany's lockdown in response to Covid-19, so I had few opportunities for face-to-face visits and discussions. Fortunately, I was working primarily with ideas, and with media and other commentary on a constant flow of relevant current events including, for example, the release of the report of the Royal Commission of Inquiry, the trial of the Halle synagogue attacker (who copied tactics of the Christchurch attacker), the de-platforming from social media of then-President Trump following the insurrection at the US Capitol on January 6, 2021, and the stoush between the Australian Government and Facebook in February 2021.

Despite the lockdown, I was able to make virtual (but real!) connections with other researchers and it was good to participate in online conferences and seminars from within the same time zone. The staff at CAIS generously shared resources and provided encouragement and support. Weekly online colloquia and discussions in the Fellowship programme enabled inter-disciplinary engagement and sharing of resources and ideas and goaded me into greater use of social media to increase the impact of my research.

Research Outputs

When is state censorship reasonable, lawful and demonstrably justifiable?

Three days after the terrorist attack on Christchurch mosques, the Office of Film and Literature Classification classified the shooter's livestream as 'objectionable', in effect banning its possession and distribution in New Zealand. Five days later, the Office also classified his 'manifesto' as objectionable.

An early research output was to reflect with David Shanks, New Zealand's Chief Censor, on why his Office was able to make and issue these judgements so (relatively) quickly, and on the decision framework the Office used to do so. We co-authored an article on this, published in New Zealand's open access *Policy Quarterly* (Bromell & Shanks, 2021), and maintained contact throughout my CAIS Fellowship.

On December 3, 2020 I gave a guest lecture based on this component of my research at Friedrich-Alexander University, Erlangen, in the Elite Master's Programme on Standards of Decision-making Across Cultures.

After Christchurch: Hard questions for policy makers

The *Georgetown Journal of International Affairs* invited me to contribute an article on my research at CAIS. This was published in the online edition on February 27, 2021 (Bromell, 2021a). It identifies three key questions when regulating harmful communication:

- In content moderation and de-platforming, who calls the shots? Big Tech, or democratically elected governments and the courts?

- Should regulation of ‘hate speech’ be framed around the effect of harm, or the emotions of hate and offence?
- Should regulation aim to protect *believers* from harm caused by incitement of discrimination, hostility or violence, or *beliefs* from criticism, offensive or ‘hurtful’ remarks, satire, etc.?

After Christchurch: Hate, harm and the limits of censorship

After discussion with colleagues at CAIS and in New Zealand, I decided to write up my research as seven working papers for open access publication, because of their immediate relevance to policy development as the New Zealand Government responds to the recommendations of the Royal Commission of Inquiry.

The IGPS published these working papers during March and April 2021 on its website at Victoria University of Wellington (Bromell, 2021b), incorporating the CAIS logo and acknowledgement of my Fellowship:

1. *The terrorist attack on Christchurch mosques and the Christchurch Call,*
2. *‘Hate speech’: Defining the problem and some key terms,*
3. *Challenges in regulating online content,*
4. *Regulating harmful communication: Current legal frameworks,*
5. *Arguments for and against restricting freedom of expression,*
6. *Striking a fair balance when regulating harmful communication,*
7. *Counter-speech and civility as everyone’s responsibility.*

I used my professional networks and digital media (Twitter, Facebook, LinkedIn and ResearchGate), and worked with Dr Matthias Begenat, CAIS’s Head of Knowledge Transfer and Public Relations, and Guy Somerset, Senior Communications Advisor, Media Content, at Victoria University of Wellington, to alert policy makers and their advisors to the availability of these resources. They have been referenced in *NZ Politics Daily*, a comprehensive, non-partisan compilation of articles, columns, and analysis relating to New Zealand politics and government.

Op-ed in The Guardian

On March 12, 2021, *The Guardian* published an op-ed I had contributed, under the headline, *After Christchurch, hate speech policy should focus on harm, not offence taken* (Bromell, 2021c). It argued that:

- the issue is harm caused by incitement of discrimination, hostility or violence, not the emotions of hate or offence,
- in a pluralist liberal democracy, we don’t all need to like or agree with each other – it’s enough to live together in all our difference, resolving conflict politically, agonistically, without recourse to domination, humiliation, cruelty or violence,
- legislation may be *necessary* to protect members of social groups from discrimination, hostility or violence, but it is not *sufficient* – just passing laws does not solve complex social problems.

CAISZeit podcast

Matthias Begenat and Silke Offergeld (Referentin für Digitale Gesellschaft und Medienkompetenz in der Staatskanzlei NRW) recorded an interview podcast with me on April 16, following my return to New Zealand. This was published on the CAIS website on May 10, 2021 (CAISZeit, 2021).

Ten provisional conclusions

During my fellowship at CAIS, I arrived at 10 provisional conclusions.

1. Eliminating terrorist and violent extremist content online (Christchurch Call) while maintaining a free, open and secure internet is aspirational and well-intentioned, but impossible.
2. Impossibility is not, however, an excuse for policy-makers to do nothing – don't let the perfect be enemy of the good.
3. Regulation of 'hate speech' (better: 'harmful communication') should focus on harm caused by incitement to discrimination, hostility or violence, not on emotions or hate, offence or 'hurt'.
4. When regulating harmful communication, distinguish between public and private communication, and persons and groups.
5. Decisions to restrict freedom of expression should be made within a framework of laws defined by democratically elected legislators and be open to review and appeal – not by private companies acting as courts to determine the boundaries of free speech.
6. Constraining harmful digital communication requires co-ordinated effort by multiple actors – the right mix between government, business and society in multi-stakeholder governance of the internet remains an open question.
7. Public policy decisions about whether, when and how to regulate harmful communication require prudential balancing of freedom of expression, protection from harm, promotion of social cohesion, maintenance of public order and ensuring that the law can practically be enforced.
8. Refrain from using the coercive power of the state to enforce a 'heckler's veto' (or a 'mourner's veto'). In a liberal democracy, agonistic respect and toleration are preferable to 'calling out', 'cancel culture' and de-platforming. 'They (whoever they are) are us.' We cannot wish people out of existence because we find their ideas, beliefs, words or actions abhorrent.
9. This does not necessarily imply state neutrality – democratic states cannot tell citizens what to feel, think, believe or value, but can use their expressive powers to address 'lawful hate speech', and encourage and support counter-speech strategies as alternatives or complements to prohibition and censorship.
10. Everyone has a role to play – in the World Wide Web, the party's over and all the guests need to help clean up (Justus Bender).

Next steps

Guest lectures, University of Canterbury

During May 2021, I gave two guest lectures in the University of Canterbury on pluralism and civility in a liberal democracy, including material on 'hate speech' and counter speech from my research at CAIS.

IGPS roundtable with senior New Zealand officials

The IGPS has organised a roundtable, under the Chatham House rule, with invited senior government officials on June 11, 2021, to discuss issues raised by my research at CAIS and to inform and support policy making in New Zealand.

Springer monograph

Springer has accepted my proposal of a monograph in its professional book series. This will re-work and update material from my working papers for an international audience, focusing on policy makers, and researchers in civil society organisations.

Acknowledgement

I am grateful to CAIS and the Ministerium für Kultur und Wissenschaft NRW for the opportunity to engage in highly topical research that bears directly on difficult questions for public policy in free, open and democratic societies.

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Table of Figures

Photo Titlepage: CAIS, Matthias Begenat

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