

Freedom of Speech and Expression in the Digital Era: A Comparative Constitutional Analysis of the United States and China

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Abstract: The freedom of speech and freedom of expression is now present in a new and different way in the landscape of digital technologies and social media platforms, which have also created a host of legal and regulatory issues and questions. With the rise of digital communications, which are increasingly moving past national borders, the approaches of States to reconcile individual rights, public order, national security and platform accountability have been diverging. This article will make comparative constitutional and legal analysis of freedom of speech and expression in the digital age, focusing on the United States and China. In the United States, First Amendment protection of online expression and the restrictions of government to that expression are strong, with numerous exceptions that are narrowly drawn. Meanwhile, China takes a state-led approach, which is based on the principle of cyberspace sovereignty, social stability and national security, and is built on all-round regulation of online content and digital platforms.

Using a doctrinal and comparative legal research approach, the study explores constitutional provisions, statutory frameworks, significant constitutional cases and current regulatory policies regarding digital speech in both jurisdictions. In addition, it examines how international human rights norms have affected the standards of freedom of expression around the world, including the International Covenant on Civil and Political Rights, and Article 19 of the Universal Declaration of Human Rights. It also considers questions such as the challenges that new technologies like AI, algorithmic content moderation, misinformation, hate speech, deepfakes and the rise of power among digital platform providers create.

Keywords: Freedom of Speech; Freedom of Expression; Digital Era; Digital Constitutionalism; First Amendment; Cyber Sovereignty; United States; China; Social Media Regulation; Human Rights; Artificial Intelligence; Comparative Constitutional Law.

Introduction: Freedom of speech and expression is one of the human rights that are most basic and vital in democratic rule, individual autonomy and rule of law. It allows people to voice their views, discuss their ideas, criticize their governments, be involved in public life and contribute to social, political and economic progress. The term freedom of expression has been redefined and is now shaped by the swift development of digital technologies, Internet communications, social media and artificial intelligence (AI). Now billion of people use digital platforms like X (formerly Twitter), Facebook, YouTube, TikTok, and WeChat to communicate, to seek information, to join political discussions, and to join public debates. The advantages of these technological advances to the freedom of expression are great, but so are the new legal, constitutional and regulatory issues they have raised (Balkin, 2018).

The digital revolution has come and changed how people, governments and private tech companies relate. Compared to traditional media, digital media enables the real-time cross-border dissemination of information, and users can share information across national borders within a few seconds. Goyal (2026) As a result,

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governments are grappling more than ever with the complexities of balancing constitutional freedoms of expression with other considerations, including national security, public order, cybersecurity, misinformation, hate speech and online extremism, election integrity, privacy and data protection. But these competing interests have led to a variety of legal and constitutional responses from countries with respect to the regulation of online speech (Klonick, 2018).

There are two models: that of the United States and that of China, in terms of freedom of speech in the digital age. The U.S. Constitution provides for one of the world's most robust protections of free speech: the First Amendment. The U.S. adopts a liberal democratic approach in keeping with this strong constitutional protection. The U.S. Supreme Court has been very expansive in its interpretation of the First Amendment, expanding its coverage of online speech to all forms and allowing government restrictions only in limited situations, for example, when speech is obscene, defamatory or a true threat, or when the speech can be shown to incite violence (Chemerinsky, 2023). The Court has reiterated in important rulings that the internet and social media services are integral platforms for democratic engagement, including *Reno v. American Civil Liberties Union* (1997) and *Packingham v. North Carolina* (2017).

By contrast, China has a different approach in keeping with the following principles: cyberspace sovereignty, social stability, national security, and state control of digital information. Ganai (2025) While freedom of speech is stipulated in the Constitution of the People's Republic of China, it is extensively regulated by law in China, including the Cybersecurity Law (2017), the Data Security Law (2021), the Personal Information Protection Law (2021), and other administrative regulations for internet platforms and online information services. The Chinese rule of law is based on the government's duty to ensure social harmony, defend national interests, fight against misinformation and guarantee cyber sovereignty with all-encompassing content moderation and platform responsibility systems (Creemers, 2022).

These two legal traditions show the overall difference in opinion about the conception of constitutional rights, and the function of the state in relation to digital communication. In China, the right to freedom of expression is not a fundamental right of individuals but the right of the populace to be governed over by the state, whereas the United States tends to see it as an integral part of individual rights that must be respected by the government. The different constitutional philosophies have grown in importance in light of the fact that digital platforms engage in activities across jurisdictions that have different legal norms and expectations of regulation.

The advent of AI has also added additional layers to the legal complexities surrounding digital free speech. The production, dissemination and consumption of digital information have been revolutionized by AI-powered recommendation systems, automated content moderation, generative AI applications and deepfake technologies. Vitale (2025) The algorithms that shape information a user sees, impact public opinion, electoral processes and democratic engagement. Meanwhile, AI-driven misinformation, synthetic media, online harassment and state-sponsored disinformation pose a significant threat to democratic institutions and people's trust in them. Governments around the world are thus trying to create regulatory regimes that maintain freedom of expression, while simultaneously reducing the negative impacts of digital technologies (UNESCO, 2023).

In addition, another major problem is the rapidly increasing private technology companies' power to regulate online speech. Without judicial intervention, algorithmic moderation, account suspension and the removal of content can happen on major digital platforms, which sets community standards. This has led to the emergence of the private sector engaging more and more in activities which were traditionally the domain of government regulation, thus posing significant constitutional and human rights issues on transparency, accountability, procedural fairness and users rights. This has been dubbed "private governance of public discourse" (Klonick, 2018) and calls for better-defined legal guidelines for platforms' responsibilities (Klonick, 2018).

International human rights law is also an important normative tool to assess digital freedom of expression. Article 19 of the Universal Declaration of Human Rights (1948) and Article 19 of International Covenant on Civil and Political Rights (1966) make freedom of opinion and expression a universal human right, and allows for certain lawful, necessary and proportionate restrictions in the interest of national security, public order, public health, morals and the rights of others. The standards are also increasingly shaping local understandings and debates of constitutional issues relating to digital governance, platform regulation, cross-border information flows and freedom of the internet (United Nations, 1966).

Although there is an increasing amount of literature addressing the constitutional and legal framework of digital constitutionalism and internet governance, few will bring the United States and China together in a single analytical framework. There is also much literature that either considers constitutional protection in democratic societies or the regulation of the internet in authoritarian societies, but neither of these sides has

tried to carry out a comparative analysis of the respective constitutional ideas, judicial rulings, laws and effects on international human rights law. Furthermore, new technologies have been emerging over the past years such as generative artificial intelligence, algorithmic governance, cross-border digital platforms and new regulatory efforts, which require fresh scholarly attention.

In this context, the current research compares the legal concept of freedom of speech and expression in the digital age from a comparative legal perspective, focusing on the United States of America and China. This paper explores the constitutional principles, legislations, jurisprudence, regulatory policies, and international human rights frameworks that regulate digital speech. It also examines the relationship between the freedom of expression and other concerns of national security, public order, cybersecurity, misinformation and platform accountability in each country. This article aims to highlight the strengths, weaknesses and general implications of these other regulatory approaches when juxtaposed.

The study suggests that an unfettered concept of digital freedom of expression and a very strict regime of regulation do not offer a satisfactory answer to the problems of the current digital environment. Instead, a constitutional-based framework, with checks, balances, and clear platform governance mechanisms, algorithmic accountability, and a comprehensive adherence to internationally agreed human rights principles must be put in place to ensure freedom of expression without compromising the legitimate interests of society. The results of this research also add to the growing literature on comparative constitutional law, digital governance and internet regulation, as well as digital constitutionalism, and provide policy considerations for enhancing the defence of freedom of speech in a digitally connected world.

Research Problem: A fast-changing digital environment has created a new global constitutional challenge for freedom of speech. The United States has a liberal constitutional model that gives significant protection to First Amendment freedoms, while China has a state-centric model that puts national security, social stability and cyberspace sovereignty as its principles. The divergent strategies provoke the questions of what will happen to digital rights, to online censorship, to who or what will be held responsible for platforms, and to democratic governance. New research has underscored a recent trend of conflict between freedom of speech, misinformation, hate speech and state regulation in the digital space.

Objectives:

1. To examine the constitutional foundation of freedom of speech in the USA.
2. To examine China's legal framework regulating online expression.
3. To compare digital speech regulation in both countries.
4. To analyze judicial approaches toward online freedom of expression.

Hypothesis:

H₀: There is no significant difference between the digital free speech frameworks of the United States and China.

H_a: The United States and China adopt significantly different constitutional and legal approaches toward freedom of speech in the digital era.

Review of Literature: Freedom of speech and freedom of expression is one of the most discussed constitutional and human rights issues of the twenty first century with the increasing importance of digital communication. The relationship between constitutional guarantees, technology innovation, platform governance and state regulation have been the focus of scholars' studies in recent years. The literature available so far can be summarized in three main themes: the development of the digital free speech, comparative constitutional interpretation on internet governance, and the private digital platforms as regulators of the internet.

Based on this view, Balkin (2018) explored the rise of algorithmic government and the power of private platforms in the digital era. The social media companies are increasingly influencing the narrative, he said, by curating content, recommending stories, and making decisions based on data. The study indicated that the debates around the constitution need to move away from just discussing the issue of state censorship, as there is now a strong influence of private technology companies on freedom of expression. Given these developments, Balkin suggested that new principles of the constitution be developed to deal with digital intermediaries as well as governmental institutions.

John (2019) took a historical approach and showed how freedom of expression has always been subject to change due to the change in communication media. He said the digital revolution is another great transformation similar to the invention of the printing press and broadcast media. In John's view, values of democracy and public participation must be maintained in the face of new technological realities and the principles of free expression must evolve to do so.

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Chemerinsky (2023) offers one of the most thorough examinations of First Amendment jurisprudence in the United States, a jurisprudence that is at times bizarre. He says that the U.S. constitution provides the freedom of speech with "unparalleled protection" since it is essential to democratic governance that there be open political discussion and criticism of the government. His analysis shows that judicial rulings have continually broadened constitutional rights to free expression online, while allowing for very narrow restrictions to the government on incitement, obscenity, true threats, and defamation. Chemerinsky also contends that digital communication should be similarly protected by the Constitution as other modes of expression.

Researchers have also studied the expansion of the private platforms in the regulation of digital speech. Klonick (2018) coined the phrase "new governors" for the social media companies. She stated that businesses like Meta, Google, and X (formerly Twitter) are setting rules on public discourse more and more with community standards and content moderation policies. These private actors have powers traditionally attributed to governments, and thus more transparency, accountability and procedural fairness is needed to ensure users' rights are protected, Klonick argued.

There is also a need for the appropriate legal tools to effectively regulate online speech; to balance free expression with countering misinformation, hate speech, terrorism, and harassment, as Douek (2021) also noted. She introduced content regulation models based on proportionality with an accent on transparency and due process in reaching decisions about content.

In recent years, comparative scholarship has increasingly turned to the differences between the United States and China in the realm of digital governance. Liu and Yang (2022) created a 'dual-track governance' model which illustrated that the United States has a strong regulatory oversight of digital technology, while giving the private digital platforms a great deal of freedom to determine what they permit. By contrast, China's model is one of over-arching statutory regulation and administrative oversight of online content by the government. They make a comparison between these two different methods and conclude that they reflect two different constitutional philosophies about the limits on government and the extension of liberty.

After the enactment of the Cybersecurity Law, the Data Security Law and the Personal Information Protection Law, Creemers (2022) shed light on the new data governance framework in China. He claims these changes in the law have given governments a much greater grip on cyberspace and have built new laws around the protection of personal data and digital security. His work illustrates a China that has a policy of cyber sovereignty, in which the state takes the main responsibility for regulating digital information flows.

More recently, Qiao (2026) offers a comparative view, in particular, by comparing the role of digital platforms in governance in China and the United States. The study emphasizes that digital platforms are becoming more than just commercial intermediaries that are assuming more and more the role of institutional partners in the public administration, judicial service, and implementation of regulation in China. In contrast, U.S. platforms remain mostly private-governed, while having relatively little direct governmental involvement. This work extends comparative research, focussing on institutional cooperation, the absence of which is the usual contrast with censorship.

Comparative Analysis

Aspect	USA	China
Constitutional Philosophy	Liberal Democracy	Socialist Governance
Nature of Right	Fundamental Right	Qualified Right
Internet Regulation	Limited Government Restriction	Strong State Regulation
Social Media	Private Platform Governance	Government Supervision
Censorship	Minimal	Extensive
National Security	Narrow Restrictions	Broad Restrictions

Judicial Review	Independent Judiciary	Limited Constitutional Review
Digital Privacy	Strong Constitutional Debate	State-Centered Regulation
Platform Liability	Section 230 Framework	Direct State Oversight

Comparative Analysis of Freedom of Speech and Expression in the Digital Era: The United States and China:

Political, legal and ideological divisions between the U.S. and China are reflected in the constitutional freedom of speech and expression in the digital world. Both countries see the power of digital communication in the fields of economy, governance and social interaction, but have very different approaches to how to balance personal freedom, government power, national security and technological innovation in their constitutions. A comparison between these two models can be made on the main axes of these differing models.

Constitutional Philosophy: Individual liberty, limited government, liberal democracy, and the rule of law are the core tenets of a constitutional philosophy that underlies the United States. Freedom of speech is seen as an essential feature of a democratic system and is guaranteed in the First Amendment of the U.S. Constitution. Open public debate and the free exchange of ideas are core tenets of the American constitution that, through citizens' critical engagement with government policies and their involvement in political decision making, hold public officials to account and strengthen democracy (Chemersky, 2023). As a result, constitutional walls are taken down with great suspicion by government.

The philosophy of constitution for China is different from the one of other countries, which is based on socialist government and the leadership of the Communist Party of China. While Article 35 of the Constitution guarantees freedom of speech, the protection of that right is subject to other constitutional values in the broader context of national unity, social harmony, political stability and economic development. China's constitutional discourse is focused on social welfare rather than individual freedom and thus leaves room for the state to control digital communication in order to serve public interests (Creemers, 2022).

Internet Regulation: One of the major differences between the two countries is Internet regulation. The United States is broadly characterized by a limited role for government in regulating digital content, and provides digital platforms and private individuals ample space to do so. Restrictions by government are generally not allowed unless they are related to a constitutional exception like incitement to violence, obscenity, child exploitation or criminal activity.

China has a comprehensive model of state control of cyberspace. The Chinese government has a high degree of control over the internet infrastructure, online content, cross-border data transfer, and digital service providers, among other areas, through legislation, including the Cybersecurity Law (2017), Data Security Law (2021), and Personal Information Protection Law (2021). The notion of cyber sovereignty is the foundation of this regulation and means that the State has control over the activities taking place on the internet within its territorial area.

Social Media Governance: There are also opposing approaches to constitutionalism in the context of social media governance. In the United States, platforms like Meta, X, YouTube and Google are mostly private companies with their own community standards and guidelines for user-generated content. These companies have a lot of power over public opinion, but despite this, their editorial decisions are still constitutionally limited by the First Amendment because of the influence they have over public opinion.

On the other hand, Chinese social media are directly supervised by the government. WeChat, Weibo and Douyin are legal entities that must monitor the online content, delete content deemed to be prohibited, confirm the identity of users in certain cases, and cooperate with governmental authorities responsible for online content regulation. Platform governance thus becomes a part of the national information management and digital governance.

Censorship: The system of censorship is very different in the two countries under the constitution. There is a general constitutional rule in the United States against prior governmental restraint and under the doctrine of the judiciary, only certain exceptions are recognized. Unpopular, offensive, or controversial viewpoints have always been protected by the First Amendment as long as they are not among the very limited categories of unprotected speech.

The system of content control and censorship, which is in use in China, is much more comprehensive. Government monitoring of online communication is for the purpose of curbing content that is detrimental to

national security, political stability, public morality or social harmony. This is a reaction to the trend of internet platforms to remove prohibited content rather than proactively, as opposed to in a judicial manner.

National Security: Both jurisdictions consider national security issues when regulating speech, but in different ways. Restrictions for national security purposes are narrowly drawn in the United States and are constitutional review. In most instances, courts will not restrict protected speech without a strong government interest and thus maintain the constitutional balance between security and civil liberties.

The Chinese perspective of national security has a wider scope, covering all aspects of national security, such as political security, ideology security, cyber security, economic security, cultural security and information security. This wide definition grants the government the authority to crack down on digital information that could pose a threat to the nation, its social order, and its government. National security is thus a key argument for online regulation of expression.

Judicial Review: The judiciary provides an additional distinction. The United States has an autonomous judiciary that has the power to strike down laws or official actions that contradict the freedoms to free speech guaranteed by the Constitution. The judiciary has played an essential role in protecting digital freedom of expression in landmark cases like *Reno v. American Civil Liberties Union* (1997), *Brandenburg v. Ohio* (1969) and *Packingham v. North Carolina* (2017).

There is limited constitutional judicial review in China. Courts generally interpret and enforce the laws and statutes, and do not look to the constitutionality of these laws or statutes. This means that the judiciary's role in the interpretation of constitutional limits on freedom of expression is limited, and that interpretation is strongly intertwined with the laws and rules that are made. Thus, the judicial interpretation of constitutional limits on freedom of expression is closely tied to the policies and regulations of the legislature and the administration.

Digital Privacy: As AI and big data expand and digital surveillance becomes more prevalent, digital privacy has become more crucial. There is still much debate about digital privacy in the United States regarding the relationship between privacy, freedom of speech, government surveillance, and technology. The interpretation of constitutional protections of personal data and digital communications is a focus of judicial decisions more and more.

China's digital privacy regime is regulatory based and state-oriented. China's digital privacy regime is state-centric and regulatory. Personal Information Protection Law (2021) provides comprehensive rules on personal information, and the regulation of privacy is intertwined with the wide powers of the Government concerning cyber security, public administration and national security. So, the privacy protection is intertwined with the various responsibilities of the government in terms of public order and digital governance.

Platform Liability: One of the most unique differences between the two systems is demonstrated in Platform Liability. The Section 230 doctrine created by the Communications Decency Act of 1996 is the basis for the United States. The general principle of Section 230 is that online intermediaries are not liable for third-party content they do not post, and can remove material they don't like in good faith. The legal safeguard has played a major part in the expansion of digital platforms and online innovation, minimizing litigation risks.

China implements a direct state liability system for platforms. China has a direct state liability system for platforms. The Internet companies have affirmative legal obligations and are required to monitor users' content, remove unlawful information, save and keep user information, inform relevant authorities of illegal activity and cooperate with them. Failure to comply with any of these requirements can lead to administrative penalties, monetary fines, suspension of operations or other consequences of the regulations. Thus, the platform liability is not just a tool of private risk allocation, but also a tool of digital governance by the government.

Comparative Evaluation: The comparison reveals that the United States and China are two distinct models of governance of digital free speech. Under the American model, liberty, independence of the judiciary, and a limited role for government are emphasized, resulting in the greatest possible protection of constitutionally guaranteed political speech and public debate. But, this is still plagued with problems of misinformation, hate speech, extremist content and private technology companies' influence.

The Chinese model, on the other hand, is based on the principles of collective interests, national security, and the roles of government in cyber regulation. This allows for quick action and blocking of harmful online information, but has sparked an ongoing debate internationally about the limits of censorship, transparent operation, judicial independence and proportionality of restrictions on freedom of expression.

Both systems have thus valuable lessons to offer with regard to today's constitutional governance. The United States shows the benefits of robust constitutional protections and the independent power of the judiciary to manage new digital risks, while China exemplifies how extensive regulatory institutions can tackle new digital threats. In an age of ever-changing technology, such as artificial intelligence, algorithmic governance, and

cross-border digital communication, the future constitution may be more likely to pursue a balance between freedom of expression and cyber security, public safety, democratic integrity and responsible platform governance.

Conclusion: Freedom of speech and expression is one of the most dynamic constitutional issues of the twenty first century, the scope, exercise and regulation of which has been transformed by the digital era. Rapid technological changes, such as the spread of the internet, social media, artificial intelligence (AI), and digital communication practices have improved the opportunities for public participation, political engagement and access to information. These technological advances have also posed major challenges, such as misinformation, hate speech, cybercrime, digital surveillance, algorithmic bias and transborder spread of harmful content. As a result, both constitutional and authoritarian regimes have had to rethink the issue of balancing individual freedoms with legitimate public interests.

In this comparative analysis, it is clear that the United States and China have two different models of digital speech governance. The U.S. has a liberal constitutional system based on the First Amendment, in which the right to free speech is considered a fundamental constitutional right and is afforded generous protection by courts. The principles of American constitutional law include a limited role for government, independence of the judiciary and marketplace of ideas, all of which assume that strong public debate is essential to democratic government. The U.S. Supreme Court's precedents have consistently upheld the constitutional protections of political speech, online speech, and press freedom, while placing an extremely strong bar on invoking the Constitution to limit narrowly drawn restrictions on expression to serve compelling government interests.

While China follows a state-centred constitutional model with freedom of speech being acknowledged but limited in its exercise to the overall goals of national security, social stability and socialist rule. The Chinese government holds a strong position of regulation over digital platforms, cyber-sphere and online content through comprehensive legislation, notably the Cybersecurity Law, the Data Security Law and the Personal Information Protection Law. Through the concept of cyber sovereignty, the constitution of the state is used as the basis to support the government's extensive supervision of digital communication, which focuses on collective interests rather than free expression by individuals.

The study also draws attention to the growing importance of private digital platforms on the dynamics of today's freedom of expression. Today, firms that run social media platforms, search engines, and online communication services are wielding significant power in terms of managing, shaping, and curating content, recommending content, and controlling access to digital public spaces. This increasing private regulatory authority has made the traditional lines between state regulation and private governance in the case of environmental issues somewhat indistinct and has raised new constitutional and human rights issues that current laws are unable to handle. With the advancement of AI algorithms and automated decision-making processes, having transparency, accountability, and fairness in platform governance will become more crucial.

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