



Journalism
Studies.

Reading list for Free Speech & Censorship JNL331 2024/25

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Seminars and reading

The reading is arranged around the lecture programme and it is important that you keep up with the reading so that you can remain up to speed with the lecture topics and adequately prepare for your assessment and seminar discussion. Additional reading may be placed on Blackboard so please keep an eye out for that.

We have included reading which is **essential** and supplementary for each topic. Remember the reading list is indicative. Discussion points for each seminar will be provided at the end of each lecture so please come along to the seminars prepared to contribute and debate the issues.

SEMINAR ONE:

Thinking about freedom of speech and censorship in the digital age.

This seminar session sets out some key questions that will be explored over the coming weeks and hopefully gives you food for thought. For example: what is meant by freedom of speech and expression? How does freedom of the press differ? What are acceptable limits on free speech and how should they be enforced? Are we living in a new era of freedom of expression or are there new threats to the right to hear and be heard?

Reading:

Essential:

Balkin, J. (2018). Free speech is a triangle. *Columbia Law Review*. 118 (7), 2011-2056

Warburton, N. (2009). *Free speech: A very short introduction*. Oxford: OUP. Chapter 1

Supplementary:

Bernal, P. (2018). *The Internet, Warts and All: Free Speech, Privacy and Truth*. Cambridge: CUP. Chapter 5

Brison, S. J. and K. Gelber (2019). Introduction. In K. Gelber and S. J. Brison, eds. *Free speech in the digital age*. Oxford: OUP. pp. 1-11

Kramer, L. (2022). A deliberate leap in the opposite direction. The need to rethink free speech. In: Bollinger, L. and G. Stone (2022). *Social media, freedom of speech, and the future of our democracy*. Oxford: OUP. pp 18-39

Oster, J. (2013). Theory and doctrine of 'media freedom' as a legal concept. *Journal of Media Law*. 5 (1), 57-78

Scanlon, T. M. (1978). Freedom of Expression and Categories of Expression. *University of Pittsburgh Law Review*. 40, 519-550

Schauer, F. (2017). Free speech, the search for truth, and the problem of collective knowledge. *SMU Law Review*. 70(2), 231-254

Tambini, D. (2021). *Media freedom*. Cambridge: Polity.

Volokh, E. (2011). In defence of the marketplace of ideas/search for truth as a theory of free speech protection. *Virginia Law Review*. 97, 595-602

Weinstein, J. (2011). Participatory democracy as the central value of American free speech doctrine. *Virginia Law Review*. 97(3), 491-514.

SEMINAR TWO:

Why do we protect free speech?

This session examines the range of philosophical perspectives on freedom of speech as: a vehicle for the discovery of truth; an aspect of self-fulfilment; the lifeblood of democracy; a bastion against regulation by government (and private actors). It assesses the usefulness of these justifications in a contemporary digital context.

Reading

Essential:

Barendt, E. (2007). *Freedom of speech*. 2nd ed. Oxford: OUP. Chapter I 1, 2

Moore, A. (2023). Post-Truth Politics and the Competition of Ideas. *Critical Review*. 35:1-2, 112-121

Warburton, N. (2009). *Free speech: A very short introduction*. Oxford: OUP. Chapters I, II

Supplementary:

Ingber, S. (1984). The marketplace of ideas: A legitimizing myth. *Duke Law Journal*. 1, 1-91

Nunziato, D. C. (2019). The marketplace of ideas online. *Notre Dame Law Review*. 94, 1519-1583

Scanlon, T. M. (1978). Freedom of Expression and Categories of Expression. *University of Pittsburgh Law Review*. 40, 519-550

Schauer, F. (2017). Free speech, the search for truth, and the problem of collective knowledge. *SMU Law Review*. 70(2), 231-254

Schroeder, J. (2018). Toward a discursive marketplace of ideas: Reimagining the marketplace metaphor in the era of social media, fake news, and artificial intelligence. *First Amendment Studies*. 52 (1-2) 38-60

Volokh, E. (2011). In defence of the marketplace of ideas/search for truth as a theory of free speech protection. *Virginia Law Review*. 97, 595-602

Weinstein, J. (2011). Participatory democracy as the central value of American free speech doctrine. *Virginia Law Review*. 97(3), 491-514.

SEMINAR THREE:

How do we protect free speech?

This seminar explores the similarities and differences between the ECHR and US approaches to the protection of free speech. It discusses the extent to which these different outlooks affect the European and US approaches to the regulation of the internet.

Reading

Essential:

Barendt, E. (2007). *Freedom of Speech*. 2nd ed. Oxford: OUP. Chapter II 2,5

Oversight Board, Former President Trump's suspension. <
<https://www.oversightboard.com/decision/FB-691QAMHJ/>>

Yoshino, K. (2024). Reconsidering the first amendment fetishism of non-state actors: the case of hate speech on social media platforms and at private universities. *Stanford Law Review*. 76(7), 1755-1786.

Supplementary:

Middleton, K., W. Lee, D. Stuart (2018). *The Law of Public Communication*. 10th ed. London: Routledge. Chapter 2.

Nunziato, D. C. (2019). The marketplace of ideas online. *Notre Dame Law Review*. 94, 1519-1538

Nieuwenhuis, A. (2000). Freedom of speech: USA v Germany and Europe. *Netherlands Quarterly of Human Rights*. 18 (2), 195-214

Pollicino, O. (2019). Judicial protection of fundamental rights in the transition from the world of atoms to the world of bits. *European Law Journal*. 25, 155-168

Zoller, E. (2009). Foreword: Freedom of expression: Precious right in Europe, sacred right in the United States. *Indiana Law Journal*. 84(3), 803-808.

SEMINAR FOUR:

Truth in a digital age

This session discusses whether untruthful expression needs to be regulated in the digital age, and whether such regulation would be compatible with free speech guarantees. The seminar will take into account the flurry of misinformation that has been brought about in the course of the pandemic. How to balance free speech and freedom of the press with the potential harm to public health as a result of 'fake news'?

Reading

Essential:

Sunstein, C. (2022). A framework for regulating falsehoods. In: Bollinger, L. and G. Stone (2022). *Social media, freedom of speech, and the future of our democracy*. Oxford: OUP. pp 53-62

Wu, T. (2020). Disinformation in the marketplace of ideas. *Seton Hall Law Review*. 51 (1) , 169-173

Supplementary:

Andorfer, A (2018). Spreading like wildfire: Solutions for abating the fake news problem on social media via technology controls and government regulation. *Hastings Law Journal*. 69 (5), 1409-1431

Bayer, J., I. Katsirea et al. (2021), [The fight against disinformation and the right to freedom of expression - Think Tank \(europa.eu\)](#). European Parliament, LIBE Committee.

Brown, N. and J. Peters (2018). Say this, not that: Government regulation and control of social media. *Syracuse Law Review*. 68, 521-545

Katsirea, I. (2019). 'Fake news': reconsidering the value of untruthful expression in the face of regulatory uncertainty'. *Journal of Media Law*. 10 (2), 159-188

Park, M. (2018). Separating fact from fiction: The First Amendment case for addressing 'fake news' on social media. *Hastings Constitutional Law Quarterly*. 46 (1), 1-15

Russell, F. M (2017). The new gatekeepers. An institutional-level view of Silicon Valley and the disruption of journalism. *Journalism Studies*. 20 (5), 631

SEMINAR FIVE:

Harm and offence in a digital age

This session examines the controversies around 'harmful speech' and 'hate speech'. How and why should it be regulated, if at all? What is the nature of offence? How do Western democracies regulate hate speech online? Which of these solutions (if any) address the problem satisfactorily?

Reading

Essential:

Dworkin, R. (1995). The unbearable cost of liberty. *Index on Censorship*. 24(3), 43 - 46

Howard, J. (2019). Free speech and hate speech. *Annual Review of Political Science*. 22, 93-109

Supplementary:

Booth, R. (2009). BBC is right to allow BNP on Question Time, says Mark Thompson. *Guardian*. Available from <http://www.guardian.co.uk/politics/2009/oct/21/bbc-bnp-mark-thompson>

Citron, D. K. (2019). Restricting speech to protect it. In K. Gelber and S. J. Brison, eds. *Free speech in the digital age*. Oxford: OUP. Chapter 7.

Cohen-Almagor, R. (2005). *The Scope of Tolerance*. London: Routledge.

Cohen – Almagor, R. (2001). *Speech, Media, and Ethics. The Limits of Free Expression*. London: Palgrave. Chapter 1

Dworkin, R. (1995). The Unbearable Cost of Liberty. *Index on Censorship*. 3, 43-46

Gelber, K. and S. J. Brison (2019). Digital dualism and the speech as thought paradox. In K. Gelber and S. J. Brison, eds. *Free speech in the digital age*. Oxford: OUP. Chapter 1

Livingstone, K. (2009). The BBC's gift to the BNP. *Guardian*. Available from <http://www.guardian.co.uk/commentisfree/2009/oct/23/nick-griffin-bnp-ken-livingstone>

O'Regan, C. (2018). Hate speech online. An intractable contemporary challenge? *Current Legal Problems*. 71 (1), 403-429

Parmar, S. (2018). Freedom of expression narratives after the *Charlie Hebdo* attacks. *Human Rights Law Review*. 18, 267-296

Schauer, F. (2019). Recipes, plans, instructions, and the free speech implications of words that are tools. In K. Gelber and S. J. Brison, eds. *Free speech in the digital age*. Oxford: OUP. Chapter 4

Smet, S. (2019). 'Free speech versus religious feelings, the sequel: Defamation of the Prophet Muhammad in *ES v Austria*'. 15 (1) *European Constitutional Law Review* 158

SEMINAR SIX:

Free speech and cancel culture

This seminar explores origins and meanings of the buzzword 'cancel culture' and probes motivations for the use of this term. It discusses the tension between 'cancel culture', its regulation and freedom of expression.

Essential:

Keohane, J. (2024). Cancel Culture Rhetoric and Moral Conflict in Contemporary Democratic Societies. *American Behavioral Scientist*, 0(0)

Tandoc, E. C., Tan Hui Ru, B., Lee Huei, G., Min Qi Charlyn, N., Chua, R. A., & Goh, Z. H. (2024). #CancelCulture: Examining definitions and motivations. *New Media & Society*, 26(4), 1944-1962

Clark, M. D. (2020). DRAG THEM: A brief etymology of so-called "cancel culture". *Communication and the Public*, 5(3-4), 88-92

Supplementary:

Marwick, A. E. (2021). Morally Motivated Networked Harassment as Normative Reinforcement. *Social Media + Society*, 7(2)

Mueller, T. S. (2021). Blame, then shame? Psychological predictors in cancel culture behavior. *The Social Science Journal*, 1-14

SEMINAR SEVEN:

Online platforms: Censors or defenders of freedom of expression?

This final seminar discusses the impact of online platforms on freedom of expression. X (aka Twitter) has famously characterised itself as 'the free speech wing of the free speech party'. Facebook claims that by giving everyone a voice, it empowers the powerless and pushes society to be better over time. At the same time, platforms take innumerable moderation decisions to maintain a civil environment. Are they censors or defenders of freedom of expression online? And does the deluge of expression online empower or disempower?

Reading

Essential:

R.-L. Gerbrandt (2023) Media freedom and journalist safety in the UK Online Safety Act, *Journal of Media Law*, 15:2, 179-212

Supplementary:

M. A. Franks and D. Citron (2020). 'The internet as a speech machine and other myths confounding section 230 reform'. *The University of Chicago Legal Forum*. 45-75

S. Illing, 'The First Amendment has a Facebook problem' (Vox, 5 May 2021) <
<https://www.vox.com/policy-and-politics/22356339/free-speech-facebook-twitter-big-tech-first-amendment>>

K. Klonick (2018). 'The people, rules and processes governing online speech'. *Harvard Law Review*. 131 (6), 1599 – 1670

News Media Association, 'Written evidence on the Draft Online Safety Bill'
<https://committees.parliament.uk/writtenevidence/39265/pdf/>

Nunziato, D. C. (2019). The marketplace of ideas online. *Notre Dame Law Review*. 94, 1538 – 1584

*G. Smith, 'Carved out or carved up – The draft Online Safety Bill and the press', *Inform Blog*, <<https://inform.org/2021/06/30/carved-out-or-carved-up-the-draft-online-safety-bill-and-the-press-graham-smith/>>

Supplementary Resources

In addition to the significant array of books and journal articles in this area there are also a number of useful websites you might consult:

Article 19: <https://www.article19.org/>

Campaign for Press and Broadcasting Freedom: <http://www.cpbef.org.uk/>

Centre for Freedom of the Media: <http://www.cfom.org.uk/>

Committee to Protect Journalists: <http://www.cpj.org/>

Defence, Press and Broadcasting Advisory Committee: <http://www.dnotice.org.uk/>

ECHR Blog: <http://echrblog.blogspot.co.uk/>

Fairness and Accuracy in Reporting: <http://www.fair.org/index.php>

Freedom of Expression network: <http://www.freeexpression.org/>

Global Freedom of Expression <https://globalfreedomofexpression.columbia.edu/>

Independent Press Standards Organisation: <https://www.ipso.co.uk/IPSO/>

Index on Censorship: <http://www.indexoncensorship.org/>

International Federation of Journalists: <http://www.ifj.org/en>

International Freedom of Expression Exchange: <http://www.ifex.org/>

Journalism.co.uk: <http://www.journalism.co.uk/>

Mediawise: <http://www.mediawise.org.uk/>

National Union of Journalists: <http://www.nuj.org.uk/>

OFCOM: <http://www.ofcom.org.uk/>

Open Society Institute: <http://www.soros.org/>

PCC: <http://www.pcc.org.uk/>

Press Freedom Tracker: <https://pressfreedomtracker.us>

Project Censored: <http://www.projectcensored.org/>

Reporters Without Borders: <http://www.rsf.org/-Anglais-.html>

Spiked Online: <http://www.spiked-online.com/>

Strasbourg Observers: <https://strasbourgobservers.com>

The Westlaw database, accessible via StarPlus, provides full text access to law journals.

Twitter

It is also useful to follow a range of relevant and interesting debates and issues on Twitter.

Try and follow accounts which are particularly relevant to this module including:

@jnlreespeech; @IndexCensorship; @pressfreedom; @CJR; @cpbfreedom;

@hackinginquiry; @freepress; @press_freedom; @mediareformUK.

University guidelines on how to reference

http://www.librarydevelopment.group.shef.ac.uk/shef-only/referencing/journalism_harvard.html

https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf