

# FREE SPEECH

## Class activities\*



## Class 1 Sep 12: Introduction

### Discussion questions

- 1) What is free speech? What does free speech aim to protect?
- 2) Is freedom of speech a human right? Why or why not?
- 3) Is freedom of speech under attack?
- 4) Are you concerned about recent limitations of free speech?
- 5) Is feeling safe more important than free speech?
- 6) How, if any, would you balance free speech and the right of vulnerable minorities?
- 7) What is censorship?
- 8) What is self-censorship? Does it happen here?
- 9) Discuss the cartoons.
- 10) Discuss the poem.

### FIRST THEY CAME

By Martin Niemöller

First they came for the Communists  
And I did not speak out  
Because I was not a Communist  
Then they came for the Socialists  
And I did not speak out

Because I was not a Socialist  
Then they came for the trade unionists  
And I did not speak out  
Because I was not a trade unionist  
Then they came for the Jews  
And I did not speak out  
Because I was not a Jew  
Then they came for me  
And there was no one left  
To speak out for me.





### Critical analysis of a text on Human Rights



**Read the following text and discuss these questions**

- What is the purpose of the text?
- What is the speaker's ethos?
- What evidence does the author give to advance their arguments?
- Are there any fallacies or flaws in the text?
- What is the author's worldview?

- Whom do the author's arguments benefit?
- How can you deconstruct/critically evaluate the author's arguments?
- What is another perspective? What counter-arguments can you think of?
- What has been silenced or what is missing from the author's text?

JOURNAL ARTICLE

**Human rights and global benefits**

Dr. Lauren Wolf, Ph.D. (International Law, Cambridge University).  
Human Rights, International Law, and Global Governance Chair  
Cambridge University

Citation: Wolf, L. (2022). Human Rights and Global Benefits. *International Journal of Global Governance*, Vol. 30 No. 4, pp. 101-123 (22 pages).



**Abstract**

Human rights are basic rights that belong to all of us simply because we are human. They embody key values in our society such as fairness, dignity, equality, and respect. They are an important means of protection for us all, especially those who may face abuse, neglect, and isolation. Most importantly, these rights give us power and enable us to speak up and to challenge poor treatment from a public authority. Human rights are the tools we use to fight for the basic rights and freedoms that should be protected in relation to every person in the world, from birth until death, no matter our race, gender, religion, abilities, political belief, sexuality, age or any other characteristic. This article examines the concept of human rights at the international level and explores the benefits of adherence and compliance with international instruments of Human Rights, particularly in developing countries.

**Class 2 Sep. 19: United States and Free Speech (First Amendment)**

**Read these articles and discuss the following questions**

**Maggie DeJong**

**Christian Student Slapped With ‘No Contact Order’ by University for Speaking Views in Class Discussions**

**BY MICHAEL WING TIMEJUNE 24, 2022 PRINT**

It's part of the whole college experience. Eager young minds, animated in discussion, engaging in robust classroom debate.

It got lively, boisterous—even explosive at times—as bright pupils with great expectations shared, tested, and contested ideas about the world. This was the university, the crucible of learning, the engine of ideas.

How times have changed.

Today, that experience has turned heavy (the crucible cold and unyielding) in many colleges and universities, where discussions are dampened by theories like postmodernism, putting a chill on that wistful classroom experience.

Few know this better than those who've been silenced.

The schools themselves are doing the silencing.

Michigan Maggie DeJong, 26, now graduated, studied art therapy counseling at Southern Illinois University Edwardsville, where postmodernism was taught as part of its curriculum.

Because of her viewpoints on contentious issues facing America today, ones impacting the lives, livelihoods, rights, and security of countless individuals—such as abortion, defunding the police, and Black Lives Matter—the school took administrative steps to bring her bright mind to heel.

They slapped DeJong with a “no contact order,” the college’s equivalent of a restraining order, usually reserved for those threatening violence.

“There is a view that is becoming more prominent on campuses, that speech is ‘violence,’” DeJong’s attorney Gregg Walters told The Epoch Times. “You cannot issue an order saying your protected speech is a violation of some code of conduct.”

DeJong, along with the Alliance Defending Freedom, is now suing the school for violating her First Amendment rights to free speech and religious belief. Her Christian beliefs are part of what shape her worldview. DeJong is seeking a change in the school’s policy, vindication from the no contact order, and remediation for damages.

She was also denied due process.

“Even in the legal system, you get a chance to defend yourself,” added Walters. “She wasn’t given any type of hearing date to defend us, they were just issued.”

DeJong engaged in discussions in classroom settings, which was expected of her, in ways that were topically appropriate, discussions about “race relations,” “religion,” and “the postmodern theoretical framework,” she said. Until a student who didn’t like what she was saying made a formal complaint.

And her views were collected from social media for over a year. Classmates took screenshots from her Instagram as “evidence.”

“I was participating in these discussions, but they found views offensive that were from my Instagram that regarded pro-life discussions,” she told the newspaper, adding that those views were “conservative views that millions of Americans hold that are being discussed right now.” She defended Kyle Rittenhouse and denounced critical race theory on social media, drawing the ire of fellow students.

“Proof” of ideological impiety in hand, administrators issued DeJong no contact orders preventing her from having any contact, direct or indirect, with three students, on or off campus. “It’s the university’s version of a restraining order,” said Walters, adding that schools are not allowed to issue them. “Not in these circumstances. In other circumstances [it may be allowed], perhaps for protection against physical violence, threats of violence, sexual assault, sexual harassment, but when it comes to protected speech, absolutely not.”

Adding insult to injury, DeJong's teacher followed up by sending an email to some 30 of her classmates, informing them she was being investigated.

This pressure successfully chilled her speaking, effectively silencing her from further discussion, even in the classroom.

"I was living in fear with my speech and so I was very scared to even defend myself, and so I remained very quiet," she said, adding that she felt "sadness for what was going on."

Punishment with such impunity flies in the face of university tradition: to seek truth. Now, the prevailing postmodern ideology holds that truth is relative; all discourses are constructs, tools of power; logic itself is a construct, a construct of the West, so logical debate can't reach fruitful conclusions but can only serve the powerful, the privileged.

Only power struggles exist, between oppressor and oppressed.

Hence, speech equals violence when uttered from people like DeJong—so the postmodern mantra goes.

Not all agree.

"The more we talk about speech being 'violence,' the more we see extreme reactions to legal speech," said Walters. "And in case of Maggie's speech, there are millions of people that would agree with the positions that she took.

"To treat that as if it were something worthy of a no contact order is just absolutely wrong. It was protected speech, and universities cannot censor speech based on religious and political viewpoints."

The university's punitive approach to learning, he added, reinforces victimhood behavior rather than encouraging civil discourse.

"I went in with the mindset that it's university, so diversity of thought should be welcomed," DeJong added. "It should be a marketplace of ideas where you can engage in dialogue ... where you're truly picking things apart and learning, and learning from other people.

"Freedom of speech, the First Amendment, needs to be upheld within university systems so that students can fully engage in the marketplace of ideas."

- 1) Discuss what Maggie DeJong did and what happened to her.
- 2) What is a no-contact order? Do you think this is appropriate in this case? Can it be appropriate and effective in other free speech situations?
- 3) Maggie DeJong's attorney argues that "There is a view that is becoming more prominent on campuses, that speech is 'violence'". What does he mean by this? Do you agree? Why or why not?
- 4) Postmodern ideology held that truth is relative and that there is a wide diversity of possible realities and discourses. This incident seems to change Postmodernism traditional ideology. Here, it is argued, that "all discourses are constructs, tools of power; logic itself is a construct, a construct of the West, so logical debate can't reach fruitful conclusions but can

only serve the powerful, the privileged.” Are we experiencing the end of postmodernism and the beginning of a new ideology?

## Disinformation Governance Board



### DHS' disinfo debacle

**The Department of Homeland Security announced the creation of its new Disinformation Governance Board last week, and the rollout could hardly have gone worse.**

The reveal was slipped into a skim-and-you-miss-it blurb in POLITICO Playbook, and then the board's new executive director, Nina Jankowicz, tweeted it out with little context, stoking confusion, misinformation and even outright exploitation.

The Orwellian name. The utter lack of detail. Even the timing, released smack in the midst of Elon Musk's "free speech" crusade — all of it combined to spawn a million outraged statements and equally outraged Fox News chyrons before almost anyone even knew what this board was all about. The comparisons to "1984" flooded in.

"Those criticisms are precisely the opposite" of what the board will do, DHS Secretary Alejandro Mayorkas said during a CNN interview Sunday. In reality, the board is mainly a bureaucratic exercise at DHS, according to a source who's been in conversations with DHS about it.

DHS has a ton of sub-agencies (ICE, CBP, USCIS, to name a few). All of them have been working in silos on ways to counter disinformation in different areas for years.

DHS now needs to know who's doing what and, importantly, if they're doing it in a way that doesn't infringe on people's free speech rights and privacy.

Mayorkas emphasized the board has "no operational authority."

But the big, noisy announcement was ultimately self-defeating. Even Mayorkas acknowledged Sunday, “I think we probably could have done a better job communicating what it does and does not do.”

“If you take any action against disinformation, that action in and of itself will inevitably become the target of disinformation,” the source who’s discussed the board with DHS said. “Having a very large governance board and a really big, public rollout for it with a very well-known person in this space very publicly leading it, that probably drove their risk up a little more than it needed to.”

Bad faith arguments abound, most of them focused on Jankowicz. Conservative lawmakers and right-wing media have accused her of being a partisan hack who’s unqualified for the job.

As evidence of her supposed bias, they’ve pointed to her comments about how the 2020 Hunter Biden laptop story in The New York Post was a “Trump campaign product.” (No one mentions in these attacks that Trump lawyer Rudy Giuliani was the one who provided the laptop data to the Post, but I digress.)

But not all of the backlash is coming from the usual suspects. Other internet freedom experts worry that the existence of such a board within DHS will weaken the U.S.’s ability to push back against autocrats like Putin who are using the supposed threat of disinformation to justify cracking down on anyone who dares to tell the truth.

“It is not going to help a single person trying to advance human rights in non-democratic regimes around the world,” tweeted Daphne Keller, director of Stanford’s Cyber Policy Center.

“DHS needs to pull the plug on this as soon as possible,” U.S. Naval Academy professor Jeff Kosseff added over the weekend.

One person who is standing up for the board’s creation? Former CISA head Chris Krebs, who was on the front lines of the 2020 fight against election misinformation and maybe knows more than anyone about the scope of the challenge inside DHS.

In a Twitter thread, Krebs said the Trump administration’s battle with disinformation had been “ad hoc” and that a board that has transparent rules around the First Amendment, privacy and civil rights is “exactly what DHS should do.”

And if anyone doesn’t like it? This is a good moment for Congress to more clearly define DHS’ power, Krebs argued.

This isn’t the first government body to try to take on disinformation. Under President Obama, the State Department launched a Global Engagement Center in hopes of countering ISIS propaganda and, in the wake of the 2016 election, state-sponsored aggression.

But that effort fell on hard times under President Trump, who wasn’t exactly motivated to investigate Russian interference.

The Disinformation Governance Board may end up being an even trickier sell. While the State Department is focused on threats from abroad, DHS has a domestic focus.

This new board has its work cut out for it. But the hardest part may be dispelling the many and multiplying myths about itself.

— Issie Lapowsky (email | twitter)

## Discussion questions

- 1) What is the Disinformation Governance Board?
- 2) Why did the US government create it?
- 3) Is the Disinformation Governance Board compatible with the First Amendment?
- 4) Do you agree with the creation of the Board? Why or why not?
- 5) What are its functions?
- 6) What are the potential risks derived from the Board?
- 7) Who is Nina Jankowicz?
- 8) What are, if any, the similarities with George Orwell's 1984?
- 9) Why was the Board paused?



## Smartmatic

### **FOX NEWS WON'T BE GETTING OUT OF A \$2.7 BILLION LAWSUIT OVER ITS RIGGED VOTING MACHINE CLAIMS**

An election technology company's case against Fox News can move forward, with a judge finding "substantial basis" for the claim that Murdoch's network "evinced a reckless disregard for the truth."

BY CHARLOTTE KLEIN

MARCH 9, 2022

An election technology company suing Fox News for airing false claims about its role in the 2020 election notched a win yesterday, as a New York judge said much of Smartmatic's \$2.7 billion defamation case against the network can proceed. There is "substantial basis" for the claim "that, at a minimum, Fox News turned a blind eye to a litany of outrageous claims about [Smartmatic], unprecedented in the history of American elections, so inherently improbable that it evinced a reckless disregard for the truth," Judge David Cohen wrote in a 61-page ruling.

Smartmatic last year filed a suit against Fox News and Fox Business Network, naming current and former network stars Maria Bartiromo, Jeanine Pirro, and Lou Dobbs as defendants. The election technology company accused them of damaging its reputation and business with false claims broadcast in the aftermath of the 2020 election. The claims aired on Fox served to bolster Donald Trump's democracy-defying attempt to explain away his loss to Joe Biden by blaming it on faulty or rigged voting machines. The suit—one of two massive defamation suits Rupert Murdoch's empire is battling as a result of its conspiracy-addled election coverage—also targeted former Trump lawyers Sidney Powell and Rudy Giuliani, both of whom peddled pro-Trump conspiracy theories about Smartmatic's voting machines on Fox programs.

Cohen on Tuesday rejected efforts by Fox Corp, Bartiromo, and Dobbs to dismiss Smartmatic's claims against them. Pirro, however, prevailed. The judge dismissed all claims against her because the anchor, despite asserting on her program that Democrats "stole votes," did not specifically blame Smartmatic's software. The judge also dismissed defamation claims against Powell due to a lack of jurisdiction, and most of the claims against Giuliani. But some parts of Smartmatic's case against the former New York City mayor were allowed to proceed, The New York Times noted.

In their motions to dismiss Smartmatic's case, Fox and its current and former anchors have cited First Amendment protections and the newsworthiness of covering Smartmatic as part of Trump's post-election efforts. Fox News again cited free speech in response to Tuesday's ruling. "While we are gratified that Judge Cohen dismissed Smartmatic's claims against Jeanine Pirro at this early stage, we still plan to appeal the ruling immediately," the network said in a statement. "We will also continue to litigate these baseless claims by filing a counterclaim for fees and costs under New York's anti-SLAPP statute to prevent the full-blown assault on the First Amendment which stands in stark contrast to the highest tradition of American journalism."

### **Discussion questions**

- 1) What is the lawsuit about?
- 2) How does the threat work in practice?
- 3) What are the weakest aspects of the plaintiff's arguments?
- 4) How does the lawsuit affect free speech?
- 5) Do an online search of other individuals and companies threatened with this or a similar lawsuit? Is it fair?

6) What is Smartmatic?

## Paul Manafort

### Judge issues gag order in Manafort case

By [Dan Berman](#), CNN

Published 11:56 AM EST, Wed November 8, 2017

[Video Ad Feedback](#)

02:49 - Source: [CNN](#)

Manafort, Gates remain under house arrest

**WashingtonCNN —**

The federal judge overseeing the case against former Donald Trump campaign aides Paul Manafort and Rick Gates has issued a gag order in the case.

Judge Amy Berman Jackson on Wednesday said the order is necessary to limit the impact on potential jurors.

“In order to safeguard defendants’ rights to a fair trial, and to ensure that the court has the ability to seat a jury that has not been tainted by pretrial publicity, all interested participants in the matter, including the parties, any potential witnesses, and counsel for the parties and the witnesses, are hereby ordered to refrain from making statements to the media or in public settings that pose a substantial likelihood of material prejudice to this case,” Jackson wrote.

### Lawyers sanctioned for 'conspiracy theory' election fraud lawsuit

By Katelyn Polantz, CNN Reporter, Crime and Justice

(CNN)Lawyers who attempted a class action lawsuit claiming voter fraud in the 2020 election were sanctioned by a federal judge in Colorado on Wednesday for the frivolous, meritless case, a major condemnation of pro-Donald Trump allies' attempts to use the courts to vet right-wing conspiracies.

The attorneys -- Gary D. Fielder and Ernest John Walker -- that filed the election lawsuit in late December 2020 in Colorado federal court now must pay attorneys fees for Facebook, Dominion Voting Systems, the states of Michigan, Pennsylvania, Georgia and Wisconsin, and the non-profit Center for Tech and Civic Life, all of which were named as defendants in the lawsuit, Magistrate Judge N. Reid Neureiter ruled.

Neureiter wrote a scathing 68-page opinion condemning the post-election lawsuit, calling it an "enormous conspiracy theory" and potentially defamatory. The lawsuit had no lawyers or experts that were able to support the claims, the judge noted.

## Discussion questions

- 1) Who is Paul Manafort? Why was he issued a gag order? What is a gag order?
- 2) How do gag orders affect free speech?
- 3) What did Cambridge Analytica do in the 2016 US elections? What about Facebook?
- 4) Why were lawyers sanctioned in connection to election fraud lawsuit?

## Alex Jones

### **Alex Jones must pay \$50m for Sandy Hook hoax claim BBC**

US conspiracy theorist Alex Jones has been ordered to pay \$49.3m (£41m) in damages after falsely claiming a 2012 school shooting was a hoax.

A jury in Texas ruled the radio host must pay \$45.2m in punitive damages, in addition to \$4.1m in compensatory damages they awarded a day earlier.

The two-week defamation trial was brought by the parents of a child killed in the attack.

Twenty children and six adults were killed at Sandy Hook in Connecticut.

The lawsuit was filed by Scarlett Lewis and Neil Heslin, the separated parents of six-year-old Jesse Lewis, who died in the primary school shooting.

The plaintiffs - who said they had endured harassment and emotional distress because of the Infowars founder's misinformation - had sought \$150m.

The compensatory damages issued on Thursday were meant to cover the actual costs to the family incurred by Jones' defamation, such as the private security they hired during the trial out of fear of an attack from a Jones supporter.

"We ask that you send a very, very simple message and that is: Stop Alex Jones," a lawyer for the parents said in court on Friday.

"Stop the monetisation of misinformation and lies. Please."

Earlier on Friday, an economist hired by the parents testified that Jones, his media brand Infowars and parent company Free Speech Systems were worth up to \$270m.

Bernard Pettingill told the court that records indicate Jones withdrew \$62m for himself from his company in 2021 as his legal troubles grew.

"That number represents, in my opinion, a value of a net worth," Mr Pettingill said. "He's got money put in a bank account somewhere."

Free Speech Systems filed for bankruptcy protections in the first week of the two-week trial.

The trial heard that Jones' business had earned about \$800,000 in a single day selling diet supplements, gun paraphernalia and survivalist equipment.

Lawyers for the parents accused Jones of trying to hide evidence, and argued that he had committed perjury when he denied having sent any messages about the Sandy Hook attack.

Earlier this week, an attorney for the plaintiffs revealed that Jones' legal representative had accidentally sent them two years of the radio host's telephone texts.

He said that the congressional committee investigating last year's US Capitol riot had requested access to the messages as they look into Jones' alleged role.

This is the first of three trials against Jones being brought by family members of Sandy Hook victims.

He has already lost a series of defamation cases filed by parents of the victims by default after failing to produce documents and testimony.

But this was the first trial in which financial damages were agreed by a jury.

Jones appeared briefly in the court on Friday, but was not present for the final verdict.

Despite retracting his claims about Sandy Hook, Jones has continued to use his media platform to argue the case was rigged against him and claimed that members of the jury pool "don't know what planet they're on". His Infowars website depicted the judge being consumed by flames.

His behaviour triggered several rebukes from the judge, who at one point told him: "This is not your show."

Jones - a popular figure in US fringe conservative commentary - has repeatedly argued that the Sandy Hook shooting was a hoax orchestrated by the government to strip Americans of gun rights, and that the parents of the dead children were "crisis actors".

His lawyer had cited US constitutional free speech protections and asked for leniency in the trial, saying the jury had already sent a message to all radio hosts "that their standard of care has changed".

## **Discussion questions**

- 1) Who is Alex Jones?

- 2) What did Alex Jones say about Sandy Hook?
- 3) What was the lawsuit about? What did the court rule? Why?
- 4) Do you agree with the court's decision?
- 5) How, if any, does the court decision affect free speech and freedom of the press?
- 6) What effect, if any, can this rule have on other journalists with non-hegemonic views?

## Princeton course

**Princeton course accuses 'far right activists' of abusing free speech to 'justify' hate speech**  
**One of the course's mandatory readings is a book called 'Is Free Speech Racist?'**

**Logan Dubil '23 | Senior Pennsylvania Campus Correspondent**

**Friday, August 12, 2022 12:01 PM**

This fall, Princeton University's Anthropology Department is offering the course "Current Issues in Anthropology: Liberalism, Racism & Free Speech," addressing issues relating free speech and hate speech.

According to the course description, the class will emphasize how "far right activists" take advantage of "free speech" to "justify hate speech."

"We use comparative studies of racist and Islamophobic hate speech to examine different cultural approaches to managing speech and how these rules are contested/challenged by popular countermobilizations," the description reads.

One of the course's required readings is the book *Is Free Speech Racist?*, which argues that "'free speech' has been adopted as a primary mechanism for amplifying and re-animating racist ideas and racializing claims."

The course will be taught by Visiting Professor Sindre Bangstad, a published author and writer, who occasionally publishes pieces for *The Guardian*.

Princeton University student Abigail Anthony drew attention to the course via a March 23 Twitter post.

Anthony spoke with *Campus Reform* about her reaction to the course.

"It would certainly be antithetical to free speech and academic freedom to suggest that this course should be banned or removed from the offerings," Anthony told *Campus Reform*.

However, she expressed concern over the course's ability to indoctrinate students if not taught in an unbiased manner.

“The syllabus is currently unavailable, but I hope it offers competing perspectives on the issues of free speech and hate speech; otherwise, education verges on indoctrination.”

Campus Reform contacted Princeton University, the Anthropology Department, and Bangstad for comment. This article will be updated accordingly.

### **Discussion questions**

- 1) What is the Princeton course about?
- 2) Is free speech racist? Why or why not?
- 3) Do an online search of the book *Is Free Speech Racist?* What is it about? Do you agree with its major thesis? Why or why not?
- 4) Is free speech used sometimes to justify hate speech? Why or why not?

### **Classes 3 & 4 Sep. 26 & Oct. 3: Canadian Law**

#### **Despite what you may think, Canadians don't actually have freedom of speech**

**Tristin Hopper: Unlike in the U.S., you can go to jail in Canada for saying the wrong thing**

Publishing date: Mar 24, 2022 •

During the events of Freedom Convoy, it was common to hear protesters say that they were standing up for the rights of free speech or free expression. And Canada does indeed pride itself as a land of free speech ... to a point. Unlike the Americans, there are a number of ways that you can go to jail in Canada simply because of something you said.

You'll often hear Canadians talking about their fundamental right to free speech. But, as with many Canadian misconceptions, this is a case of them mistaking themselves for Americans.

Yes, “freedom of expression” is guaranteed by our Charter of Rights and Freedoms, but there's a pretty big loophole nobody mentions. The preamble to the Charter explicitly mentions that this freedom is subject to “reasonable limits.”

There's also the other part of the Charter where provincial governments can steamroll any freedom they want, provided they publicly announce that they're doing so.

This is all very different from the US, where you just have the First Amendment.

But in Canada, it means that you can get fined or even go to jail based on something you say. Say something on Twitter that “wilfully promotes hatred” and you could go to jail for two years.

## **Canada and Freedom of Expression**

- 1) What are the differences between Canadian freedom of expression and the US free speech?
- 2) What was the Freedom Convoy demonstration about?
- 3) What happened?
- 4) How did the Canadian government react? What measures did the government adopt?
- 5) What do you make of Ottawa’s requirement that crowdfunding sites register and report transactions to the federal anti-money laundering watchdog in the wake of the Freedom Convoy protests?
- 6) Should there be any limits to the right to protest in a democratic country? If so, what should the limits be on demonstrations, marches, occupations, blockades, and acts of civil disobedience aimed at influencing public policy and driving social change?
- 7) How did Canadian legacy media treat the Freedom Convoy demonstration?
- 8) Discuss Bill C-229. How does it affect free speech? Do you agree with this bill? Why or why not? Can the bill, if enacted, punish behaviours that the law itself is not intended to punish?
- 9) Discuss section 3 of Alberta’s Human Rights Act.

### **HOUSE OF COMMONS OF CANADA**

#### **BILL C-229**

#### **An Act to amend the Criminal Code (banning symbols of hate)**

**FIRST READING, FEBRUARY 3, 2022**

#### **SUMMARY**

This enactment amends the Criminal Code to broaden the provisions relating to hate propaganda by making it an offence to publicly display visual representations that promote or incite hatred or violence against an identifiable group.

Available on the House of Commons website at the following address:

[www.ourcommons.ca](http://www.ourcommons.ca)

1st Session, 44th Parliament,

70 Elizabeth II, 2021-2022

HOUSE OF COMMONS OF CANADA

BILL C-229

An Act to amend the Criminal Code (banning symbols of hate)

Preamble

Whereas Parliament recognizes the importance of preventing all forms of hatred or violence against any group that is distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability;

Whereas Parliament acknowledges past atrocities and violence committed against such groups by persons or organizations whose symbols, emblems, flags and uniforms continue to this day to be used to promote or incite hatred and violence against these groups;

And whereas it is in the interest of all Canadians to prevent the display or sale of symbols or emblems such as the Nazi swastika and the Ku Klux Klan's insignia, flags such as the standards of Germany between the years 1933 to 1945 and those of the Confederate States of America between the years 1861 to 1865 and uniforms, including the German and Confederate States of America military dress of those periods, as well as the hoods and robes of the Ku Klux Klan;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

Short title

1 This Act may be cited as the Banning Symbols of Hate Act.

R.S., c. C-46

Criminal Code

2 (1) Section 319 of the Criminal Code is amended by adding the following after subsection (2):

Promotion of hatred or violence — visual representations

Start of inserted block

(2.1) Everyone who, wilfully or recklessly, promotes or incites hatred or violence against any identifiable group by publicly displaying, selling or offering for sale a symbol, emblem, flag or

uniform that identifies, or is associated with, a person or organization that promotes or incites, or has promoted or incited, hatred or violence against an identifiable group, is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.

End of inserted block

(2) The portion of subsection 319(3) of the Act before paragraph (a) is replaced by the following:

Defences

(3) No person shall be convicted of an offence under subsection (2) Insertion start

(2.1) Insertion end

(3) Subsection 319(3) of the Act is amended by striking out “or” at the end of paragraph (c) and by adding the following after paragraph (d):

Start of inserted block

(e) if, in good faith, the person publicly displayed the symbol, emblem, flag or uniform because it was relevant to a subject of public interest, including for educational purposes or accurate depiction in a film, and if on reasonable grounds the person believed the display to be proper and for the public benefit; or

(f) if, in good faith, the person displayed the symbol, emblem, flag or uniform for the purpose of their removal from public places on the grounds that they produce or tend to produce feelings of hatred — or incite or tend to incite acts of violence — against an identifiable group.

End of inserted block

(4) Subsections 319(4) to (6) of the Act are replaced by the following:

Forfeiture

## Cases

### Choose one of the following cases and discuss it

- Mugesera v Canada (Minister of Citizenship and Immigration) (2005)
- R v Buzzanga and Durocher (1979)
- Slight Communications Inc. v. Davidson (1989).

- R v Keegstra (1990)
- R v Andrews (1990)
- R v Krymowski (2005)
- R v Presseault (2007)
- R v Popescu (2009)
- R v Ahenakew (2009)
- Your Ward News (2019)

## **Free speech and Criminal Law**

### **Discussion questions**

- 1) What is hate speech?
- 2) Should hate speech continue to be criminalized? Why or why not?
- 3) How can hatred be defined? Who gets to define hatred? What, if any, are the -intended and unintended- consequences of such definition?
- 4) Some argue that hate speech means criminalizing behaviours that hurt feelings. Do you agree? Why or why not?
- 5) What are NZ Prime Minister's major ideas and arguments in her speech at the UN General Assembly? Do you agree with her views? Why or why not?
- 6) Who is protected under current Canadian law?
- 7) What characteristics, social identities, or statuses should or should not be treated as protected characteristics within a body of hate speech laws?
- 8) Are the existing crimes in Canada too broad? Do they infringe upon freedom of expression? Why or why not?
- 9) Should the government restrict and/or criminalize other behaviours related to freedom of expression?

### **Class 5: Oct. 17: Midterm test**



## **Class 6: Oct. 24 Online Regulation**

**Read the following article and discuss these questions**

### **Discussion questions**

- 1) What is the objective of the bill to regulate social media and combat harmful content online? Do you agree? Why or why not?
- 2) How would this bill impact on freedom of expression rights?
- 3) Would you make some changes to the bill? If so, what changes?
- 4) Do you agree with the government that certain groups are vulnerable and need state protection online?
- 5) Do you think that it is acceptable to have a higher standard of responsibility online, compared to offline, as the online environment allows users to hide and not be held accountable for their speech?
- 6) What is secondhand censorship? Is this a problem? Why or why not?
- 7) Do you agree with the government's initiative to demand Canadian content from online content creators? Why or why not?

Why Bill C-11—the Online Streaming Act—is bad news for Canadian YouTubers like myself  
Canadian creators are at risk of having their content and visibility diminished by the passing of  
the Online Streaming Act, says YouTuber J.J. McCullough, who recently opposed Bill C-11 in  
Parliament.

By Nicholas Seles June 22, 2022

On Tuesday, Bill C-11, a law that will regulate online media from services such as YouTube or Netflix passed through to the Senate, leaving YouTubers and other content creators in Canada increasingly worried that the bill threatens the way content creators earn a living by affecting visibility and potentially limiting video views.

Referred to as the Online Streaming Act, Bill C-11 intends to highlight and promote Canadian content—CanCon in the world of streaming—and would put online content under the jurisdiction of the Canadian Radio-television and Telecommunications Commission (CRTC). This would require streaming platforms to showcase Canadian content more than they currently do.

That means that platforms like Netflix would have to recommend more Canadian-made shows like Schitt's Creek or other Canadian-made content ahead of non-Canadian content.

This is a worry for content creators on YouTube in particular, where its algorithm curates and recommends videos based on feedback from users based on everything from how long a video is viewed to how quickly it is skipped.

Canadian YouTuber J.J. McCullough has 782,000 subscribers to his channel. He spoke at a Parliamentary hearing earlier this month to oppose the Online Streaming Act and its introduction into Canadian law and shares his thoughts on the experience and potential impact of Bill C-11: The hearing was revealing. I've never been part of a parliamentary committee before, so I put a lot of effort into trying to come up with a powerful opening statement and people responded quite favorably to it. I took the process seriously.

I had worked in television for a few years as a TV political pundit and so I had gotten comfortable being on camera. I worked for Sun News in its final years and when it shut down in 2015, I was abruptly out of a job. That was when I started my YouTube channel and I've been doing it for over six years now—but only professionally for the last two or so, in terms of it being my primary source of income.

It can be exhausting. You write the scripts, film the videos, edit them and add all the sound effects and graphics and all those things. But I like creative projects. It's very rewarding to see the reactions that my content gets, especially from young people. As I get older, I feel like there's a paternalistic side to me that's coming out more and so I like to know that I'm helping and that's very rewarding and very validating to me because that's ultimately what I got into this business to do.

I'm grateful to have the chance to do this full-time, but my new career now seems at-risk now with Bill C-11; it's crushing that so much hard work and passion could now disappear because of it.

The way that YouTube works at present is that the content audiences discover is determined by a control algorithm that recommends videos based on what YouTube perceives the user to be interested in. For example, if my YouTube habit suggests that I'm interested in cooking videos, then YouTube will naturally recommend a lot of cooking videos.

We know from the text of the bill that the CRTC is going to be given a mandate to promote the 'discoverability' of Canadian content, specifically, and that websites under the CRTC jurisdiction, such as YouTube, will be obligated to comply with this discoverability mandate.

What this means is that the CRTC is going to have to come up with some sort of criteria for what is good Canadian content and then YouTube is going to have to live up to its legal obligations to promote and recommend that content.

Overnight, creators are going to wake up and find the kind of content that has previously been successful in an unregulated YouTube is no longer successful in a regulated YouTube. As a

result, they will either have to change the nature of content that they make in order to make it more overtly Canadian—whatever that means—or they could possibly be at a disadvantage. That could mean their viewership, and thus revenues, take a hit. That's something that I think is quite worrying to a lot of YouTubers.

The thing that really struck me from the parliamentary hearings—and this is just a personal insight—was that when witnesses are testifying, you would think they're the center of attention. But when you're there in-person, almost none of the politicians seem to be listening at all. Everybody is just on their phone. It was incredibly upsetting and disrespectful. It felt like whistling in the wind.

### **Read this article and discuss the following questions**

#### **Judge orders Biden admin to turn over Fauci, Jean-Pierre 'misinformation' emails sent to social media giants**

White House press secretary Karine Jean-Pierre, Dr. Anthony Fauci emails to Facebook, social media giants must be turned over in 21 days

A federal judge in Louisiana ruled Tuesday that the Biden administration has 21 days to turn over all relevant emails sent by White House press secretary Karine Jean-Pierre and Dr. Anthony Fauci to social media platforms regarding alleged misinformation and the censorship of social media content.

The decision by Judge Terry Doughty, who was appointed by former President Donald Trump, came as part of a lawsuit filed in May by Missouri Attorney General Eric Schmitt and Louisiana Attorney General Jeff Landry, accusing the Biden administration of suppressing the constitutionally protected right to free speech on elections, the COVID-19 lab leak theory, coronavirus-related lockdowns and other issues.

The Justice Department objected to the handing over of the email correspondence under executive privilege and presidential communications privilege, but Doughty decided, "This Court believes Plaintiffs are entitled to external communications by Jean-Pierre and Dr. Fauci in their capacities as White House Press Secretary and Chief Medical Advisor to the President to third-party social media platforms."

In their initial filing, he and Landry argued that "having threatened and cajoled social-media platforms for years to censor viewpoints and speakers disfavored by the Left, senior government officials in the Executive Branch have moved into a phase of open collusion with social-media platforms under the Orwellian guise of halting so-called 'disinformation,' 'misinformation' and 'malinformation.'"

"As a result of these actions, there has been an unprecedented rise of censorship and suppression of free speech — including core political speech — on social media platforms," the lawsuit says.

"Not just fringe views, but perfectly legitimate, responsible viewpoints and speakers have been unlawfully and unconstitutionally threatened in the modern public square."

In response to the ruling, an administration official told Fox News that as a general matter, "as we have said over and over again since the beginning of the administration in our battle against COVID-19, it has been critical for the American people to have access to factual, accurate, science-based information."

"For example, we worked hard to debunk inaccurate or misleading information about the COVID vaccines that have saved millions of lives and encourage Americans to get vaccinated and boosted to stay safe," the Biden administration official said by email. "Democrats and Republicans came together to urge the public to get vaccinated, stressing the safety and effectiveness of the vaccines."

"We believe in and we support freedom of speech, and we also believe it is important for all media platforms, including social media, to represent factual scientific information and combat misinformation and disinformation that can cost lives," the official concluded.

Responding to a Fox News request for comment about the ruling on the emails from Jean-Pierre and Fauci, Andy Stone, the communications director for Meta, formerly known as Facebook, referred to his public tweet published last week regarding the lawsuit.

"This is at least the third major news cycle about our work with the CDC to address harmful misinformation about COVID, and the least informative," Stone tweeted on Sept. 1, days before the ruling. "We announced that we would be doing this in 2020, during the Trump Administration."

- 1) What was the Biden administration accused of?
- 2) Do you think that a government can legitimately influence the content of media and social media? Why or why not?
- 3) Discuss the reference to George Orwell in the accusation? What does it mean?
- 4) Discuss the following tweets.
- 5) Do an online search of the recent developments of this case.

← Thread

#



⚙️

**Eric Schmitt**  @Eric\_Schmitt · Sep 1 ⋮  
 US Senate candidate, MO  
 🚫 In May, We filed a landmark lawsuit against top ranking Biden Admin. officials for colluding with social media companies to censor free speech. We have already received documents that show their cozy relationship, and now we're demanding more. 📄

💬 1,021    ↻ 6,055    ❤️ 18.3K    ↗



**Eric Schmitt**  @Eric\_Schmitt ⋮  
 US Senate candidate, MO

In July of 2022, MO and LA served discovery requests and third-party subpoenas, demanding documents from top-ranking Biden Administration officials and social media companies over their alleged collusion to suppress freedom of speech.

**Eric Schmitt**  @Eric\_Schmitt · Sep 1 ⋮  
 US Senate candidate, MO



Here's what we know so far. DOJ identified 45 federal officials who have interacted with social media companies on misinformation.

💬 81    ↻ 1,016    ❤️ 3,149    ↗

**Eric Schmitt**  @Eric\_Schmitt · Sep 1 ⋮  
 US Senate candidate, MO

Beyond DOJ, Meta identified 32 additional federal officials including White House Officials who communicated with them, and YouTube identified 11 federal officials including White House Officials who communicated with them, many of whom were not disclosed by DOJ.

💬 18    ↻ 774    ❤️ 2,551    ↗

**Eric Schmitt**  @Eric\_Schmitt · Sep 1 ⋮  
 US Senate candidate, MO

This is a vast censorship enterprise, and the American people deserve to see the truth. Here are examples that already prove that federal officials and social media companies are coordinating on censorship, and we're not close to being done yet:

## Cancellation culture



Edinson Cavani, the Manchester United striker, could face a three-game ban if the Football Association deems that he used discriminatory or racist language in an Instagram story shared from his account on Sunday evening.

The FA has confirmed it is investigating the post, which was published shortly after United's 3-2 win against Southampton, in which Cavani scored two goals after coming on as a half-time substitute.

Manchester United players celebrate after Edinson Cavani's late winner.

Edinson Cavani on target as Manchester United fight back to beat Southampton

In the post – which was later deleted – the words “gracias n[...]to!” are used to thank a follower congratulating Cavani on his performance in the match at St Mary's.

Social media postings are covered by FA Rule E3, and if a comment is deemed to include a reference to a person's ethnic origin, colour, race or nationality, then that will be regarded as a potential aggravating factor in any punishment. The rules also make it clear that the owners of social media accounts are responsible for any content posted from their account, whether by themselves or by a third party.

Additionally, deleting an inappropriate post does not necessarily prevent a sanction from being imposed. Last year, Manchester City's Bernardo Silva was banned for one match after posting and then deleting a tweet comparing his teammate Benjamin Mendy to the cartoon figure on a brand of Spanish chocolate.

If the FA decides to pursue the case it will write to Cavani in the next few days asking for his written observations. Any charge must be issued by next Monday.

At the start of this season, the FA issued fresh guidelines on racist language and behaviour on social media, with offences carrying a minimum ban of three matches. Manchester United were not available for comment on Sunday night.

- 1) Who is Cavani? Where is he from? What is his native language? Approximately how long had he lived in an English language country before this incident?
- 2) What did Cavani do?

- 3) Do you think he was wrong? Why or why not?
- 4) What do you think about the sanctions against Cavani?
- 5) Discuss other similar incidents where someone is sanctioned because a word in a foreign language sounds similar to an offensive word in English.

### **Class 7 Oct. 31: Freedom of Speech and the University**

#### **Read the following articles and discuss these questions**

- 1) Discuss the culture of cancellation across university campuses in the US and other countries. Give some specific examples.
- 2) Does this happen in Canada, too?
- 3) What does the author mean by conventional wisdom? Do you agree that universities should challenge conventional wisdom? Why or why not?
- 4) Do you agree with the following statement? Why or why not?

A university ought not to guarantee anyone sanctuary from ideas that upset them. Quite the contrary. True scholarship requires that ideas be freely explored, debated and discussed.

- 5) Do you agree with the following statement? Why or why not?

To give students information that is engineered to avoid offending one interest group or another is to give them a partial and distorted view of the world – and it is a gross failure of a university's most basic obligation.

- 6) What are the Chicago the Chicago Principles on Freedom of Expression? Why have they been adopted?
- 7) Are you in favor or against the Chicago Principles?
- 8) What about Algoma University's principles on academic freedom?
- 9) Discuss the University of California Berkeley's Free Speech Movement. What was double jeopardy? What, if any, are the similarities and differences between the Free Speech Movement and the current situation on campus across North America?
- 10) Discuss the May 68 movement in France. What was it about?

11) Bill 32 defines academic freedom as “the right of every person to engage freely and without doctrinal, ideological or moral constraint in an activity through which the person contributes, in their field of activity, to carrying out the mission of an educational institution.” Do you agree with this definition? Why or why not?

**College professors have a right to provoke and upset you. It's a part of learning.**

Daniel Diermeier, chancellor of Vanderbilt University.

Nov. 18, 2021

In recent weeks, we’ve seen more stories of universities being co-opted for political ends. Academics have been prevented from doing what they do best: conducting research and talking about it.

It’s happening across the nation to faculty from schools large and small, including those from Vanderbilt, the university I lead.

When political interference prevents the nation’s universities from carrying out their missions, America is worse for it. That should alarm not only university leaders like me, but Americans everywhere.

Academic institutions owe it to their students and faculty, and to society at large, to guard against this sort of radicalization and politicization of ideas by any group, no matter where it falls on the political spectrum.

Whether from the right or from the left, calls to silence faculty voices on America’s campuses are entirely inconsistent with the values of a university.

What started a few years ago as outrage over “controversial” speakers deemed unfit to talk on university campuses has evolved to targeting distinguished academics who are prevented from speaking on their area of expertise because some radical – and, frankly, loud and often uninformed – voices are determined to silence them.

Academics are being canceled not because of the content of their remarks, but because someone doesn’t like their stance on a particular issue.

A university, by virtue of its commitment to the pursuit of facts and truth, must welcome and encourage divergent points of view. It must provide a platform for dissent where people can forcefully disagree – with each other and with popular thought.

### **Challenge conventional wisdom**

College campuses must be a proving ground where ideas can be tested and conventional wisdom challenged. It is only through the exchange and rigorous debate of ideas, theories and hypotheses that pathbreaking discoveries can occur.

Just as civil discourse does not dictate consensus or harmony, a university ought not guarantee anyone sanctuary from ideas that upset them. Quite the contrary. True scholarship requires that ideas be freely explored, debated and discussed.

If universities are doing their job, faculty, students and guest speakers will sometimes make uncomfortable assertions. They will upset people by challenging orthodoxy and conventional wisdom.

This kind of provocation is valuable, but not just for its own sake. It is valuable because diversity of thought, opinion and perspective – and the fierce and free exchange of all of these – forms the soil from which insight and understanding grow.

When Vanderbilt Chancellor Alexander Heard was criticized in the 1960s for inviting controversial figures such as Black Power leader Stokely Carmichael to speak on campus, he responded that “young people, and especially young people in college, cannot be shielded from the winds of opinion in our world. The university’s obligation is not to protect students from ideas, but rather to expose them to ideas, and to help make them capable of handling, and, hopefully, having ideas.”

### **Faculty commits to open inquiry**

This year, more than five decades later, with the “winds of opinion” gusting stronger than ever, Vanderbilt’s Faculty Senate passed a resolution committing to “an environment for open inquiry and the vigorous exploration and free expression of ideas.”

Here, it is understood that a faculty member’s views are their own and not necessarily representative of Vanderbilt’s. It is also understood that the university exists in part to give faculty and students – from our campus and from others – a space to freely express and discuss their ideas.

Universities are charged with teaching the next generations of workers, leaders and citizens. To give students information that is engineered to avoid offending one interest group or another is

to give them a partial and distorted view of the world – and it is a gross failure of a university’s most basic obligation.

At the very moment when universities ought to be setting a better example for our polarized nation, too many are succumbing to those who seek to shape the world by intimidation and intolerance instead of by persuasion and reason.

As America’s last, best hope for inquiry and civil discourse as a means of understanding, cooperation and progress, universities must unflinchingly demonstrate their commitment to these values.

## **Academic Freedom**

### **In Defense of the Chicago Principles**

**They have become a gold standard among institutions that wish to show their commitment to American higher education's core principle of freedom of expression, argues Michael Poliakoff.**

**By Michael Poliakoff**

**December 21, 2018**

Sigal Ben-Porath’s Inside Higher Ed article, “Against Endorsing the Chicago Principles,” puts the urgent need for uncompromised freedom of expression on a slippery slope. While properly observing that espousing even a clear statement of commitment is insufficient, Ben-Porath rejects the idea of its absolute necessity and thereby risks entirely derailing mainstream efforts to protect free speech on college campuses.

The “Report of the Committee on Freedom of Expression,” now widely known as the Chicago principles, has become a gold standard among institutions that wish to show their commitment to this core principle of American higher education. There has recently been a significant uptick in the number of institutions joining in support -- which is not surprising, given that the 931-word statement is balanced and nuanced, protecting both those articulating unpopular viewpoints and the rights of protesters. Let us underscore that point at the beginning: the Chicago principles envision and protect both controversial viewpoints and protests against those viewpoints, with the proviso that protesters “may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe.”

Ben-Porath expresses two major concerns with the Chicago principles: 1) that they are not a one-size-fits-all solution to the free speech debate and 2) that the Chicago principles, and free speech more widely, can come at the cost of silencing minorities -- whether religious, ethnic, racial or sexual.

Ben-Porath is correct that endorsing the Chicago principles is not a silver bullet that ensures freedom of expression, a point that the Foundation for Individual Rights in Education recently concurred with. But that is not what endorsing the principles is meant to accomplish. The Chicago principles constitute a statement of intent that a university can use to guide it in fostering the free exchange of ideas. If a university is so committed, it will align its bylaws, student code of conduct, faculty handbook and programming to reflect that commitment.

For example, after Purdue University endorsed the Chicago principles, it instituted a freshman orientation that focused on the importance of free speech. Other institutions translate the Chicago principles into action in other ways. Just as the Declaration of Independence has no legal power and cannot ensure that all men are treated with the respect due to being created equal, it articulates a sacred American value with profound effect.

Ben-Porath's second point is that the demand for free speech is itself problematic, arguably even destructive of academic values. That assertion bears the marks of ideological prejudice in its portrayal of the concern to protect free speech not as a categorical value of higher education but as a means of protecting conservatism. It is true that, in many instances, conservatives have rallied for academic freedom, as they often feel marginalized on college campuses, but they are hardly the only beneficiaries of a culture of free and open discussion. C. Vann Woodward, for example, led the committee at Yale University that drafted the classic 1975 Woodward Report on freedom of expression, but before one concludes that its intent was to protect speakers such as General William Westmoreland or the racist William Shockley, it is important to recall that decades earlier he had defended Angelo Herndon, an African American communist charged in Georgia with insurrection.

Ben-Porath claims that free speech "comes at the expense of the reasonable demands" from those burdened by the free speech that protects biased views. But what is bias to one person may reasonably be seen as truth by another: that is precisely why the free exchange of ideas alone can further understanding. Perhaps Ben-Porath is right that proving biased views to be incorrect is a burden, but it is a responsibility that comes with leading an examined life and a valuable educational exercise in and of itself. To protect students from this activity would weaken the academic experience.

It is, moreover, all too short a step from that to Herbert Marcuse's theory that tolerance of viewpoints that diverge from liberalism is itself repressive, and from there to the contemporary meme that speech that departs from the perceived interests of the oppressed is a form of violence that justifies physical violence to counter it. At institutions including the University of California, Berkeley, and Middlebury College, the fruit of that ideology has stained the reputation of higher education. The clarity of the Chicago principles is urgently needed.

But even more troubling is Ben-Porath's suggestion that free speech is of particular value to conservative students and is "too often used as a political tool by the right." It is Ben-Porath, however, who thereby politicizes the discussion. The opening of the Chicago principles references how the University of Chicago's president Robert Maynard Hutchins defended the absolute right of William Z. Foster, the chairman of the Communist Party USA in the 1950s, to visit and address the university despite public outrage. Hutchins said that "our students . . . should

have freedom to discuss any problem that presents itself,” despite his personal anticommunist beliefs. The Chicago principles are a seamless extension of the university’s proud legacy of protecting unpopular viewpoints.

Ben-Porath seems to imply that a college that accepts freedom of expression may become a toxic environment in which minority students cannot express themselves. That does not appear to have happened at the University of Chicago, Purdue University, Princeton University or Johns Hopkins University -- top-tier, diverse institutions that have all adopted the Chicago principles. And that raises the question, is the anti-Chicago principles hysteria at Williams College and elsewhere factually based, or is it simply fantastical? Just as Americans during the red scare feared that allowing Marxists any type of platform would lead to revolution, chaos and despotism, overly zealous campus communities seem to dread that permitting controversial thought will undermine all sense of intellectual decency.

There is a sad irony that Ben-Porath’s own institution, the University of Pennsylvania, most desperately needs a recommitment to the free exchange of ideas. Last summer, the University of Pennsylvania Law School began its own campaign of harassment against Amy Wax for co-authoring an op-ed identifying the positive impact of bourgeois values and questioning the effectiveness of affirmative action. Penn’s posture and official sanctions of Wax are chilling evidence of why Ben-Porath’s institution itself needs a cultural reset that would engage challenging ideas rather than put them to silence.

The worst irony of all is that the world of higher education, which should be eager for vigorous debate and challenge, often lags behind the diverse leaders who embrace free speech as the engine of progress. U.S. congressman and civil rights leader John Lewis asserted, “Without freedom of speech and the right to dissent, the civil rights movement would have been a bird without wings.” And, in a more recent struggle, Jonathan Rauch, senior fellow at the Brookings Institution and LGBTQ advocate, observed, “Not long ago, gays were pariahs. We had no real political power, only the force of our arguments. In a society where free exchange is the rule, that was enough. We had the coercive power of truth.”

The integrity of higher education, too, rests on the uncompromising protection of the powerful truth that those who struggle for minority rights know so well.

### **Against Endorsing the Chicago Principles**

**Their main shortcoming is in the false assurance they offer colleges and universities, argues Sigal Ben-Porath.**

By Sigal Ben-Porath  
December 11, 2018

In response to rising tensions around free speech, many colleges and universities have endorsed the Chicago principles, which express a commitment to free inquiry and an environment of open

expression. A variety of groups, including FIRE and Heterodox Academy, have promoted these principles.

Somehow, they all have gotten it wrong.

Not because the principles are not useful. They represent an admirable effort to restate and reinforce colleges and universities' long-standing commitment to free speech, a necessary condition for conducting research and advancing knowledge. The First Amendment guides public and (most) private institutions because free inquiry is at the core of their work, and that requires strong protections for unpopular and controversial ideas.

Rather, the Chicago principles' main shortcoming is in the false assurance they offer the colleges and universities who endorse them. They rely on a legalistic and formal framework that purports to offer a response to a set of problems that has little use for such blunt tools. They fail to recognize that higher education institutions must address the current tensions brewing under the heading of "free speech" -- brought on by students, faculty members and outside forces -- by reconsidering, and possibly shifting, a host of practices in classrooms, dorms, clubs and administrations in ways that would differ across campuses. Those tensions cannot simply be resolved by endorsing a one-size-fits-all statement.

As the current controversy over the endorsement of the Chicago principles at Williams College indicates, some are starting to recognize their limited value. On campuses, challenges to free speech come mostly from students -- and sometimes from faculty members -- who sense that they are not accepted as equal members of the community and who seek a guarantee that their voices will be heard and respected. The most pressing concerns are voiced by students who are members of various (racial, religious, sexual and other) minority groups, who view some common practices in their colleges -- admissions, academics, events -- as undermining their equal membership. Responses to those diverse concerns can only be contextual and should take into account the history and social conditions of the specific institutions in which such issues are put forth.

If a group of young female aspiring scientists are raising concerns about statements that faculty members are making in their classes and labs, the institutional response should depend on whether those students are at, say, Bryn Mawr, the Massachusetts Institute of Technology or Utah State University. If African American students express opposition to a campus group's invitation to an anti-Black Lives Matter speaker, their paths for legitimate protest are paved by the college's history, its student body makeup and the willingness of the college leadership to work with them and help them make their voices heard (rather than restricting them to a "free speech zone").

The Chicago principles would provide little guidance in such cases. An administration that endorsed them may be expressing its commitment to protect the professor and the invited speakers, but would that suffice as a response? It does nothing to satisfy the concerns of the students nor helps the college fulfill its mission to not only advance research but also educate all of its students. Free speech will be protected, but some students will find it harder to benefit from their education; they may be effectively silenced, which may be permissible but is surely

undesirable. The invitation to speak their minds in response does little to help create an environment conducive to learning if they feel as though they are shouting into a void; in some states, protesting can lead to disciplinary action.

The endorsement of the Chicago principles may help with a different group that feels excluded, namely, conservative and right-leaning students, whose concerns are echoed and amplified by conservative think tanks, politicians and news media. The chief complaints: colleges and universities are too liberal; they don't allow students to think for themselves. The principles are likely to assuage some concerns among students as well as outside parties that are fanning the flames of the public debate on free speech.

The Chicago principles can thus serve as a rather effective response to the portrayal of campuses as "safe spaces," or as caving to student identity-based demands and to faculty ideological biases. But that comes at the expense of these institutions' commitment to their teaching mission, which relies on an inclusive climate and an expressed atmosphere that can assure all campus members that their voices are valued and heard. Such a climate and atmosphere might have been assumed in colleges where all students (and faculty members) came from a similar background. But they require more attention as campuses grow more diverse yet maintain some structures that reflect their old makeup. Institutional attention to these new tensions is necessary.

Today, the endorsement of the Chicago principles comes at the expense of the reasonable demands from people on campuses who argue that free speech that protects the expression of biased views creates an unequal burden that they are made to carry -- especially as free speech today is too often used as a political tool by the right. If an institutional endorsement of the principles is the end of the conversation about free speech, it undermines the ability of that college or university to fulfill its teaching mission.

The main way to avoid this outcome is to treat the endorsement of the principles as a means of starting a conversation about campus speech rather than as an end in itself. Or, if an institution prefers, it can replace the declaration of endorsement with an open conversation about what a specific campus needs in this domain. As the chair of the University of Pennsylvania's Committee on Open Expression, I engaged in many such conversations on my campus. And after publishing *Free Speech on Campus*, I have taken up this discussion at numerous other colleges and universities. These can be very productive conversations when engaged in openly and honestly. They can lead to crafting guidelines that fit the institution's history, makeup and needs, and to a commitment to continuously maintain an inclusive and open climate on the campus. It can readily support an environment where free speech is protected and the burdens that it creates on some people are recognized and alleviated.

The current state of free speech will not be resolved by making better rules or endorsing any set of principles, no matter how well crafted. Policies are necessary to ensure equal treatment, but preserving free speech on campuses requires a redoubling of our efforts to include all of our students in a community of free inquiry. That requires a continuing commitment to listening and responding to the legitimate demands of students who feel excluded, while helping them grow and recognize their agency and power.

Free speech that includes all members of the campus community is necessary for fulfilling higher education's mission. And that requires pushing back on the narrative of the biased college full of fragile students and especially on legislation that would limit people's ability to speak freely on campuses, including by protesting. The higher education sector is far from perfect, but no other institutions in the United States today practice free speech as well as colleges and universities do.

Students may still be young and have a lot to learn -- that's why they come to college -- but they demand that we fulfill the promise of democratic deliberation and equal dignity to all. They deserve our attention. Endorsing premade rules shuts them out.

## **Class 10 Nov. 7: Corporations and Free Speech**

### **Elon Musk says what's next for Twitter advertisers if they bow to activists demands and leave the platform**

On Friday, Musk claimed Twitter suffered a "massive drop in revenue" after he purchased the platform

By Lawrence Richard FOXBusiness

Bill McGurn on Elon Musk's Twitter layoffs: 'Nobody is entitled to a job'

Elon Musk has warned advertisers who are canceling purchases on Twitter amid fear of boycotts from activists that they may soon face a "thermonuclear name and shame." In a pair of tweets on Friday, Musk claimed Twitter suffered a "massive drop in revenue" after he purchased the platform and stepped in as CEO just seven days ago "due to activist groups pressuring advertisers" to discontinue ad purchases.

Responding to a user's request to "name and shame the advertisers who are succumbing to the advertiser boycotts," Musk affirmed he would soon be taking action. "A thermonuclear name and shame is exactly what will happen if this continues," he ambiguously warned. The tweet follows an open letter a group of more than 40 organizations, including the NAACP and GLAAD, sent calling on Twitter's top 20 largest advertisers to stop financing the platform, as they claim Musk's proposed changes will stifle their voices or will allow hate, harassment, or fake content to thrive. The letter argues Musk's ownership of Twitter has allowed the platform to be "inundated with hate and disinformation."

"We know that brand safety is of the utmost importance to you," the letter reads. "As such, you also have a moral and civic obligation to take a stand against the degradation of one of the world's most influential communications platforms, and to hold Musk to the pledge he made to you to ensure that Twitter is a welcoming and civil place for everyone."

Musk has repeatedly denied these claims and has defended his decision to roll back content moderation to promote free speech. He has also gone as far as saying his intention to do so "remains absolutely unchanged" in the face of current protests.

"Twitter will not censor accurate information about anything," he tweeted Friday.

Activists also allege Musk's proposal of an \$8 monthly subscription for user verification could open the door for impersonation or being forced to pay the fee to reach desired audiences. Musk wrote his own letter to some advertisers, namely to the chief executives of Amazon, Anheuser-Busch, Apple, Capital One, CBS, CenturyLink, Coca-Cola, Comcast, Best Buy, Disney, Google, HBO, IBM, Merck, Meta, Mondelez International, PepsiCo, Procter & Gamble, Unilever and Verizon.

"The reason I acquired Twitter is because it is important to the future of civilization to have a common digital town square, where a wide range of beliefs can be debated in a healthy manner, without resorting to violence," he wrote. "There is currently great danger that social media will splinter into far right-wing and far left-wing echo chambers that generate more hate and divide out society."

Musk recognized he could fail in his endeavor to create such a forum, but said he would not allow Twitter to "become a free-for-all hellscape, where anything can be said with no consequences."

In a recent poll to his followers, Musk asked whether advertisers should support "freedom of speech" or "political correctness." A whopping 78.3% of the polls over 2.75 million participants said advertisers should continue to support the platform as it promotes free speech.

Only 21.7% said advertisers should cave to political correctness.

Musk has been ridiculed by his critics after each change he makes to the Twitter company or the social media platform, including his announcement of an \$8 monthly subscription service to keep user verification and the decision to fire most of the company's staff.



**Discussion questions**

- 1) Why did Elon Musk purchase Twitter?
- 2) What is the impact of Twitter's purchase, if any, on free speech?
- 3) Discuss the campaign to convince corporations to stop advertising. What was Elon Musk's response? Why have major corporations stopped advertising on Twitter?
- 4) Is Twitter as a common digital town square? If so, is this important for civilization?
- 5) Do an online search about Kathy Griffin. Who is she? What did she post in 2017? Why did Elon Musk ban Kathy Griffin from Twitter? What do you think of this?



### **Discussion questions**

- 1) Who is Ron DeSantis?
- 2) What is the Parental Rights in Education Act? Why was it dubbed "Don't Say Gay"?
- 3) What is the purpose of the Act? Do you agree? Why or why not?
- 4) Why was it adopted?
- 5) What was Disney's original reaction to the bill? What is its current position?
- 6) Why does Disney oppose the act?
- 7) How did the Florida government react to Disney's opposition?
- 8) What is Disney's position vis-à-vis Human Rights in China? Is this relevant? If so, why?

### **'Don't Say Gay': Disney clashes with DeSantis over Florida bill**

Entertainment giant suspends political donations as CEO apologises for silence and governor hits back with 'communist' barb

Sat 12 Mar 2022 19.13 GMT

The Republican governor of Florida, Ron DeSantis, claimed the Walt Disney Company was too cozy with communist China, as the chief executive of the tourism and entertainment criticized a state bill that bars teachers from instructing early grades on LGBTQ+ issues.

DeSantis, who has not yet signed the so-called "Don't Say Gay" bill, also reportedly criticized Disney as "woke", after the company's leader opposed the legislation.

Controversy surrounding the bill could cut off a significant fundraising pipeline for Florida Republicans: Disney said it would suspend political donations in the state.

The move came after the Disney chief executive, Bob Chapek, experienced extensive blowback for not using the company's influence to thwart the controversial bill.

"I do not want anyone to mistake a lack of a statement for a lack of support," Chapek said early this week in a memo obtained by USA Today.

"We all share the same goal of a more tolerant, respectful world. Where we may differ is in the tactics to get there.

"And because this struggle is much bigger than any one bill in any one state, I believe the best way for our company to bring about lasting change is through the inspiring content we produce, the welcoming culture we create, and the diverse community organizations we support."

Chapek's first public statements on the bill came in a shareholder's meeting on Wednesday.

"We were opposed to the bill from the outset but we chose not to take a public position on it because we thought we could be more effective working behind the scenes engaging directly with lawmakers on both sides of the aisle," he reportedly said.

Chapek claimed such efforts had taken place for weeks. The executive said he had called DeSantis to express Disney's "disappointment" with the "Don't Say Gay" bill. Chapek posted a statement online and emailed staffers on Friday, saying Disney was wrong to stay silent as the Republican-majority Florida legislature greenlit a bill he called "yet another challenge to basic human rights".

Republicans contend that parents, not educators, should discuss gender issues with children in early grades. The bill bars prohibits instruction on "sexual orientation or gender identity" in kindergarten through grade three.

DeSantis, who has indicated that he supports the measure, has chafed at calls for a veto. A potential frontrunner for the 2024 Republican presidential nomination, he sent a fundraising email that said: “Disney is in far too deep with the communist party of China and has lost any moral authority to tell you what to do.”

The statement shocked Republicans and Democrats. Disney theme parks are a multibillion-dollar economic engine for Florida. The company has given outsize amounts to state parties and politicians and holds significant influence in state government.

DeSantis also criticized Disney at a campaign event in South Florida Thursday.

“Companies that have made a fortune catering to families should understand that parents don’t want this injected into their kid’s kindergarten classroom,” DeSantis said. “Our policies will be based on the best interest of Florida citizens, not the musing of woke corporations.”

Rick Wilson, a former Republican operative now part of the Lincoln Project, told the Associated Press: “The weird hypocrisy of Florida politics right now is DeSantis has been happy to take Disney’s money but to pass a bill that’s anathema to the values of their customers and their institution.”

A Republican lawmaker who didn’t want to be named because he or she did not want to comment publicly against the governor told the same outlet Disney was the third-highest contributor to state Republican candidates. Disney has given millions to both Democrats and Republicans.

Disney opened a theme park in China six years ago and has landed access to that country’s booming film market. It has also been accused of altering content to satisfy China’s leaders.

DeSantis’s critics charged that he was opposing Disney out of his ambition to win the Republican primary.

“It’s really pretty shocking,” former Republican governor Charlie Crist, now a Democratic congressman who hopes to challenge DeSantis, told the AP.

Demonstrators gather in front of the Florida state capitol on Monday to protest against the so-called ‘don’t say gay’ bill.

Crist noted that DeSantis has gone head-to-head with other industries important to Florida, pointing to a legal fight with cruise companies which wanted passengers to show proof of Covid-19 vaccinations.

“Now it’s Disney. Who’s next on the hit list for this governor?” Crist commented.

The Democratic US congressman Darren Soto also questioned the governor’s attack.

“This is another strike in the hate agenda that Governor DeSantis is pushing right now,” Soto said, noting that Florida’s budget relies heavily on sales tax generated by Disney and other theme parks.

“Now he’s putting that in jeopardy because he wants to attack LGBTQ+ families, families that make up a fundamental part of the Disney atmosphere.”

## Be Careful What You Tweet Before Boarding an EasyJet Flight

# Today's Travel Lesson: Don't tweet mean things about easyJet just before boarding an easyJet flight.

By [Rebecca Greenfield](#)  
SEPTEMBER 25, 2013

Today's Travel Lesson: Don't tweet mean things about easyJet just before boarding an easyJet flight. Passenger [Mark Leiser](#) learned that the hard(ish) way, after tweeting the following while waiting for his flight:

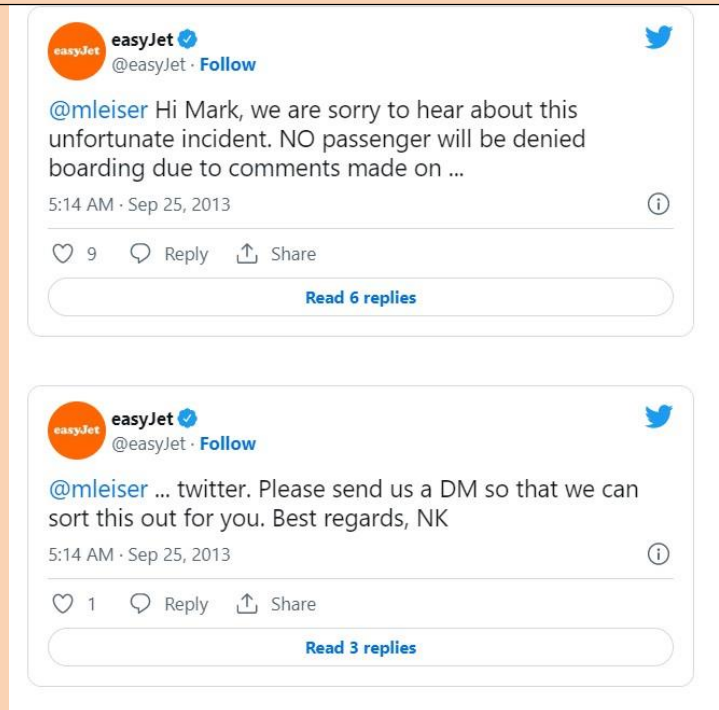
Flight delayed 90min. Soldier going to miss last connection & [@easyjet](#) refusing to help pay for him to get to Portsmouth. Get right into em!

– Mark Leiser ([@mleiser](#)) [September 24, 2013](#)

After filing that complaint on a very public social media platform, Leiser alleges that "Manager from easyjet just said I couldnt board flight because I criticised [@easyJet](#) on twitter before boarding the flight," he added on that same public platform. As one of those budget airlines that charges for everything but using the bathroom, it's not that surprising that easyJet doesn't have the most forgiving customer service.

The airline, however, claims that "easyJet has never denied boarding due to comments on social media. On the rare occasion that we consider denying boarding it is on the basis of disruptive behaviour," a spokesperson told The Atlantic Wire. Leiser eventually boarded his flight and easyJet alleges "staff were not monitoring the passenger's tweets and did not deny boarding."

That more polished response does not quite match the immediate response from easyJet's twitter handle, which tweeted at Leiser:



The easyJet spokesperson admits that there was an "altercation at the gate," but wouldn't elaborate beyond that. Leiser claims the manager said the following to him. "You're a lawyer. You know u can't tweet stuff like that and expect to get on an @easyJet flight." That doesn't sound like legally binding advice.

### **Class 9 Nov. 14 Freedom of Speech in the news**



Do an online search of current news dealing with Free Speech not discussed before in class. Summarize the articles and critically analyze them. Prepare to present them next class.

## **Class 10 Nov. 21 Legal control of dissent and non-hegemonic discourse**

### **Discussion questions**

- 1) What is the article about?
- 2) What do you think of Christina Ellingsen's tweets? Are they criminal? Why or why not?
- 3) Why was she prosecuted?
- 4) Would Christina Ellingsen's tweets be a crime in Canada? What about the US?
- 5) Suppose you are her attorney. What legal arguments would you make to defend her?
- 6) Suppose you are the prosecutor. What legal arguments would you make to prosecute her?

### **Norwegian Public Prosecution Service investigates "hate inciting" tweets about gender 01-06-2022**

Northern Europe

Tineke van der Waal, RD

The Norwegian Public Prosecution Service investigates "hate-mongering" tweets by feminist Christina Ellingsen, addressed to a man who claims to be a lesbian woman. If found guilty, Ellingsen could face up to three years in prison.

Ellingsen posted the tweets between February 2021 and January 2022, in reaction to statements of Christine Marie Jentoft, representative of the transactivist group Foreningen FRI. Jentoft is a biological man who identifies as a lesbian.

"Why does FRI teach young people that males can be lesbians? Isn't that conversion therapy?" tweeted Ellingsen. Later, she wrote about how "bonkers" FRI is, an "organisation that supposedly works to protect the interests of young lesbians' interests."

Amnesty International Norway recently accused Ellingsen of "harassing" after telling him on national television that he was male. "You are a man. You can't be a mother," said Ellingsen. "To normalize the idea that men can be mothers is a defined form of discrimination against women."

The charges against Ellingsen have everything to do with the addition of the concept of gender identity to Norwegian law paragraphs on insult and hate crime in January 2021. The fact that police are legally able to investigate and persecute women who engage in women's rights is concerning, says Ellingsen. "This is new territory in Norway, so the outcome of the investigation is important."

According to her, women are not protected against so-called hate speech in Norway. “But men who claim to be both lesbian and a woman, are protected both on the grounds of gender identity and on the grounds of sexual orientation.”

In 2021, a Norwegian man was already convicted for “insulting” and “misgendering” a trans-identified man on Facebook. He was sentenced to 21 days in prison and a fine of approximately 1500 euros.

Former Interior Minister Kajsa Ollongren worked on a Dutch ban on hate speech to protect gender identity from “insult”. The subject also plays a role at the European level. At the end of 2021, the European Commission proposed adding hate speech to the existing “EU crimes” list. A decision on this is expected to be taken in Luxembourg next week. According to Bas Tichelaar, director of CitizenGO NL, it is "a tactic of the radical left to censor any criticism of their ideas worldwide. By changing the definition of freedom of speech, freedom of expression is endangered. When it is suppressed, the system of government turns into a totalitarian tyranny." CitizenGO launched a petition earlier this week to stand up for freedom of speech in Europe. "We see more and more how hate speech laws can be misused to persecute people with a different opinion." An additional problem, according to Tichelaar, is the lack of a clear definition of hate speech and hate crimes.

### **Discussion questions**

- 1) What is the article about?
- 2) What do you think of Gulsen’s joke? Is it criminal? Why or why not?
- 3) Why was she arrested?
- 4) Would Gulsen’s joke be a crime in Canada? What about the US?
- 5) Suppose you are her attorney. What legal arguments would you make to defend her?
- 6) Suppose you are the prosecutor. What legal arguments would you make to prosecute her?

**Turkish pop star jailed over joke about religious schools**



ANKARA, Turkey (AP) — Turkish pop star Gulsen has been arrested on charges of “inciting hatred and enmity” over a joke she made about Turkey’s religious schools, the country’s state-run news agency reported.

The 46-year-old singer and songwriter, whose full name is Gulsen Colakoglu, was taken away for questioning from her home in Istanbul and was formally arrested late on Thursday before being taken to a prison pending her trial.

The arrest sparked outrage on social media. Government critics said the move was an effort by President Recep Tayyip Erdogan to consolidate his religious and conservative support base ahead of elections in 10 months' time.

The charges were based on a joke Gulsen made during a concert in Istanbul back in April when she quipped that one of her musicians’ “perversion” stemmed from the fact that he went to a religious school. A video of the singer making the comments began circulating on social media recently, with a hashtag calling for her arrest.

Gulsen — who had already been the target of Islamic circles for her revealing stage outfits — issued an apology for the offense caused but said her comments were seized on by those wanting to deepen polarization in the country.

During her questioning, Gulsen rejected accusations that she incited hatred and enmity, telling court authorities that she had “endless respect for the values and sensitivities of my country,” the state-run Anadolu Agency reported.

A request that she be released from custody pending the outcome of a trial was rejected.

Kemal Kilicdaroglu, leader of Turkey’s main opposition party called on Turkey’s judges and prosecutors to release Gulsen.

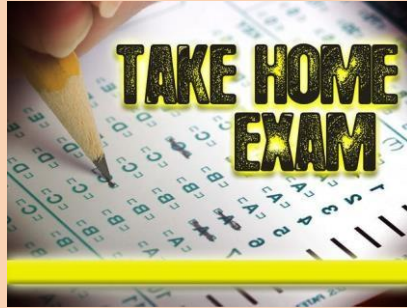
“Don’t betray the law and justice; release the artist now!” he wrote on Twitter.

The spokesman for Erdogan ruling party, Omer Celik, appeared however, to defend the decision to arrest the singer, saying “inciting hatred is not an art form.”

“Targeting a segment of society with the allegation of “perversion” and trying to polarize Turkey is a hate crime and a disgrace to humanity,” Celik tweeted.

Erdogan and many members of his Islam-based ruling party are graduates of religious schools, which were originally established to train imams. The number of religious schools has increased under Erdogan, who has promised to raise a “pious generation.”

**Nov. 28 Distribution of final take-home**



**Dec. 5: Submission of final take-home**



**\* TRIGGER WARNINGS**



Some materials in this course may be sensitive. Course materials, including lectures, class activities, hypotheticals, scenarios, examples, court cases, and films shown in class, may have mature content, including violent, sexual, and strong language content.

**Disclaimers**

Except for newspaper articles and court cases, all class activities are hypothetical and fictitious. Any resemblance to actual persons, institutions, or events is purely coincidental. The views and opinions expressed in the articles assigned for reading in this course, as well as those expressed in videos shown in class, are those of the authors or the individuals who made those opinions and do not necessarily reflect the position of the course professor. Questions, follow-up questions, examples, and comments made within the context of class activities do not purport to reflect the opinions or views of the course professor. All such articles, comments, questions, examples, and activities are meant solely to facilitate the discussion and study of Law. They are not meant to advocate or promote any crime or unlawful action. Neither are they meant to advance any ideological perspective. Discretion advised before signing up for this course.