

MEDIA AND LAW

SOCIOLOGY OF CRIME, LAW AND DEVIANCE

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MEDIA AND LAW: BETWEEN FREE SPEECH AND CENSORSHIP

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INTRODUCTION: MEDIATING BETWEEN LIBERTY AND LAW

Mathieu Deflem and Derek M. D. Silva

A famous dictum by classical sociologist Émile Durkheim, now widely accepted as foundational to the study of society, is that social facts are coercive over the individual ([Durkheim, 1982](#)). The coercive nature of social facts cannot be misunderstood to mean that society precludes free will, but as applied in organic societies such as our own today, on the contrary, presupposes that individuals are free to do and say as they choose. The continued though altered co-existence of society and individual was so peculiar at the dawn of the twentieth century despite a growing culture of individualism that it is virtually synonymous with the birth of sociology. However, the coerciveness of social facts, even under conditions of a cult of the self, does mean that various modes of individual conduct of action and speech are not without consequences, including both more and less formal sanctions when things are said and done that violate expectations of the cultural and normative order. Human agency allows people to act freely, but not without cost.

With respect to the ideal and actualized balance between free speech and various forms of its control by law and other regulatory frameworks, we find ourselves in strange times. For ours is increasingly a society in which the vast majority of its members continually express a commitment to openness, diversity, and tolerance at the same time when limits and discouragements to speak as one wishes flourish widely as well. Such preventions and curtailments of speech most typically take on the form of calls to secure protections from harm. In the name of personal safety and well-being, these sanctions can go down to the finest detail such as in the case of microaggressions ([Campbell & Manning, 2018](#)).

Thus, it appears that right when diversity is celebrated and when a wide array of means of self-expression, especially by means of social media on the internet, are readily at one's hand-held disposal, the range of tolerated opinions seems to have narrowed in scope. Among the many examples, mention can be made of legal

and economic sanctions imposed on unpopular tweets and opinions expressed on the internet; the irony intrinsic to the mandated or at least expected use of pronouns others prefer; the refusal of comedians to perform on college campuses for fear they are not safe in the one space where the notion of safe spaces is preached and practiced arguably more than anywhere else; and the strange and seemingly growing cases of university professors who have been reprimanded, removed from their teaching, or even lost tenure when they spoke out about some matter others deemed to be objectionable.

Perhaps it is only paradoxical, but also expected, that the freedoms awarded in our age also invoke a renewed measure of repression. After all, only in a society dedicated to the liberty of all can one be offended or upset when some individuals act and speak in a manner that was not expected nor appreciated. Nonetheless, some noteworthy ironies persist. For one, many of the calls to suppress speech in the name of protection from harm have been taking place in our universities and on college campuses, in that institution and in those spaces, in other words, that are functionally devoted to thinking and expressing ideas. Additionally striking is that many of these calls to suppress or repress speech have come from students rather than from the higher university administration, when young people were traditionally among the first and most vocal to critique any censorship of speech and unconventional words and expressions, such as in the realm of popular music (Deflem, 2020).

All too ironically, moreover, a climate encouraging free inquiry and free speech today, more than ever, is a critical challenge in the university setting, which in the American context is expressed as liberal arts (Whittington, 2019). As a result, instead of academic freedom as a primary right to be protected and exercised, professional academics presently working in institutions of higher learning at times engage in avoidance and self-censorship (Chamlee-Wright, 2019). This rise of self-censorship among academics coincides with, and indeed may not be unconnected to, the rise of a public concern with diversity that is based on ascribed identity characteristics (especially race and gender) rather than achieved accomplishments and relevant perspectives related to expertise (Wood, 2019).

Today's concerns over free speech and censorship have found expression in a range of contemporary phenomena expressed in such terms as safe spaces and cancel culture. As sociologist Frank Furedi (2020) has recently argued, the practice of safe space has blended uncomfortably well with the social distancing that was called for because of the COVID-19 pandemic. As such, the quarantining practices that were enacted because of a dangerous virus mirrored the quarantining that was already advocated as a kind of self-isolation from the harm that might result from dangerous opinions. In this social climate that also promotes diversity and tolerance, the mere utterance of an unpopular opinion can lead someone to be reprimanded, suspended, fired from employment, and indeed canceled from social life itself.

That the discussed phenomena take place in university settings is all the more remarkable because they are squarely at odds with the university as a site of debate geared toward the formation of knowledge and wisdom (Hill, 2020). As such, we may be witnessing, in Durkheim's terms, a return to mechanical times in

which the mere expression of an opinion deemed harmful is sufficient to have one exiled from the social group. Perhaps even more problematic than an expressed opinion facing attempts at suppression and retaliation after they have occurred is that some opinions are ignored because they are too marginally positioned to be noticed or, arguably worst of all, unheard because they are not even thought or expressed. Paraphrasing musician and free speech advocate Frank Zappa, the fundamentalism of today's cancel culture undermines what could be learned by the development of "an unborn idea" (Eisner, 2016).

At no time in history have the means to speak been so expansive and the right to speak without fear been so curtailed as today. Technology has advanced to give everybody with access to a computer or phone a voice to speak. But when anything can be said by more readily available means than ever before, not everything can be said without fear. And, at the same time, as the media landscape has diversified and expanded in unprecedented ways, there rages a war on science (Silva, 2018) and a questioning of the traditional media under the heading of fake news. Strikingly, also, cancel culture is a phenomenon often addressed in popular media and news outlets (e.g., Henderson, 2019; Kato, 2020), but it has as yet failed to draw any dedicated social science attention, having to date only attracted one academic article specifically addressing the issue (Ng, 2020).

It is within the context of the changing understanding of freedom, rights, and responsibilities that the chapters in this volume of *Sociology of Crime, Law, and Deviance* examine some of the socio-legal issues involved, especially in connection with a diverse media landscape, ranging from traditional mass media to the increasingly important social networking sites. Covering a range of themes in terms of mediated forms of the right to speak and the limits that are or should be imposed thereon, the chapters are theoretically and methodologically diverse.

Part I of this book addresses several fundamental and conceptual issues with respect to the control of speech in a variety of spaces and institutions. Anthony Löwstedt seeks to develop a new conception of censorship from the standpoint of a duty to safeguard and promote various forms of diversity. Löwstedt argues that censorship so conceived cannot be eliminated but can and should be minimized when appropriate. Next, Kimberly W. O'Connor and Gordon B. Schmidt likewise focus on censorship, examining free speech protections in terms of the social media use in academia. They argue that the legal questions posed in this context are complex and constantly developing in an uncertain environment. Turning to the medical field, Gabriela Capurro and Josh Greenberg research news coverage about health risks with a special focus on (anti-)vaccination, antimicrobial resistance, and COVID-19. They find that risks are framed differently in connection with public health guidelines in terms of their character as being known, emerging, and novel.

Part II focuses on various aspects of the internet as a public sphere. Natasha Tusikov investigates the role of online payment platforms in cases of sex censorship and the regulation of lawful sexual content. On the basis of relevant corporate policies, the authors find that the censorship enacted by payment platforms is driven by market concerns of the online payment industry. Next, Tanner Mirrlees examined hate-content moderation by the companies Google, Apple, Facebook,

Apple, and Microsoft (GAFAM) with respect to the online presence and activities of the so-called alt-right. With these powerful companies defining hate speech, Mirrlees intriguingly suggests that the alt-right can be effectively controlled when hate speech is involved. Likewise concentrated on the online environment, Sarah Lageson and Kateryna Kaplun examine accusations publicly uttered on the internet by various state and non-state actors. They find that the expression of an online accusation itself is seen as a valuable objective, irrespective of additional consequences to search for a fair and just resolution.

The chapters of Part III, finally, discuss relevant issues of media and law in different national settings. Focused on the Canadian context, Anne-Marie Gingras offers a fascinating examination of freedom of expression and humor, with special attention to a case involving a stand-up comic in Canada. Gingras shows how the cases were dealt with a matter of human rights, displacing the issue from one of defamation to a matter of dignity and honor. Also pertaining to Canada, Allyson M. Lunny investigates the development of Canadian hate speech laws and the role of mass communications media therein. Influenced by technological advanced, Lunny argues that hate speech laws need to be attuned to changes that propel various forms of online hate. Turning to the European continent, Lucia Bellucci explores how media law in Hungary developed in an illiberal manner to encourage self-censorship and the prevention of freedom of expression. Bellucci argues that the conditions of the COVID-19 pandemic have been used to reinforce these speech-suppressing powers. Finally, Devika Sethi reports from research on the censorship of communist publications in setting of late-colonial India. With a focus on the General Communist Notification of 1932 that was enacted in British India, Sethi argues in favor of a more nuanced and multidimensional understanding of the actual workings of censorship laws, irrespective of their stated intent.

Collectively, the chapters in this volume present a useful mix of perspectives and themes to demonstrate the relevance of socio-legal issues involved with today's media landscape. Both politically as well as culturally, free speech and the control thereof in the media have in recent years clearly moved center stage in discussions on what must, should, and should not be said in the public sphere of ideas, tastes, and opinions, and are therefore deserving of our scholarly attention. In a world of cancel culture, alternative facts, fake news, (self-)censorship, edited art, hate speech, and career-ending tweets, this volume hopes to make a timely contribution useful for scholars and students in sociology, public policy, socio-legal studies, criminal justice, law, and other relevant social science disciplines.

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PART I

SPACES AND INSTITUTIONS OF FREE SPEECH

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