The Ongoing Challenge to Define Free Speech

by Stephen J. Wermiel

Freedom of speech, Supreme Court Justice Benjamin Cardozo declared more than 80 years ago, "is the matrix, the indispensable condition of nearly every other form of freedom." Countless other justices, commentators, philosophers, and more have waxed eloquent for decades over the critically important role that freedom of speech plays in promoting and maintaining democracy.

Yet 227 years after the first 10 amendments to the U.S. Constitution were ratified in 1791 as the Bill of Rights, debate continues about the meaning of freedom of speech and its First Amendment companion, freedom of the press.

This issue of *Human Rights* explores contemporary issues, controversies, and court rulings about freedom of speech and press. This is not meant to be a comprehensive survey of First Amendment developments, but rather a smorgasbord of interesting issues.

One point of regular debate is whether there is a free speech breaking point, a line at which the hateful or harmful or controversial nature of speech should cause it to lose constitutional protection under the First Amendment. As longtime law professor, free speech advocate, author, and former American Civil Liberties Union national president Nadine Strossen notes in her article, there has long been a dichotomy in public opinion about free speech. Surveys traditionally show that the American people have strong support for free speech in general, but that number decreases when the poll focuses on particular forms of controversial speech.

The controversy over what many call "hate speech" is not new, but it is renewed as our nation experiences the Black Lives Matter movement and the Me Too movement. These movements have raised consciousness and promoted national dialogue about racism, sexual harassment, and more. With the raised awareness come increased calls for laws punishing speech that is racially harmful or that is offensive based on gender or gender identity.

At present, contrary to widely held misimpressions, there is not a category of speech known as "hate speech" that may uniformly be prohibited or punished. Hateful speech that threatens or incites lawlessness or that contributes to motive for a criminal act may, in some instances, be punished as part of a hate crime, but not simply as offensive speech. Offensive speech that creates a hostile work environment or that disrupts school classrooms may be prohibited.

But apart from those exceptions, the Supreme Court has held strongly to the view that our nation believes in the public exchange of ideas and open debate, that the response to offensive speech is to speak in response. The dichotomy—society generally favoring free speech, but individuals objecting to the protection of particular messages—and the debate over it seem likely to continue unabated.

A related contemporary free speech issue is raised in debates on college campuses about whether schools should prohibit speeches by speakers whose messages are offensive to student groups on similar grounds of race and gender hostility. On balance, there is certainly vastly more free exchange of ideas that takes place on campuses today than the relatively small number of controversies or speakers who were banned or shut down by protests. But those controversies have garnered prominent national attention, and some examples are reflected in this issue of *Human Rights*.

The campus controversies may be an example of freedom of speech in flux. Whether they are a new phenomenon or more numerous than in the past may be beside the point. Some part of the current generation of students, population size unknown, believes that they should not have to listen to

offensive speech that targets oppressed elements of society for scorn and derision. This segment of the student population does not buy into the open dialogue paradigm for free speech when the speakers are targeting minority groups. Whether they feel that the closed settings of college campuses require special handling, or whether they believe more broadly that hateful speech has no place in society, remains a question for future consideration.

Few controversies are louder or more visible today than attention to the role and credibility of the news media. A steady barrage of tweets by President Donald Trump about "fake news" and the "fake news media" has put the role and credibility of the media front and center in the public eye. Media critics, fueled by Trump or otherwise, would like to dislodge societal norms that the traditional news media strives to be fair and objective. The norm has been based on the belief that the media serves two important roles: first, that the media provides the essential facts that inform public debate; and, second, that the media serves as a watchdog to hold government accountable.

The present threat is not so much that government officials in the United States will control or even suppress the news media. The Supreme Court has probably built enough safeguards under the First Amendment to generally protect the ability of the news media to operate free of government interference. The concern is that constant attacks on the veracity of the press may hurt credibility and cause hostility toward reporters trying to do their jobs. The concern is also that if ridicule of the news media becomes acceptable in this country, it helps to legitimize cutbacks on freedom of the press in other parts of the world as well. Jane E. Kirtley, professor and director of the Silha Center for the Study of Media Ethics and Law at the University of Minnesota and past director for 14 years of the Reporters Committee for Freedom of the Press, brings her expertise to these issues in her article.

Other current issues in our society raise interesting free speech questions as well. It is well-established law that the First Amendment's free speech guarantee only applies to government action. It is the government— whether federal, state, or local—that may not restrict freedom of speech without satisfying a variety of standards and tests that have been established by the Supreme Court over the past century. But the difference between government action and private regulation is sometimes a fine line. This thin distinction raises new questions about freedom of speech.

Consider the "Take a Knee" protests among National Football League (NFL) players expressing support for the Black Lives Matter movement by kneeling during the National Anthem. On their face, these protests involve entirely private conduct; the players are contractual employees of the private owners of the NFL teams, and the First Amendment has no part to play. But what could be more public than these protests, watched by millions of people, taking place in stadiums that were often built with taxpayer support, debated by elected politicians and other public officials, discussed by television commentators because of the public importance of the issue. That is not enough to trigger the application of the First Amendment, but should it be? First Amendment scholar David L. Hudson Jr., a law professor in Nashville, considers this and related questions about the public-private distinction in his article.

Another newly emerging aspect of the public-private line is the use of social media communications by public officials. Facebook and Twitter are private corporations, not government actors, much like NFL team owners. But as one article exams in this issue, a federal court recently wrestled with the novel question of whether a public official's speech is covered by the First Amendment when communicating official business on a private social media platform. In a challenge by individuals who were barred from President Trump's Twitter account, a federal judge ruled that blocking access to individuals based on their viewpoint violated the First Amendment. If the ruling is upheld on appeal, it may open up an entire new avenue of First Amendment inquiry.

One aspect of current First Amendment law is not so much in flux as in a state of befuddlement. Courts have long wrestled with how to deal with sexually explicit material under the First Amendment, what images, acts, and words are protected speech and what crosses the line into illegal obscenity. But today that struggle that has spanned decades seems largely relegated to history because of technology. The advent of the relatively unregulated Internet has made access to sexually explicit material virtually instantaneous in the home without resort to mailed books and magazines or trips to adult bookstores or theaters.

In his article, law professor and First Amendment scholar Geoffrey R. Stone elaborates on much of the legal and social history and current challenges in handling sexually explicit material, drawing on his own 2017 book, *Sex and the Constitution: Sex, Religion, and Law from America's Origins to the Twenty-First Century*.

If there is a unifying theme in the articles in this issue of Human Rights, it may be that while as a nation, we love our freedoms, including freedom of speech and freedom of the press, we are never far removed—even after more than two centuries—from debates and disputes over the scope and meaning of those rights.

https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/the-ongoing-challenge-to-define-free-speech/

Europe's greenest city has free public transport and highways for bees

By Ben Anthony Horton with Reuters Connect

As cities around the world scramble to find greener modes of living, one European capital is already leading the way in the race for sustainability.

Tallinn, the capital of Estonia and the most northerly of the Baltic cities, has implemented a number of drastic changes in order to achieve carbon neutrality by the year 2050.

These strategies were praised by the European Commission last year, with the city being named the European Green Capital for 2023.

But with more and more metropolises striving to reduce their carbon footprints, what can we learn from Tallinn's modern approach to sustainability?

Cows, pollinating insects and cyclists

Protecting public land, reducing noise pollution and improving water quality were key to Tallinn being awarded the illustrious title, according to the European Commission.

"Tallinn [...] demonstrated commitment and concrete actions to create healthier, better places for its citizens," said Commissioner for Environment, Oceans and Fisheries, Virginijus Sinkevičius.

Chief among these actions is the city's dedication to providing ample green space for its inhabitants. Tallinn's network of parks now tops 90 m2, constituting 19.5 per cent of the city's total landmass. This contrasts with just 9.5 per cent in Paris.

A recent study suggests that Europe's cities could prevent up to 43,000 premature deaths a year if they supplied adequate green space for urban dwellers.

And while Tallinn's population continues to rise - the capital now has more than 445,000 residents, according to recent figures - a number of key projects are in place to ensure sustainability remains at the heart of this growth.

40 per cent reduction in emissions by 2030

'Tallinn 2030' is a long-term strategy intended to build a "healthy city environment and sustainable use of natural resources" by the year 2030. The project is supported by the Tallinn Landscaping Action Plan, the Rainwater Strategy and the Sustainable Energy Action Plan.

Such well-intentioned schemes invariably provoke accusations of greenwashing from critics, but look beyond their impressive titles and tangible change is behind them.

On the fringes of the city, a herd of Scottish Highland cows can be seen snacking on plants in the Paljassaare nature reserve, helping to boost biodiversity and maintain the area as a habitat for wild animals.

And while the city's growing green space is open to the public, it also has an ulterior motive.

The city is encouraging parks, gardens and nature reserves to remain wild in an attempt to encourage insect pollination.

"The aim is to enlarge the possibilities for the pollinators and also attract more people to use the pollinator highway as a green corridor which goes through six city districts," says gardener and landscape architect Liivi Maekallas.

This 13-kilometre walkway is yet another example of Tallinn encouraging its citizens to ditch private vehicles and adopt a more sustainable approach to transportation.

The city received widespread attention when it made access to public transport free for residents in 2013 - a key waymarker on the city's journey towards achieving a 40 per cent reduction in emissions by the year 2030.

"For us, a green capital means that Tallinn is inviting, comfortable, and clean – a city of the future," says Mihhail Kõlvart, the mayor of Tallinn.

"The time has passed when the protection of nature and the progress of people are opposites – we have learned to associate innovation and development with a sustainable economy and green thinking."

The baltic capital also aims to increase the number of cyclists on its roads, aiming for 11 per cent of journeys to be made by bike by the year 2027.

And according to cycling strategist Erik Sarapuu, that doesn't just mean building more cycle lanes.

"You have to have a good idea why people should cycle and have some disincentives towards motorists," he says.

"You have to kind of take some space from them because if you don't take space, they won't change their routine and they will still drive."

https://www.euronews.com/green/2022/01/06/europe-s-greenest-city-has-free-public-transport-and-highways-for-bees

Why it's time to stop pursuing happiness

Positive thinking and visualising success can be counterproductive – happily, other strategies for fulfilment are available

Like many teenagers, I was once plagued with angst and dissatisfaction – feelings that my parents often met with bemusement rather than sympathy. They were already in their 50s, and, having grown up in postwar Britain, they struggled to understand the sources of my discontentment at the turn of the 21st century.

“The problem with your generation is that you always expect to be happy,” my mother once said. I was baffled. Surely happiness was the purpose of living, and we should strive to achieve it at every opportunity? I simply wasn’t prepared to accept my melancholy as something that was beyond my control.

The ever-growing mass of wellness literature would seem to suggest that many others share my view. As a writer covering the latest research, however, I have noticed a shift in thinking, and I am now coming to the conclusion that my mother’s judgment was spot on. Over the past 10 years, numerous studies have shown that our obsession with happiness and high personal confidence may be making us *less* content with our lives, and less effective at reaching our actual goals. Indeed, we may often be happier when we stop focusing on happiness altogether.

Let’s first consider the counterintuitive ways that the conscious pursuit of happiness can influence our mood, starting with a study by Iris Mauss at the University of California, Berkeley. The participants were first asked to rate how much they agreed with a series of statements such as: “I value things in life only to the extent that they influence my personal happiness” and “I am concerned about my happiness even when I feel happy”. The people who scored highly should have been seizing each day for its last drop of joy, yet Mauss found they tended to be less satisfied with their everyday lives, and were more likely to have depressive symptoms even in times of relatively low stress.

Various factors may have caused that link, of course, but a second study suggested a strong causal connection. In this experiment, Mauss asked half the participants to read a paragraph expounding the benefits of feeling good, and then had them watch a feelgood film about a professional figure skater. Far from enhancing their enjoyment of the inspirational story, the focus on their own happiness had muted their joy – compared with the second group of participants, who had been given a dry article to read about the importance of rational judgment.

People who rate happiness as an important focus for them have been found to enjoy pleasurable moments less while they’re happening. Photograph: Oliver Rossi/Getty Images

These findings have now been replicated many times, with many more experiments revealing a dark side to the pursuit of happiness. As well as reducing everyday contentment, the constant desire to feel happier can make people feel more lonely. We become so absorbed in our own wellbeing, we forget the people around us – and may even resent them for inadvertently bringing down our mood or distracting us from more “important” goals.

The pursuit of happiness can even have strange effects on our perceptions of time, as the constant “fear of missing out” reminds us just how short our lives are and how much time we must spend on less than thrilling activities. In 2018, researchers at the University of Toronto found that simply encouraging people to feel happier while watching a relatively boring film meant that they were more likely to endorse the statement “time is slipping away from me”. The same was true when the participants were asked to list 10 activities that might contribute to their happiness: the reminder of

all that they could be doing to improve their wellbeing placed them in a kind of panic, as they recognised how little time they had to achieve it all.

Perhaps most important, paying constant attention to our mood can stop us from enjoying everyday pleasures. Surveying participants in the UK, Dr Bahram Mahmoodi Kahriz and Dr Julia Vogt at the University of Reading have found that the people who scored highest on Mauss's questionnaire felt less excitement and anticipation for forthcoming events, and were less likely to savour the moment during the events themselves. They were also less likely to look back fondly on a fun event in the days afterwards – it just occupied less of their headspace. "They have such a high standard for achieving happiness that they don't appreciate the small and simple things that are really meaningful in their life – and they are more unhappy as a result," says Mahmoodi Kahriz.

These lessons may be especially important in the pandemic. The peaks in our mood may be few and far between, but a simple appreciation of the small pleasures amid the stress could help ease us through the day-to-day anxieties, Mahmoodi Kahriz says. That will be much harder for people who are constantly thinking about their happiness, since they'll always be lamenting the loss of the many more exciting activities that they could have been doing.

The law of repulsion

If the general pursuit of happiness is problematic, specific strategies designed to bring about greater contentment can also backfire.

Consider the oft-cited technique of "visualising your success". A student might imagine themselves in mortar board and gown; an athlete with a gold medal around their neck; someone on a diet might picture the new clothes they'll be wearing at the end of their regime.

Positive fantasies – and the positive moods that they create – can lead to a sense of complacency

The idea lies behind bestselling books such as *The Power of Positive Thinking* by Norman Vincent Peale and often features in inspirational biographies. It seems to make sense that thoughts of success could boost our motivation and self-confidence. What's wrong with imagining a better future for yourself?

Quite a lot, according to research by Prof Gabriele Oettingen and colleagues at New York University, which has shown that this intuition is counterproductive. One of her first studies found that dieters who spend some time imagining their newer, healthier figure tend to lose less weight than dieters who do not engage in such fantasies. Similarly, students who daydream about their future jobs are less likely to gain employment after university than students who don't contemplate their successes in such vivid detail.

The researchers suspect that the positive fantasies – and the positive moods that they create – can lead to a sense of complacency. "You feel good about the future, with no urgency to act," says Dr Sandra Wittleder, a postdoctoral fellow at NYU. This process could be seen at play in a recent study tracking students' progress over the course of two months: the more they reported fantasising about their success, the less time they spent studying for their exams – presumably because, at an unconscious level, they assumed they were already well on the way to getting a good grade. Inevitably, they performed worse overall.

Not only do these fantasies reduce the chances of success, the failures pack an even greater emotive punch once you compare your previous hopes with your current circumstances. Echoing Mauss's research on the pursuit of happiness, Oettingen's team found that the students who had engaged in this kind of positive thinking suffered a greater number of depressive symptoms months down the line.

If you really want to succeed, you'd do far better to engage in "mental contrasting", which involves combining your fantasies of success with a deliberate analysis of the obstacles in your path and the frustrations you are likely to face. Someone going on a diet, for example, might think about the benefits for their health before considering the temptation of junk food, and the ways it could stop you from reaching that goal. By contemplating these potential failures, they may not feel so good in the short term, but many studies have shown that this simple practice can increase motivation and improve success in the long run. "It creates a kind of tension or excitement," says Wittleder, who has shown that the method can help dieters to avoid temptation and eat more healthily.

Black and white thinking

These unexpected effects should give pause for thought to anyone striving for even greater contentment – a topic that will be on many people's minds as a new year begins. If we go about it in the wrong way, an overambitious set of resolutions will only set us up for stress, disappointment and loneliness.

Rather than making an elaborate list of life changes, we should aim for fewer, more realistic goals, and be aware that even some apparently benign habits are best used sparingly. You will have heard that keeping a "gratitude journal" – in which you regularly count your blessings – can increase your overall wellbeing, for example. Yet research shows that we can overdose on this. In one study, people who counted their blessings once a week showed the expected rise in life satisfaction, but those who counted their blessings three times a week actually became less satisfied with their life. "Doing the activity can itself feel like a chore, rather than something you actually enjoy," says Dr Megan Fritz at the University of Pittsburgh, who recently reviewed the conflicting evidence for various happiness interventions.

You should also reset your expectations of the path ahead. While greater contentment is achievable, don't expect miracles, and accept that no matter how hard you try, feelings of frustration and unhappiness will appear from time to time. In reality, certain negative feelings can serve a useful purpose. When we feel sad, it's often because we have learned something painful but important, while stress can motivate you to make some changes to your life. Simply recognising the purpose of these emotions, and accepting them as an inevitable part of life, may help you to cope better than constantly trying to make them disappear. Any effort that we make – whether it's specifically aiming at greater happiness, or other measures of success – will come with some challenges and disappointments, and the last thing you should do is blame yourself for occasionally feeling bad when plans don't work out.

Ultimately, you might adopt the old adage "Prepare for the worst, hope for the best, and be unsurprised by everything in between". As my mother tried to teach me all those years ago, ease the pressure off yourself, and you may just find that contentment arrives when you're least expecting it.

https://www.theguardian.com/science/2021/jan/10/why-its-time-to-stop-pursuing-happiness

4 Ways TikTok Is Dangerous to Personal Privacy and Security

By Anina Ot

You've probably heard lots of bad stuff about the popular social media app, so why is TikTok dangerous for your privacy?

Whether you're looking to keep up with the latest news in a lighthearted way or learn about the latest memes and trends, TikTok's got you covered. But does it have a dark side?

TikTok has been at the forefront of countless rumors of privacy violations and security issues. It was banned in India, and by the US Army and Navy with accusations of national security threats.

But what about using it as an individual? Is TikTok dangerous for people who value privacy and security?

Why Is TikTok Dangerous?

TikTok is a free app and social media platform that allows users to share short videos ranging anywhere from 15 to 60 seconds. Similar to most proprietary social media networks, TikTok collects user data and information.

Sure, it's easy to accept some level of violation when using free services. However, TikTok is often accused of taking things too far, posing serious security and privacy risks to its users.

That led both private companies and US government departments to ban their employees from installing and using the app on their work devices. And Amazon was one of the first companies to issue the ban to workers, although they soon retracted their decision. But the financial services company, Wells Fargo, didn't.

What Are the Dangers of TikTok?

The question remains, what are the dangers of TikTok for the average user?

1. TikTok Collects a Lot of Data

This might not bother you very much unless you're a privacy enthusiast. Yet TikTok's pursuit of data collection doesn't stop at gathering your preferences by tracking what type of content you like and share on the app.

In its privacy policy, TikTok states that it collects "information you provide in the context of composing, sending, or receiving messages." Focusing on the use of the word "composing," TikTok doesn't just collate data and messages you share using the app, but content you created or wrote but didn't share.

TikTok also takes advantage of every access permission you give it, collecting information about your phone's model, screen resolution, current OS, phone number, email address, location, and even contact list.

TikTok stores user data in the US and Singapore, but since it's owned by the Chinese company ByteDance, they are required by law to submit user data if asked.

And while it's important to note that there hasn't been any clear-cut evidence of TikTok sharing data, at its core, TikTok is a ticking time bomb.

2. TikTok's Littered With Security Vulnerabilities

Over the past few years, security researchers found multiple security vulnerabilities within the app. And since TikTok has access to a lot of personal information, it became the favorite route for many hackers.

One way hackers take advantage of TikTok is by sending users a text message that allows them to access their accounts.

Another is leveraging the fact that TikTok uses an insecure HTTP connection to deliver videos instead of the more secure option, HTTPS. This allows cybercriminals to manipulate users' feeds and plant unsolicited content that could be misleading or disturbing, especially to young TikTok users.

3. Who Else Uses Data From TikTok?

TikTok is a video—and sometimes audio—sharing platform. That means, even if TikTok and ByteDance aren't pulling user data, others can.

The hundreds of hours of video that individuals upload of themselves are a goldmine for artificial intelligence and machine learning development. That's not necessarily a good thing.

In their current state, facial recognition and deepfake algorithms don't pose serious threats to everyday users. However, with this much high-quality data to use for training, the future could be bleak for individuals too.

4. Long-Term Repercussions of TikTok

Using TikTok regularly, either as a consumer or content creator, increases your digital footprint. On its own, this poses great risks such as being more prone to phishing attacks and stalking.

But in the future, using TikTok could stand in the way of you working in your chosen field. For example, ones that requires a high degree of security, such as high-profile government occupations, since a foreign country has access to highly-personal and detailed information about you.

1. **Be Careful What You Share**

When it comes to privacy and security, TikTok is transparent with what data it collects. Still, when using an app or service, remember that privacy policies and security regulations could change at any moment, leaving your data exposed and device vulnerable.

You should avoid over-trusting and over-sharing with apps that don't value security and privacy from the get-go.

https://www.makeuseof.com/is-tiktok-dangerous/