

Volume 54, Issue 3 (Spring 2017)

Special Issue: Law, Authority & History: A Tribute to  
Douglas Hay

Article 12

# Regulating Speech in Cyberspace: Gatekeepers, Human Rights, and Corporate Responsibility, by Emily B. Laidlaw

Tanner Stanley

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## Citation Information

Stanley, Tanner. "Regulating Speech in Cyberspace: Gatekeepers, Human Rights, and Corporate Responsibility, by Emily B. Laidlaw." *Osgoode Hall Law Journal* 54.3 (2017) : 973-976.

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# Regulating Speech in Cyberspace: Gatekeepers, Human Rights, and Corporate Responsibility, by Emily B. Laidlaw

## **Abstract**

Regulating speech in cyberspace is a daring, interdisciplinary work that meets at the intersection of free speech, corporate social responsibility, and human rights law. Written by Emily B. Laidlaw, an Assistant Professor at the University of Calgary, the book successfully carves out a unique space in the literature that is relatively unexplored. Although it situates itself in legal academia by offering an in-depth analysis of regulatory frameworks used to police online speech, the work draws heavily on communication theories, international development theories, and fundamental paradigms on human rights regimes. The result is a creative read that challenges us to re-conceptualize how online speech may be regulated by engaging with theories and concepts from a variety of disciplines.

Laidlaw starts her book with the notion that privately owned companies control democratic societies' pathways of communication. Her analysis brilliantly invokes the work of Jürgen Habermas to engage in a discussion of how online spaces may or may not resemble a form of the "public sphere." One of the strengths of the book is this initial framework that Laidlaw creates. Using foundational communication theories, she helps the reader understand why technical, complex, and tedious regulatory frameworks for Internet gatekeepers matter for "deliberative" democracy. She argues that although the Internet and various online spaces are by no means perfectly analogous to Habermas' public sphere, cafés and public squares of the past, such spaces do currently act as key sites for the exchange of ideas. This makes the Internet and online spaces critical for the flourishing of democracy. *Regulating Speech in Cyberspace* reminds the reader why debating and analyzing the fine minutia of corporate responsibility models and regulatory frameworks for online gatekeepers actually matters.

## **Cover Page Footnote**

Many thanks to Richard Haigh for his invaluable commentary and guidance.

## Book Review

***Regulating Speech in Cyberspace: Gatekeepers, Human Rights, and Corporate Responsibility*, by Emily B. Laidlaw<sup>1</sup>**TANNER STANLEY<sup>2</sup>

*REGULATING SPEECH IN CYBERSPACE* is a daring, interdisciplinary work that meets at the intersection of free speech, corporate social responsibility, and human rights law. Written by Emily B. Laidlaw, an Assistant Professor at the University of Calgary, the book successfully carves out a unique space in the literature that is relatively unexplored. Although it situates itself in legal academia by offering an in-depth analysis of regulatory frameworks used to police online speech, the work draws heavily on communication theories, international development theories, and fundamental paradigms on human rights regimes. The result is a creative read that challenges us to re-conceptualize how online speech may be regulated by engaging with theories and concepts from a variety of disciplines.

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1. Emily B Laidlaw, *Regulating Speech in Cyberspace: Gatekeepers, Human Rights and Corporate Responsibility* (Cambridge, UK: Cambridge University Press, 2015).
  2. JD Candidate 2018, Osgoode Hall Law School. Many thanks to Richard Haigh for his invaluable commentary and guidance.

how online spaces may or may not resemble a form of the “public sphere.”<sup>3</sup> One of the strengths of the book is this initial framework that Laidlaw creates. Using foundational communication theories, she helps the reader understand why technical, complex, and tedious regulatory frameworks for Internet gatekeepers matter for “deliberative” democracy. She argues that although the Internet and various online spaces are by no means perfectly analogous to Habermas’ public sphere, cafés and public squares of the past, such spaces do currently act as key sites for the exchange of ideas.<sup>4</sup> This makes the Internet and online spaces critical for the flourishing of democracy. *Regulating Speech in Cyberspace* reminds the reader why debating and analyzing the fine minutia of corporate responsibility models and regulatory frameworks for online gatekeepers *actually* matters.

Laidlaw then lays down the foundational concepts of online gatekeepers and corporate social responsibility. Here, her overarching argument is that such online gatekeepers have a sliding scale of responsibility based on the extent to which they can facilitate or inhibit democracy. It is nuanced and compelling. Laidlaw leaves the reader comfortable with the role that gatekeepers play and helps them better understand how legislatures, courts, and other actors have not sufficiently determined how to regulate the dynamic nature of digital channels of communication. This premise is of course critical to her thesis, which argues that a new, alternative model of corporate social responsibility is needed to regulate such gatekeepers in a fashion that is friendly to democracy.

Although her writing on gatekeepers is particularly nuanced, the chapter on corporate social responsibility (CSR) stalls. It reads like a textbook chapter for an introductory course on corporate responsibilities and duties. Although many readers will most likely appreciate an explanation of basic corporate social responsibility models and concepts, particularly if the ideas are new and novel, this chapter strays from the book’s main contention and thesis. The discussion is also isolated from regulating cyber speech. Although she does come back in later chapters to evoke the concepts laid out in this section, the structure is cumbersome.

After this conceptual background, Laidlaw dives into two case studies. The first analyzes Internet service providers as mechanisms of information control; the second turns to search engines in the context of free speech and access to information. These case studies are particular examples of how Internet information gatekeepers, in the context of utilizing CSR “as a facilitative force for socially responsible governance” can either help or hinder participation

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3. *Moral Consciousness and Communicative Action*, translated by Christian Lenhardt & Shierry Weber Nicholsen (Cambridge, Mass: Polity Press, 1990).

4. Laidlaw, *supra* note 1 at 13-14.

in democratic culture.<sup>5</sup> The case studies illuminate her argument that such gatekeepers represent critical actors in a democratic system; she demonstrates that a new, alternative model for corporate social responsibility is needed, as the traditional model does not sufficiently address digital human rights.

These two case studies prove insightful. Executed with near surgical precision, they focus in on the technical complexities of regulations guiding the *International Watch Foundation* and detailed reasoning of cases that interpret free speech rights' relationship with search engines. Much of the literature on gatekeepers and cyber speech tends to either offer summaries of such regulatory frameworks or side-steps in-depth discussion altogether and typically relies on more basic arguments about the role of the Internet in facilitating democratic discourse.<sup>6</sup> Laidlaw doesn't hesitate to get into technical regulatory details at the same time as remaining mindful of larger themes.

More importantly, she employs the two case studies to illustrate two different ways in which the traditional corporate social responsibility model fails to sufficiently protect human rights and safeguard cyber speech. This culminates in the final chapter where she proposes an alternative corporate social responsibility model designed to avoid both the downfalls of traditional models and the blunt ineffectiveness of legal remedies in regulating cyber speech. Her model focusses on three areas: (1) education, policy, and research, (2) corporate support, and (3) developing a remedial mechanism. It is designed to highlight the responsive nature of the interplay of layers of regulation.

While Laidlaw's approach draws on various ideas, models, and concepts from other commentators, her proposal is novel, creative, and nuanced. For her, regulations matter. The challenge is finding a way to institute effective, well-designed rules and regulations. Laidlaw's model rewards her commitment to discussing complex, micro-regulatory details and illuminating their importance for democratic systems.

Laidlaw best embodies this complexity when articulating the theoretical basis for her model. This model "has both an external element in the form of a regulatory body independent of IIGs [internet information gatekeepers] and an

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5. *Ibid* at 61.

6. See generally Lincoln Dahlberg, "The Internet and Democratic Discourse: Exploring the Prospects of Online Deliberative Forums Extending The Public Sphere" (2001) 4:4 Inf, Comm & Soc 615; Zizi Papacharissi, "Democracy Online: Civility, politeness, and the democratic potential of online political discussion groups" (2004) 6:2 New Media & Soc 259; KA Hill & JE Hughes, *Cyberpolitics: Citizen Activism in the Age of the Internet* (New York: Rowman & Littlefield, 1998); Rabia Karakaya Polat, "The Internet and Political Participation: Exploring the Explanatory Links" (2005) 20:4 Eur J of Comm 435.

internal element integrating the model into an IIG's internal operations and due diligence."<sup>7</sup> The external element includes an independent body, in partnership with governments, charged with the task of human rights regulation.<sup>8</sup> The internal element is described as a "blueprint for a business fulfilling its corporate responsibility to respect human rights."<sup>9</sup> Further, her model is specifically designed to link and connect the various approaches to regulation "in a complementary, mutually reinforcing way."<sup>10</sup> While Laidlaw's model with external and internal levels may sound simplistic, it is in fact nuanced and its genius lies in its ability to seamlessly incorporate the micro-regulatory details she describes as being essential to regulating cyberspace and protecting human rights.

In conclusion, *Regulating Speech in Cyberspace* is a well argued, well researched, and well-articulated work that proposes a noteworthy alternative corporate social responsibility model to guide private actors in the regulation of cyber speech. As current corporate social responsibility models fail to protect cyber speech, democracy suffers.

Laidlaw's success is partly due to resisting the many opportunities to get trapped into unfocused, contextualized summaries of technical regulatory details. Instead, her detail-focused analysis is paired with larger narratives and themes about public spheres and spaces, and the role the Internet has as a democratizing force. And all of this takes place in a persuasive and clear style, making the book easily digestible and understandable for readers unfamiliar with the topic.

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7. Laidlaw, *supra* note 1 at 250.

8. *Ibid* at 251.

9. *Ibid* at 255.

10. *Ibid* at 251.