

### Global Communication Rights: Is There a Future? A Review Article

Cees J. Hamelink, **Communication and Human Rights: Towards Communicative Justice**, Cambridge, UK: Polity, 2023, 208 pp., \$24.95 (paperback).

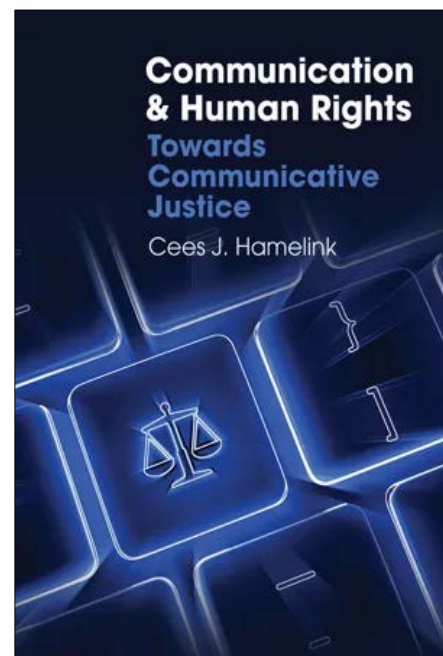
Paul Wragg, **Free Speech Theory: A Radical Restatement**, Hart, UK: Oxford University Press, 2025, 303 pp., \$84.00 (hardcover).

Reviewed by  
Damian Tambini  
London School of Economics

The current tech shift undermines established orthodoxies of freedom of speech as an international human right. Should powerful private gatekeepers of speech be treated as speakers or censors? If speech and media freedoms are justified by their ability to facilitate the emergence of truth, how to assess success without privileging one conception or adjudicator of truth? And how can it even be possible for authorities, public or private, to govern these matters given contested global jurisdiction? Is there a danger of imposing a foreign standard of free speech that fails to respect local cultural sensitivities?

An increasing willingness of scholars around the globe to question the dominance of U.S. First Amendment theory signals a period of deeper contestation of the theory and practice of communication rights around the world. After a period in which human rights organizations, and particularly the United Nations (UN), sought to articulate universal norms and values for speech regulation, and provide standards against which civil society could hold both national states and private bodies to account for their breach, global geopolitics and the rise of the BRICS has led to increasing questioning of those standards. Are they based on “Western,” “developed,” or U.S. standards, or are they universal? This inevitably raises profound theoretical questions about where the standards and values of communication rights and freedoms come from, and the historical question of whether they are imposed from outside or emerge endogenously.

Paul Wragg’s **Free Speech Theory: A Radical Restatement** and Cees Hamelink’s **Communication and Human Rights: Towards Communicative Justice** agree that the first stage in resolving this conundrum is to consider how to theorize about these matters. Is this fundamentally a question of legal authority? Do free speech norms emerge from domestic “natural” rights or international treaties, and to what extent are current standards the result of U.S. hegemony? Is determining the new norms of global media governance a matter of legal scholarship, jurisprudence, and comparative statutory



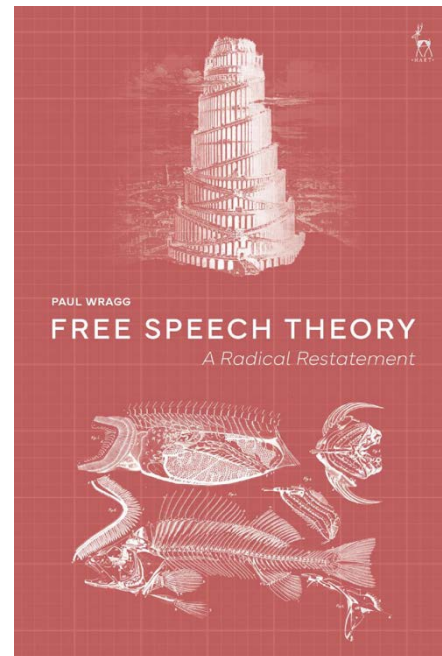
interpretation? Or a matter of understanding how laws and standards work in practice? Unpacking these issues entails an exercise in global media and communication history: tracing the emergence of the rules and principles that constitute the apparently long-established norms of freedom of speech and of the press, which after all are the standards propagated by the UN and its human rights-based approach to communication. These challenges are huge and urgent, and both of these books make significant contributions to resolving them. In doing so they also reveal to us the scale of the task and the initial obstacles that must be surmounted.

Out there in the real world, freedom of communication is in turmoil. The combination of rapid rise of the Internet, global platforms with tight relationships to national states, and new doctrines of information warfare and international relations have upset the process of development of global rules and standards to enable predictable and fair balancing of freedom of expression with national security and other justified restrictions. One role of theory in this urgent melee is to guide decision-making by judges and policy makers as they attempt to develop frameworks for protection of the public interest. For, while there are numerous principles and guidance on the future of media policy, issued by intergovernmental and non-governmental organizations, there is little in the way of systematic normative theory.

Appeal to global principles will be ethnocentric, possibly Eurocentric, and open to the criticism of imperialism. This is certainly true of international human rights standards on communication. How, then, to theorize communication rights and freedoms? These two books offer contrasting disciplinary perspectives, one from an academic lawyer who focuses on statutes and cases, as well as theory, and another from media and communication studies and cultural theory, which focuses on the history of the field and of human rights concepts applied to communication. Both of the books attempt to advance solutions, and in doing so reflect on the nature and utility of theory and the role of rights in our global historical moment.

The two books offer radically differing approaches to this bundle of contemporary problems. Cees Hamelink seeks to question and undermine the ethnocentrism of global principles and standards of human rights in communication. Paul Wragg, meanwhile, attempts to engage more deeply with both the philosophical lines of reasoning, and the jurisprudence of free speech dispute. Both are necessary, both help us understand better the task at hand and potential ways through it. Both books discuss law, but only Wragg's book delves into case law.

Wragg, in contrast to Hamelink, leaves aside the question of legitimacy of global standards. For him, free speech theory is a Western, perhaps even Anglo-Saxon, enterprise, and the way through our current confusion is to return to where it all started, or at least to John Stuart Mill. Wragg is especially



concerned with the problem of private actors and what is referred to in the United States as the “state action doctrine” under the First Amendment, which directs concern not at constraint of speech, per se—but at constraint of free speech by the state:

Increasingly we see it said that platform regulation of digital speech is a free speech problem because platform providers are excluding or otherwise censoring users who providers say are abusing its property . . . this horizontal application of free speech, to disputes between individuals and private entities, is a radical departure from the traditional vertical application of free speech as a right that citizens have against the state. . . . A key aim of free speech theory, then is to demonstrate that this horizontal application is more problematic than precedent or intuition would otherwise hold. (p. 290)

Wragg sees the development of free speech *theory* as opposed to precedent, intuition, or tradition as a way of resolving these difficult problems. In particular, he makes the case for a rehabilitated John Stuart Mill and for basing the fundamental justification of free speech in terms of the “limitation of state power over individuality” (p. 292).

We should be grateful to Wragg for boiling a considerable ocean of free speech theory down to a series of more cordial measures. He covers a huge amount of ground, in particular from the postwar birth and boom of First Amendment studies as a distinct academic field in the 1950s and 1960s, to the emergence of European theories and jurisprudence later with the development of European Court of Human Rights case law. But even in condensed form, these are somewhat indigestible. Wragg is a stickler for nuance and detail in argumentation and takes us through all the twists and turns of his detailed critique of theorists. He wrestles with what we could term the hardwired and tautological conservatism of the field: Free speech is a good, he reads in these theories, because we intuitively know this is the case, and because in a world structured by speech that to a greater or lesser extent tends to be free, this assumption is ubiquitous.

Wragg chooses to engage with the now well-established standard instrumental rationale of free speech as a means to the goods of truth, democracy, and self-expression or autonomy. He argues that in the justification for free speech it is above all human autonomy that should be paramount and that private platforms should not be compelled or have duties to protect free speech, per se. By combining a vigorous Hohfeldian analysis with a constant reiteration of the distinct roles of public and private bodies, he argues that free speech above all is a right that limits state power. On the issue of private actors’ restraint of speech, he is less concerned.

One area he neglects is the interrelated questions of market structure, platform size, and pluralism and freedom of speech. Quite apart from the “vertical” (state-related) concerns that may arise in the context of state control of speech, there is a gray area of state delegation of censorship functions to private bodies, often conducted in the context of potential conflicts of interest. Wragg could have addressed this more comprehensively or at least drawn the links between his treatment of theory and the new coregulation of European and UK legislation such as the Digital Services Act and Online Safety Act.

It is a shame given the value of this book as a guide and introduction to the vast literature of free speech theory that the book does not have a bibliography or a separate list of statutes or cases. Readers have to navigate the informative but unruly footnotes in the hope of following up on leads. It is probably churlish to take issue with the index, given the impressive depth of the scholarly engagement with the theories in this book, but the index is very short and sketchy. The publisher should have offered more help with indexing and bibliography and might also have offered a tighter editing service.

The lack of a bibliography does reveal a silver lining, however, because it obliges the reader to rely on Wragg's detailed and thorough exposition of the various theorists, conducted in his own inimitable, entertainingly curt style. Wragg has made a significant contribution to the theory of freedom of speech with this book. At the risk of setting an unfairly high bar, however, there is still a way to go to address the wider regulatory and societal problems I set out at the start of this article.

As a nonlawyer, Cees Hamelink does not engage with speech rights case law, or the underlying philosophy of statutory constructions of speech rights, at such a deep level as Wragg, but as a hugely accomplished media scholar who has focused on developments for more than half a century, he is well qualified to offer this opinionated and sweeping global history of communication rights. This ambitious work makes a concerted attempt to address the Big Questions, specifically the problem of ethnocentrism. Given the origin of communication rights in the Western philosophical tradition, is it possible to fashion a universal global justification on the basis of distinct regional and religious ethics of communication around the world? He phrases his question, however, at an even more ambitious level: "Why could we not manage to translate the guidance inherent to the principles in the international human rights regime into a human-rights based communication practice?" (p. 8). His answer is multilayered: There is a need to revisit the origin of the rights themselves, "where some will applaud human rights as instruments of self-empowerment, others will reject them as tools of neo-colonialism" (p. 9), and there is also a simple lack of enforcement, which he identifies as nonimplementation of Article 28 of the Universal Declaration of Human Rights.

Where students and scholars will find a lot of value is in the introductory unpacking of where communications rights come from, both before and after the 1948 Universal Declaration of Human Rights. The thematic prehistory examines the global and multicultural background to our current system of communications rights, covering the period before the postwar declarations. The survey is necessarily selective, examining such normative principles as human dignity, privacy, confidentiality, freedom of speech, freedom of thought, and the value of truth. The real selling point of this work, though, is that Hamelink adopts a much less Eurocentric approach than is usually adopted, incorporating aboriginal approaches, most of the major world religions, and the classical world, and even makes an attempt to comment on literally prehistoric principles in communication rights. An overview of this length will inevitably be highly selective, but it is rare to have such a delightfully eclectic take on communication rights, and, if there is to be any kind of global restatement of "universal" communications rights and principles, then this is a necessary first step.

Hamelink does not argue it explicitly, but there is a barely hidden subtext: while the postwar international human rights system can be seen as a project of U.S. hegemony, his archaeology of rights and religious traditions in other regions of the world reveals more than mere traces of rights discourses, and

these are sufficient to support a qualified claim of universality. In many cases we can identify precedents and traditions that are harmonious with the subsequent development of global communication rights. This is a noble enterprise, but it does arouse a faint suspicion of post-hoc rationalization and anachronism and raises the question of whether the book can ultimately escape the charge of ethnocentrism. The approach is quite selective, and in the latter part of the book, the Anglo-Saxon and even Christian traditions come to the fore in the presentation. A more decisive response to the challenge to international human rights posed by the BRICS countries would require more than this survey. If this account of communication rights fails to convince that they are universal rather than ethnocentric, this might be because they are not. Which is not to say that they should not become universal.

The second substantive contribution of value to communications scholars and students is the provision of an accessible, subtly written historical overview of the human rights of communication since the Second World War. Based on secondary sources, and one imagines a certain amount of the authors own experience, Hamelink's history covers all of the main declaratory moments in communication rights, including the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the communication rights movements of the 1970s in UNESCO and elsewhere (which he singles out for criticism for elitism), and he brings this up to date in the UN-driven World Summit on the Information Society (2003–2005). Missing from this book, which was published in 2023, is the most recent international work, for example, UNESCO's Internet for Trust initiative and the Global Digital Compact.

In terms of his diagnosis of problems, as well as nonimplementation and nonenforcement of human rights, he argues that the approach of the 1970s, which is viewed with nostalgia by many as a missed opportunity in communication rights, was in fact marred by elitism and coloniality, a tendency to reiterate a nation-state dominated paradigm of international relations, and a failure of human rights to deal with horizontal private actor-to-citizen, and citizen-to-citizen relations. In this there is common ground with Wragg's critique, which also focuses on vertical media-state relationships. But whereas Wragg's freedom of speech theory holds that freedom of speech is fundamentally an issue of human freedom from the state, Hamelink argues that communications rights must in future do more to provide redress against breaches of privacy, expression, and related rights by private actors.

If there is a problem with Hamelink's work, it is that he may be too rose tinted about rights, too uncritical about the problem of ethnocentrism, and less cognizant of some of the more decisive factors: money and guns. It is commendable that more than 50 years of untiring work on the value of communication rights has left the authors' idealism undimmed. It is precisely this enthusiasm that is needed to address our global challenges, but we also need realism about the nature of our global institutions.

The debate about communications rights is likely to intensify. It will focus on whether communication rights of humans can empower citizens vis-à-vis increasingly powerful AI driven platforms on the one hand, and AI-enabled states on the other. The security and integrity of nation-states is increasingly associated with an assertion of "digital sovereignty," which, in the hands of democratic actors, is seen as central to the protection of digital rights, national cultural heritage, democracy, and the rule of law. In the hands of authoritarians, however, the projection of digital sovereignty is often an assertion of state control of speech rights, personal data, and state monopolies. These highly accomplished but

contrasting books show how communication rights have continually struggled to offer frameworks to empower humans in relation to their media environment. However, they also show that neither a legal analysis nor a normative historical analysis can provide rights and freedoms with constitutional authority. In the absence of agreement among scholars about the theoretical basis of communications rights as both legal and historical institutions, it is state regulatory power and the propaganda power of private media gatekeepers that will determine the outcome—as they did in the past.