

University of Tennessee College of Law

Legal Scholarship Repository: A Service of the Joel A. Katz Law Library

Law Library Faculty Scholarship

Law Library

2020

Review of: The First: How to Think About Hate Speech, Campus Speech, Religious Speech, Fake News, Post-Truth, and Donald Trump

Rebecca Kite

Follow this and additional works at: https://ir.law.utk.edu/fac_scholar

University of Tennessee College of Law

From the Selected Works of Rebecca Kite

2020

Review of: The First: How to Think About Hate Speech, Campus Speech, Religious Speech, Fake News, Post-Truth, and Donald Trump

Rebecca Kite, *University of Tennessee College of Law*



DATE DOWNLOADED: Thu Jul 22 09:36:05 2021

SOURCE: Content Downloaded from [HeinOnline](https://heinonline.org)

Citations:

Bluebook 21st ed.

Rebecca Kite, The First: How to Think about Hate Speech, Campus Speech, Religious Speech, Fake News, Post-Truth, and Donald Trump, 112 LAW LIBR. J. 355 (2020).

ALWD 6th ed.

Kite, R. ., The first: How to think about hate speech, campus speech, religious speech, fake news, post-truth, and donald trump, 112(3) Law Libr. J. 355 (2020).

APA 7th ed.

Kite, R. (2020). The first: How to think about hate speech, campus speech, religious speech, fake news, post-truth, and donald trump. Law Library Journal, 112(3), 355-356.

Chicago 17th ed.

Rebecca Kite, "The First: How to Think about Hate Speech, Campus Speech, Religious Speech, Fake News, Post-Truth, and Donald Trump," Law Library Journal 112, no. 3 (Summer 2020): 355-356

McGill Guide 9th ed.

Rebecca Kite, "The First: How to Think about Hate Speech, Campus Speech, Religious Speech, Fake News, Post-Truth, and Donald Trump" (2020) 112:3 Law Libr J 355.

AGLC 4th ed.

Rebecca Kite, 'The First: How to Think about Hate Speech, Campus Speech, Religious Speech, Fake News, Post-Truth, and Donald Trump' (2020) 112(3) Law Library Journal 355.

MLA 8th ed.

Kite, Rebecca. "The First: How to Think about Hate Speech, Campus Speech, Religious Speech, Fake News, Post-Truth, and Donald Trump." Law Library Journal, vol. 112, no. 3, Summer 2020, p. 355-356. HeinOnline.

OSCOLA 4th ed.

Rebecca Kite, 'The First: How to Think about Hate Speech, Campus Speech, Religious Speech, Fake News, Post-Truth, and Donald Trump' (2020) 112 Law Libr J 355

Provided by:

University of Tennessee College of Law Joel A. Katz Law Library

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

is invaluable for attorneys and policymakers from diverse backgrounds. To be a good lawyer in the age of the IoT, it is essential not only to respond to novel problems but, more important, to anticipate them. An underlying theme in the book is that it is impossible to know precisely how the law as it relates to the IoT will be applied and practiced in the future. However, by informing attorneys about the current state of the IoT and suggesting possible future developments, the book provides attorneys with a strong foundation to excel in a world increasingly dominated by the IoT. Recommended for all law libraries.

Fish, Stanley. *The First: How to Think About Hate Speech, Campus Speech, Religious Speech, Fake News, Post-Truth, and Donald Trump*. New York: One Signal Publishers/Atria, 2019. 228p. \$20.99.

*Reviewed by Rebecca Kite**

¶44 In the opening pages of Stanley Fish's *The First*, the author declares his twin theses: first, "that the First Amendment is a participant in the partisan battle, a prize in the political wars, and not an apolitical oasis of principle"; second, "there is nothing wrong with that" (p.4). The majority of this book addresses the first thesis, not only as it applies to matters Fish identifies as falling squarely within the purview of the First Amendment, such as religious practice, but also the myriad ways the First Amendment is invoked in matters that fall outside its scope.

¶45 *The First* provides numerous examples and illustrations to support the first thesis, taking the reader through various notable scenarios, such as when Roseanne Barr found her sitcom cancelled by ABC because of her tweets, the discipline of various professors based on their public statements, and Colin Kaepernick's ongoing battle with the National Football League. Fish's arguments rely on not only First Amendment jurisprudence but also the philosophical arguments underlying the discourse about speech and expression. This well-executed weaving of the legal and the philosophical assists in explaining Fish's conclusion that the First Amendment is not simply a neutral principle.

¶46 Structuring the work, provocative statements open each chapter, such as "Why the Religion Clause of the First Amendment Doesn't Belong in the Constitution" and "Why Transparency Is the Mother of Fake News." Throughout the text, Fish routinely poses questions to the reader to illustrate both competing views and the challenges inherent in considering the matters of speech and religion. This format may be familiar to readers with an educational background in philosophy or political science, where this method of instruction is designed to elicit new ideas and to challenge students to question some of their own assumptions. As a result, the work is extremely thought-provoking in ways that address some core issues in First Amendment jurisprudence, such as whether freedom of speech is best described as a value or a principle and, depending on that answer, whether the application of the First Amendment in specific cases can be reconciled with its nature.

¶47 This question-based structure serves as the organizing theme of *The First*: Although our First Amendment jurisprudence is a mess and we live in a post-truth world, we can nevertheless embrace the principles of First Amendment law such as

* © Rebecca Kite, 2020. Reference Librarian and Assistant Professor, Joel A. Katz Law Library, University of Tennessee, Knoxville, Tennessee.

they are because they provide necessary tools. Fish declares that “[t]he fact that the speech/action distinction cannot be cashed in and is infinitely malleable (as the case law abundantly shows) is no reason to discard it; it makes possible all of the ingenious maneuvers First Amendment jurisprudence so abundantly displays when there is a job to be done” (p.195).

¶48 In the epilogue of *The First*, Fish returns to the second of his two theses: that there is nothing wrong with using the First Amendment as a political tool. Structurally, this move leaves the reader with the sense that the true thesis is buried in the final pages: that many First Amendment rulings are contradictory, and many of the issues frequently discussed along with the First Amendment, such as campus speech, are less about constitutional rights and more about the boundaries of professionalism. But in the end, Fish concludes that these contradictions and inconsistencies are far less important than the reader might believe upon reaching the epilogue.

¶49 Having taken the reader through various thought exercises regarding the First Amendment and the philosophical issues connected to the notion of truth, Fish asks whether there is anything to be done about the post-truth condition. He concludes that we are not in a new social state after all. Rather, humans have always lived in a post-truth world. It is part of the human condition, Fish argues, that there can be no objective fact. All facts are filtered through the perspectives and beliefs of those exposed to the facts, and differences of perspective lead inevitably to different understandings and interpretations of the facts.

¶50 Ultimately, this book is true to the title. Fish presents a way to consider matters like campus speech, fake news, and the Trump presidency in light of the First Amendment. For a reader looking for more concrete suggestions about what to do to address some of these issues, particularly with respect to the issues of truth and politics, this book offers little. As Fish concludes that we have always been in a post-truth age, the solutions are the same as they have always been in America: winning elections and enacting laws and policies that address the ills we see. There may be some limited comfort in the notion set forth at the close of the chapter addressing our post-truth age: that there have always been those in power willing to lie for their own advantage, and that we are not seeing the advent of fake news, merely new examples of an age-old problem. But many readers may be seeking something more concrete.

¶51 While the work is engaging and readable, deftly moving from issues of religion to fake news, I advise readers seeking a primer on First Amendment law to look elsewhere. However, there is no need to have a legal background to understand *The First*, as Fish effectively summarizes relevant cases. Lawyers, law professors, and law students will recognize many of the notable cases, but discussion of cases largely serves to make broader and more philosophical points about the nature of the First Amendment. Thus, *The First* would not only be of interest to legal scholars, but also to those in other disciplines, particularly political science. Recommended for academic and public law libraries.