



A ‘Global First Amendment’

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April 14, 2015

Last night I had the pleasure of participating in [the first ever “Freedom Day”](#) celebration at the National Constitution Center in Philadelphia. The day consisted of a series of panels made up of national thought leaders, including new Cato Institute President Peter Goettler, American Civil Liberties Union Executive Director Anthony Romero, *The New York Times* columnist and President of the American Enterprise Institute Arthur Brooks, President of the Center of American Progress Neera Tanden, and bestselling author and President and CEO of the Aspen Institute Walter Isaacson (and that was just a single panel).

I participated in a later panel that included [William Marshall](#), professor of law at the University of North Carolina School of Law, former chairman of the Federal Election Commission [Bradley Smith](#), and Vice President and General Counsel for Koch Industries [Mark Holden](#), while [Jeffrey Rosen](#), president and CEO of the National Constitution Center, moderated the discussion. The topics covered by the panel ranged from campus speech codes to *Citizens United v. FEC* to the importance of anonymity. To conclude the discussion, host Jeff Rosen asked us for closing statements. I decided to leave the audience with an idea that I hoped would provoke some thought and reaction.

I explained that free speech is under assault worldwide in ways more subtle than the unabashed policing of speech expected in countries [such as China](#) and [North Korea](#). Russia [now bans](#) both distribution of material supporting gay rights and “offending religious feelings.” Similar blasphemy laws are [commonplace across](#) much of the Islamic world, and even [in unlikely countries](#) such as [Denmark](#) and [Germany](#)—and [pressure to enact new ones](#) is continuous. [Hate speech laws](#) are [alive and well \(and enforced\)](#) overseas—in [a befuddling conflict](#) with the outpouring of “support” for freedom of speech after the *Charlie Hebdo* murders. Oppressive national security laws and regulations, such as those proposed in the [United Kingdom](#) and [France](#), prove that we’ve not yet learned that the “liberty for security” exchange is fraught with peril. Turkey’s government has engaged in [a crackdown](#) on journalists and citizens alike who insult or criticize the current regime.

Though I have been concerned about the international scene for free speech for some time (especially as American academics often like to use free speech restrictions in other countries as a way of [arguing that America is somehow behind the times and less sophisticated](#)), my concerns gained new urgency after reading Flemming Rose's important, and, at times, frightening, new book [The Tyranny of Silence](#). If you are concerned about threats to free speech both abroad and also on the horizon in the U.S., Rose's book is a must read.

On the Freedom Day panel I explained that we are naive if we think that free speech will survive in the U.S. as an isolated island if we are afloat in a sea of state-supported censorship. We need to be able to move beyond the circular argument that "free speech is good because the First Amendment protects it." We need to be able to offer moral, philosophical, and practical arguments that explain why free speech works and why it always matters. But such arguments do not just apply to those of us in the U.S.; they are arguments for why we should defend free speech principles *everywhere*.

I hoped to raise some eyebrows by referring to this as a "global First Amendment." To be clear, I did not and do not mean the passage of some one-world government globo-law. Instead, I mean that we should not be afraid to preach what we practice. I believe you should be free to be an oddball, a dissenter, a doubter, or a believer and say so anywhere in the world.

The reason why I called it a global First Amendment, as opposed to simply "global free speech," is because America's First Amendment jurisprudence has been perhaps the longest, most sophisticated exploration of how to realize free speech in the real world. Though people sometimes think of the U.S. as a "free speech absolutist" nation, our jurisprudence does not protect incitement to imminent violent behavior, true threats and intimidation, defamation, and other narrowly drawn exceptions to the First Amendment. It recognizes that child pornography, conspiracy, and hostile environment harassment, properly defined, are unlawful and are not given shelter under the First Amendment's protections. It recognizes the special problems posed by captive audiences and takes into account the settings and circumstances under which a speaker attempts to speak. In short, American free speech jurisprudence is a model for allowing the most robust discourse and dialogue possible while at the same time safeguarding the rights belonging to our citizens. The end result of this well-thought-out jurisprudence is not anarchy—it's a system that protects both the marketplace of ideas and the society that makes democracy possible.

This is not to say I think the American interpretation of the First Amendment is perfect. We should do a better job protecting high school students' and public employees' free speech rights, as well as freedom of assembly (assembly is a right that sometimes seems negated on campus by ["free speech zones"](#) and in the outside world by overly restrictive "time, place, and manner" restrictions). But the First Amendment provides broad and moral principles that strongly protect the expression of virtually any viewpoint.

We have to stop this relativist thinking that free speech is just our local, quaint American tradition and all other systems are equally good. Free speech is the best invention civilization has come up with for minority rights, scientific discovery, social progress, peaceful resolution of differences, and for genuine pluralism.

I am under no illusion that we are anywhere near an international regime in which the American conception of free speech is embraced, but I propose it's time we start pushing back against a global tide that represents censorship as enlightened and that trusts those in power to police the views of ordinary people.

Free speech is not something America should ever apologize for, and, indeed, we should make sure it is always regarded as a fundamental human right.