

What We Can Learn from the History of Free Speech

Is free speech under threat? What do we even mean when we talk about free speech? **Jacob Mchangama**, a Danish lawyer and human rights advocate, tackles those questions in his new book, *Free Speech: A History from Socrates to Social Media*. In February, Cato hosted a book forum in which Mchangama explained what he found in the history of this important concept, with commentary from **Jonathan Rauch**, senior fellow at the Brookings Institution and author most recently of *The Constitution of Knowledge*.

Jacob Mchangama: I was born in cozy, secular, liberal Denmark, and in my youth, free speech was taken for granted. It was the air that we breathed in the '90s and early 2000s. So I didn't really think about it, and I think most people didn't, because it was not under threat. It was just part of daily life.

Then Denmark became the epicenter of a global battle of values over the relationship between free speech and religion. Someone who later became a good friend of mine, Flemming Rose, the editor of the Danish newspaper *Jyllands-Posten*, published a number of cartoons depicting the prophet Muhammad, which led to a global crisis. Flemming and many others still live with around-the-clock security because of threats from extremists. But that forced many Danes, and I think many in Europe and around the world, to really think: What is this principle that we hail as an Enlightenment value and the foundation of democracy? Is it really that important?

A lot of people said, maybe it's not so important; these cartoons are punching down on a vulnerable minority, and this is not what free speech was supposed to be about. That surprised me; it shocked me a little bit. What I also saw was that, generally, people on the right were free speech absolutists when it came to the cartoons. Then we had several

governments that adopted a number of restrictions on religious free speech, and even though it was formally neutral as to which religion, everyone knew it was targeted at extremist Muslims. That limited free speech, and I was saying this goes against the very principles that we defended during the cartoon affair. But a lot of people on the right said, well, free speech is important, but to safeguard our fundamental values, we have to limit the free speech of these particular extremists.

That led me to investigate the whole history of free speech. What's at stake? What does it mean? What does it mean when a society is based on free speech? What does its absence mean? Is this principle really worth all the fuss? I found that it was. But by looking at past debates about free speech, you can have a more detached attitude, rather than the culture war tainting everything when you look at it through the prism of the present.

I locate the origins of free speech in Athenian democracy some 2,500 years ago. The Athenians had two concepts of free speech, one of them being *isegoria*, equality of speech, which was exercised in the assembly where all freeborn male citizens had a direct voice in debating and passing laws.

But perhaps of even more consequence was the second concept, called *parrhesia*, which

means something like uninhibited speech, a culture of tolerance and free speech. So if you were Plato, you could set up an academy and you could teach a philosophy that was not particularly fond of the democracy that allowed you to philosophize. You could have foreigners like Aristotle, who wasn't from Athens, come and set up shop. And until the tolerance wore a bit thin, Socrates could heckle people and roast them in the agora, the marketplace in Athens. The Athenian statesman Demosthenes observed that in Athens, you were free to criticize the Athenian constitution and praise the Spartan constitution but that in Sparta, home of the Athenians' bitter enemies, you could *only* criticize the Athenian constitution and praise the Spartan constitution.

I think that really still is the litmus test of free speech. Are you able to criticize the political system under which you live? The Athenian system obviously by our standards was not radically egalitarian, but for its time, it had very much an egalitarian free speech idea. I contrast this with the Roman Republic, where there was a much more elitist, top-down approach to free speech. You would have senators like Cato the Younger and Cicero who believed in free speech, but it was mostly for the senatorial elite, not the plebeians. Roman citizens did not have a right to address assemblies the way Athenian citizens did.

These two concepts, leadership-elite free speech and egalitarian free speech, have been in tension throughout the history of free speech. You see it especially when the general public's sphere has been expanded, either through technology—be it the printing press, the radio, the telegraph, and today social media—or through a change in the political environment. It could be democracy giving the vote to women, to the poor and propertyless,

and to religious and racial minorities. There has always been an elitist pushback against this idea and a dread, an existential dread, that the unwashed mob was unfit to be given access to information. That it had to be filtered by the elites, because otherwise everything would go to hell, basically. So that's a very important thesis in the book.

Another one is related to that. I argue that many today see free speech as entrenching unequal power relations. I argue that free speech in fact may be the most powerful engine of human equality that human beings have ever stumbled upon. Every single oppressed group or minority has relied on free speech, the practice and principle, to further their cause and stake a claim for equality and tolerance. In this country, I spent a bit of time on how Southern states in the 1830s adopted the most draconian censorship laws in American history to counter abolitionist literature and ideas.

Take Virginia, for example. In 1776, Virginia became the first state to adopt a bill of rights, even before the Declaration of Independence. The Virginia Declaration of Rights included a statement that freedom of the press was “the great bulwark of liberty.” But then in 1836, Virginia passes a law that says it's a crime to deny that white masters have a right to property in their black slaves and that it's also a crime to inculcate resistance to slavery, among a whole laundry list of ways to try to counter abolitionist ideas.

On the other hand, you had abolitionists like Frederick Douglass, who was himself of course born a slave, who argued for a universalist idea of free speech, which he said would destroy slavery. He argued that free speech does not depend on the color of your skin or the size of your wallet, and that the right of free speech is a very precious one, especially to the oppressed. I would say that that is another theme that runs through the book.

I'm staying at a hotel very close to Lafayette Square, and you'll see a plaque there showing how in 1917, a number of women's rights

advocates were burning an effigy of President Woodrow Wilson. They were arrested and fined for demonstrating for their right to vote. I remember thinking about that in 2018, when I was living on the Upper West Side with my family and I took my son to a museum. Outside, tens of thousands of people were protesting, most of them women, wearing these pink “pussyhats” and shouting ob-



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scenities at the president of the time. The NYPD was there to safeguard their First Amendment rights to criticize the president, in terms that were probably more aggressive than those of many who went before them. I thought that was really a sign of how free speech has furthered the rights of groups that had previously been persecuted.

Jonathan Rauch has also written very eloquently about how that was also the case for the gay rights movement, for instance. When

you see the huge increases in acceptance and tolerance of interracial and gay marriage, that was not achieved through censorship and putting bigots in jail. It was to a large degree won by people using the First Amendment rights to do activism, to appeal to our common humanity, and so on.

The last thing I might want to highlight is that ultimately I believe the health of free speech in any given nation depends more on a culture of free speech than on laws. The First Amendment was ratified in 1791. It hasn't changed in its wording, but in 1798, you could go to jail for criticizing President John Adams. That was supported by people like Alexander Hamilton and the Federalists, whereas Jefferson and Madison were on the other side of that conflict. Then, as I mentioned, there were laws prohibiting abolitionist literature. During World War I, the Supreme Court was completely fine with sending people to prison for 10 or 20 years for opposing American involvement in the war. Then you have the Red Scares and so on. You really have to get into the 1950s before free speech is consistently protected and reaches our modern threshold by the end of the '60s with *Brandenburg v. Ohio*, which set a very, very high bar for restricting speech.

All of this reflects a change in cultural attitudes and in norms among Americans because the wording of the First Amendment hasn't changed. You see that also in famous works like *On Liberty* by John Stuart Mill. He was as concerned with the stifling norms in Victorian England as he was about censorship by the magistrates. He warns that society's tendency to impose its values on dissenters is a danger to free speech. George Orwell made some of the same points. So that's why I worry for this country, because in my view, both sides of the political spectrum are eating away at the culture of free speech in the hyperpolarized, partisan nature of American politics. This will ultimately have downstream effects that might affect how the First Amendment is constitutionally protected, whether in 10 or 20 or 30 years.

Jonathan Rauch: I have three points. The first is about the book, the second is about what I learned from the book, and the third is about the environment we're in right now. The first thing about the book is that you should get it. Buy it. Read it. It's not only readable and comprehensive, it's the only thing like it. Unbelievably, until this book came along, there was nothing to read that took you from the very beginning of the ideas of free speech right up to social media. It's all here: the ancient Greeks; medieval times, where there were occasional outbursts of very interesting thinking only to be suppressed; the Enlightenment; and the long history of seditious libel, which reappears again and again. It's a fantastic book. I just can't say enough about it. It's a service. It will be a touchstone for years to come, and it's also a lot of fun.

Second thing, what I learned—or maybe relearned—from the book is the idea that the government should not only allow but actively protect speech and thought that is seditious, vulgar, offensive, wrongheaded, bigoted, or just plain wrong. The government should actually protect this most crazy, counterintuitive, wacky social idea of all time, bar none. If you put that proposition to someone on the street, they'll ask what's the matter with you. But it's this principle that is the single most successful social idea of all time. It gives us the peace, the freedom, and the knowledge that build this society. But because it is so deeply counterintuitive, it took 2,500 years to build in the form we know it. As Jacob just said, the current form of free speech in the United States is extremely young. The environment in which the Founders wrote the First Amendment was much more restrictive than today's.

So what I remind people of and what I hope they take away from this book is that defending and protecting this radical, wacky proposition requires getting up every morning and explaining it from scratch to a whole new generation. Then our kids will have to do that and their kids and their grandkids every single day, and we just need to be cheerful about that. Because as this book shows you, we're doing

incredibly well, actually. I'm not sure Jacob would agree with that. But for example, in my grandfather's time the greatest novel of the 20th century, *Ulysses*, was banned by the government and confiscated on the docks. That couldn't happen today in the United States and most other democracies.

Right up to the present, however, we have a couple of challenges that really bend the



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paradigm and challenge Jacob and me and all of us, because they're quite unconventional. We're used to thinking of free speech as something that we protect against intrusion by censors, primarily the government. Free speech in terms of legal protections is stronger in America right now than I'd say it's ever been anywhere in the world. And I think it may be about to get stronger with the current Supreme Court.

The kinds of challenges we face, however, don't really fit that box. One is disinformation,

and the other is what's often called cancel culture, the systematic use of social coercion to chill and silence. Disinformation is not about censorship. It's actually about, as Steve Bannon, Trump's former adviser, very aptly and accurately put it, “flooding the zone with shit.” Putting out so many lies, half-truths, conspiracy theories, and exaggerations that no one knows which end is up. It turns out that platforms like social media are tailor-made for this because their business model is to maximize eyeballs for revenues, and the way you maximize eyeballs is outrage, which is addictive.

When the internet got going, we thought it would be a big open forum and marketplace of ideas and that the best ideas would rise to the top. We did not realize how easy it would be to manipulate this environment to make it epistemically toxic. It's now well known that false stuff travels much faster and much further online than true stuff, which is much more expensive to make and much less fun to click on. That is not a problem you can tackle with traditional free speech doctrines. In fact, it does the opposite. It harnesses free speech and turns it into a weapon of epistemic destruction, a weapon of mass confusion and chaos.

Jacob and I may have something of a disagreement on that, because I think he's a purist and wants platforms like Facebook to essentially adopt the morality, though not the law, of the First Amendment. I think that's impractical and unsustainable and it actually betrays a lot of the rest of their mission, which has to do with being a community, a business, and a publisher. So I think there is going to have to be content moderation; it's a hard problem, but getting it right is a lot more complicated than just saying we should have absolute free speech online.

The second area that Jacob did allude to and that is awfully important is so-called cancel culture. The weaponization of social coercion, that's always been around. Tocqueville came to the United States in 1835 and warned that the biggest threat to liberty in America was not from the government but

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ing Paper no. 132). Expanding bank-like regulations to non-bank institutions, as many have advocated, would not have actually addressed the root causes of the financial turmoil.

INEFFECTIVE INTERVENTIONS

The collapse of the U.S.-backed government in Afghanistan after two decades of war felt like a catastrophic defeat for the U.S. policy of nation-building and military intervention. But was Afghanistan an outlier? In **“When Interventions Fail: Lessons from the U.S. Experience in Latin America”** (Research Briefs in Economic Policy no. 289), Leticia Arroyo Abad and Noel Maurer consider a number of U.S. interventions in the Western Hemisphere, analyze their long-

term effects, and find a sober lack of beneficial gains to be had.

GET HOME SAFE

Ridesharing apps like Uber have long been defended on the intuitive basis that they reduce drunk driving accidents. In **“Uber and Alcohol-Related Traffic Fatalities”** (Research Briefs in Economic Policy no. 288), Michael L. Anderson and Lucas W. Davis conduct a first-of-its-kind study using proprietary Uber ridership data to estimate the effect. They find that ridesharing reduces total U.S. alcohol-related traffic fatalities by 6.1 percent and reduces total U.S. traffic fatalities by 4 percent.

ON THE MARGINS

The United States has a bewildering range of transfer and welfare programs, subject to endless tinkering by policymakers. Can change, in

and of itself, harm current beneficiaries? That depends heavily on labor market factors and the nature of the programs in question, as explored by Jeffrey Clemens and Michael J. Wither in **“When Is Tinkering with Safety Net Programs Harmful to Beneficiaries?”** (Research Briefs in Economic Policy no. 290).

W IS FOR WARY



Expanded preschool programs are perennially popular, but do the much-touted educational benefits stand up to scrutiny? There are reasons to doubt it, according to Colleen Hroncich in **“Universal Preschool: Lawmakers Should Approach with Caution”** (Policy Analysis no. 924). “Children are not widgets,” she reminds legislators who too often forget it. ■

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from social coercion. The tyranny of the majority, he called it. Madison worried about the same thing. John Stuart Mill worried about it. Turns out, however, it can be tyranny of the minority. Even relatively small groups of people that are ready to whack you online, demolish your reputation, and flood the search engine so that you’re labeled a racist.

The first thing a potential employer sees is demands that you be fired. Even small minorities of people can make life a living hell for dissenters and cause a widespread chilling

effect. And at the moment, two-thirds of Americans say that they are chilled. That they are reluctant to state their true beliefs about politics for fear of social and professional consequences. Two-thirds, and it’s also about 60 percent of students on campus. It’s hard to compare, but from the best evidence, that’s about four times the level of 1953, the height of the McCarthy era. One reason for this is that in the McCarthy era, there were a couple of things you couldn’t say and you could otherwise be pretty safe. In the canceling era, you don’t know when

you’re safe and when you’re not, and that’s on purpose. They want to make us our own policeman so that we’re always afraid that we’ll step on a new land mine.

So we now have both the widespread chilling problem and the disinformation problem. We have severe stresses on the epistemic environment, our ability to sort truth from falsehood. And they’re not problems that are within the traditional bounds of how we think about free speech. So this book in a way is a ladder up to the next kind of conversation that is now beginning. ■

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According to estimates by the Federal Emergency Management Agency, policyholders pay somewhere between 40 and 60 percent of the full-risk price. The consequence isn’t only a bad deal for taxpayers but is also the exact moral hazard Congress had been trying to avoid. When people don’t have to bear the full cost of the risk, the result is excessive building in risky places.

In recent years, for the first time in a century, private flood insurance has appeared on the market. Unfortunately, this development appears to be largely the effect of cross-subsidies from the NFIP, rather than a true market development. Unless and until a real market develops, the NFIP should refocus on its stated goals of avoiding subsidies and ensuring that the risks are internalized for property owners.

“The NFIP was an important decision by Congress to move away from providing ad hoc disaster aid to flood victims at taxpayer expense,” concludes Van Doren. “But lawmakers’ commitment to a subsidy-free system has been imperfect from the beginning, and they have backslid further from that in recent years. The NFIP needs to reembrace the goal of insureds paying actuarially fair premiums.” ■