

## BOOK REVIEW

### A Review of *The Future of Free Speech* by Jacob Mchangama and Jeff Kosseff

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#### INTRODUCTION

Debates over free speech have become increasingly polarized, with public discourse often framed in stark terms of either unchecked permissiveness or urgent regulatory intervention. Against this backdrop, Jacob Mchangama and Jeff Kosseff provide much-needed clarity in their new book, *The Future of Free Speech: Reversing the Global Decline of Democracy's Most Essential Freedom*.<sup>1</sup> The book will hopefully serve as a powerful catalyst to spark interest in effective free speech advocacy. This Book Review proceeds in two parts. Part I highlights the book's principal strengths, focusing on the author's honest assessment of both sides, the unintended consequences of censorship, powerful examples of how bad speech is overcome by more speech, and the pragmatism of taking a global perspective. Part II offers a set of modest, constructive critiques aimed at sharpening the book's normative claims and clarifying several important doctrinal and policy distinctions.

#### I. PRAISE

This Section highlights several of the book's most compelling strengths. In particular, the authors combine normative clarity with empirical and comparative analysis, grounding their defense of free expression in real-world consequences rather than abstract slogans.

The authors are unabashed in their purpose for the book. They state upfront, "This book serves as a wake-up call against the growing pessimism around free speech."<sup>2</sup> They nevertheless provide an intellectually honest assessment of the policy tradeoffs involved. For example, they provide graphic examples of how free speech can result in harm. They explain, "We do not argue that the current state of discourse is a utopia. Many people are exposed to hateful rhetoric, unverified claims, and other sorts of speech that can carry real harms."<sup>3</sup> They provide examples of truly abhorrent speech, such as the speech involved in *Brandenberg v. Ohio*,<sup>4</sup> and *Snyder v. Phelps*.<sup>5</sup> The authors use these extreme examples to illustrate the importance of free speech,

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1. JACOB MCHANGAMA & JEFF KOSSEFF, *THE FUTURE OF FREE SPEECH: REVERSING THE GLOBAL DECLINE OF DEMOCRACY'S MOST ESSENTIAL FREEDOM* (2026).

2. *Id.* at 8.

3. *Id.* at 273.

4. *Id.* at 28–42.

5. *Id.* at 42–46.

expressly pointing out that the free speech rights of Brandenburg and the Westboro Baptist Church that the Supreme Court had vindicated went on to apply to others, such as investigative reporters, social media commentators, and civil rights activists.<sup>6</sup>

The authors provide strong evidence for how speech censorship often harms the very people that were intended to be helped.<sup>7</sup> After the *Charlie Hebdo* murders, a former *Charlie Hebdo* journalist and critic of Islamism was prosecuted under France's new "apology for terrorism" laws for describing Hamas as a "resistance movement" and not explicitly condemning the October 7 Hamas attack on Israel.<sup>8</sup> Since 2022, about a third of the people canceled or deplatformed for allegedly antisemitic posts in Germany were Jewish.<sup>9</sup> Some of the first people prosecuted for incitement to racial hatred under the UK's 1965 Race Relations Act were members of the Black Power movement.<sup>10</sup> "Hate speech" legislation often targets minorities critiquing other members of the same group.<sup>11</sup> The point that censorship often harms the very people it was intended to help is something that a lot of free-speech advocates overlook. This is unfortunate as it helps distinguish between what matters (real-world results) and what does not (the good intentions of the censors).

The authors illustrate another frequent unintended consequence of censorship, namely, it often results in an increase in the very speech intended to be curtailed.<sup>12</sup> There is little evidence that crackdowns on "hate speech" have resulted in less hate.<sup>13</sup> For example, France's implementation of anti-free-speech policies coincided with an increase in the practice and support of the very types of activity the government considered to be extremist and sought to eradicate.<sup>14</sup> Although not discussed in the book, this ineffectiveness of censorship is perhaps because censorship helps "hate speech" groups achieve martyrdom status, which can be turned into an effective recruitment tool.<sup>15</sup>

The authors do not just repeat catchy mantras such as "the best way to fight bad speech is with more speech." Instead, they provide real-life illustrations of the principles. For example, they tell the powerful story of Daryl Davis, a Black man

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6. *Id.* at 28–29.

7. *Id.* at 116.

8. *Id.* at 125.

9. *Id.* at 113–14.

10. *Id.* at 130.

11. *Id.*

12. *Id.* at 80; *see generally, e.g.*, Michael Conklin, *Making the Case for the Other Side: How Bérubé and Ruth's Anti-Academic Freedom Advocacy Demonstrates the Importance of Protections*, 50 S.U. L. REV. 72 (2022) (explaining how "censorship efforts often lead to unprecedented exposure of the speech intended to be suppressed due to the 'forbidden fruits effect' and empowering the speaker with a powerful martyrdom status").

13. *See* MCHANGAMA & KOSSEFF, *supra* note 1, at 111–42.

14. *Id.* at 126.

15. Conklin, *supra* note 12, at 80. A similar phenomenon likely occurs with hate crime legislation, which may function to increase the very crimes they are implemented to reduce. *See* Michael Conklin, *Unnecessary, Counterproductive, and Unjust: The Case Against Hate Crime Legislation*, 30 GEO. MASON L. REV. F. 12, 22 (2023).

who engages members of the Ku Klux Klan in dialogue.<sup>16</sup> In doing so, he has singlehandedly convinced over 200 Klan members to leave the group.<sup>17</sup>

The authors adopt a global perspective, not just focusing on the United States. This provides a cautionary tale of the disparity between the promises of censorship and the realities. In 2018, France passed legislation to protect against “manipulation of information,” giving judges the power to remove “inaccurate or misleading allegations or imputations of a fact likely to alter the sincerity of the upcoming election.”<sup>18</sup> In 2023, the UK implemented criminal penalties for those sharing “false information intended to cause nontrivial harm.”<sup>19</sup> Alongside these cautionary examples, the authors provide the example of Taiwan as an illustration of a country “confronting disinformation without compromising core principles.”<sup>20</sup>

The global perspective provides for a more thorough historical context. The authors explain how hate speech laws in other countries were often inspired by opposition to Soviet disinformation and propaganda, while the Soviet Union itself was notorious for criminalizing hate speech and false information.<sup>21</sup> For example, the KGB created the swastika epidemic in an effort to “discredit Western democracies” by provoking the implementation of hate speech laws.<sup>22</sup>

The authors use these international comparisons to provide an additional argument in favor of free speech by the example of social media companies. Likely because of robust free speech protections in Section 230, a disproportionate number of successful internet platforms are based in the United States.<sup>23</sup> This provides the benefit of high-paying jobs and a lucrative tax base. And there is likely a global benefit to reinforcing a system whereby the cultures that value free speech the most are consequently given disproportionate power to influence other countries.<sup>24</sup>

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16. MCHANGAMA & KOSSEFF, *supra* note 1, at 289–90.

17. *Id.* at 290.

18. *Id.* at 89 (quoting Loi 2018-1202 du 22 décembre 2018 relative à la lutte contre la manipulation de l’information [Law 2018-1202 of December 22, 2018 on the Fight Against the Manipulation of Information], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Dec. 23, 2018, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000037847559/> [<https://perma.cc/HGP4-64H4>]).

19. *Id.* at 99; Online Safety Act 2023, c. 50, § 179, <https://www.legislation.gov.uk/ukpga/2023/50/section/179> [<https://perma.cc/JV97-2N8R>].

20. MCHANGAMA & KOSSEFF, *supra* note 1, at 110; *id.* 22–24, 273–75, 308–10.

21. *Id.* at 18–19.

22. *Id.*

23. *Id.* at 73.

24. A similar phenomenon may be occurring regarding artificial intelligence where a highly disproportionate number of these companies are located in the United States due to our friendly legislation in this area. See C. Kibby, Richard Sentinella & Antony Hilton, *Global AI Governance Law and Policy: US*, IAPP (Sept. 3, 2025), <https://iapp.org/resources/article/global-ai-governance-us> [<https://perma.cc/R73K-A5MQ>] (“The U.S. federal government’s market-driven approach is intended to encourage rapid innovation and competitiveness in the world AI market. While other jurisdictions forge forward with comprehensive rules and requirements, like the EU AI Act, the U.S. has elected to leave the issues of systemic

The authors address many pressing topics not mentioned in this Review. The importance of focusing on the impact of censorship rather than the motivations behind it is also discussed, for example.<sup>25</sup> There is a chapter on Strategic Lawsuits Against Public Participation (SLAPP)—lawsuits weaponized to stifle speech—and the limitations of anti-SLAPP laws.<sup>26</sup> They provide examples of how censorship efforts fail to recognize obvious satire.<sup>27</sup> There are numerous examples of how the response to the COVID-19 pandemic affected free speech.<sup>28</sup> And free speech implications of new emerging technologies such as artificial intelligence deepfakes are discussed.<sup>29</sup>

## II. LIGHT CRITICISM

Because offering counterpoints is more informative than merely offering praise, this Section offers four light critiques. These include the pragmatism of addressing how allowing “hate speech” offers positive benefits, potential alarmism about new technologies, the distinction between public and private censorship, and claims about decreasing free speech protections.

This is likely not effective free speech advocacy as it unnecessarily concedes too much ground. While it is important to be honest about the potential harms that free speech entails, I argue that even extreme examples of “hate speech” should not be viewed as only worthy of protection on a lesser-of-two-evils theory. Instead, protecting abhorrent “hate speech” provides numerous positive benefits.<sup>30</sup> For example, allowing “hate speech” results in a populace that has a more accurate view of the beliefs of others—which is particularly important in a democracy.<sup>31</sup> It better affords others the opportunity to challenge those beliefs.<sup>32</sup> It fosters public discourse where counterarguments are made, thus better educating society as to the strongest arguments against the “hate speech” message.<sup>33</sup> Allowing “hate speech” likely facilitates social trust, which is essential to a productive society.<sup>34</sup> In extreme

risk management to voluntary self-regulation.”).

25. MCHANGAMA & KOSSEFF, *supra* note 1, at 314.

26. *Id.* at 162–72.

27. *Id.* at 131–34. The authors provide an example of protestors being arrested even after including the message “this is satire.” *Id.* at 131.

28. *Id.* at 106–07.

29. *Id.* at 90–98.

30. Michael Conklin, *Anti-Semitism and the Overlooked Benefits of Allowing “Hate Speech,”* 11 *IND. J.L. & SOC. EQUAL.* 197, 202–05 (2023).

31. Michael Conklin, *The Overlooked Benefits of “Hate Speech”: Not Just the Lesser of Two Evils,* 60 *S. TEX. L. REV.* 687, 690–91 (2020).

32. *Id.* at 691 (“Being aware of who holds objectionable beliefs also allows others in society to challenge those belief holders intellectually and potentially change their mind.”).

33. *Id.* at 692 (“[I]t is far easier to convince someone that your view is correct—regardless of how objectionable it is—if they have never been exposed to the counterarguments. In this way, the free-exchange of ideas in a society that respects free speech acts as a form of immunity, building up antibodies to combat objectionable beliefs that may be encountered.”).

34. *Id.* at 694 (“We are constantly trusting others to treat us in fair and

scenarios, the knowledge of who holds objectionable beliefs could be instrumental in protecting oneself from harm.<sup>35</sup> And there is even evidence to suggest that intermittent exposure to “hate speech” is beneficial to mental health.<sup>36</sup>

My second light criticism is that the authors may be overly alarmist about the threats from new technology. For example, they warn that “the integration of neurotechnology and AI brings us closer to a dystopian reality.”<sup>37</sup> Yes, new technology creates novel free speech issues to address—such as the real-life occurrence where an AI chatbot convinced a teenager to commit suicide.<sup>38</sup> But it is important to view such claims in the historical context of similar alarmist concerns of past technological advancements. For example, the printing press was seen as a threat because it allowed people to read unapproved books.<sup>39</sup> Some warned against the invention of photography on the grounds that it could only capture reality and therefore would stifle the more creative art form of painting.<sup>40</sup> Many doctors in the 1800s resisted using anesthesia, believing that there was a cathartic effect to experiencing the pain of a surgery.<sup>41</sup> And over 2000 years ago, Plato warned against the written word, because it did not represent true learning.<sup>42</sup>

My third, light criticism involves the distinction between public and private censorship. Commendably, the authors provide examples of private censorship, such as those by social media companies.<sup>43</sup> The authors rightfully address the nuanced

predictable ways. Allowing “hate speech” gives society more information to rely on when making these important decisions. This results in fewer instances of misplaced trust, which in turn, results in more confidence in the system of social trust.” (footnotes omitted)).

35. Conklin, *supra* note 30, at 206 (providing the extreme example that allowing antisemitic “hate speech”—and therefore being aware of who is antisemitic—could save the life of a Jewish person by putting them on notice of who not to accept a ride from late at night).

36. See Greg Lukianoff & Jonathan Haidt, *The Coddling of the American Mind*, ATLANTIC, Sept. 2015, at 42, 45 (providing the following example in the college campus context: “[V]indictive protectiveness . . . prepares [students] poorly for professional life, which often demands intellectual engagement with people and ideas one might find uncongenial or wrong. The harm may be more immediate, too. A campus culture devoted to policing speech and punishing speakers is likely to engender patterns of thought that are surprisingly similar to those long identified by cognitive behavioral therapists as causes of depression and anxiety”).

37. MCHANGAMA & KOSSEFF, *supra* note 1, at 244.

38. *Id.* at 261.

39. Harlan R. Johnson, *Printing and Censorship*, EBSCO (2023) <https://www.ebsco.com/research-starters/literature-and-writing/printing-and-censorship> [<https://perma.cc/J3ST-CYL7>].

40. Aaron Hertzmann, *How Photography Became an Art Form*, AARON HARTZMANN’S BLOG (Aug. 29, 2022), <https://aaronhertzmann.com/2022/08/29/photography-history.html> [<https://perma.cc/V2VS-ACDM>].

41. Adam Booser, *The Astonishingly Slow Progress Towards Surgical Anesthesia*, 118 MO. MED. 511, 514 (2021).

42. *Plato’s Argument Against Writing*, FS, <https://fs.blog/an-old-argument-against-writing/> [<https://perma.cc/GQU2-SD65>].

43. MCHANGAMA & KOSSEFF, *supra* note 1, at 61–74.

issue of governments pressuring social media companies to increase censorship.<sup>44</sup> And many of the principles for implementing free speech protections from the government are applicable to private entities.<sup>45</sup> Nevertheless, I would have liked to see a clearer delineation between public and private censorship.<sup>46</sup> In the United States, an integral part of free speech is the freedom of association.<sup>47</sup> Private individuals and companies maintain the right to curate the messages they publicize.<sup>48</sup>

My fourth and final light criticism involves the authors' frequent claim that we are in a "free-speech recession," an underlying premise of the book.<sup>49</sup> They certainly provide powerful examples of incidents where free speech rights were not upheld. However, assessing the net effect of all free speech changes is a highly subjective endeavor. Any claim regarding a net decrease in free speech must consider both sides of the equation; examples of decreased free speech protections in one area may be offset by examples of increases in free speech elsewhere.<sup>50</sup> Further problematic in attempting such an assessment is that there is no objective scale with which to make such a comparison, especially when it comes to degree. For example, is it a greater loss to free speech when a country of five million bans criticism of its government or when a country of six million bans criticism of a certain religion? Regardless, there is evidence to suggest that, in the United States, the censorship movement hit "peak wokeness" around 2022 and has been in decline since.<sup>51</sup>

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44. *Id.*

45. See Michael Conklin, Response, *Censorship by Any Other Name: A Response to Nadine Strossen on Private Censorship Online*, 61 WASHBURN L.J. 85, 92–96 (2021); Michael Conklin, *What's Bad for the Goose is Bad for the Gander: Censorship Is Harmful Whether Done by the Government or Private Industry*, W. NEW ENG. L. REV. (Aug. 10, 2021), <https://www.wnelawreview.org/post/what-s-bad-for-the-goose-is-bad-for-the-gander-censorship-is-harmful-whether-done-by-the-government> [<https://perma.cc/4VAM-K2WM>].

46. This is a frequent issue on the topic of free speech. For a discussion of this issue in another context, see Michael Conklin, *No Safe Spaces: A Distorted Image of a Clear Problem*, 2019 PEPP. L. REV. 80, 83–85; Michael Conklin, *Dershowitz Misses the Mark on Free Speech: A Review of The Case Against the New Censorship*, 46 S. ILL. U. L.J. 461, 461–62 (2022) (reviewing ALAN DERSHOWITZ, *THE CASE AGAINST THE NEW CENSORSHIP: PROTECTING FREE SPEECH FROM BIG TECH, PROGRESSIVES, AND UNIVERSITIES* (2021)).

47. See *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958).

48. See *FIRE Releases Statement on Free Speech and Social Media*, FIRE (Jan. 9, 2023), <https://www.thefire.org/news/fire-releases-statement-free-speech-and-social-media> [<https://perma.cc/NM8V-AYPA>] (“The First Amendment protects both a private actor publishing content the government wishes to suppress, and a private actor refusing to publish speech that the government wants them to host.”).

49. MCHANGAMA & KOSSEFF, *supra* note 1, at 4–7, 82–84, 315.

50. Michael Conklin, *Disappearing Act: Are Free Speech Rights Decreasing?*, 51 ST. MARY'S L.J. 699, 710–11 (2020) (reviewing RONALD J. KROTOSZYNSKI, JR., *THE DISAPPEARING FIRST AMENDMENT* (2019)).

51. See Michael Conklin, *Peak Wokeness in Legal Scholarship: An Empirical Analysis of Recent Trends in Progressive Topics*, 61 CAL. W. L. REV. 381, 389–98 (2025).

## CONCLUSION

The light criticisms advanced in this Review will hopefully not detract from the book's central achievement. For scholars, policymakers, and advocates grappling with the future of speech regulation in an increasingly global and technologically mediated public sphere, this book offers both a powerful warning and a constructive framework for thinking more clearly about what is at stake when societies choose censorship over liberty. Through international comparisons, historical context, and practical anecdotes of free speech triumphing over censorship, the authors provide a powerful and much-needed framework for free speech advocacy.