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Timothy Zick

William & Mary Law School, tzick@wm.edu

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Exporting the First Amendment

Posted By [Timothy Zick](#) On September 15, 2011 @ 3:05 pm In [Cyber Civil Rights, First Amendment](#) | [1 Comment](#)

One of the trans-border concerns I'll address in my book, *The Cosmopolitan First Amendment*, relates to the exportation of First Amendment norms and standards. Generally speaking, [provincialism and cosmopolitanism](#) ^[1] both aspire to facilitate the spread of First Amendment norms and standards — although, as I will explain in the book, they differ in important respects with regard to the preferred means of exportation.

In a broad sense, exportation can take many forms. For example, refusal to recognize foreign libel judgments may indirectly result in the exportation of American libel standards. Extraterritorial application of some U.S. laws may effectively export U.S. free speech principles to foreign countries. Voluntary, or court-ordered, compliance with First Amendment standards in cases where aliens' expressive or religious liberties are affected abroad would also constitute a form of exportation. Conditional spending measures could prohibit American companies working abroad from assisting repressive foreign regimes. Federal legislation might commit the U.S., at least in principle, to facilitating and protecting religious and expressive liberties throughout the world. Exportation through legislation may be somewhat effective in terms of expanding the domain of First Amendment norms. These and other measures may result in expansion of the First Amendment's actual domain, or at least signal an intent to facilitate expressive and religious liberties regardless of location. In truth, however, these measures are not likely to produce substantial exportation of First Amendment norms and standards.

Exportation is far more likely to occur through diplomatic and foreign affairs policies designed to facilitate expressive and religious liberties around the world. (I consider this exportation of "First Amendment" norms, broadly speaking, in part because this is one of the primary goals of such policies. Of course, other nations are committed to similar norms and values.) These efforts include U.S.A.I.D. programs, participation in various trans-national processes, and foreign affairs initiatives. Of course, there is no guarantee that these or any similar efforts to export First Amendment norms will be successful. (In this regard, one might read Margaret Blanchard's book, *Exporting the First Amendment: The Press-Government Crusade of 1945-1952* (1986)). However, in the long run, they are likely to bear far more fruit than the legal means of exportation discussed above.

The book will discuss several forms of exportation-by-diplomacy. The State Department's ["21st Century Statecraft"](#) ^[2] initiative demonstrates some of the complexities and challenges associated with this means of exporting First Amendment norms. One aspect of this program entails facilitating access to counter-surveillance and other technologies that will make it more difficult for repressive foreign regimes to stifle public protest and social movements. Although this Internet freedom initiative has been frequently touted by Secretary of State Clinton, its particulars have not yet been fully specified. As the WikiLeaks episode suggests, the U.S. has not yet determined the extent to which its commitment to Internet freedom will be tempered or affected by national security concerns. Finally, as [this recent op-ed](#) ^[3] observes, American and other technology companies have been involved in counter-productive endeavors such as providing software and other resources to repressive regimes — including Qaddafi's government.

If this sort of statecraft is going to be part of American foreign policy, it will probably have to involve some collaboration and coordination between government and private industry. Google's recent resistance of Chinese Internet repression shows that multinational corporations are likely to be important players in the realm of "21st Century Statecraft." Ultimately, the extent to which the U.S. is able to export First Amendment norms will depend in part on its actual and perceived power and influence across the globe — a subject of intense interest and debate in the twenty-first century.

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[1] provincialism and cosmopolitanism:

<http://www.concurringopinions.com/archives/2011/09/first-amendment-cosmopolitanism.html>

[2] "21st Century Statecraft": <http://www.state.gov/statecraft/index.htm>

[3] this recent op-ed: http://www.nytimes.com/2011/09/02/opinion/political-repression-2-0.html?_r=1&scp=1&sq=internet%20freedom%20technology&st=cse

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