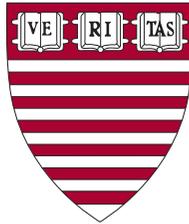


**RICHARD S. SALANT LECTURE
ON FREEDOM OF THE PRESS**

WITH

CLAY SHIRKY

Joan Shorenstein Center
PRESS ▪ POLITICS



▪ PUBLIC POLICY ▪

Harvard University
John F. Kennedy School of Government

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HISTORY

In 2007, the estate of Dr. Frank Stanton, former president of CBS, provided funding for an annual lecture in honor of his longtime friend and colleague, Mr. Richard S. Salant, a lawyer, broadcast media executive, ardent defender of the First Amendment and passionate leader of broadcast ethics and news standards.



Frank Stanton was a central figure in the development of television broadcasting. He became president of CBS in January 1946, a position he held for 27 years. A staunch advocate of First Amendment rights, Stanton worked to ensure that broadcast journalism received protection equal to that received by the print press. In testimony before a U.S. Congressional committee when he was ordered to hand over material from an investigative report called “The Selling of the Pentagon,” Stanton said that the order amounted to an infringement of free speech under the First Amendment. He was also instrumental in assembling the first televised presidential debate in 1960. In 1935,

Stanton received a doctorate from Ohio State University and was hired by CBS. He became head of CBS’s research department in 1938, vice president and general manager in 1945, and in 1946, at the age of 38, was made president of the company. Dr. Stanton was an early proponent of the creation of a Press and Politics Center at the Kennedy School. He served on the advisory committee for the proposed Center in the early 1980s and was on the Shorenstein Center’s advisory board from 1987 until his death in 2006.



Richard S. Salant served as president of CBS News from 1961 to 1964 and from 1966 to 1979. Under his leadership, CBS was the first network to expand its nightly news coverage to a half-hour on week-days; start a full-time election unit; create additional regional news bureaus outside New York and Washington; and launch *60 Minutes*, CBS Morning News and Sunday Morning programs. He was credited with raising professional standards and expanding news programming at CBS. Salant was known as both a defender of the news media’s First Amendment rights and a critic of what he considered the media’s excesses and failings. Salant graduated from Harvard

College in 1935 and from Harvard Law School in 1938. He worked in government and as a lawyer. Mr. Salant represented CBS in hearings before the FCC and Congressional committees and in a suit with RCA-NBC over which network would develop color television. Although CBS lost, Salant impressed the network’s president, Frank Stanton, who later appointed him vice president of CBS News in 1952.



Clay Shirky is a writer, consultant and teacher on the social and economic effects of Internet technologies. He has a joint appointment as Arts Professor at New York University in the Tisch School of the Arts, and as a Distinguished Writer in Residence at the NYU Arthur L. Carter Journalism Institute. His courses address, among other things, the interrelated effects of the topology of social networks and technological networks, how our networks shape culture and vice-versa. He was a Fellow at the Berkman Center for Internet and Society, and was the Edward R. Murrow Visiting Lecturer at Harvard

Kennedy School in 2010. Shirky is the author of two recent books on social media. *Cognitive Surplus: Creativity and Generosity in a Connected Age*, published in 2010, describes new forms of coordinated voluntary participation, ranging from political activism to the creation of lolcats, and *Here Comes Everybody: The Power of Organizing Without Organizations*, published in 2008, describes how the social media landscape came to be. These two books have been translated into 10 languages. He has written and been interviewed extensively about the Internet since 1996. His columns and writings have appeared in *Business 2.0*, *The New York Times*, *The Wall Street Journal*, *The Harvard Business Review* and *Wired*. He has given talks all over the world, including the U.S. State Department; Emerging Tech; the *Economist's* "Human Potential" conference; Tech4Africa; South by Southwest; and TED talks in Oxford, Cannes. Shirky was named one of *Foreign Policy's* "Top 100 Global Thinkers" in 2011.

RICHARD S. SALANT LECTURE

OCTOBER 14, 2011

Mr. Jones: I'm Alex Jones, Director of the Shorenstein Center, and it is my great pleasure to welcome you to the Fourth Annual Richard S. Salant Lecture on Freedom of the Press. Our Salant Lecturer is Clay Shirky. Clay is one of the most genuinely profound thinkers in technology, media, the press and values.

Before I introduce Clay I want to first spend a moment or two to talk about the two men who make today's lecture possible. This is an endowed lecture that we started four years ago and it's something in which we feel great pride.

Richard Salant was considered the greatest-ever head of a network news division for his tenure at CBS. This was during the time when CBS was truly the television news leader, the 1960's and 1970's. No coincidence that Marvin Kalb was there as well.

When Richard Salant became president of CBS News, the keystone nightly news program was 15 minutes long. There was no *60 Minutes*, no full-time unit assigned to covering elections. No *CBS Morning News*. He changed all that and made CBS the leader in raising television news to something respected journalistically in a way that it had never been before in this country. He stood for high quality news and a willingness to fight for that high quality. But I think it is important to mention another great CBS icon and I speak of Frank Stanton. Frank died on Christmas Eve of 2006. He was a great friend of the Shorenstein Center and the Kennedy School. He lived the latter part of his life here in Boston.

It is from a bequest in his will that the Salant Lecture was created. Frank Stanton was not a news man in the literal sense. To the best of my knowledge he never covered a story. But as president of the CBS network he was a champion of news and of press freedom. For one thing, he was Dick Salant's ally and champion. He made it possible for Dick Salant to win the reputation of being the world's greatest news division chief and made it possible for CBS to become respected as the nation's Tiffany network for news. The point is that this lecture could have been called the Frank N. Stanton Lecture on Freedom of the Press. That he named it instead for his friend Richard Salant was a decision of Dr. Stanton, who, among other things was remarkably modest.

Clay Shirky, our 2011 Salant Lecturer would have been a man after Dick Salant's heart. Dick was a man who was a ferocious advocate of what was in his time the new thing, television news. But he was also someone

who worried about news and technology, about where it was going and what the consequences — some unintended and largely unforeseen — would be. What the innovations of news that were happening, what impact they were going to have, and that they were happening at breakneck speed by the standards of the 1960's and 70's.

The difference between the worries of Dick Salant and Clay Shirky is that Dick, for the most part, had to do his worrying with money. The new

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world of TV was awash with money. Clay is trying to think about a news universe that is in many respects on the verge of insolvency, but at the same time is bursting with energy and imaginative new technology.

I think it's fair to say that Clay Shirky is one of the world's most sought-after and quoted public intellectuals on the social and economic effects of Internet technologies. His book, *Here Comes Everybody*, was a vision of a new world of online collaborative crowdsourcing in which the web would empower indi-

viduals in ways that would make the whole far greater than the sum of the aggregated parts. He speaks of algorithmic authority in which unverified information is vetted for its trustworthiness through multiple sources: The journalistic process re-imagined for a digital age.

Clay is on the faculty of New York University. We tried to lure him to Harvard, but he has kids in New York in school and he wouldn't leave. But even so, we had him for a semester as the visiting Murrow Lecturer, where he taught a course called New Media in Public Action. He did a great job, of course, and has remained a friend and partner to the Shorenstein Center and the Kennedy School. At NYU he is a distinguished writer in residence and also professor in the interactive telecommunications program. In the nerd world, he is a rock star. (Laughter)

He is listened to not just because of his thoughtfulness and insights on the impact of technology but because he infuses that thinking with values, including the importance of a free press. It is my pleasure to present our 2011 Salant Lecturer on Freedom of the Press, Clay Shirky. (Applause)

Mr. Shirky: Thank you so much, Alex. It is really a pleasure and an honor to be back at Shorenstein. I am of course here to talk about freedom of the press, and I want in particular to talk about freedom of the press as a relationship between actual technical capability, and a set of legal and

policy restraints that envelop and shape that capability. This is an ancient pattern; it well pre-dates the founding of the United States. In fact I think I can give you an idea of how ancient this tension is between regulatory power and technological capability by telling a story of a media revolution, but not our media revolution — the media revolution from 500 years ago.

After Johannes Gutenberg perfected movable type, it spread through Europe, and after a while a tradition of publishing Bibles in vulgar languages sprung up — French and Italian, Spanish and German and, in 1526, English. A man named William Tyndale had translated the Bible into English and proposed to print and sell copies to the English. Now, the Catholic Church, whose considered opinion on this matter had always been clear — “If Latin was good enough for Jesus, it should be good enough for you” — frowned on the production of these Bibles. In particular, the Bishop of London was especially alarmed at news of an English Bible being created. And so he sought to forestall the English Bible getting into the hands of English citizens.

Unfortunately for him, Tyndale and the Bibles were not in England, they were in Antwerp, for the obvious reason. As the Bishop of London’s power did not go across the water, Plan B was needed. Plan B was hatched in the person of a man named Augustine Packington, a wealthy British Catholic merchant who signed up for the job, went to Antwerp, and found Tyndale, whereupon, not 100 percent understanding the economics of the printing press, he proceeded to buy every extant copy of the English language Bible, and then burn them, thus creating an event that has only been whispered about in the halls of publishing institutions since, a guaranteed 100 percent revenue on a single transaction, alongside an enormous marketing boost and zero loss in demand.

It is hard to imagine a scenario more opposite to what the Bishop of London desired than that scenario. And this, of course, was but one skirmish in the long struggle between the Catholic Church and the increasingly restive publishers in the intellectual foment of Europe in the 1500’s. It was a period that came to be called the Counter-Reformation, as the church invented strategy after strategy to attempt to grapple with the Reformation. One of their strategies was to draw up, for the first time, an index of banned books.

They didn’t draw up such an index until the 1500’s, because the index of banned books was not a response to heresy. By that point the Catholic Church had been fighting off heresy for the thick end of a thousand years. It wasn’t even a response to heresy written down in books. There had been heretical codices for as long as the Codex had existed as a form. The index of banned books was a response to abundance. The threat that the Catholic

Church was trying to see off was that the heretical books were now widely available, written in languages that people who didn't read Latin could understand and, most alarming of all, they were becoming cheaper by the year.

Now, I will apologize for those of you who haven't seen the movie, I'm going to give away the ending: The Counter-Reformation failed to counter the Reformation. This list of strategies that the Catholic Church had tried over this period ultimately ended in a kind of a stalemate. And the Catholic Church called off the Counter-Reformation in 1648. Now, in almost any year in the 1600's the church announcing that the Counter-Reformation had ceased would be a good candidate for most important event of the year, but not in 1648, because something much more important happened in that year as a function of the same truce, which is the end of the Thirty Years' War, and the signing of the Treaty of Westphalia.

What the Treaty of Westphalia said was, "We are going to divide Europe into well-defined nation states. And we are going to retire our armies inside those borders and cease fighting with one another." And so the countries of Europe (and later the world as the model spread) took on the characteristic of geographically continuous areas — largely culturally and linguistic coherent populations, and single well-identified governments.

A curious thing happened to the media environment in light of the Treaty of Westphalia. It de-globalized. The media environment in the late 1600's was less global than the media environment of the early 1500's. No more printing things in Antwerp to be read in London, no more printing things in Venice to be read in Madrid.

Typically media, after Westphalia, was produced in the country where the consumers were. There were a lot of reasons for this. Some of them were quite practical. It's cheaper to print things near and ship them near than to print them far away and ship them far away. Some of it had to do with novelty. As more people started writing books the people who owned the printing presses had to be where the authors were and most of the people writing in French were in France. And the borders of the nation state, whatever else they became, became zones of sharply reduced information flow, such that it was possible to have two very different regulatory regimes controlling the press, operating side by side in different countries, with very little conflict between.

Now, a lot of media has been invented between 1648 and now. We've seen the telegraph and the phonograph and the photograph, we've seen motion pictures and the evanescence of all of same into the ether with radio and television. But curiously, despite all of the subsequent media

revolutions, the media environment has stayed nationalized. Media has tended to be produced in the country where it is consumed. And that has been especially true of political media. So despite all of the new kinds of media invented, the model worked out in the aftermath of the Treaty of Westphalia has remained intact for several centuries.

There are several reasons for this. Some of them are economic. The enormous amount of money required to own a printing press or to own a broadcast station can be most easily raised within the nation where the consumers of that medium are. Some of this is technological. It's easier for a radio station to broadcast near than to broadcast far. Some of this is regulatory. At several critical points in the 20th century, the United States had to make choices. The United States government had to make choices about regulatory regimes that would favor either a large number of small broadcasters or a small number of large broadcasters. And it consistently made the latter choice.

The United States prefers to work with a set of relatively large, relatively stable, relatively long-lived media institutions. And this existence of national encapsulation, the nation state as both a platform and a container for free speech, allowed us to essentially have it both ways in our current free speech environment. We could have an incredibly broad constitutional protection for free speech, and we could have a series of laws that said, "Well, you can't libel people and you can't reveal trade secrets and here are the controls on obscenity." And because the entire conversation took place within a national matrix it was possible for the legal system to balance out those competing interests, because the whole system was contained by those borders.

If you want to see how vital the national context still is, 350 years after its invention, I can do no better than to quote Marcus Brauchli, who gave the Salant Lecture last year. In that lecture, he told a story about the Pentagon coming to *The Washington Post*, his paper, asking that paper not to pub-

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lish a story that the Pentagon knew they were working on. Now, Brauchli's point of course is that the most powerful government in the world could not require or demand or order the newspaper to do anything. All they could do, said Brauchli, was to discuss the national interest and ask the editor to weigh the national interest against the decision to publish and

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then leave the editor to make his decision.

And it is indeed a glory of the American situation that our government cannot order our media outlets not to publish things. That was the part of the story that Brauchli was telling. But I want to call your attention to something he mentioned just in passing and called almost no attention to, which is the conversation the Pentagon had with *The Post* was about the national interest. The Pentagon could sit in that room and assume that everyone there was a citizen, that the insti-

tution they were dealing with was incorporated in the United States and subject not just to its laws but to its long-term political context. And that even if they disagreed, everyone in that conversation could be said to have something like the national interest of the United States at heart.

The model for that conversation began in the middle of the 1600's, and in this country, ended last April, with the publication of a video dubbed Collateral Murder, and put up online by the online publishing site WikiLeaks. Collateral Murder was the opening salvo of the release of a very large cache of State Department documents from the State Department's secure network. And the Collateral Murder video was a precursor to the release of a quarter of a million cables from the State Department, first filtered and redacted and then later, sadly, unfiltered and unredacted.

As this happened, and as people came to understand what WikiLeaks was doing, people cast around for the parallels in the history of freedom of the press. Very often, the parallels that came up were the ones that everyone reaches for as students of contemporary American democracy and media: *The New York Times'* decision to publish the Pentagon Papers and *The Washington Post's* refusal to reveal the identity of the informant in the Watergate case known as Deep Throat. But actors who were in those situations, Bill Keller at *The New York Times*, Floyd Abrams who was the lawyer who argued the Pentagon Papers case, have explicitly denied the Pentagon Papers or the Watergate case are the apposite comparisons here.

And although I disagree with those men as to why I think they are correct, I don't believe that the Pentagon Papers gives us the framework we need to think about WikiLeaks.

Compare the conversation with Marcus Brauchli and the conversation with Julian Assange, founder of WikiLeaks. There was no way the State Department could go to WikiLeaks and have a conversation that hinged on or even involved anything called the national interest. Julian is not a U.S. citizen, he is an Australian citizen. He was not operating on U.S. soil, he was in Iceland. The Pentagon Papers conversation took place entirely within the national matrix, and the WikiLeaks conversation took place outside of it.

I don't think that the apposite comparison is the Pentagon Papers. I think the apposite comparison for WikiLeaks is William Tyndale's Bible.

Julian is the publisher operating on remote soil. Reykjavik is our Antwerp; it is the environment that is far enough away from us that we can't get there. And the role of the Catholic Church is this time played by the United States government, the most powerful force that discovers its power stops at the water's edge, and it can't reach out and affect the media environment in the way that it would like. In an even worse parallel, the histrionic but unfocused reactions from various parts of the U.S. government, not least, alas, the Senate, called significantly more attention to those documents than there would have been otherwise, and caused the people at WikiLeaks so much consternation that they decided to distribute alternate versions of the encrypted file as a kind of doomsday device should WikiLeaks in fact be taken down.

This is partly because WikiLeaks was being pursued via extra-legal means to have its hosting arrangements taken away, to have itself cut off from financial services via the credit system, and so on. And the presence of those encrypted documents was one of the precursors to those documents finally being decoded, and for people who had risked their lives to try to help the United States now being subjected to plain identification, in clear text. From Tyndale's Bible

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to WikiLeaks I think history has repeated itself, but this time it was the second time that was tragedy.

Now, I don't want to leave you with the impression that WikiLeaks has caused this post-national media environment. In fact WikiLeaks' principal tool here wasn't their servers or their software or their people. WikiLeaks'

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principal tool was the Internet. When you have a medium that allows data to move from Kandahar to Reykjavik and from there to Madrid and London and New York, and to do so quickly and privately and above all cheaply, you have a medium that makes it easy to create these kinds of platforms. But because it's the Internet driving this post-national media environment, different countries discover this change at different times.

In Canada, in 1994, during a particularly lurid sex crimes trial called the Homolka-Teale trial, a Canadian judge enjoined the press from discussing the trial. As had happened in the past, this successfully stopped magazines and newspapers and radio and television from discussing the trial. But the Canadian judge discovered the ruling could not stop conversation on America Online and it could not stop conversation on Usenet. The national border had not become porous so much as irrelevant.

Five years ago in Italy a documentary made about the priestly abuse scandal, first discovered and documented in this city by *The Boston Globe*, that documentary movie was going to be shown to the Italian people on RAI, the Italian broadcaster. The Italian Parliament said, "Well, no, actually you are not going to do that. We forbid the national broadcaster from showing this documentary," at which point it was uploaded to YouTube and it stopped mattering.

Just last year I was talking to *The Guardian's* correspondent in Johannesburg who said, "I used to write about South Africa so that people in England could read about it. But with *The Guardian's* online presence and the number of South Africans connected to the Internet, I now have more readers in South Africa than I have in England." So an Englishman, in South Africa, writes for an English paper, to be read by South Africans. It's not how you would route the news if you were looking at a map, but sometimes other things trump geography, and increasingly that is the case.

Now, if I had to pick a spokesperson for the complicated and confused state of national regulation and post-national media, I would pick Judge Eady, a British judge who was asked to weigh in on a free speech case ear-

lier this summer. A British footballer was rumored to have had an affair with a young lady not his wife, who was both a model and a star on a popular reality television show. The tabloid headlines, they basically write themselves. But the footballer took out what is called a super-injunction. A super-injunction is a way of not merely instructing the British press not to write about something, but also instructing them not to mention the fact that there is something they can't talk about. It is like double-secret probation for newspapers.

And this lasted, as you might imagine, all of about 35 seconds. Tens of thousands of people on Twitter showed up and said, "Hey, Ryan Giggs is having an affair with Imogen Thomas, how about that?" And when it was pointed out to Judge Eady that the super-injunction had been utterly ineffective he said, "If the British populace is going to start behaving like publishing outlets, they are also going to have to start learning that the law applies to them as well."

Stay with that irony for a minute. The whole *point* of a super-injunction is not to tell the public something. But if every member of the public is a media outlet, you have to tell them the thing that they are not supposed to know in order that they can obey the law, thus eviscerating your court order by enforcing it. So Judge Eady gets my vote for the Not-Thinking-Things-All-The-Way-Through award, an award somewhat debased, alas, by the fact that it's given out about once an hour in the current media environment.

This is a dangerous moment for free speech. Not because we know how nation states and post-national media environments interact, but because we don't. We don't. And the reaction to that change, the reaction to the enormous increase in free speech as an actual practical capability could leave us in a considerably worse state than we are now.

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There is a lot of attention paid when thinking about freedom of speech, particularly as regards to the use of the Internet, on the world's autocracies, on Iran, on China, on Cuba. But of course there is nothing new there. Autocracies have always expended an extraordinary amount of resources to keep their people from communicating with one another or with the outside world.

The threat we face now is coming from the world's democracies. South Africa, which has discovered that a press that has more international

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coverage and more transparent access to data is getting uncomfortably close to some ties between the president's family and the issuing of state contracts for things like mining rights, has proposed a press tribunal which basically would, if enacted, have the right to

oversee the interaction of all of the press operating in that country, whether they were incorporated locally or globally.

South Korea in the aftermath of protests that shook Lee Myung-bak's government in the middle of 2008 has enacted a Real Names law, in which a South Korean citizen wanting to do so much as comment on a video must register their real name with that site in a way that is directly accessible to the South Korean government on demand. And to make it clear that this is not about increasing personal accountability but decreasing group coordination, the law only applies to sites with 10,000 or more users. This is not

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actually about individual behavior, this is about group synchronization. South Korea, because of this, is the first nation to get itself banned from YouTube by Google, rather than comply with the law.

In Italy right now they are debating a law which says anyone who has something written about them online that they don't like has the right to demand that that same site publish a reply, unredacted and uncommented on, in

full, within 48 hours, or be fined 12,000 euros. Here's two things that law doesn't propose. It doesn't propose that the accuracy of the statement is any sort of defense at all, and it doesn't propose any exemption for political speech. That may go through the Italian Congress next week.

Now, we would expect the governments of the world, even democracies, to be somewhat iffy about this. Democracies have always been fitful

supporters of free speech, and when they do support increases of free speech, they have typically supported it only incrementally. So it is disappointing but not surprising that the threats are coming from democracies. What's disappointing *and* surprising is the threat that is coming from mainstream media because they have typically been the most active, most vocal proponents of free speech and the most active opponents of states to restrict that speech. But in this case they are curiously quiet. Now, one need allude only lightly, especially in this gathering, to the commercial and competitive forces unleashed by new Internet competitors, as felt by the group of organizations we have learned to call traditional media, and to the affront to professional dignity to see citizens calling themselves publishers, merely because they have software that has a button that says Publish.

But even then, even then the temptation to assume that there is a separation that can be cleanly and coherently drawn between traditional publishers and the new participants in the media environment is pernicious. Bill Keller has gone out of his way to characterize WikiLeaks as a source, to talk about WikiLeaks in a way that explicitly denies that what WikiLeaks is doing is in any way related to what *The New York Times* is doing. But Joe Lieberman, God bless him, intellectually honest to the last, gave the game away last fall on the Senate floor. When people were looking for a way to charge WikiLeaks with a crime Lieberman got up and said we should absolutely do that, and we should go after *The New York Times*, too. Because Lieberman recognized what Keller denies, which is that any legal rationale for going after WikiLeaks is a legal rationale for going after *The New York Times*. What Lieberman fantasizes about is re-adjudicating the Pentagon Papers case, this time with *The New York Times* in the losing role.

Alex, I wish I had better tidings to bring you on the happy occasion of Shorenstein's 25th anniversary, but alas, I don't. I wish I could tell you that the expansion in free speech occasioned by these new tools is a lock, a done deal, so baked into the environment that it can't be uprooted and it can't be reversed.

Sadly that is not true. So I will say instead three things. First, 20 years from now, we are going to look back on this period, and we are either going to recognize it as the beginning of a revolution or as a funny interregnum. Because what the democracies of the world are asking for, like the index of banned books, is not a sensible

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return to a previously acceptable status quo, but instead a vast new set of powers unlike anything they had enjoyed previously.

If we are going to see this period as a revolution and not as an interregnum, we have to sign the democracies of the world, and particularly the United States of America, up for the idea that freedom of speech is something that has to be defended. It can't be allowed to be eroded piecemeal. In particular we have been quite good at talking about control of speech to the governments in Tehran and Havana and Beijing. But we have to get that good and better at holding ourselves to those standards, and in having that conversation with the governments of Seoul and Rome and Pretoria. If we don't hold ourselves to those standards, and we don't hold our democratic allies to those standards, we have no standing to lecture autocracies at all.

The second thing I will say is that if we are going to see this period as a revolution and not as an interregnum, we have to sign up the traditional media outlets for defense of freedom of speech, even on the part of the new entrants, yea unto the lowliest blogger. There is no way to draw a clean line that says, "Media incorporated before 2000, one set of rules, to the left. People publishing after 2000, another set of rules, to the right." Rationales for restricting speech are rationales for restricting speech, and the mainstream media needs to understand that notwithstanding the competitive pressures and the affront to professional dignity, with the digitization of all media well underway, there is only one media environment that matters and controls in that media environment will apply to all participants. We need to be very careful about thinking through the logic of this because we may be setting the stage, not just for the next few months, the next few years, but for the foreseeable future.

And the third thing I'll say is that if you wanted to take that problem on, you would want to do it from inside an institution that is committed in equal parts to thinking about the press and about public policy. I can think of nothing I would recommend more highly to Shorenstein in the next 25 years than thinking through the possibility of political speech in a post-national environment, and securing for ourselves some of the advantages we enjoyed in securing political speech in a national environment.

We could do this. We could see that this increase in freedom of expression, as a practical, lived experience for billions of people worldwide, remains part of the global fabric of conversation. But we could also lose. Not all counter-reformations fail. Last time, maybe we just got lucky.

Thanks. (Applause)

Mr. Jones: Clay is of course going to be taking questions. I want to ask the first one, Clay, if I may. You described eloquently the national framework that allowed the United States to have a First Amendment, but also

had such things as libel laws, recognition of genuine secrets and so forth. In the world that you see and the world that you see coming, is there any framework for those kinds of constraints or is effectively the only alternative to having a kind of autocratic control of these efforts to have a free speech that cannot probably be muted at all anyway, is there any mechanism for similar kinds of constraints that do put what I think most of us would say are sensible and civilized constraints even on free speech?

Mr. Shirky: Yes, there will be, I think — let me actually back up and say, first of all, one of the things I came to when writing *Cognitive Surplus*, the most recent book, is what I started calling the revolutionary's dilemma, which is to say that the more serious you are about believing something is a revolution the more you are confessing that

you can't predict the future. That if it's a revolution it can't be predictable. And if it's predictable it can't be a revolution. So my ability to see the move into the future that you are asking about is quite limited.

That having been said, I don't believe that we will ever end up in a completely unregulated free speech environment. We've never had one. I don't think we ever will have one. I think the risk right now is that we don't yet know what this looks like. And that especially at this level of struggle around free speech with this relatively new capability, almost all of the constraints that are being imagined are constraints that are fantasies about reversing the flow of time. But I do think we will hash out constraints over the long term. And I think that there are at least two axes on which that can happen. One is participation among respective nation states in the same way we work on financial regulations now. And there are both rogue actors and good actors, but once we are able to identify who is whom, we can start to negotiate free speech. Famously now controlled, the most pernicious forms of speech, e.g., child pornography, are worked out in exactly that framework.

The other is that in the early days of the WikiLeaks, in the Cablegate publications there was a commitment on the part of WikiLeaks to both filter and redact the files. And the fact that the files became unfiltered and unredacted was in a way a side effect of WikiLeaks' concern about U.S. concern, but there was a moment there where you could imagine that however much the United States didn't want that material to be published that it would have remained filtered had the reaction on both sides been different. And I think there are some basic human motivations around not get-

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ting people killed, for example, that do seem to apply to actors, even when you can't rely on the national interest as being the constraint.

But the key thing I think is that we need to build up those norms in negotiation and over time and that what I'm afraid of right now is that even the democracies of the world are not looking for new negotiated norms, but rather the button that says reverse flow.

Bernice Buresh: I work with public communication. I wonder if you would comment on the tendency of employers attempting to restrict the free speech of their employees. The example is there are many hospitals now that have very, very broad restrictions on nurses using the social media, not just in the workplace, but beyond that and what it's doing, it's terrorizing nurses, but it's also preventing them from getting clinical support, such as tweeting each other and so on. I think the bottom line of this is to prevent nurses from organizing in any way.

We don't have a public sphere online. We have a corporate sphere that tolerates public speech. And we have extraordinary legal unclarity about that.

Mr. Shirky: As with the South Korea Real Names issue. It's interesting, when Alex first invited me to come here and talk about this I had originally thought to talk about essentially everything. And I quickly talked myself out of that idea. But the other huge moving piece in all of this is the tension between the commercial desires of the platforms that offer up these tools for speech and the regulatory environment of commercial entities versus the requirements

of democracy to have an environment open for free speech. We don't have a public sphere online. We have a corporate sphere that tolerates public speech. And we have extraordinary legal unclarity about that.

This is essentially a re-adjudication of the *Pruneyard* case in the United States context — actually a series of cases — in which the question around free speech at commercial malls, as public space in the United States became commercially enclosed, the justices at both the state and federal level wrestled very uneasily, and to my mind have achieved nothing more than a kind of loose patchwork of compromise around whether or not people get to exercise free speech rights in commercial space. So that issue I think is core to this.

I will also observe that most of the concern around people using this media seems to my eye to center around women. That it is not typically a general concern. When you look at the number of people who have their private lives exposed and are then made to suffer for it, disproportionately female. I can't tell whether or not this is a press bias in covering those cases

or whether the harms are in fact unevenly distributed. Always when you look through the lens of the press you see two layers. But it is interesting to me and I suspect relevant to a nurses groups or a nurses union that there may be a gender aspect to this kind of control. You wonder, for example, whether or not doctors are subjected to the same restrictions. I don't know whether there are any legal avenues for that access. But that does seem to me to be a common element of these kinds of cases.

Nik Gowing: Clay, hi, nice to see you again.

Mr. Shirky: Nice to see you.

Nik Gowing: I don't know if you were here when I made an intervention with Anne-Marie Slaughter earlier, but I talked about the new brittleness and fortuity of power because of the environment you have written about and I have written about and other people here. But I'm building on that. I find it inconceivable — this is going to be an interregnum. I think there are areas, including in the authoritarian countries where they are trying to make sure it is only an interregnum. But I think it's going to be sustainable simply because of what Vivek Kundra said this morning, 0.0001 percent. I don't know if I've got the right number of decimal points, but we haven't seen anything yet. What you see at the moment is an inability of those in positions of power and responsibility to claw it back.

Lord Chief Justice Igor Judge commented, "modern technology is totally out of control," after 75,000 people tweeted the name, Ryan Giggs, following a court order barring the press from naming the athlete who was allegedly having an affair. Those who peddle lies on the Internet must be fined. I ask you to imagine how this is going to proliferate.

But look also at what happened with the British violence back in August when David Cameron decided when he came back from holiday rather belatedly, he said, well, we're thinking of introducing controls on Blackberry. Blackberry has now introduced their own controls, but that's another story. (Laughter)

And also on Facebook to stop people organizing demonstrations. And two people were jailed for four years for trying to organize a protest which never actually took place. I say that because the backlash was enormous in Britain. Politically it was unsustainable even though the Chinese government, actually through Tsinghua University congratulated David Cameron on introducing these measures. (Laughter)

Clay, we can laugh about this, but I think these are indications of why this cannot be an interregnum and, if you like, the power of the bottom up, the community at the base is going to make sure it won't be put back in its box.

Mr. Shirky: Nik, I hope that you are right. And I will say Nik wrote a piece some years ago called *Sky Full of Lies*, which was analysis of essen-

tially the change in the media environment from the point of views of exactly the kinds of decision makers Nik is talking about now. Cannot recommend it highly enough. I still assign it to my students as a discussion exercise.

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I hope that you were right. What I will say, I think, is that the threat is really the threat of national-level control of the re-segmenting of the network at the joints. The Chinese are doing this.

The Iranians have proposed a national Internet, etcetera, etcetera. But it may be that technology is perfected in an autocratic context. Start getting adopted by, e.g., the U.K. and Australian proposals for network level filtering. I hope very much that you are right. I spend a lot of time looking at the ways that the unleashed potential of group action is altering the relationship between citizens and the state. But I can't go all the way to no fear, in part because I think that when the democracies of the world are signing up to force their own citizens to identify themselves in public forums in ways that the state can see, that is closer to what Cameron imagined for himself in the U.K. than I think people in the West have cottoned to. And it's an actual lived reality in South Korea now.

So I think you and I are in agreement that it would be good if political speech thrived in a post-national environment, but I'm generally an optimist, but in this case I can't go all the way. I can't go all the way.

Alex Remington: Hi. Thank you. I'm a first year Master's in Public Policy candidate at the Kennedy School and a research assistant here at Shorenstein. I'm very interested in the dimensions of this post-national online environment. One thing that you had said is sometimes other things trump geography, but while national borders appear to be eroding, the same may not be entirely as true for national identity. It is still the case, I believe, that most French authors are still in France and most people reading South African news in an English newspaper are South African.

This Westphalian nationalism hasn't — or the erosion of it — hasn't cured the problem of babble. We are all interested in what we speak, where we live, who we are, who we know. So while *The New York Times* successfully ignored the British Official Secrets Act for many, many years, that didn't create this WikiLeaks controversy that you have identified. Ultimately the hope of free speech is that we will find out things we wouldn't have otherwise learned. But if the only people who care are already in our country then that does make them subject to some of the laws that are otherwise challenged. So I wonder if you could talk about what's truly different now?

Mr. Shirky: First of all, I think the basic analysis is absolutely right. That even without the national border as the zone of sharply reduced information flow as an edge there is still a censoring of particularly linguistic groups. I would say two things have happened that are different. One, particularly after the Judy Miller case in which the government was observably able to exert enough force to get what it wanted out of Miller and *The Times*, even though it was in the form of the source coming forward — if I wanted to leak something and I didn't want the U.S. to know, the lesson I would take from the Judy Miller case is: Don't go to the U.S. press. Don't go to anybody reachable by the U.S. government.

Now, the choice used to be that if I leaked it to a foreign paper it would not be read by local citizens. Now *The Guardian's* readership, to take just one example, is larger in the United States than it is in the U.K. So the question I'm asking myself is for anyone leaking anything, why would they ever leak it to a media outlet in their own country? Because this redirect does, as you say, put both the producer and consumer of information in the same country but moves the unveiling of the publicness of it outside the frame of national control.

One of the things that makes nation states' edges, zones of sharply reduced information flow, is that you speak French and I speak German. But between low-cost crowdsourcing and surprisingly good algorithmic translation, the ability of information to move in and out of a country without respect to the language of origin is higher than it has ever been in human history.

With the possible exception of some reporting from Tahrir Square and Sidi Bouzid in Tunis, we are not seeing many cases where that translation has had direct practical effects, but I think that day is coming. And that will be another erosion of this national edge case.

Andrew Robertson: I'm a former Shorenstein Fellow. As a historian I want to commend you for using a 17th-century case study. (Laughter)

But I also want to suggest that the result may be more complicated. So I'll introduce an 18th-century case study. The case of another instance where I think information transcended national boundaries and that is after the French Revolution in the Atlantic world. The responses by the British and the American governments were almost identical. That is the British introduced the Sedition Act in 1795 and the Americans followed

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with a language that was almost word for word identical in 1799. Now, it seems to me that what we see as a result is almost the immediate repeal on the American side, but the very long duration of the Sedition Act on the British side.

And I suggest to you that we may see a very similar phenomenon in the future. And it may not be all one or all the other, that we may see repression continue in some of the countries that you have described and we may see a more jealous regard for liberty in some of the others.

Mr. Shirky: I think that that is absolutely right. What worries me now is that the countries that we are used to seeing sign up for the jealous regard of liberty seem not to be doing it as much to my eye, in part because of the novelty of the threat, in part because of the post-national nature of the threat, and in part because the people usually goading them in that direction, the collection of organizations we have come to call traditional media, are not as eager to sign up to protect citizens acting as publishers or new competitive threats in the commercial landscape or foreign publish-

...traditional media are not as eager to sign up to protect citizens acting as publishers or new competitive threats in the commercial landscape or foreign publishers, almost on the grounds that their traditional role is being undermined.

ers, almost on the grounds that their traditional role is being undermined. And that is, I think, probably the right answer commercially and almost certainly the wrong answer politically. And that is one of the log jams I'm concerned about.

Andy Glass: Hi. I'm a former Fellow here. This was a brilliant lecture to a concerned audience and I thank you for it. My question is if we had a referendum or constitutional convention today on certain aspects of the Bill of Rights, beginning with the First Amendment, what do you think the American people would do? Would

they reaffirm the First Amendment or would they say, too much, we've gone too far, let's do it again.

Mr. Shirky: I think that the number of times that the language of the First Amendment has been taken out and given to people as a petition to have them not only not sign it, but to accuse the people circulating the petition of potentially having seditious attitudes towards the United States will give us the answer to that question. One of the enormous, enormous tensions around this kind of liberty, and it was alluded to by Nik Gowing earlier, which is that there are times when signing up for long-term freedom

means tolerating certain classes of short-term harm. And it is very, very difficult, particularly in a mood in the country as dark as now to get that to happen.

I don't have much hope that one could completely re-adjudicate free speech as a *de novo* concept in this country or in some of the world's stable democracies and get the same result. But what I do see is the country's entering into that possibility, particularly reading the things that Tunisians are saying about the design of their constitution. It is in a way one of the things whose importance you forget once it becomes part of the background of your life. And I'm afraid that that's where we are in the U.S. So I don't think that were we to undertake a direct referendum of these issues that it would be the way to advance this idea.

But I also don't think we need to. I think in a way what we need is for the traditional defenders of free speech in the United States government and traditional media to sign up for those roles again, even against the short-term disorientation of the current environment.

Mr. Jones: Last question.

George Mokray: I'm an independent scholar. Earlier today some people were talking about media as asymmetric warfare, now with the Internet. And you are talking about post global. I look at this and I follow John Robb and Martin Van Creveld, who talk about fourth-generation warfare, asymmetric warfare, global guerillas, highly empowered small groups of people who are able to create the kind of actions that formerly nation states were able to do so. That's a further level of fragmentation which I would like you to address, if you can.

Mr. Shirky: It's interesting. Anne-Marie Slaughter is gone, but one of the things that we have spent a lot of time talking about is the way in which, for people who think about foreign relations, the phrase "non-state actor" is like the phrase "horseless carriage." It principally defines the future in terms of how it differs from the familiar past and assumes that a new class of actors can be described with reference to the thing that they are not like that we are really familiar with. I think that the rise of non-state actors, John Robb in particular, that line of thought focuses on non-state actors in explicitly conflict-oriented situations.

But when you look at things like the campaign to ban land mines, which came out of nowhere, and generated a consensus among the world's governments in nothing flat relative to previous attempts to change

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people's minds, or when you look at the transnational nature of protest movements now — there are fliers in lower Manhattan explicitly referencing Tahrir Square as a rationale for occupying Wall Street — and whatever you can say about the coherence of those parallels, the awareness of non-

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state action as a just-lived capability is, I think, one of the big forces shaping it.

When I look at the media environment, as you know from the class Alex invited me here to teach last year, when I look at the media environment and the effect on non-state action I break it down into three elements: the synchronization of opinion, the coordination of action and the documentation of results. And when you look at things like the Egyptian situation in the lead up to the Arab Spring you see bloggers talking to each other over a course of years just to synchronize their opinions about

Mubarak. Then you see uses of the tools to coordinate action, the ability of these citizens to say in advance, we're hijacking national police. They were telling you now that in the future there will be a protest in Tahrir Square. Not only do we not need permission from the state media to arrange that

Not only do we not need permission from the state media to arrange that protest, they can't stop us from telling you.

protest, they can't stop us from telling you. And then of course the thing I underestimated that has turned out to be enormously important is documentation of the results. Here we are in the Pearl Roundabout in Bahrain and I am giving you video evidence the government is using live fire against its own citizens.

While the global guerilla analysis takes a slice of that, I think that the general pattern of increasingly coordinated non-state action is going to be a big part of this post-national matrix, whatever you want to call it.

Mr. Jones: Clay, thank you so much.

Mr. Shirky: Thank you. Thank you, very much. (Applause)