**On June 1, 2017,** [**Floyd Abrams**](https://www.carnegiecouncil.org/people/floyd-abrams) **gave a talk at the Carnegie Council for Ethics in International Affairs on his new book** [***The Soul of the First Amendment***](https://www.amazon.com/dp/B06XX1GG9R/ref%3Ddp-kindle-redirect?_encoding=UTF8&btkr=1)***.* Abrams, a strong defender of freedom of speech, has represented numerous media outlets in First Amendment cases and provided an *amicus curaie* brief on behalf of Senator Mitch McConnell in** [***Citizens United v. Federal Election Commission***](https://en.wikipedia.org/wiki/Citizens_United_v._FEC)**.**

**The excerpt below provides a detailed comparison of how and why the United States treats freedom of speech--particularly hate speech and the right to privacy--differently than in Western Europe. *The excerpt of the transcript of the talk has been modified for the classroom.***

...Many constitutions around the world are phrased in terms of individuals, people, [and] citizens having rights. The Bill of Rights is not that. The Bill of Rights [and specifically the first amendment] says, "Congress shall make no law which abridges the freedom of speech or of the press." It was deliberately phrased negatively to make very clear that these were boundaries over which the government could not go.

Of course, the Bill of Rights applies *only* to the government. We do not have free speech rights in the Constitution against each other; people can be fired for their political views. That may violate other laws, but not the Constitution. The Constitution limits only the government. By its terms, "Congress shall make no law." Congress was later expanded to be the president, the states, the cities, public officials in general, but the government. So we have a government which is limited in power by the Bill of Rights purposely, and it has wound up to be a Bill of Rights which has provided more power to the public, more limitations on the government, than exist in any other democratic state [country].

For example, the subject of hate speech—terrible, vile speech aimed at minorities, often in the grossest of terms—every other democratic country in the world, in one sort of language or another, bans, criminalizes, hate speech. And indeed, the United States is a party to an [international convention on civil rights](https://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights%22%20%5Ct%20%22_blank) which basically says that "every country shall take steps to protect people against that," but when President [Carter](https://en.wikipedia.org/wiki/Jimmy_Carter%22%20%5Ct%20%22_blank) signed that, he had to attach a "reservation," as it's called, saying "this is all subject to the U.S. Constitution," which means that we can't adopt legislation of the sort that other countries have...

So where do we come out then? Example: In Saskatchewan, Canada, a [religious zealot](https://en.wikipedia.org/wiki/Bill_Whatcott%22%20%5Ct%20%22_blank), learning that homosexuality was going to be taught about in the high schools in Saskatchewan, printed out fliers, which he put in mailboxes all around town, denouncing the idea of teaching about homosexuality in the schools, and phrased it very broadly and very crudely. One line: "If Saskatchewan sodomites have their way, your school boards will be celebrating buggery." There was that, and there was a lot worse than that, all aimed at, and derogatory about, gay people. He was [convicted](https://en.wikipedia.org/wiki/Saskatchewan_Human_Rights_Commission_v_Whatcott%22%20%5Ct%20%22_blank) of a crime in Canada just a few years ago. The crime was the speech; the crime was what was on those fliers that were put in the mailboxes.

Compare that to here...The [Westboro Baptist Church](https://en.wikipedia.org/wiki/Westboro_Baptist_Church%22%20%5Ct%20%22_blank) [is] a family that travels...around the country when there are funerals of American soldiers who have been killed in [Iraq](https://en.wikipedia.org/wiki/Iraq_War%22%20%5Ct%20%22_blank) or [Afghanistan](https://en.wikipedia.org/wiki/Afghanistan_War_%282001-%29%22%20%5Ct%20%22_blank), with ugly, vile signs, denouncing the soldiers by name—they don't even know anything about the soldiers—and saying, "This is God's punishment for America's too favorable treatment of homosexuals." The signs are filled with "God hates f-gs," "f-gs doom nations," "f-g troops." Some of the language was celebratory about the death. They always obey the police. They never get closer to the place of the burial or the church...than the police allow, but they're always just outside there, with their signs.

And the father of one deceased soldier brought a [lawsuit](https://en.wikipedia.org/wiki/Snyder_v._Phelps%22%20%5Ct%20%22_blank) saying that the family ought to be able to recover, as a result of the nature of the insult, the calumny aimed at his dead son. The case went to the Supreme Court just a few years ago, and the Supreme Court, taking a uniquely American approach to it, said in so many words, "Not only is this the sort of speech which cannot be punished, it is the sort of speech which requires special protection, and is given special protection under the First Amendment because it relates to matters of public interest and concern," not the soldier, which might be private...The Court said, "The political and moral conduct of the United States, homosexuality in the military, scandals involving the Catholic Church"—there were some anti-Catholic things there too—in an 8-to-1 opinion written by the [chief justice](https://en.wikipedia.org/wiki/John_Roberts%22%20%5Ct%20%22_blank), that "This is the sort of speech which may not be elegant or attractive or anything good, but it is the sort of speech we protect."

We see that again and again in different areas. [Criminal action] was brought in England and one in Belgium, both just a few years ago, where people were carrying signs [with hate speech]. One in Belgium: "Belgians and Europeans first. Stand up against the Islamification of Belgium." The European Court of Human Rights (ECHR), the highest court in Europe that deals with civil liberties issues, affirms the conviction of the person who was carrying those signs, saying that such language might be effective, especially "with less knowledgeable members of the public."

In England, signs with pictures of the World Trade Center falling, and the language, "Islam out of Britain. Protect the British people" and another sign saying "Don't come over to this country and treat it like your own. Britain first."

One way to say it is that [Donald Trump](https://en.wikipedia.org/wiki/Donald_Trump%22%20%5Ct%20%22_blank), when he was [running for president](https://en.wikipedia.org/wiki/Donald_Trump_presidential_campaign%2C_2016%22%20%5Ct%20%22_blank), said things which would have been criminal throughout the entirety of Western Europe about Muslims, Mexicans, and the like. The penalties, by the way, for these people, some of whom were legislators, was in one case somebody couldn't run for office for 10 years; in another, a fine being imposed.

But it is a total difference in approach in terms of the level of legal protection that is afforded and the degree to which the law is really based on a concern about having government involvement in [speech]. We refuse to define what speech is, and other democratic countries—Canada, England, and the like—do define it, and do say, and have said, "If you want to say 'Islam out of Britain,' that's a crime. It is picking on an oppressed minority."

A final example: In Europe now they have adopted what is referred to in their cases as a "[right to be forgotten](https://en.wikipedia.org/wiki/Right_to_be_forgotten%22%20%5Ct%20%22_blank)." It is a notion, privacy-based, that if enough time has passed after somebody has done something which has been written about, and whatever it was is no longer "relevant," that Google and other entities which reprint, as it were, or carry old information of that sort, should not be permitted to do so if the individual involved complains.

So a person in Belgium went to Google and said: "Twenty-two years ago I was the driver of a car which resulted in the death of two people. It was in the newspapers. On Google it is my only listing. It has been 22 years. I'm not a public person, I'm a private figure, and I don't think Google ought to be allowed to carry that." And the person won.

The law throughout Western Europe—not Canada—is that if enough time has passed—and I have to speak vaguely because the language is vague—if the information is not relevant, which it is usually interpreted to be if it is an otherwise private person—they wouldn't say this about a politician who had been in an accident 22 years ago, but a private person—if it's no longer relevant, that Google can't carry it if the person protests.

Here, I am confident our courts would say: "We don't kill history. If it's true, it's true. If somebody finds it out, he could publish it now for the first time, and he can publish it 22 years later. Google and its competitors are the place where most people get most information these days about the past, and we're not going to start down the road of making such information unavailable."

As of this time, over 500,000 newspaper articles have been banned from Google throughout Western Europe because of this right to be forgotten. The way it works is that Google has to decide first after the protest or the request to drop it, what's relevant and what's not, and if the person disagrees, if Google says, "No, we think we should continue to carry it," they can go to court and get a court order, and that's what the person in Belgium did, in the case that I described to you.