Chapter 9: Liberalism and Its Critics

Adventures in Ethics | Brendan Shea, PhD (Brendan.Shea@rctc.edu)

In this chapter, we’ll be talking about the idea of political **liberalism,** a political philosophy that emphasizes the rights of individuals to pursue their *own* ideas about the good “life” without interference from either the government or other people. This has been as a powerful political idea in modern democracies (such as the US) among both “left-wing” and “right-wing” thinkers. However, this idea also has its critics, and we’ll explore some of their reasons for disagreeing with liberalism. We’ll begin by talking about John Stuart Mill (and Harriet Taylor Mill), whose work provides some foundational ideas. Then, we’ll move on to a “test case” for liberalism—laws regarding pornography.

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# Let’s Meet the Mills!

**John Stuart Mill** published “On Liberty”[[1]](#footnote-1) in 1859. In the introduction, he states that much of the work was a collaboration with his wife, **Harriet Taylor Mill,** who had died in 1858. “On Liberty” is considered one of the founding texts of modern liberal political philosophy[[2]](#footnote-2), and helped inspire both left-wing liberalism and right-wing libertarianism. In order to understand what Mill is up to, it’s important to distinguish between two very different sorts of “liberty” or “freedom” that we need to consider:

* In democracies and republics, citizens have the freedom to govern themselves. This primarily consists of “political rights” such as the right to vote and the right to hold elected office. Citizens living in monarchies, dictatorships, or theocracies do not have this sort of freedom. This sort of freedom was emphasized by political philosophers like John Locke, and was one of the main ideas behind the American and French revolutions. We’ll call this **political freedom.** Mill is NOT concerned with this.
* A *different* sort of freedom concerns “how much freedom a society allows each individual citizen.” This concerns things like rights to freedom of speech, religion, private property, firearms, and so on. We’ll call this **civil liberty.** This type of freedom is the subject of Mill’s essay.

Mill notes that having political freedom does NOT guarantee that one has civil liberty—that is, he argues that democracies can and do infringe on civil liberties. This is possible because of the **tyranny of the majority,** which occurs when the majority curtail the civil liberties of the minority. Mill argues that democratic societies (such as the US, UK, Canada, etc.) ought to respect civil liberty.

## When is It OK to Prohibit Actions? Mill’s Harm Principle

In “On Liberty,” Mill defends what is now called the “Harm Principle.”His explanation is as follows:

The object of this essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties or the moral coercion of public opinion. That principle is that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of anyone for which he is amenable to society is that which concerns others. In the part which merely concerns himself, his independence, is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.

The **Harm Principle** can be defined as follows: *the ONLY reason for prohibiting and an action is if it the action either directly harms of other people, or puts other people at a significant risk of imminent harm.* The Harm Principle is AGAINST the following sorts of laws:

* **Paternalistic** laws,which are adopted in order to stop citizens from harming themselves. For example, Mill is opposed to laws that prohibit drinking or gambling. Mill thinks its fine to treat *children* paternalistically; he just doesn’t think these sorts of laws should be applied to normally functioning adults.
* **Moralistic** laws, which prohibit actions that the majority finds “immoral” (but which don’t directly harm others). For example, Mill is opposed to laws that prohibit polygamy are of this type.
* Laws based on “**mere offense**,” in which certain acts are prohibited because they offend various people. In general, Mill is against laws that restrict freedom of speech or of the press, even if the language used offends others.
* Most modern liberals oppose things such as immigration restrictions for reasons other than security (for example, it’s fine to keep out actual terrorists; however, you can’t keep people out who haven’t done anything wrong). They also support the “separation of church and state.”

Some examples of actions that CAN be legally prohibited include the following:

* Actions that directly harm others, such as murder, theft, assault, rape, and so on. For example, Mill thinks that slavery clearly violates the Harm Principle and so should be forbidden even if the “democratic majority” happened to approve of it.
* Actions that cause a substantial risk of harm to others, such as drunk driving or polluting drinking water.
* Speech used to cause a harm. Mill’s example: it’s fine to write a newspaper article saying that corn merchant are “robbing the poor,” and it would be wrong for the government (or even society) to “punish” someone for writing this. By contrast, it’s not OK to make a speech like this when you are outside a corn merchant’s house, and are trying to convince a crowd of people to go in and kill the corn merchant.
  + A question: How can we make this sort of distinction when it comes to things like social media?

## Why Should We Accept the Harm Principle?

The Harm Principle is based on the idea that we should allow adults to live however they like, provided they don’t harm others. It emphasizes the importance of allowing *individual choice.* But why should we think that this is a good principle? Mill offers several reasons:

* **It makes for better (more creative, thoughtful, knowledgeable, and responsible) citizens.** While society can (and should!) educate children about history, science, and so on (this allows us to learn from the past), it would be wrong to *make* adults behave in the “normal” or “customary” way. Why? One reason is that allowing for freedom of action makes citizens *think* about the way they want to live their lives, and consider the possible *reasons* for and against certain sorts of actions. This helps them in their personal lives (they are more likely to be creative and successful) and in their political lives (they make better decisions when voting, and are more likely to care about their fellow citizens).
* **It allows for “genius,” and allows for the advancement of civilization.** Society would never get any better if we didn’t allow people to “go against the grain” and behave “eccentrically.” For example, early critics of slavery and defenders of women’s right were considered weird. Of course, many eccentric people are NOT geniuses, but a society that tolerates eccentricity is much more “genius friendly” than one that requires conformity.
* **In general, it will make individuals happier.** Since each individual person differs in terms of psychology, skills, and desires, people will (generally) be happier if they are free to choose how to live than if society tries to make everyone behave the same.

## Liberalism, Left And Right

Mill uses his Harm Principle (along with his Utilitarianism and his economic theories) to defend a political philosophy that might be called **social liberalism** (or “left-wing liberalism”)**.** Along with the Harm Principle, it is characterized by the following claims (not all left left-wing liberals would agree with Mill on all of these claims, though):

1. **Taxes to help the poor are often OK.** Because Mill thinks that society as whole—as opposed to just individual entrepreneurs or business owners—contributes to the creation of wealth, he thinks the government can justifiably tax rich individuals and corporations (and it can use tax revenue to prove aid for the poor).
2. **The government can (sometimes) protect us from other powerful institutions.** While the government is one threat to civil liberties, civil liberties can ALSO be threatened by private institutions (such as families, religions, or businesses). So, for example, women’s behavior was often controlled by their husbands; and (legal) political activity was often suppressed by employers, who would threaten to fire employees who “said the wrong thing.” Minorities are often harmed by racist business owners (who won’t to hire them). Mill suggests that the government can (in some cases) intervene to help protect vulnerable individuals.
3. **It is (sometimes) OK to militarily intervene in other countries in the name of “human rights.”** Mill is a “liberal interventionist,” who thinks that it is sometimes OK to forcibly intervene in foreign nations to help protect the rights (and lives) of the people living there. For example, he supported the Union in the US Civil War because he thought slavery was immoral. He also supported Britain’s war in Crimea versus Russia (just as most liberal interventionists supported giving aid to Ukraine in 2022 versus Russia). However, he was also in favor of “imperial” British rule in Ireland and India, for which he has been criticized. (He justified this by arguing Irish/Indians lacked the necessary political culture for self-rule. In Mill’s defense, he did seem to have reservations about this late in life, when British rule in Africa *obviously* wasn’t intended to help the people being ruled).
4. **Effectiveness matters.** Mill does NOT think it is always OK to redistribute income, regulate businesses, or use military force to protect human rights. Such things are only OK if we can provide evidence that the policy in question *will actually work,* and that it doesn’t violate anyone’s fundamental rights to speech, religion, etc.

Mill’s version of left-wing liberalism is fairly close to the more modern “liberal egalitarianism” defended by 20th century philosopher **John Rawls** and his followers. Other notable liberals include the economist **Adam Smith** (sometimes called the “father of capitalism”) and the contemporary philosophers **Kwame Appiah** and **Peter Singer.**

Other liberal thinkers, sometimes called **libertarians** (or “right-wing liberals”)**,** *accept* the Harm Principle (this is what makes them “liberals”), but *reject* many of Mill’s other claims. These thinkers generally claim the following:

1. **Taxes to help the (adult) poor are rarely OK.** Libertarians think that many forms of taxation DO violate the Harm Principle, since taxation essentially involves making people spend a significant portion of their time “working for the good of society.” They think Mill is inconsistent in calling for higher taxes.
2. **The government should rarely interfere in religion, family, or business.** Libertarians do NOT think the government should intervene in the affairs of families, religions, or businesses in attempts to protect civil liberty. Why? Because any intervention would itself interfere with the civil liberties of *other* people.
3. **The government should rarely, if ever, use military force to defend “human rights.”** Libertarians are generally AGAINST intervening in the affairs of foreign countries, except when this is required for self-defense. (One exception: Some libertarians, like some left-wing liberals, are “cosmopolitans” who think that we have a duty to protect the liberal rights of all people).
4. **Effectiveness does NOT matter.** Libertarians do NOT care whether taxes, military force, or regulations “work” or “don’t work”—they are against such things “on principle.”

Some examples of libertarians include classical philosophers like **John Locke**, but also more recent philosophers such as **Robert Nozick,** **Frederic Hayek,** and **Jason Brennan.**

## Not Everyone is a Liberal

Finally, there are a number of thinkers who are NOT liberals, on both the left and the right. Many of these thinkers might be called **communitarians[[3]](#footnote-3),** since they think the society (and the government) has a duty to preserve the values and traditions of the “community”, as opposed to simply “letting people live as they wish.” They often adopt ethical theories such as virtue ethics or natural law theory. Historically, many communitarians have been religious, but this isn’t necessarily part of the view.

1. **Left-wing communitarians** tend to focus on “protecting” people from the various ways in which capitalism can harm them. So, for example, the Harvard professor (and communitarian) Michael Sandel has argued that liberalism allows for huge gap between the “elite” (who go to fancy schools, and get high-paying jobs in medicine, law, or finance, and who dominate much of the media) and everyone else. He also thinks liberalism doesn’t do enough to address the root causes of things like racism and sexism. He argues the government (and other institutions, such as universities) should take measures to narrow these gaps. Left-wing communitarians are often sympathetic to certain aspects of **Marxism** (such as a concern for equality).
2. **Right-wing communitarians** have often been associated with promoting the precepts of fundamentalist versions of a religion (whether this be Christianity, Islam, Hinduism, Buddhism, Confucianism, or Judaism). More recently, they have been focused on protecting the “native culture” from immigrants, liberal teachers and news outlets, “deviant” ideas about sex/gender, and the like. Like left-wing communitarians, they tend to be distrustful of the “elite”, and believe the government can and should help promote their values. They are often associated with so-called **cultural conservatives.**
3. Communitarians of all types (unlike liberals) think that the government/society can (and should!) be fairly aggressive about educating children “the right way,” and on making sure that we help “push” people in various ways toward leading the “right sort of life.” They tend to focus on the people who *suffer* because of liberalism (for example, the people who never “find their way” in life, and end up addicted to opiates). They do NOT share the liberal belief that freedom of speech or action is always good. Both left-wing and right-wing communitarians, for example, tend to pretty suspicious of liberal ideas about legalizing drugs, prostitution, immigration, etc. They are often opposed to pornography, and more open to governmental funding of community or religious institutions.
4. One argument for communitarianism is the (supposed) **self-defeating nature of liberalism.** The idea is basically this: in liberal societies, we let people say and do whatever they want. This notably includes things like advocating for views like fascism on social media. In the long run (so the story goes), the most “extreme views” win out, overthrow democratic government, and replace it with something much, much worse. Communitarians propose that we “nip this problem in the bud” and aggressively try to stamp out such bad views before they have a chance to spread.

Communitarianism (particularly in its religious forms) is, in many ways, a much older philosophy than liberalism. However, liberalism was the dominant way of thinking about politics for most of the 20th century (and early 21st century) among both the “left” and “right.” One reason for this was likely the huge problems caused by non-liberal governments (with Nazi Germany on the “right” and Stalinist Russia on the “left”). In recent years, however, communitarians have again gained steam, with left-wing communitarians focusing on issues such as “hate” speech, and right-wing communitarians arguing for major restrictions on immigration. Both groups have been very involved in arguing about the values we should try to instill in children during K-12 education. Liberals, for their part, have been warning (in increasingly dire terms) on the bad consequences of all this for personal freedom.

## Review Questions

1. In your own words, explain Mill’s “Harm Principle.” Now:
   1. Give an example of an action that would be allowed by this principle, even if the majority of people disapproved of it.
   2. Give an example of an action that would NOT be allowed by this principle even if majority of people approved of it.
2. Which of the following laws do you think that liberals (and Mill) should/would approve of? Why
   1. Laws outlawing the sale of one’s own kidneys.
   2. Laws outlawing the sale and use of addictive drugs, such as heroin, cocaine, and meth.
   3. Laws outlawing prostitution by adults (How does the situation change for child prostitution?)
   4. Laws prohibiting the ownership of certain weapons: rifles, handguns, military grade explosives, chemical weapons.
   5. Laws requiring a basic education for all children, even if the parents do not want this.
   6. Laws prohibiting “hate speech” directed against members of different races, religions, sexual orientations, and so on.
3. What sorts of things do liberal egalitarians and libertarians agree on? What do they disagree on? Can you give an example of a current debate where left liberals and libertarians might disagree?
4. Overall, how would you describe the differences between the various sorts of political positions? What do you think of each? (Remember: Liberals accept the “Harm Principle” while communitarians don’t).
   1. Left-wing liberal (social liberal)
   2. Right-wing liberal (libertarian)
   3. Left-wing communitarian or Marxism
   4. Right-wing communitarian or cultural conservative.

# Pornography, Free Speech, and the Harm Principle

In this section, we’ll be thinking a few closely related questions related to pornography by considering arguments given by the contemporary philosophers Susan Brison and Andrew Altman[[4]](#footnote-4). While this might seem like an “odd” philosophical question, it actually touches on a number of pretty important questions in political and moral philosophy. Among these are the role of the Harm Principle in liberal democracies, the limitations on **free speech**, and the distinction between “what’s (not) morally OK” and “what we should (not) legally allow citizens to do.

## What Exactly is Pornography, Anway?

Like many morally important concepts (such as *consent, intent, reasonable doubt,* or *person*), it’s actually pretty difficult to say what exactly *pornography* is. Here are some proposed definitions:

**“Pornography can be defined as *sexually explicit material.*”** This definition is close to that used by traditional cultural conservatives (especially in the 19th and early 20th centuries). It has some obvious problems, however: it changes according to time and place (in some cultures, a woman’s bare ankle is sexual explicit, in others, going topless is not), it includes things that are *obviously* not pornographic (anatomy textbooks), and it bans lots of art (anything with naked people).

* Most contemporary ethicists and legal scholars think this is a bad definition, since it classifies things together which we want to make moral and legal distinctions between.

**“Pornography can be defined as material primarily intended to produce *sexual arousal,* and which lacks artistic merit.”** This definition is close to that used by US Supreme Court, which appeals to “community standards” to define pornography: would an *average member of the community* think that this was primarily aimed at sexual arousal? That it was offensive? That it lacked artistic merit?

* While this might work OK as a general guideline, there are several problems. First, the appeal to community standards make this standard fairly subjective (i.e., two communities may have very different ideas of what pornography is). Second, many people want to distinguish between different *types* of sexually explicit material: the stuff that seems generally OK (“erotica”) and the stuff that seems more dubious (“pornography”). This definition lumps everything that seems mostly designed to turn people on—internet pornography, erotic fan fiction, intimate photos of a partner, romance novels*,* etc.—into one big category.

**“Pornography can be defined as *sexually explicit material (intended to produce arousal) that is bad or harmful in some way*.”** This definition allows for the *possibility* that there is at least some “erotica” that isn’t bad, and it is also avoids appealing to the opinions of individuals or communities (the material in question *really does* have to be harmful).

* Again, the problem is that different individuals will apply this definition very differently. Some people argue that (a) all sexually explicit material is pornography, and thus harmful. Some argue that (b) no sexually explicit is harmful, and that none of it is “pornography” in this sense. And some argue that (c) some sexually explicit material is pornography, and some that isn’t. The problem for this last group is to say which is which!

For this class, we’ll use pornography in the third sense: that is, we’ll be focusing on material that is bad or harmful (or at least appears to be). We’ll begin whether considering whether there really is such stuff, and go on to consider what might be done about it.

## Does Pornography Violate the Harm Principle?

Pornography has, in one form or another, been around for quite a long time, and in a wide variety of cultures. Until the last 40 years or so, most of its critics were **conservatives** who (like Plato, the great-grandfather of conservativism) thought there was a uniquely “correct” and “good” way to lead life, and that consuming pornography (by watching it, reading it, etc.) was contrary to this way of life. By contrast, most **liberals** (who thought that the government should be concerned with making sure citizens could lead they sort of lives *they* wanted to lead) defended the right to pornography as an aspect of sexual **autonomy** (the ability of adults to make important decisions about their lives)**.** The basic idea was this: just as people should have the legal and moral right to divorce; to gay, interracial, or interreligious marriage; to masturbation; or to premarital sex (all things that religious conservatives had banned at some point), they should *also* have the right to consume pornography.

The current debate, by contrast, has been largely one between competing groups of liberals (and feminists), some of whom think there is a “right to pornography” and some who don’t. The debate is usually phrased in terms of the Harm Principle proposed by the famous utilitarian (and liberal/libertarian hero) John Stuart Mill and Harriet Taylor Mill..

As described earlier, Mill uses his Harm P to argue against paternalistic laws intended for citizen’s “own good” (i.e., banning alcohol or gambling in order to “help” addicts), moralistic laws (e.g., banning polygamy among consenting Mormon adults), and laws based on mere offense (banning speech/writing because it offends some group). Mill’s general argument is a simple one: scientific, artistic, and moral progress depends crucially on having a wide variety of opinions/lifestyles. So, no matter how the majority happens to *dislike* something*,* it is not OK for them to use things like the law, religion, or social pressure (boycotts, etc.) to try and *make* the minority change their ways.

**Mill and the Pornography Debate.** Mill defends a very strong right to free speech, which many liberal defenders of pornography have used to support their case. However, he also notes that there are limitations to this. His example: it is perfectly fine (on his view) to publish newspaper editorials saying things “corn merchants are murdering the poor with their high prices” (even if your opinion isn’t true, and even if it makes the corn merchants mad). However, things are very different if you are screaming these exact same things outside of the corn merchant’s house in front of an angry mob. In this case, your speech definitely risks causing the corn merchant harm, and Mill has no problem with the police stepping in. Liberal *critics* of pornography have argued that pornography is more like this case.

## Does Pornography Violate The Harm Principle? Some Arguments

In her article “The Price We Pay? Pornography and Harm” Susan Brison gives a number of reasons for thinking that consuming pornography (as defined as above) violates Mill’s Harm Principle:

* **Consuming pornography helps fund things such as sex slavery, rape, and forced prostitution.** While its difficult to provide exact statistics, a number of investigative reports by journalists, government organizations, police departments, and other have repeatedly found links between many “adult video” companies (sometime located in other countries) and activities such as sex slavery, forced prostitution, drug use, and other things. The female “stars”, at least in many cases, did not *choose* to participate, they are not compensated *fairly,* and they are subject to violent *coercion.* Consuming pornography made in these circumstances makes one a causal contributor to these harms.
* **Consuming pornography harms unwilling viewers, women and girls more generally, the men/boys who consume it, and previous victims of sexual violence.** A number of researchers have argued that
  + (1) young children are often “accidentally” exposed to pornography, and are harmed by it.
  + (2) Women/girls are harmed by the attitudinal shifts caused when men/boys watch things that link sex w/violence, with coercion more generally (e.g., a boss/teacher/coach/parent/etc. having sex w/ a subordinate), or that favorably depict sexual acts that most women find unpleasant.
  + (3) Men/boys who have these desires will (predictably) find it more difficult to find happiness.
  + (4) People who consume pornography are (in general) less sympathetic to victims of sexual violence, since they are more likely to see these actions as “normal.”

One worry about these arguments has concerned the “direction of causation”: that is, are people more violent/sexist *because* they watch more pornography or do people watch more pornography *because* they are more violent/sexist. The “mainstream” view seems to be “it’s probably a little bit of each.” Second, these arguments shouldn’t necessarily be taken as applying to any and all “erotica” (e.g., exposing men to non-violent, non-coercive erotica hasn’t had the same sort of bad effects on their attitudes toward women, though it may have other negative effects.) One debate among liberals has concerned whether (and to what extent) it would be possible to replace the existing sort of (harmful) pornography with less harmful erotica. Similarly, there has been some debate over whether pornography produces its “bad effects” by (1) making all of its consumers (“the average Joe”) a bit “worse” or (2) making a select few people (“the borderline sociopath”) much “worse,” perhaps by providing them with ideas.

## Conclusion, Objections, and Response

**Brison’s Conclusion.** Brison concludes that there is not a *moral right* to pornography, and so it is perfectly OK for people (friends, spouses, community members) to try and make people stop consuming it, using things like social pressure. However, she doesn’t actually argue for legally *banning* it, since this would raise lots of issues (who gets to determine what counts as pornography versus mere erotica? How could we enforce the law without spying on people? And so on).

**Objection.** In contrast to Brison, Andrew Altmanargues that there IS a “moral right” to pornography, which follows naturally from the right to sexual autonomy. This is true even if we define pornography as erotic material that is in some way harmful, as Brison does. The idea is basically this: the debates about contraception, gay marriage, premarital sex, and so on have shown that it is a mistake to try to *dictate* to people about what should “turn them on” or what they should do about it (so long as it with consenting adults). So, if a consenting adult wants to watch a video of other consenting adults doing things that *would* be immoral (in real life) that is the individual’s choice. While individual people (including, but not necessarily limited to, the person watching the video) may well be harmed by pornography, people are (on the whole) helped by living in a sexually liberal society. [This can be supported with other examples: e.g., there’s a huge amount of research linking alcohol to violence, depression, etc. However, the US attempt to ban alcohol during the Prohibition led to even worse consequences than allowing it.]

**Response.** Brison thinks there is a clear difference between things like interracial or gay marriage (which don’t harm *anyone,* and can actually *contribute* to well-being) and consuming pornography (which even Altman admits isn’t “desirable”). Moreover, Altman’s analogy suggests that people have “no control” over their sexual desires re: pornography, which isn’t quite true (since consuming pornography *itself* can change desires). Finally, she notes that the mere fact that we sometimes allow *other* things that are harmful (such as violent movies) doesn’t mean that we can’t restrict pornography. If this were the case, it would be hard to justify *any* law.

## Review Questions

1. Briefly describe the three definitions of pornography given above. Which, if any, do think is the best? Why?
2. Do you think there is a meaningful difference between “pornography” and “erotica”? Why or why not?
3. Do you agree with Brison that consuming pornography violates the Harm Principle? Why or why not?
4. Altman argues that there is a moral right to pornography, while Brison does not. Why do they disagree? Who do you agree with?
5. Brison is neutral on whether we should *legally* restrict pornography, even if she thinks it is morally wrong. What do you think?

# Reading: The Lure of Fascism (by Jonathon Wolff)[[5]](#footnote-5)

Ours is the age of the rule by ‘strong men’: leaders who believe that they have been elected to deliver the will of the people. Woe betide anything that stands in the way, be it the political opposition, the courts, the media or brave individuals. While these demonised guardians of freedom are belittled, brushed aside or destroyed, vulnerable groups, such as refugees, immigrants, minorities and those living in poverty, bear the brunt. What can be done to halt or reverse this process? And what will happen if we simply stand by and watch? Some commentators see parallels with the rise of fascism in the 1930s. Others agree that democracy is under threat but suggest that the threats are new. A fair point, but with its dangers. Yes, we must attend to new threats, but old ones can reoccur too.

**[Brendan: Which global leaders might count as “strong men” in the sense that Wolff is worried about?]**

Stefan Zweig, the Austrian author of Jewish descent, saw his books burnt in university towns across Germany in 1933. His memoirs paint a picture in which everything was normal until it wasn’t. But it would be wrong to think that we can predict how things will turn out. Who foresaw where we are now? The French philosopher Simone Weil, writing in 1934, probably had it right: ‘We are in a period of transition; but a transition towards what? No one has the slightest idea.’

Liberal democratic institutions, such as those we have now, exist only so long as people believe in them. When that belief evaporates, change can be rapid. Beware leaders riding a wave of crude nationalism. Beware democracy submerging into a vague notion of the will of the people. But why now? In 1920s Germany, it was obvious. The novelist and journalist Joseph Roth remarked:

Without the free food [that the unemployed man in Hamburg] gets in assembly halls he would starve to death. And in these assembly halls, where people used to go to smooch and drink, they are now daubing swastikas and Soviet stars on the grimy walls.

Mass unemployment isn’t what threatens us today. Instead, we’re facing something closer to the situation observed by Hannah Arendt in 1951:

It is as though mankind had divided itself between those who believe in human omnipotence … and those for whom powerlessness has become the major experience of their lives.

Powerlessness can lead to detachment. But it can also lead to exuberant support for whomever seems to be on your wavelength. This is what happened in the 1930s. In considering the parallels between then and now, the Irish journalist Emily Lorimer’s book *What Hitler Wants* (1939) – written in October 1938, a month before Kristallnacht, and just after the German occupation of Czechoslovakia – is a remarkable resource. Lorimer realised that the English translation of Hitler’s *Mein Kampf* (1925) was highly censored; for example, it left out Hitler’s detailed plans to invade England. Few English people could read German, so Lorimer set out to make an English-language digest and summary of the key elements of the book. She suggested that three key elements drove Hitler’s initial plans: a concern for workers’ rights; a desire to create a purely German state; and violent opposition to social democracy.

Top of Form

Bottom of Form

The concern for workers’ rights is surely the forgotten element in far-Right ideology. In the first instance, far-Right ideas can bloom in those who consider themselves wronged or ignored by their political leaders. Early fascists latched on to low-paid workers, war veterans and others who felt betrayed by a system that gave them nothing in return for their sacrifices. As historian Samuel Moyn writes in *Not Enough* (2018): ‘It is no accident that the inventor of the still most widely used measure of national inequality, Italian statistician Corrado Gini, was a Fascist.’

Gini wasn’t just any fascist, either; he was the author of the paper: ‘The Scientific Basis of Fascism’ (1927). Yet, surely, national inequality is an obsession of the Left rather than the Right? In the end, what is the difference between fascist and Left-wing ideas? According to Oswald Mosley – the leader of the British Union of Fascists from 1932 to 1940 – the British Labour Party was pursuing policies of ‘international socialism’, while fascism’s aim was ‘national socialism’.

Mosley might have been wrong to regard mature fascism as a form of socialism. But he was right about its origins. Early Italian fascism broke from socialism only on the grounds of nationalism. The Italian dictator Benito Mussolini proposed giving women the vote, lowering the voting age to 18, introducing an eight-hour workday, worker participation in industrial management, heavy progressive capital tax and the partial confiscation of war profits. Of course, he also advocated extreme nationalism and Italian expansionism, but the pro-worker aspects of his programme are striking.

In Germany, as early as 1920, Hitler set out his 25-point manifesto for the Nazi Party, of which points 11 to 15 concern workers’ rights:

11. That all unearned income, and all income that does not arise from work, be abolished.  
12. Since every war imposes on the people fearful sacrifices in blood and treasure, all personal profit arising from the war must be regarded as treason to the people. We therefore demand the total confiscation of all war profits.  
13. We demand the nationalisation of all trusts.  
14. We demand profit-sharing in large industries.  
15. We demand a generous increase in old-age pensions.

Connoisseurs will spot the antisemitic notes – ‘unearned income’ and ‘war profits’ – but, on the face of it, these points could have been taken from the manifesto of the German communists.

Mosley, who fell out with the socialists over their compromises with big business and what he perceived as the weakening of their principles, quipped: ‘The Socialists wore red ties until they faded pink after the last Labour Government.’ He added, in terms with which it is hard to quibble: ‘Real freedom means good wages, short hours, security in employment, good houses, opportunity for leisure and recreation with family and friends.’

**[Brendan: To what extent might people’s concerns about economic inequality and poor working conditions lead them to support radical parties? In this still a concern today?]**

Mussolini and Mosley are a reminder that espousing a concern for workers’ rights is not, in itself, a protection against authoritarianism. In the United Kingdom today, there is a growing belief that it was the Labour Party’s failure to embrace nationalist policies – thought to be favoured by its traditional voters – that led to its humiliating electoral defeat in 2019. There’s also the conviction, shared by some of the less thoughtful activists, that as long as they remain supportive of trade unions and retain pro-poor policies, their Left-wing credentials will remain intact, even if they embrace crude nationalism. But this terrain needs to be navigated very carefully indeed.

In practice, fascism’s initial championing of the rights of workers came to little. But, especially in Germany, fascists relentlessly pursued their second goal of creating a racially pure state. The nation, said the Nazis, was being ruined by traitors and parasites, and it was essential that purity be restored by any means necessary. And, of course, the traitors were the communists and the parasites were the Jews.

The idea of the need to restore national purity is common to all fascisms. As the American political scientist and historian Robert Paxton wrote in *The Anatomy of Fascism* (2004): ‘Fascisms seek out in each national culture those themes that are best capable of mobilising a mass movement of regeneration, unification, and purity, directed against liberal individualism and constitutionalism and against Leftist class struggle.’ This allows a person ‘the gratification of submerging oneself in a wave of shared feelings’.

In fascist literature, we see repeated a language of enemies, traitors, parasites and foreigners, and the dehumanising metaphors of pigs, dogs, rats and cockroaches, accompanied by the readiness for violent action by paramilitary and extrajudicial forces. A mob in coloured shirts exudes an aura of organised – yet brutal – force, even when those assembled have no training and little individual muscle. In the 1930s, nationalist parties around the world dressed not just in black and brown, but also in blue, green, grey, orange, silver and khaki and, not to be forgotten, the more elaborate white outfit of the American white-supremacist group the Ku Klux Klan.

**[Brendan: What do people “get” out of fascist politics? What draws ordinary people to movements that are so racist/violent/etc.?]**

As the British philosopher Brian Barry remarked in the 1980s, Anglo-American academia and liberal intellectual circles have had a difficult time with nationalism, regarding it as ‘inimical to civilised values’. Yet, this has left a gap that has been exploited by ruthless opportunists, as made evident in the 2016 Brexit vote. The Leave campaign claimed a monopoly on British values. Fringe elements of the campaign were openly racist. Even members of parliament and parts of the press joined in the hostility to immigrants and foreign residents, with all the unpleasant imagery of ‘swarms’ or ‘floods’ of refugees and low-paid workers at the UK’s doors.

In response, many on the Left have adopted an unashamedly pro-immigrant stance. But some Left-wing and centre-Right politicians have taken a different tack, attempting to capture nationalist sentiment without resorting to discriminatory or racist language, attitudes or policies.

The terms ‘progressive patriotism’ and ‘liberal nationalism’ have been used to try to capture this type of view. But what does it stand for? There are a number of ways to explain a distinction between ‘bad’ and ‘good’ nationalism. Bad nationalism, in the Scottish philosopher Alasdair MacIntyre’s words, is ‘a mindless loyalty to one’s own particular nation’. Good nationalism, or what MacIntyre calls patriotism, is a matter of valuing the achievements and merits of one’s country, both because they are achievements and merits, and because they are ours.

**[Brendan: Alasdair MacIntyre is a prominent communitarian philosopher. In general, he thinks the best way to protect ourselves from the bad nationalism of fascism is to promote a “good nationalism” in its place.]**

What keeps this type of more sophisticated nationalism, or patriotism, liberal or progressive is that it is intended to be nonexclusive. You take pride in your country’s achievements while recognising that other countries can take pride in theirs. And you don’t exclude or demonise outsiders. But how easy is it to maintain this position? At the very least, it takes work to prevent it from sliding into the dangerous blind loyalty that breeds racism and xenophobia. The crowd can form too quickly.

Yet some philosophers argue that we have no real choice. We cannot wish nationalist sentiment away. Much of ordinary political and cultural life depends on it. Pride in national traditions of food, wine, sport, art, music and literature. Attachment to a particular, bounded, territory. Solidarity with those with a shared history. How else can, for example, the campaign for Scottish independence, supported by many liberals, be understood? Following the Second World War, intellectuals have ignored nationalism at their peril. Yet they could adopt it at their peril too. As the Israeli political scientist and former politician Yael Tamir writes in *Why Nationalism* (2019): ‘Without the balancing power of liberalism and democracy [nationalism] can easily turn destructive.’ All the more reason for strengthening liberalism and democracy to keep nationalism in check.

**[Brendan: Wolff suggests that liberals (of the both the left-wing and libertarian variety) are bad at talking about nationalism, and this can lead voters to support radical, even fascist, alternatives. Do you agree this is problem? How might liberals get better at talking about nationalism, while still remaining liberals?]**

The third key aspect of the Nazi programme, according to Lorimer – after support for workers’ rights and the creation of a German state – was to defeat social democracy. I’m especially interested in this assault on liberal democracy and its institutions.

Fascism has the knack of turning democracy against itself. Democracy has been used as a stepping stone to power, only to be dismantled and replaced by authoritarian rule. Leadership, parades, celebrations and rallies take the place of politics. With them, a whole host of institutions and safeguards that keep political leaders in check are undermined. This process generally has two stages, both of which relate to philosophical debates about democracy.

The first stage concerns the basic question, *What is democracy?* Naturally, we identify democracy with majority rule. Going back on a decision made by the majority seems to be the epitome of antidemocratic arrogance, often represented as a form of elite capture of the state. Yet, the 19th-century British philosopher John Stuart Mill is among many who have warned of the danger of majority rule. Before democracy was established, theorists had assumed that it would solve all our problems. If the people make the laws that bind them, why would they ever choose to oppress themselves? But Mill points out that democracy exposes us to a new sort of tyranny: the tyranny of the majority.

At the heart of democracy is a tension between the rule of the majority and the protection of the rights of the minority. Protecting minority rights means that, in practice, liberal democracy limits the rule of the majority. Many countries have a written constitution, covering issues that are simply too important to be left to ordinary day-to-day politics. They need a special, drawn-out process for change. For some matters of even greater importance, change can happen only at the hands of the international community. And these, of course, are human rights. A simple majority should not be enough to overturn constitutional or human rights.

Fascism disagrees. Mosley wrote: ‘**The will of the people is greater than the right of the minority.’** The leader is there to carry out the will of the people, irrespective of the consequences for particular individuals. No one has the right to stand in its way.

**[Brendan: Mosley’s claim is something like the \*opposite\* of liberalism. However, in a democracy, it’s very difficult to stop voters from acting in this way (imposing their beliefs on the minority). What are some ways that we might protect the rights of minorities?]**

Liberal democracies have evolved a vast web of institutions that can interfere with an overreaching leader’s plans in different ways, and that collectively protect minority rights. The most visible are the formal mechanisms that limit power or authority. These include the rule of law and law courts. The upper house in parliament keeps watch over executive overreach. Local government provides an alternative source of concentrated authority. Healthy politics includes a ‘loyal opposition’, supporting the system but opposing the government of the day. The test for whether leaders understand this concept is if they dismiss expressed opposition as ‘treason’. Weil applies the Bolshevik leader Mikhail Tomsky’s comment on the feudal Russian regime to fascism: ‘One party in power and all the rest in prison.’

Other institutions publicise and debate government policies and their effects. These include the free press, independent think tanks and universities. Museums and archives remind us of our past glories and mistakes. Trade unions provide a collective source of strength. Finally, informal institutions of day-to-day life provide asylums relatively free from state control: think of religious communities; clubs, such as local history societies; adult education and more. Even some form of free economy, allowing diverse ways of making a living, is also a critical component for bolstering minority rights. Think of the many small businesses run by immigrants. Sometimes this is not a choice, but the only available avenue when the job market closes ranks. A vibrant and free cultural world of art, films, novels, plays and poetry holds more than just intrinsic value; it also acts as a powerful source of critique and resistance. Authoritarian governments detest activities they don’t control.

If the first stage of the fascist dismantling of democracy is to prioritise the will of the majority over minority rights, the second is to contest how the will of the majority is made manifest. Is it by majority vote? No, said Hitler, in a speech to Dusseldorf industrialists in 1932. In an argument reminiscent of Plato’s *Republic*, Hitler argued that democratic voting:

is not rule of the people, but in reality the rule of stupidity, of mediocrity, of half-heartedness, of cowardice, of weakness, and of inadequacy … Thus democracy will in practice lead to the destruction of a people’s true values.

Suspicion of the electorate is as old as democracy. Recently, a new layer of concern has emerged. Social media is manipulated by political parties but, more insidiously, spreads stories on the basis of their commercial value rather than truth. Scandalous allegations are much more widely read than their retractions, and the public too often shows its enthusiasm for hounding those who are already vulnerable. Social media, despite the initial promise of the internet, is helping to create a deluded, or at least misinformed, public. Something must be done – but what?

The concern for workers’ rights, the creation of a pure state and the opposition to social democracy – the three aims of the Nazis, as identified by Lorimer – came together in the development of a majority-pleasing nationalism, in which the will of the people steamrollers anything in its way. We hope never again to see the extreme form developed by the fascists. But defeating fascism didn’t destroy its seeds, and some observers think that they can see its shoots once more.

**[Brendan: To what extent might new technologies—such as social media—help prepare the ground for a revival of fascism? To what extent might they might be used to fight it?]**

Authoritarian leaders, who believe that they have been elected with a mandate of radical national renewal, can become easily frustrated with the spider’s web of institutions that prevent them from exercising power as they wish. The press is biased; the news is fake; the judges are the enemies of the people; the universities crush free speech and promote subversive ideologies; the trade unions stand in the way of progress; local government is a viper’s nest; and the upper chamber is full of deluded, self-interested fools. The protective institutions of liberal democracy are being persistently chipped away. The task we now face is to restore and renew the vibrant intermediate institutions that can best protect vulnerable groups, and to create the political virtues that make democracy work.

I see two particular dangers. The first is the most obvious: the increase in Right-wing authoritarianism. But I’m also worried about a growing tendency on the Left: the idea that, in order to regain majority support, it’s necessary to adopt nationalist polices. This might be true, but it’s also playing with fire. Some, with roots in the traditional Labour movement, seem to think that, as long as they support trade unions and pro-poor policies, they are on the side of the righteous – whatever else they believe – and that this grants them moral immunity from criticism. But we have seen this combination of views before. It was the starting point for both Mussolini and Mosley, and possibly even for Hitler.

An acceptable nationalism would have to be tempered by liberalism. It would also need to be held in check by democracy that strongly supports the rights of the minority. We should never accept the argument that the intermediate institutions of government and civil society are standing in the way of the will of the people. On the contrary, they must be supported and strengthened. This is our best chance of keeping the unthinkable unthinkable.

**[Brendan: Wolff is worried that there are trends on both the left and right that might someday lead to a revival of fascism. Do you agree or disagree? If he is right, what should we do?]**

# Reading: The Two Clashing Meanings of 'Free Speech' (By Teresa M. Bejan)[[6]](#footnote-6)

*Today’s campus controversies reflect a battle between two distinct conceptions of the term—what the Greeks called isegoria and parrhesia.*

Little distinguishes democracy in America more sharply from Europe than the primacy—and permissiveness—of our commitment to free speech. Yet ongoing controversies at American universities suggest that free speech is becoming a partisan issue. While conservative students defend the importance of inviting controversial speakers to campus and giving offense, many self-identified liberals are engaged in increasingly disruptive, even violent, efforts to shut them down. Free speech for some, they argue, serves only to silence and exclude others. Denying hateful or historically “privileged” voices a platform is thus necessary to make *equality* effective, so that the marginalized and vulnerable can finally speak up—and be heard.

The reason that appeals to the First Amendment cannot decide these campus controversies is because there is a more fundamental conflict between two, very different concepts of free speech at stake. The conflict between what the ancient Greeks called *isegoria*, on the one hand, and *parrhesia*, on the other, is as old as democracy itself. Today, both terms are often translated as “freedom of speech,” but their meanings were and are importantly distinct. In ancient Athens, ***isegoria***described the equal right of citizens to participate in public debate in the democratic assembly; ***parrhesia***, the license to say what one pleased, how and when one pleased, and to whom.

When it comes to private universities, businesses, or social media, the would-be censors are our fellow-citizens, not the state. Private entities like Facebook or Twitter, not to mention Yale or Middlebury, have broad rights to regulate and exclude the speech of their members. Likewise, online mobs are made up of outraged individuals exercising their own right to speak freely. To invoke the First Amendment in such cases is not a knock-down argument, it’s a non sequitur.

John Stuart Mill argued that the chief threat to free speech in democracies was not the state, but the “social tyranny” of one’s fellow citizens. And yet today, the civil libertarians who style themselves as Mill’s inheritors have for the most part failed to refute, or even address, the arguments about free speech and equality that their opponents are making.

**[Brendan: This is an important point! Mill is definitely worried about the government but he is ALSO worried about threats to free speech that come when religion/business/the press won’t “allow” certain views to be expressed.]**

The two ancient concepts of free speech came to shape our modern liberal democratic notions in fascinating and forgotten ways. But more importantly, understanding that there is not one, but *two*concepts of freedom of speech, and that these are often in tension if not outright conflict, helps explain the frustrating shape of contemporary debates, both in the U.S. and in Europe—and why it so often feels as though we are talking past each other when it comes to the things that matter most.

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Of the two ancient concepts of free speech, *isegoria*is the older. The term dates back to the fifth century BCE, although historians disagree as to when the democratic practice of permitting any citizen who wanted to address the assembly actually began. Despite the common translation “freedom of speech,” the Greek literally means something more like “equal speech in public.” The verb *agoreuein*, from which it derives, shares a root with the word *agora* or marketplace—that is, a public place where people, including philosophers like Socrates, would gather together and talk.

In the democracy of Athens, this idea of addressing an informal gathering in the *agora* carried over into the more formal setting of the *ekklesia* or political assembly. The herald would ask, “Who will address the assemblymen?” and then the volunteer would ascend the *bema*, or speaker’s platform. In theory, *isegoria*meant that any Athenian citizen in good standing had the right to participate in debate and try to persuade his fellow citizens. In practice, the number of participants was fairly small, limited to the practiced rhetoricians and elder statesmen seated near the front. (Disqualifying offenses included prostitution and taking bribes.)

Although Athens was not the only democracy in the ancient world, from the beginning the Athenian principle of *isegoria*was seen as something special. The historian Herodotus even described the form of government at Athens not as *demokratia*, but as *isegoria*itself*.*According to the fourth-century orator and patriot Demosthenes, the Athenian constitution was based on speeches (*politeia en logois*) and its citizens had chosen *isegoria*as a way of life. But for its critics, this was a bug, as well as a feature. One critic, the so-called ‘Old Oligarch,’ complained that even slaves and foreigners enjoyed *isegoria*at Athens, hence one could not beat them as one might elsewhere.

Critics like the Old Oligarch may have been exaggerating for comic effect, but they also had a point: as its etymology suggests, *isegoria*was fundamentally about equality, not freedom. As such, it would become the hallmark of Athenian democracy, which distinguished itself from the other Greek city-states *not*because it excluded slaves and women from citizenship (as did every society in the history of humankind until quite recently), but rather because it *included the poor*. Athens even took positive steps to render this equality of public speech effective by introducing pay for the poorest citizens to attend the assembly and to serve as jurors in the courts.

**[Brendan: A well-functioning democracy has to give people the power to “participate” in government, and have their speech “count” and “be heard.” What are some ways this can happen?]**

As a form of free speech then, *isegoria*was essentially political. Its competitor, *parrhesia*, was more expansive. Here again, the common English translation “freedom of speech” can be deceptive. The Greek means something like “all saying” and comes closer to the idea of speaking freely or “frankly.” *Parrhesia*thus implied openness, honesty, and the courage to tell the truth, even when it meant causing offense. The practitioner of *parrhesia* (or *parrhesiastes*) was, quite literally, a “say-it-all.”

*Parrhesia*could have a political aspect. Demosthenes and other orators stressed the duty of those exercising *isegoria*in the assembly to speak their minds. But the concept applied more often outside of the *ekklesia* in more and less informal settings. In the theater, *parrhesiastic* playwrights like Aristophanes offended all and sundry by skewering their fellow citizens, including Socrates, by name. But the paradigmatic *parrhesiastes*in the ancient world were the Philosophers, self-styled “lovers of wisdom” like Socrates himself who would confront their fellow citizens in the *agora*and tell them whatever hard truths they least liked to hear. Among these was Diogenes the Cynic, who famously lived in a barrel, masturbated in public, and told Alexander the Great to get out of his light—all, so he said, to reveal the truth to his fellow Greeks about the arbitrariness of their customs.

The danger intrinsic in *parrhesia*’s offensiveness to the powers-that-be—be they monarchs like Alexander or the democratic majority—fascinated Michel Foucault, who made it the subject of a series of lectures at Berkeley (home of the original campus Free Speech Movement) in the 1980s. Foucault noticed that the practice of *parrhesia*necessarily entailed an asymmetry of power, hence a “contract” between the audience (whether one or many), who pledged to tolerate any offense, and the speaker, who agreed to tell them the truth and risk the consequences.

If *isegoria*was fundamentally about equality, then, *parrhesia*was about liberty in the sense of *license*—not a right, but rather an unstable privilege enjoyed at the pleasure of the powerful. In Athenian democracy, that usually meant the majority of one’s fellow citizens, who were known to shout down or even drag speakers they disliked (including Plato’s brother, Glaucon) off the *bema*. This ancient version of “no-platforming” speakers who offended popular sensibilities could have deadly consequences—as the trial and death of Socrates, Plato’s friend and teacher, attests.

**[Brendan: As the author notes, the legal “right” to speech was crucially important to things like philosophy/comedy in ancient Athens, which has a huge effect on later civilizations. On the other hand, this same legal “right”, allow for the creation of immoral “mobs.” Is it possible to have one without the other?]**

Noting the lack of success that Plato’s loved ones enjoyed with both *isegoria*and *parrhesia* during his lifetime may help explain why the father of Western philosophy didn’t set great store by either concept in his works. Plato no doubt would have noticed that, despite their differences, *neither*concept relied upon the most famous and distinctively Greek understanding of speech as *logos*—that is, reason or logical argument. Plato’s student, Aristotle, would identify *logos*as the capacity that made human beings essentially *political*animals in the first place. And yet neither *isegoria*nor *parrhesia*identified the reasoned speech and arguments of *logos* as uniquely deserving of equal liberty *or* license. Which seems to have been Plato’s point—how was it that a democratic city that prided itself on free speech, in all of its forms, put to death the one Athenian ruled by *logos* for speaking it?

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Unsurprisingly perhaps, *parrhesia* survived the demise of Athenian democracy more easily than *isegoria*. As Greek democratic institutions were crushed by the Macedonian empire, then the Roman, *parrhesia*persisted as a rhetorical trope. A thousand years after the fall of Rome, Renaissance humanists would revive *parrhesia* as the distinctive virtue of the counselor speaking to a powerful prince in need of frank advice. While often couched in apologetics, this *parrhesia*retained its capacity to shock. The hard truths presented by Machiavelli and Hobbes to their would-be sovereigns would inspire generations of “libertine” thinkers to come.

Still, there was another adaptation of the *parrhesiastic* tradition of speaking truth to power available to early modern Europeans. The early Christians took a page from Diogenes’s book in spreading the “good news” of the Gospel throughout the Greco-Roman world—news that may not have sounded all that great to the Roman authorities. Many of the Christians who styled themselves as “Protestants” after the Reformation thought that a return to an authentically *parrhesiastic*and deliberately offensive form of evangelism was necessary to restore the Church to the purity of “primitive” Christianity. The early Quakers, for example, were known to interrupt Anglican services by shouting down the minister and to go naked in public “for a sign.”

*Isegoria*, too, had its early modern inheritors. But in the absence of democratic institutions like the Athenian *ekklesia*, it necessarily took a different form. The 1689 English Bill of Rights secured “the freedom of speech and debates in Parliament,” and so applied to members of Parliament only, and only when they were present in the chamber. For the many who lacked access to formal political participation, the idea of *isegoria*as an equal right of public speech belonging to all citizens would eventually migrate from the concrete public forum to the virtual public sphere.

For philosophers like Spinoza and Immanuel Kant, “free speech” meant primarily the intellectual freedom to participate in the public exchange of arguments. In 1784, five years before the French Revolution, Kant would insist that “the freedom to make public use of one’s reason” was the fundamental and equal right of any human being or citizen. Similarly, when Mill wrote *On Liberty*less than a century later, he did not defend the freedom of speech as such, but rather the individual “freedom of thought and discussion” in the collective pursuit of truth. While the equal liberty of *isegoria* remained essential for these thinkers, they shifted focus from actual *speech*—that is, the physical act of addressing others and participating in debate—to the mental exercise of *reason* and the exchange of ideas and arguments, very often in print. And so, over the course of two millennia, the Enlightenment finally united *isegoria*and *logos* in an idealized concept of free speech as freedom only for *reasoned*speech and rational deliberation that would have made Plato proud.

This logo-centric Enlightenment ideal remains central to the European understanding of free speech today. Efforts in Europe to criminalize hate speech owe an obvious debt to Kant, who described the freedom of (reasoned) speech in public as “the most harmless” of all. The same could never be said of ancient or early modern *parrhesia*, which was always threatening to speakers and listeners alike. Indeed, it was the obvious harm caused by their *parrhesiastic*evangelism to their neighbors’ religious sensibilities that led so many evangelical Protestants to flee prosecution (or persecution, as they saw it) in Europe for the greater liberty—or license—of the New World. American exceptionalism can thus be traced all the way back to the seventeenth and eighteenth centuries: while America got the evangelicals and libertines, Europe kept the philosophers.

**[Brendan: Religious and political “radicals”, of the sort that moved to the Americas, tended to favor a conception of free speech that allowed them to say whatever they want, and however they wanted to say it. By contrast, many members of “establishment” European institutions (churches, universities, etc.) favored a conception of free speech based on the idea of “calm and reasoned debate.” Where do you think YOU would go, if you lived back then?]**

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Debates about free speech on American campuses today suggest that the rival concepts of *isegoria*and *parrhesia*are alive and well. When student protesters claim that they are silencing certain voices—via no-platforming, social pressure, or outright censorship—in the name of free speech itself, it may be tempting to dismiss them as insincere, or at best confused. As I witnessed at an event at Kenyon College in September, when confronted with such arguments the response from gray-bearded free-speech fundamentalists like myself is to continue to preach to the converted about the First Amendment, but with an undercurrent of solidaristic despair about “kids these days” and their failure to understand the fundamentals of liberal democracy.

No wonder the “kids” are unpersuaded. While trigger warnings, safe spaces, and no-platforming grab headlines, poll after poll suggests that a more subtle, shift in mores is afoot. To a generation convinced that hateful speech is itself a form of violence or “silencing,” pleading the First Amendment is to miss the point. Most of these students do not see themselves as standing against free speech at all. What they care about is the *equal right*to speech, and equal access to a public forum in which the historically marginalized and excluded can be heard and count equally with the privileged. This is a claim to *isegoria*, and once one recognizes it as such, much else becomes clear—including the contrasting appeal to *parrhesia*by their opponents, who sometimes seem determined to reduce “free speech” to a license to offend.

Recognizing the ancient ideas at work in these modern arguments puts those of us committed to America’s *parrhesiastic*tradition of speaking truth to power in a better position to defend it. It suggests that to defeat the modern proponents of *isegoria—*and remind the modern *parrhesiastes* what they are fighting for—one must go beyond the First Amendment to the other, orienting principle of American democracy behind it, namely *equality*. After all, the genius of the First Amendment lies in bringing *isegoria*and *parrhesia*together, by securing the equal right and liberty of citizens not simply to “exercise their reason” but to speak their minds. It does so because the alternative is to allow the powers-that-happen-to-be to grant that liberty as a *license*to some individuals while denying it to others.

In contexts where the Constitution does not apply, like a private university, this opposition to arbitrariness is a matter of culture, not law, but it is no less pressing and important for that. As the evangelicals, protesters, and provocateurs who founded America’s *parrhesiastic*tradition knew well: When the rights of all become the privilege of a few, neither liberty nor equality can last.

**[Brendan: The author defends the American idea of free speech vs. the European one. How would you describe her argument? Do you agree or disagree? Why?]**

# Case Study: Predictive Policing

*From: Parr Center for Ethics, 2021, Ethics Bowl Regional Case Set. Authors: Tylor Cunningham, Ramona Ilea, Audra Jenson, Joanna Lawson, Marko Mavrovic, John Miller, Sally Moore, Z Quanbeck, Alex ichardson, Alyse Spiehler, Meredith Sheeks, Ehsan Sheikholharam, Delaney Thull, Dustin Webster*

Recently, the Pasco County Sheriff’s Office (PCSO) in Florida sent out a letter to some of its residents informing them that they had been selected to be enrolled in the Prolific Offender Program. Here is an excerpt from the opening lines:

*This program provides you with an opportunity to receive assistance from the Pasco Sheriff’s Office and several community partners who will work with you to identify and overcome barriers that have hindered you in your life’s journey. Ultimately, the goal of this program is to empower you to live a lawful, productive and fulfilled life*.[[7]](#footnote-7)

The program uses various metrics, including, “an evaluation of your recent criminal behavior using an unbiased, evidence-based risk assessment” in order to identify what it called, “prolific offenders in our community.” The letter claims that barriers to “successful living” include struggles with mental health, substance abuse, domestic violence, homelessness, and employment. Enrollment is based on those criteria. Enrollees who refrain from criminal activity for two years are removed from the program.

PCSO also created a program designed to detect potential crimes and stop them before they happen.[[8]](#footnote-8) To do this, the office would use a variety of metrics including “arrest histories, social networks, and unspecified intelligence in order to create a list of potential criminals.”[[9]](#footnote-9) They would then use the list to preemptively investigate these individuals and perform regular checks on them.

PCSO and its supporters claim that these are innovative ways to prevent crime and to conduct policing in a less reactionary manner. By using known metrics that lead to criminal activity, police might be able to intervene before someone even has the opportunity to commit a crime. Part of this prevention might involve providing would-be offenders with the support they need in order to cut down on potential risk factors, including mental health care, support for substance abuse disorders, assistance in finding work or a place to live, and so on.

People who oppose these kinds of programs claim that it is overreaching and authoritarian. It leads to the kind of over-policing witnessed in the case where “deputies gave the mother of one teenage target a $2,500 fine because she had five chickens in her backyard.” Having some risk-factors associated with criminal activity is a far cry from actually committing crimes. Furthermore, regardless of how likely someone is to fall into criminal activity, perhaps no one should be subject to intervention and investigation until they actually commit a crime.

## Discussion Questions

1. What difference is there between predictive policing tactics that focus on prior offenders and those predictive policing tactics which focus on preventing non-offenders from becoming offenders?
2. Is it responsible for police departments to try to participate in preventative policing by stopping crimes before they happen? Is there a right and a wrong way to go about doing that?
3. Is there ever a time when certain “risk factors” should ever be considered in beginning an investigation?
4. Does something like the Prolific Offender Program run contrary to a notion in our justice system of “innocent until proven guilty?” Does it assume guilt on behalf of those that it enrolls in the program?

# Case Study: Just the Facts

*From: Parr Center for Ethics, 2021, Ethics Bowl Regional Case Set. Authors: Tylor Cunningham, Ramona Ilea, Audra Jenson, Joanna Lawson, Marko Mavrovic, John Miller, Sally Moore, Z Quanbeck, Alex ichardson, Alyse Spiehler, Meredith Sheeks, Ehsan Sheikholharam, Delaney Thull, Dustin Webster*

On May 19, 2021, journalist Emily Wilder was fired from the *Associated Press* after three weeks on the job.[[10]](#footnote-10) Wilder, who is Jewish, was fired after right-wing media sources began publicizing her involvement in pro-Palestine activism in college, and drew attention to tweets she had made about the topic.[[11]](#footnote-11) In late May 2021, Alexis Johnson was told by her employer, the *Pittsburgh Post-Gazette*, that she would not be allowed to cover the Black Lives Matter movement. Johnson, who is Black, was told this was because she had demonstrated bias in a tweet that she had posted the day before.[[12]](#footnote-12) Felicia Sonmez was banned in 2018 from reporting on cases dealing with rape and sexual assault at her job at the *Washington Post* after she wrote about her experience as a survivor of sexual violence.[[13]](#footnote-13)

Some people see these actions by news organizations as justified measures to protect the objectivity of the reporting in question. News organizations should strive for objectivity, and this is impossible when the person reporting has made it clear that they have strong personal views on the matter. Most reporters have opinions about the things they report on. However, they are expected to put these opinions to one side while they are reporting. It is inconsistent and irresponsible, one might argue, only to prevent those who are public about their opinions (or, in the case of Sonmez, their experiences) from reporting on controversial issues. It may also constitute discrimination.[[14]](#footnote-14)

What is better, say critics of objectivity, is to report the facts while also acknowledging one’s (limited and biased) point of view. This is a sign of humility, and it may also have the benefit of opening up more ethical reporting standards. Perhaps shrugging off the myth of objectivity would release journalists from lending undue credence to what they take to be morally problematic stances, in the name of remaining neutral.[[15]](#footnote-15)

However, if objectivity and neutrality are completely discarded, some worry that this would effectively mean the end of fact-based reporting. This brings to the fore another important issue: trust. If media consumers find out that a story was written by someone who has an undisclosed personal stake in the matter, this might erode the trustworthiness of the reporting or the news outlet. This, according to Felicia Sonmez, is the reason that she was not allowed to cover stories involving sexual assault. “The reason I’ve repeatedly been given by senior editors,” she said in a tweet, “is that they are worried about the ‘appearance of a conflict of interest’ if they allow me to write on sexual assault. They’ve told me they don’t believe there’s an actual conflict, or even that my writing would be biased in any way.”[[16]](#footnote-16) Thus, even if Sonmez can report responsibly on these issues, perhaps she should not be permitted to do so, given the fact that some readers might believe her to be untrustworthy.

## Discussion Questions

1. Do news organizations have an ethical duty to maintain a certain relationship to the general public? If so, what is the nature of that relationship?
2. In which contexts, if any, is it permissible for employers to restrict (or impose consequences for) their employees’ speech outside of work hours?
3. What, if any, is the value of objectivity in journalism?

# Case Study: All Eyes on You

*From: Parr Center for Ethics, 2021, Ethics Bowl Regional Case Set. Authors: Tylor Cunningham, Ramona Ilea, Audra Jenson, Joanna Lawson, Marko Mavrovic, John Miller, Sally Moore, Z Quanbeck, Alex ichardson, Alyse Spiehler, Meredith Sheeks, Ehsan Sheikholharam, Delaney Thull, Dustin Webster*

Agustín, 15, is a tenth-grader attending a public school in Charlotte, North Carolina.[[17]](#footnote-17) One Saturday evening, he posts a photo on Instagram of himself and a group of his friends (most of whom are also tenth-grade boys) with the caption “Me and The Crew.” The boys in the photo display a variety of hand gestures—peace signs, thumbs-up signs, and other signs whose meanings are unclear. Agustín’s school, which makes use of a third-party social media scanning program, is alerted by the company, whose algorithms have defined the photo as “suspicious.”

Monday morning, his school’s Principal, Mr. Raines, asks the school resource officer (SRO) to question Agustín about the post. Unsatisfied with the explanation that the photo just shows him and his friends enjoying each other’s company, the officer follows Agustín through the halls during class changes. The SRO also reviews footage of Agustín from school security cameras, and Mr. Raines alerts Agustín’s teachers that he is suspected of possible gang involvement. Later that day, Agustín’s smartphone is confiscated by his Biology teacher because was caught text messaging during class. On Monday evening, while doing homework on his school-issued Chromebook, Agustín confides in a friend via email that he is feeling depressed and anxious about the SRO, and angry at a mutual friend of theirs, Manuel. Within the hour, a different police officer knocks on the door of his home, telling Agustín’s parents that he is there to conduct a “wellness check” based on concerns raised by his email.

The ability of schools to keep tabs on their students is on the rise, particularly in the wake of accelerating technology adoptions brought on by widespread school violence across the U.S., as well as the COVID-19 pandemic. Digital learning platforms like Canvas and Moodle not only streamline students’ assignments and grades, but provide extensive data profiles on millions of students to private corporations each year. Web, email and social media “listening” platforms like Varsity Monitor, Gaggle, and Bark allow administrators to track student communications, web usage, and search histories, in school and out. District-level purchasing of these platforms saw a tenfold increase between 2013 and 2018.[[18]](#footnote-18) Cameras and facial recognition technology are now essential parts of schools’ security strategies, with the number of schools conducting video monitoring having risen from 19% in 2000 to 83% in 2018.[[19]](#footnote-19)

Administrators and district officials often argue that these strategies are common sense measures to keep students safe from harassment, bullying, and gun violence. Critics argue that students’ privacy rights are being violated with invasive technologies whose effectiveness is thus far unproven. Furthermore, for students of color, who often face disproportionate disciplinary measures in schools, new kinds of surveillance may be especially harmful.[[20]](#footnote-20)

## Discussion Questions

1. Is the fact that Agustín was outside school when he sent the email morally relevant?
2. How, if at all, do the privacy rights of minor students differ from those of their adult counterparts? What about those rights associated with freedom of speech?
3. How should schools balance the objectives of student safety with student privacy? What is the relative importance of these goals?
4. When, if ever, are schools justified in disciplinary interventions based on students’ personal communications?

1. John Stuart Mill, *On Liberty*, 2011, https://www.gutenberg.org/ebooks/34901. [↑](#footnote-ref-1)
2. For an introduction to liberalism see Shane D. Courtland, Gerald Gaus, and David Schmidtz, “Liberalism,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Spring 2022 (Metaphysics Research Lab, Stanford University, 2022), https://plato.stanford.edu/archives/spr2022/entries/liberalism/. [↑](#footnote-ref-2)
3. See Daniel Bell, “Communitarianism,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Fall 2020 (Metaphysics Research Lab, Stanford University, 2020), https://plato.stanford.edu/archives/fall2020/entries/communitarianism/. [↑](#footnote-ref-3)
4. The full “debate” between the two thinkers is published in Andrew I. Cohen and Christopher Heath Wellman, eds., *Contemporary Debates in Applied Ethics*, 2nd edition (Malden, MA: Wiley-Blackwell, 2014). [↑](#footnote-ref-4)
5. Jonathan Wolff, “What 1930s Political Ideologies Can Teach Us about the 2020s | Aeon Essays,” Aeon, 2020, https://aeon.co/essays/what-1930s-political-ideologies-can-teach-us-about-the-2020s. [↑](#footnote-ref-5)
6. Teresa M. Bejan, “The Two Clashing Meanings of ‘Free Speech,’” The Atlantic, December 2, 2017, https://www.theatlantic.com/politics/archive/2017/12/two-concepts-of-freedom-of-speech/546791/. [↑](#footnote-ref-6)
7. https://s3.documentcloud.org/documents/21015592/pso\_letter-1.pdf [↑](#footnote-ref-7)
8. https://projects.tampabay.com/projects/2020/investigations/police-pasco-sheriff-targeted/intelligence-led-policing/ [↑](#footnote-ref-8)
9. https://www.tampabay.com/investigations/2021/07/24/pasco-sheriffs-office-letter-targets-residents-for-increased-accountability/ [↑](#footnote-ref-9)
10. https://www.nytimes.com/2021/05/25/business/media/emily-wilder-associated-press-ap.html?searchResultPosition=2 [↑](#footnote-ref-10)
11. https://www.mediaite.com/news/associated-press-reporter-out-after-conservatives-flag-pro-palestine-activism-in-college/ [↑](#footnote-ref-11)
12. https://www.thecut.com/2020/06/black-reporter-barred-from-covering-blm-protests-over-bias.html [↑](#footnote-ref-12)
13. https://www.theguardian.com/commentisfree/2021/mar/30/washington-post-felicia-sonmez-sexual-assault-sexism [↑](#footnote-ref-13)
14. https://lawandcrime.com/high-profile/washington-post-reporter-sues-the-newsroom-and-marty-baron-for-discrimination-claiming-she-was-punished-after-sexual-assaultdisclosure/ [↑](#footnote-ref-14)
15. https://medium.com/@lewispants/objectivity-is-dead-and-im-okay-with-it-7fd2b4b5c58f [↑](#footnote-ref-15)
16. https://twitter.com/feliciasonmez/status/1376274971207602184 [↑](#footnote-ref-16)
17. This story is adapted from an illustrative compilation of student experiences by Barbara Fedders, “The Constant and Expanding Classroom: Surveillance in K-12 Public Schools,” *North Carolina Law Review* 1673 (2019). [↑](#footnote-ref-17)
18. https://www.brennancenter.org/our-work/research-reports/school-surveillance-zone [↑](#footnote-ref-18)
19. https://nces.ed.gov/fastfacts/display.asp?id=334 [↑](#footnote-ref-19)
20. https://www.theatlantic.com/education/archive/2016/09/when-school-feels-like-prison/499556/ [↑](#footnote-ref-20)