



Free Speech as a Right and a Way of Life

By Gregory Salmieri

Editor's note: In May 2024, the Ayn Rand Institute Press [released The First Amendment: Essays on the Imperative of Intellectual Freedom](#), featuring four in-depth essays by Tara Smith previously published in law reviews, and one by Onkar Ghatge [previously published](#) in New Ideal. The book includes one essay by Gregory Salmieri written exclusively for the book. Drawing on Ayn Rand's theory of individual rights, Salmieri's piece identifies the philosophical foundations of the right to free speech and applies the principle to a number of controversies about free speech today (regarding "cancel culture," social media platforms, and public education). Because it offers such fundamental guidance for addressing crucial cultural and political questions, we are republishing a newly edited version of it in New Ideal.

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The First Amendment to the United States Constitution protects freedom of speech from government interference, and much of the discussion of free speech in America revolves around this legal context. But there is a widespread view that to take advantage of these legal protections (and, indeed, to sustain them), we also need a *culture of free speech*.¹ Thus, self-professed champions of free speech inveigh not only against violations of the First Amendment but also against a wide range of private actions and policies. These include disruptive protests that silence speakers; content moderation by social media companies; sanctions by universities, corporations, and other institutions against those who express certain opinions; and "cancel culture" (i.e., attempts to trigger such sanctions by stigmatizing people for the opinions they've expressed).

Citing John Stuart Mill, these professed champions of free speech worry about an intellectually stifling environment in which all but a narrow range of opinions are stigmatized and driven to society's margins. As an alternative, the Millians urge various nongovernmental institutions to adopt the sort of content-neutral policies that First Amendment jurisprudence requires of the government. The resulting "culture of free speech" they envision is one in which employers hire, fire, and promote without regard for employees' opinions on controversial societal issues; universities take no cognizance of students' opinions in deciding whether to admit and retain them, social media platforms make no discriminations about the content they host; and other businesses and organizations likewise refrain from discriminating on ideological grounds. Because, as we will

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see, such policies of neutrality are rarely tenable, those who aspire to such a free speech culture, come to see their aspiration as a noble but unattainable ideal. They are led to the conclusion that freedom of speech cannot be an absolute—that it is merely one value to be traded off against others.

This Millian conception of free speech is mistaken and destructive. Properly conceived, free speech *is* an absolute—a principle that, when implemented in a society’s laws, empowers individuals to build relationships and institutions in which they can encounter and contest one another’s ideas, in which new truths can be discovered and promulgated, and in which like-minded individuals can join together to pursue common purposes. This freedom necessarily includes the freedom to disassociate from those with whom one disagrees. Freedom is essential to human life, because we live by reason and reason is an attribute of the individual, such that to value thinking is to value *independent thinking*. The freedom of speech is an individual’s freedom to express the opinions he reaches. It is not a license to demand that those who consider these opinions evil continue to deal with one. Independence includes taking responsibility for supporting oneself and so is inconsistent with a Millian expectation of unconditional economic or social support from others.²

Freedom of speech is a *right*—“a moral principle defining and sanctioning a man’s freedom of action in a social context.”³ Rights can be violated by private actors as well as by governments, and the government’s function is to secure rights against such violations. Some of the nongovernmental actions decried by professed champions of free speech are violations of the right to free speech, but most are not—quite the reverse: they are exercises of this right. A genuine culture of free speech is one in which these acts are recognized as instances of free speech, rather than departures from it. It is a culture in which individuals value one another’s freedom not only to express opinions but to *judge* them, and to decide whom to associate with (or disassociate from) on the basis of such judgments. It is a culture in which individuals guard this freedom and utilize it to satisfy their needs for both ideological *diversity* and ideological *alignment*, forming a wide range of relationships, institutions, and communities with different purposes and different terms of association.

This is what I argue in this essay. In the first section, I elaborate on the nature of free speech as an individual right. In the second, I discuss government’s responsibility to respect and secure this right. In the remaining two sections, I discuss the value of intellectual diversity and the idea of a culture of free speech, rejecting the prevailing, collectivist approach to these issues and articulating an individualist alternative.

Freedom of Speech as an Individual Right

On the evening of May 25, 1892, a mob ransacked the offices of the *Free Speech*, a Memphis newspaper run by Ida B. Wells and James L. Fleming. The mob ran “Fleming out of town, destroyed the type and furnishings of the office, and left a note saying that anyone trying to publish the paper again would be punished with death.”⁴ Wells describes the personal impact this way: “They had destroyed my paper, in which every dollar I had in the world was invested. They had made me an exile and threatened my life for hinting at the truth.”⁵ The “hint” she mentions had come five days earlier, in an editorial she had written about the lynchings of eight black men over the course of the preceding week. Some of these men had been killed on the basis of “the old thread-bare lie that Negro men assault white women,” and she warned that if the white Southerners continued to use this pretext for lynchings, “public sentiment will have a reaction; a conclusion will then be reached which will be very damaging to the moral reputation of their women.”⁶ On the morning of May 25, the *Daily Commercial* responded in an editorial that purported to speak for the white population of Memphis: “we have had enough” of “the fact that a black scoundrel is allowed to live and utter such loathsome and repulsive calumnies.” Later that day, the *Evening Scimitar* (which assumed that Wells’s editorial had been written by a man) proposed a course of action:

If the negroes themselves do not apply the remedy without delay it will be the duty of those whom he has attacked to tie the wretch who utters these calumnies to a stake at the intersection of Main and Madison Sts., brand him in the forehead with a hot iron and perform upon him a surgical operation with a pair of tailor’s

shears.⁷

Wells and Fleming escaped with their lives and their bodily integrity, but not every proponent of individualism in Jim Crow America was so fortunate. Nor was Samuel Paty, a French high school teacher who was beheaded on October 16, 2020, because, in a class on free speech, he had shown cartoons of Mohammed from the satirical magazine *Charlie Hebdo*. Paty's murder came five years after twelve of that magazine's staff were murdered by Islamist gunmen (on January 7, 2015). Sixteen years prior to that, Ruhollah Khomeini, Iran's supreme religious leader, issued a fatwa (on February 14, 1989) ordering the murder of author Salman Rushdie, whose novel *The Satanic Verses* Khomeini saw as disrespectful to the prophet Mohammed. Rushdie would be stabbed nearly to death in Chautauqua, New York, on August 12, 2022.⁸

Freedom of speech is freedom from the evil that was perpetrated against Wells, Fleming, Paty, Rushdie, and *Charlie Hebdo* staff, and against everyone who was terrified into silence by their attackers. This freedom consists in being able to speak one's mind without fear that others will respond forcibly against one's person or property. In the cases we have discussed, the force was wielded by terrorists; too often (as we'll discuss) it is wielded by governments.

Force needn't be deadly to violate the freedom of speech. Had Paty and Rushdie's assailants sought merely to injure them, as punishment for speaking their minds, the same principle would have been violated, and others like Paty and Rushdie would still have been put in fear for their safety. Likewise, the mob that ransacked Wells and Fleming's office would have violated their freedom of speech even if they hadn't also threatened their victims' lives. Wells and Fleming were violated when the mob destroyed the property they had devoted so much of their lives to creating. Their freedom of speech, in particular, was violated because the specific property that was destroyed—the paper's type and furnishings—was their means of promulgating their ideas.

This same principle applies, though on a smaller scale, when self-styled “protesters” disrupt speeches they disapprove of. The venues for such speeches have generally been obtained by the speaker (or some sponsoring organization) for the purpose of hosting the speech, and others are admitted as an audience to hear it. To abuse one's admission by disrupting the event is to trespass and to forcibly prevent the speaker (and sponsors) from using the means which are rightfully theirs for disseminating their ideas. The principle applies also when protesters forcibly interfere without entering the venue, as by creating excessive noise from an adjacent property to drown out the speaker or distract the audience. These actions too constitute forcible interference with the speaker's use of his property to disseminate his ideas.

All the actions I've described as violating the freedom of speech would be violations of the victims' rights even if taken for some purpose other than silencing them. Murder, vandalism, trespass, intimidation, harassment, and the interference with people's peaceful enjoyment of their property are violations of rights, regardless of the motive, and the right to free speech doesn't afford speakers any special protection that they would have lacked had they remained silent. No one is entitled to initiate force against anyone in the first place, and everyone has a right to be secure in his person and property. The right to free speech is merely the recognition that voicing an opinion *as such* never infringes on anyone else's rights. The rights to liberty and property include the liberty to share one's opinions and to use one's resources to disseminate those opinions—e.g., by publishing a newspaper or delivering a lecture in a rented hall.

For the same reasons, no one has a right to other people's assistance or resources to disseminate his opinions. Indeed, it is an exercise of one's right to free speech to withhold cooperation or support for the dissemination of ideas with which one disagrees. Likewise, one exercises one's right to free speech by refusing to associate with those who propagate such ideas. Thus when Wells and Fleming refused to publish screeds by their (then) partner Reverend Nightingale against his church rivals, Wells and Fleming were not violating his free speech, but exercising their own.⁹ Likewise, Wells was exercising her rights when, during a boycott prompted by a lynching, she refused a struggling streetcar company's appeal “to use [her paper's] influence with the colored people to get them to ride on the streetcars again.”¹⁰ And Wells's free speech was not infringed

by the group of preachers who voted to boycott the *Free Speech* in response to a “caustic comment” it had printed about a minister’s sexual improprieties.¹¹

One person’s rights cannot be violated by another’s refusal to deal with him. Rights are principles for organizing society to enable individuals to interact only consensually, rather than by forcing themselves on one another. An interaction is consensual when each party participates voluntarily, under no threat from the other (except the “threat” of withholding such benefits as might result from the interaction).¹² The fundamental principle underlying free societies is that all relationships should be consensual—that no one may initiate the use of force, and that force may only be used in retaliation.

A right is a *principle defining and sanctioning an individual’s freedom of action in a social context*.¹³ Freedom means freedom *from other people* who might interfere with one’s actions. So, what rights define is the scope of an individual’s freedom to act unilaterally, without others’ consent. Since rights are reciprocal, rightful actions cannot constitute interference with, or require the cooperation of, others. “Any alleged ‘right’ of one man, which necessitates the violation of the rights of another, is not and cannot be a right.”¹⁴ The only obligation one person’s rights can impose on another is that of noninterference. Thus a person’s right to free speech cannot require other people’s participation as sponsors, enablers, or audience. It cannot entitle him to use their property as a platform or to harass them (demanding a hearing that they do not consent to give him). He has the freedom to express his ideas to an audience that’s willing to listen in a forum he owns (or that he uses with the owner’s consent). The right cannot be violated by anyone’s refusing to contribute to, listen to, or otherwise condone the relevant speech (even by refusing to continue associating with the speaker). The right cannot be violated by any form of boycott, blacklisting, ostracism, “cancellation,” or other social penalty.¹⁵ The right can be violated only by initiating force against the speaker (including against his property). Whether such social penalties are just or unjust in a given case, any claim by the penalized that his rights have been violated is simply his assertion of an imagined right to force himself on people who want nothing to do with him.

For example, consider what Ida Wells came to think was the ultimate motive for destroying the *Free Speech*:

For the first time in their lives the white people of Memphis had seen earnest, united action by Negroes which upset economic and business conditions. They had thought the excitement would die down; that Negroes would forget and become again, as before, the wealth producers of the South—the hewers of wood and drawers of water, the servants of white men. But the excitement kept up, the colored people continued to leave, business remained at a standstill, and there was still a dearth of servants to cook their meals and wash their clothes and keep their homes in order, to nurse their babies and wait on their tables, to build their houses and do all classes of laborious work. [...] The whites had killed the goose that laid the golden egg of Memphis prosperity and Negro contentment; yet they were amazed that colored people continued to leave the city by scores and hundreds.

In casting about for the cause of all this restlessness and dissatisfaction the leaders concluded that the *Free Speech* was the disturbing factor. They were right. They felt that the only way to restore “harmony between the races” would be to get rid of the *Free Speech*.¹⁶

This example highlights the power of disassociating from others as a means of both punishing injustice and protecting oneself from it. Disassociation is especially powerful when practiced by a large group, as in a boycott or blacklist. If an individual has any rights at all, he has this right to disassociate for any reason, including disagreement with another’s speech. The individual doesn’t lose this right when there are many others exercising it along with him, or when he encourages others to do so (as Wells did in her newspaper).¹⁷ In short, there is a right to participate in what is now called “cancellation.”

Perhaps the most influential denier of the right to disassociate from others on the basis of their opinions is John Stuart Mill. This makes Mill an influential opponent of the right to free speech.¹⁸ His reputation as a stalwart champion of free speech rests on his insights about an independent thinker’s need to engage with a wide spectrum of ideas—something that cannot be done in an environment where heterodox opinions are not expressed. I’ll turn to these aspects of Mill’s thought in the final two sections of this essay. What’s relevant for

my present purposes is that he denies the crucial distinction between violations of the right to free speech and social sanctions of unpopular opinions (which sanctions are, in fact, exercises of this right).

Writing in nineteenth-century England, where heresy was no longer illegal, Mill observed that “heretical opinions do not perceptibly gain, or even lose, ground in each decade or generation,” because “a large portion of the most active and inquiring intellects find it advisable to keep the general principles and grounds of their convictions within their own breasts.” He blamed “a social tyranny more formidable than many kinds of political oppression,” one that “maintains all prevailing opinions outwardly undisturbed” “without the unpleasant process of fining or imprisoning anybody.” This “tyranny” consists in “the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them.”¹⁹

Under this heading of “merely social intolerance,” Mill places two very different phenomena: (1) the forms of disassociation that (as we’ve seen) are exercises of the right to free speech, and (2) the sorts of nongovernmental violence, harassment, and intimidation that (as we’ve seen) are violations of the right to free speech.²⁰ This notion of “social tyranny” (or “intolerance”) is a package-deal that conflates acts of disassociation with initiations of force, on the grounds that both kinds of action can be practiced by large groups of people acting in their private capacities (rather than through government). The term thus tars voluntary actions with the same brush as forcible ones.²¹

The principle of individual rights marks the distinction between consensual interactions between individuals and interactions in which some individuals force themselves upon others. The fundamental right—the right to one’s own life—defines and sanctions the individual’s “freedom to take all the actions required by the nature of a rational being for the support, the furtherance, the fulfillment and the enjoyment of his own life.”²² This means the individual’s freedom to live by his own judgment, using (and developing) his own means in support of his own ends (while respecting others’ freedom to live likewise). The freedom of speech is the freedom to express one’s opinions in the course of leading such a life. This includes one’s freedom to associate with others in support of their speech or to withdraw one’s sanction from their opinions by disassociating with them (in whole or in part). Conversely, the right to freedom of speech does not give everyone with anything to say a license to force himself upon those who do not wish to be his audience, his promoters, or his enablers. This is true however large the proportion of society that does not wish to deal with him and however unjust or imprudent their attitude may be.

Freedom of speech is never a license to violate other rights. Threats and incitement to violence no more fall within the protection of this right than do the instructions a mafia boss gives to a hitman. They may express or imply an opinion (as do all utterances, publications, and actions), but their essence is to initiate or facilitate a course of action, rather than to participate in an exchange of ideas. This is true of the passages quoted earlier from the *Daily Commercial* and *Evening Scimitar* that called for Wells’s lynching. These are not mere expressions of opinion: they are conspiracy to murder and mayhem.²³ The same applies to social media posts that targeted supposed blasphemers like Paty for attacks by Islamist terrorists.²⁴ Khomeini’s fatwa against Rushdie amounted to an act of war against the free world, and it ought to have been treated as such by world governments.²⁵ No doubt there are cases where it is difficult to determine whether an utterance is essentially an expression of an opinion (which would fall within the protection of the right to free speech) or constitutes a threat, fraud, defamation, harassment or other initiation of force (which would fall outside the realm of free speech).²⁶ But the difficulty in such cases is not a matter of *balancing* free speech against other potentially conflicting rights or interests. It is, rather, a matter of determining the nature of the utterance, given the full context in which it was made.

Much of what today passes for “protest” is likewise a violation of rights and amounts to no more than self-styled “protesters” forcing themselves on others. We have already discussed how this is so in the case of those who violate others’ free speech by disrupting their events, but the point applies more widely. It should go without saying that violent “protests” that destroy people’s lives and property are violations of their rights. So is any protest conducted in such a manner as to make bystanders reasonably fear that it may erupt into such violence. Such “protests” amount to menacing. Most large, ill-organized gatherings of visibly angry individuals

have this character, especially if they are armed. Examples include the infamous “Unite the Right” rally in Charlottesville, Virginia, in 2017 (even if one does not include the murder of a counter-protester by one of the attendees), many of the Black Lives Matter rallies in 2020 (whether or not they devolved into rioting and looting), and Donald Trump’s “Save America” rally on January 6, 2021 (even before many of its members stormed the U.S. Capitol—some of them voicing their intention to “hang” someone whom they knew was in the building). No one’s rights are violated when such gatherings are prohibited by local governments (even on public spaces) or when police disperse mobs as they’re beginning to form.²⁷ Even protests that don’t threaten to turn violent often disrupt others’ lives in violation of their rights. Contemporary examples include the “occupy” movement, which consisted in prolonged trespasses on other people’s property—most notably on Zuccotti Park (in New York City’s Financial District)—and the many proponents of the Palestinian cause who commandeer thoroughfares, campuses, and homes to use as soapboxes.²⁸

Perhaps the most eloquent illustration of the perverse view that free speech amounts to a license to force oneself on others is the Berkeley “Free Speech Movement” of 1964, which consisted of months of civil unrest perpetuated by thousands of University of California students, who objected to a university policy restricting certain political activities on campus. Even granting that such a policy on the part of a public university constitutes a violation of free speech, the aggrieved students had no right to make this point by forcibly disrupting the campus, thereby denying other students the education they had contracted for.²⁹

Commenting on the events at Berkeley, Ayn Rand wrote:

[T]here is no justification, in a civilized society, for the kind of mass civil disobedience that involves the violation of the rights of others—regardless of whether the demonstrators’ goal is good or evil. The end does *not* justify the means. No one’s rights can be secured by the violation of the rights of others. [...]

The only power of a mob, as against an individual, is greater muscular strength—*i.e.*, plain, brute physical force. The attempt to solve social problems by means of physical force is what a civilized society is established to prevent.³⁰

A society is free to the extent that it is governed by the principle of individual rights, and the freedom of speech is nothing more or less than individuals’ right to be free from forcible interference in (or in retaliation for) their expression of their ideas. Mobs like those that Rand describes (and which we see again proliferating throughout American society) are instances of such forcible interference with individuals’ freedom to speak and to live.

The Government’s Responsibility to Respect and Secure the Right to Free Speech

Because freedom of speech can be violated only by the initiation of physical force, which always violates other rights as well, special laws are not generally needed to secure this freedom. It is secured, rather, by the general laws that protect us from attacks on (and threats to) our persons and property.³¹ When governments fail to protect the right to freedom of speech from infringement by private parties, it is by failing to prosecute those parties for violating these other laws—a topic we’ll return to later. Because separate laws are not needed to protect free speech from private actors, and because governments themselves often violate this right, free speech is sometimes characterized specifically as a right individuals hold against the government. Onkar Ghatge, for example, has described free speech as “an individual’s right to express his ideas without governmental interference, that is, without governmental suppression or censorship.”³² Such characterizations are natural especially in the United States where so much of the discussion of free speech centers on the First Amendment.

As should be clear from the previous section, I conceive of the right more broadly as a right to be free from forcible interference in (or in retaliation for) expressing one’s ideas, whether this force is initiated by a government or by private actors. However, much of the need to conceptualize it as a distinct right comes from the fact that governments so often pass laws abridging it. To defend the right, we must be on guard against the

confusions and rationalizations that lead lawmakers and their constituencies to think it is proper to wield force to silence people, or to compel them to support or refrain from supporting the expression of certain ideas.

The most obvious governmental violation of the freedom of speech is censorship, the explicit prohibition against the expression of certain ideas. Such censorship is commonplace throughout history and in oppressive regimes today like those of North Korea, Iran, China, and Russia. It is less common in freer nations, but it still exists in the forms of laws prohibiting Holocaust denial and other forms of “hate speech.” We do not have such laws in the United States, because they are widely recognized to violate the First Amendment. However, because the amendment has been interpreted too narrowly, we do have many laws restricting “commercial speech,” and campaign finance laws restricting political speech.³³

A less well-recognized way in which governments violate individuals’ freedom of speech is through laws that *establish* and promulgate certain opinions as orthodoxy. Because the establishment of religion is explicitly prohibited by the First Amendment, laws explicitly promoting religion are typically struck down on constitutional grounds. But it is no less a violation of free speech for the government to promote specific ideas in other fields, and we have many laws that do so.³⁴ Perhaps the oldest and most damaging such laws are those providing for public education. Public education appropriates money from taxpayers to promulgate opinions that may be anathema to them, and it forces parents to surrender their children to be educated in state-run or state-approved institutions in accordance with curricula chosen by the state. Such laws collectivize and thus politicize the field of education.³⁵ Similar points apply to public broadcasting, to the public funding of scientific research (except when that research is directly in service of a legitimate governmental function such as national defense), and to governmental licensure of professionals (like teachers, therapists, or tour guides) whose job is to express opinions.³⁶

In all such fields, the only position consistent with the right to free speech is abolitionism. The entire public education system (including public financing of higher education) should be abolished, as should such agencies as the National Institutes of Health and the National Science Foundation. This abolition could take the form of simply eliminating the present institutions in the expectation that private ones will arise (or expand) to perform those of their functions that are legitimate. Or it could take the form of *privatizing* the existing institutions by cutting them off from governmental funds and authority. Presently there is no political constituency for abolition (of either sort). This unhappy fact gives rise to many questions for advocates of free speech: Of the various policies these institutions might adopt on various issues, which are most oppressive, and which are less so? What near-term goals and strategies should a movement advocating freedom in education (or scientific research) adopt? How should an individual teacher, student, or researcher navigate the existing system? These are all questions about how to navigate and mitigate an ongoing violation of individual rights, and they must be regarded as such if we are to have any hope of answering them in a way that is consistent with the principle of free speech.

In addition to violating freedom of speech by censoring and by establishing opinions, a government also violates the freedom of speech when it restricts individuals’ freedom to disassociate from speech and speakers they disapprove of. Consider, for example, the recent Florida and Texas laws (currently under judicial stays) that prohibit social media platforms from removing or deemphasizing users or posts based on their viewpoints.³⁷ Under the pretext of defending users’ free speech, the laws compel the companies to promote, participate in, or condone speech that they have every right to disassociate from.

Governments can also violate the right to free speech by exercising their legitimate powers in a way that discriminates against individuals for holding or voicing certain opinions. A government violates freedom of speech, for example, if it enforces noise ordinances more vigorously against people who are noisily expressing unpopular opinions than it does against people who noisily express favored opinions.

A person’s opinions may legitimately factor into determinations of whether his actions are criminal (and how severely those actions should be punished) only insofar as his actions violate rights in a way or to an extent that similar actions would not if they had been otherwise motivated.³⁸ Likewise, the government ought not take cognizance of the opinions of its employees or contractors except insofar as they relate directly to their job qualifications.³⁹

In addition to actively violating individuals' freedom of speech in any of the ways we have discussed, governments are sometimes complicit in violations by private parties. This happens when a government fails to vigorously prosecute those who initiate force to silence others, thereby allowing these criminals to impose a reign of terror over those who disagree with them. Such governmental inaction can be motivated by officials' (or voters') sympathy with the terrorists. This is likely what happened in the attack on the *Free Speech* in Memphis. As far as I have been able to ascertain, no one was prosecuted for that attack, just as no one was prosecuted for committing the lynchings on which the *Free Speech* had reported. Wells believed there was no prosecution because "every white man of any standing in [Memphis] knew of the plan and consented to the lynching," and that "the criminal court judge himself was one of the lynchers. Suppose we had the evidence; could we get it before that judge? Or a grand jury of white men who had permitted it to be?"⁴⁰ If Wells's belief was correct, then it was not just a private mob, but also the municipal government of Memphis, that was responsible for murdering the lynched men and for destroying the *Free Speech*.

Terrorist movements are usually small, but corresponding to each of them is a larger group of people who share an attenuated version of the terrorists' ideology. Such people condemn the terrorism only half-heartedly and are dismissive of its victims. Governments staffed by such people too often enable terrorism by treating terrorist attacks as isolated incidents, neglecting to investigate the organizations behind them, and failing to offer potential victims the security they're entitled to.⁴¹ Such failings can be motivated not only by sympathy with the terrorists' ideology, but also by other prejudices or by cowardice, both of which can make people slow to recognize the magnitude of dangerous evils in their midst. Of course, all these attitudes were prevalent among American politicians in Wells's time, because they were widespread in the population at large.⁴²

It is because of similar governmental failures, engendered by similar cultural causes, that many people are terrified to engage in lawful speech that Islamists regard as blaspheming Mohammed. Here the primary failure lies not in the Muslim-majority countries, but in America and Western Europe. No doubt, in some Muslim-majority countries that do not have Islamist governments, there are nonetheless some officials who actively aid and abet Islamist terrorism (as Wells thought that government officials in Memphis did with white-supremacist terrorism), but fear of offending Islamists would not be a *global* problem if the governments of other countries had not been pusillanimous in the face of a movement that threatens the speech of their citizens. Since 1989, when Iran's Ayatollah Khomeini issued a fatwa against Salman Rushdie, leaders of European and American governments have equivocated about the threats faced by critics and satirists of the religion. These leaders have used their bully pulpits to voice skepticism about the value of the speech the Islamists seek to suppress and to show exaggerated sympathy for the offense some take at this speech.⁴³ This response may be motivated by the leaders' own more moderate religiosity (whether Christian, Muslim or otherwise)—or by a condescending sympathy for people they view as victims of poverty or Western imperialism—or by cowardly considerations of realpolitik. In any case, the effects are the same: the Islamists have been able to silence many. Specific instances of Islamist terrorism in Western countries have been investigated, and perpetrators have been prosecuted when they could be found, but the atrocities are too often treated as isolated crimes, and little has been done to target the organizations and governments that support them.⁴⁴

To protect our rights, including freedom of speech, governments must vigorously investigate potential conspiracies to violate these rights, whenever reasonable suspicion exists. However, such suspicion often arises in connection with organizations, movements, and subcultures devoted to controversial opinions—just the sorts of group whom we have reason to worry that the government will persecute on the grounds of their heterodox opinions. Examples in American history include the Ku Klux Klan, the American Communist Party, various factions within the civil rights movement and the countercultural movements of the 1960s and '70s, and certain mosques and other institutions serving religious minorities. These organizations have been subject to investigation and counterintelligence operations by the Federal Bureau of Investigation, and there is a well-documented record of abuses on the FBI's part, which makes civil libertarians rightly concerned about such investigations.⁴⁵ To prevent abuses, procedures must be established to ensure that investigations of heterodox groups are indeed investigations (rather than attempts to harass or influence the groups) and that they are

properly predicated on evidence (in accordance with standards that are applied uniformly to all ideological communities).

Defenders of free speech should not engage in knee-jerk calls for, or reactions against, investigations into heterodox groups. What is needed here, as in all areas of law, is *objectivity*—which means well-defined methods and standards for such investigations and prosecutions, and legal remedies for those who have been unjustly targeted. In the quest for such objectivity many difficult questions will arise, but these questions are not specific to freedom of speech. They are persistent concerns throughout the structure of a justice system wherever prejudices, ideological or otherwise, may lurk. For example, even when freedom of speech is not involved, prejudices can lead authorities to overlook (or underprioritize) crimes against members of disfavored groups or to infringe on the rights of suspects from these same groups. When forming any legal system, such concerns can be addressed by erecting checks and balances of various sorts, but that doesn't mean fundamental *rights* such as the right to free speech are being balanced against one another. Rather it is governmental resources and the incentives and powers of various investigative bodies and legal parties that must be balanced in order to preserve the rights of all concerned.

How to design (or reform) institutions such as police forces, justice departments, and courts to ensure that all relevant rights are respected is a difficult problem beyond the scope of this chapter. In general, solutions must include checks and balances within the judicial system as well as avenues by which parties who have been treated unjustly can seek redress. But there are countless questions of implementation which will likely need to be answered differently in light of the specific difficulties facing particular societies. Such problems are compounded when they are misconceptualized, or seen as issues of balancing rights, or as issues of how much or little government should be involved in an area of life.⁴⁶

The right to freedom of speech (like any other right) does not create a zone of anarchy in which a government may not function or investigate.⁴⁷ Rather, the right defines a zone in which an individual may act unilaterally, and it obligates government to take all necessary actions to secure the individual's freedom of action against forcible interference by others.⁴⁸ The government's function requires it to operate everywhere within a society, but to do so in single-minded pursuit of its proper function, constrained by well-defined rules ensuring that, in endeavoring to protect one individual's freedom, it does not intrude on anyone else's.

Because the proper function of government is limited to securing rights, any government that transgresses this limit (e.g., by providing services such as education, transportation, or healthcare) necessarily violates rights. We've discussed how the government specifically violates the freedom of speech when it provides services that involve the promulgation of ideas, such as public education, public broadcasting, or the public financing of research. It also violates rights when it operates public spaces where people can congregate to discuss and disseminate ideas. Since the government is an agent of everyone in the society, the use of governmental resources to facilitate any speech by private parties, violates dissenters' right to disassociate from that speech. This rights violation is compounded when a government favors the dissemination of some ideas over others. Therefore, the First Amendment is properly interpreted to demand ideological neutrality from the government in such matters as deciding what sorts of speech are permitted on public property.

By contrast, private individuals (or nongovernmental institutions) do not limit anyone's freedom of speech when their policies lack the ideological neutrality we rightly demand of the government. Publishers, broadcasters, social media companies, and private educational institutions do not infringe on anyone's freedom when deciding to whom they will grant or deny use of their platforms. Likewise, employers, service providers, customers, and financiers cannot violate anyone's freedom by their decisions to deal with some parties and not others. This is true even when these decisions are made on ideological grounds, and even when they are made unjustly. Far from being infringements of free speech, such decisions are always exercises of this freedom, since the freedom to speak includes the freedom to support speech of which one approves and to withdraw one's support from speech (and speakers) of which one disapproves. Even foolish or unjust policies adopted by nongovernmental actors concerning speech fall squarely within the right to free speech, in the same ways and for the same reasons that false or unjust speech falls within the protection of this right. Because of this, any use

of state power to compel or encourage private institutions to adopt a policy of ideological neutrality violates the right to free speech (and the First Amendment to the U.S. Constitution).

The Value of Intellectual Diversity

Among those who grasp that private individuals and institutions have the right to engage in ideological discrimination, many still think that there is some moral imperative for employers, and such institutions as social media companies, communications utilities, financial institutions, and private universities to nonetheless observe something like the ideological neutrality that the First Amendment demands of government agencies. It is widely held that institutions that value free speech should abstain from discriminating among their associates (employees, customers, partners, etc.) on the grounds of their opinions, because upholding ideologically neutral terms of association will foster diversity and a culture of free speech (both within the relevant institution and in the larger society of which it is a part).

This is a mistake. It is true that ideological diversity is valuable in many contexts, and there may be some specific organizations whose missions would be best served by a policy of ideological neutrality, but general presumptions in favor of such policies drop the context that gives rise to this value and amount to demands that organizations sacrifice their missions. Rather than being moral absolutes, intellectual diversity and welcoming heterodoxy are potential values to be traded off against others in crafting worthwhile associations. Using the term “free speech” for these suggests that free speech itself—the *right* to free speech—is not an absolute, but just one of many competing claims that must be pragmatically balanced against one another. In order to defend actual free speech, therefore, we must conceptualize intellectual diversity and the practice of welcoming heterodoxy as values distinct from this principle.

We can begin by considering John Stuart Mill’s eloquent account of why we each need to be conversant with ideas very different from our own:

He who knows only his own side of the case, knows little of that. His reasons may be good, and no one may have been able to refute them. But if he is equally unable to refute the reasons on the opposite side; if he does not so much as know what they are, he has no ground for preferring either opinion . . . Nor is it enough that he should hear the opinions of adversaries from his own teachers, presented as they state them, and accompanied by what they offer as refutations. That is not the way to do justice to the arguments, or bring them into real contact with his own mind. He must be able to hear them from persons who actually believe them . . . He must know them in their most plausible and persuasive form; he must feel the whole force of the difficulty which the true view of the subject has to encounter and dispose of; else he will never really possess himself of the portion of truth which meets and removes that difficulty.⁴⁹

Mill goes on to note that very few people, even among those who are considered educated, really possess their “portion of truth,” since most have not expended the effort needed to understand the strongest case for the opposing views.⁵⁰

Mill’s point is that for one’s convictions to constitute knowledge, as opposed to mere opinion, one must have engaged with the arguments against those convictions, and doing this requires encountering the strongest of these arguments presented as powerfully as possible by sincere advocates. This implies that any context in which a particular view has been wholly excluded from consideration is destructive to knowledge, *even in cases where the excluded view is false*. Such contexts undermine one’s ability to form genuine knowledge. (The situation is even worse, of course, if the excluded view turns out to be true.) Since knowledge requires considering contrasting ideas, a knower requires an intellectually diverse environment.

Moreover, since reasoning requires following the evidence wherever it leads, genuine reasoning is incompatible with the attempt to uphold any dogma. Someone whose thinking is governed by the premise that she must reach a certain conclusion and not another, or that she must not question a certain premise, is not endeavoring to know what’s true. Only free thinking—where the range of admissible conclusions hasn’t been fixed in advance—is genuine thinking. A person cannot, therefore, function as a thinker insofar as she is

dependent on maintaining a position within a social institution, which position is contingent on her reaching (or not reaching) specific conclusions.

All the values we seek from human relationships derive ultimately from the thinking of each party. This is true for every sort of association—for business partnerships, commercial transactions, employment relations, friendships, marriages, clubs, educational institutions, etc. All genuine thinking is thinking *for oneself*, and it is to be expected that differences of opinion will emerge when individuals think for themselves, even on issues where only one answer can be correct. Thus, disagreement is inevitable in any worthwhile relationship or organization, and people cannot work well or live well insofar as they depend on associations that are contingent on their toeing a party line. This is why social environments that welcome differences of opinion are valuable: they support independent thinking, which is the source of all the values we seek to gain from one another.

Such an intellectual environment is a value to each of us as individuals, and we must each pursue it in our own associations and in the context of all our other values—a context that includes the value of the uniformity of opinion that underlies any joint endeavor. However, the values of intellectual diversity and welcomeness to heterodoxy are generally discussed in collectivistic terms and in a way that drops this crucial context. Institutions such as schools, social media companies, providers of financial and communications services, and employers are regarded as societal resources which must be run in certain ways to fulfill a societal need to welcome (or tolerate) heterodoxy. This is the view that generally lies behind the calls for such institutions to embrace “free speech.” I will discuss some of the controversies regarding “free speech culture” and the policies of such institutions in my next section. But let’s first consider how we as individuals living in a free society might pursue the value of an intellectual environment that exposes us to diverse ideas and that welcomes any heterodox conclusions we may reach.

Each of us has much to gain from interacting (directly or indirectly) with people who hold ideas with which we disagree, and therefore we each have reason to support, patronize, or participate in institutions (schools, forums, social groups, libraries, etc.) that enable such interactions. However, individuals will differ in their specific needs for intellectual diversity and how these needs relate to their other values and concerns. We should, therefore, expect there to be a variety of institutions catering differently to different people in different contexts.

For example, a biology researcher will want access to a library or bookstore stocked with a wide range of books in her field, including many that she disagrees with. She’ll likely be more interested in disagreements of detail (e.g., about the evolutionary history of a specific organism) than in works advocating for creationism, phrenology, or race science, but she’ll want access to these, too, on occasion. She may, however, want works expressing some of these views to be excluded from the library she visits with her child. She’ll likely prefer to work for an employer who welcomes the forthright expression of disagreements on scientific issues, but she may find certain approaches to biological research so misguided that she sees no point in working for or with their proponents. Because she’ll be motivated to work with those collaborators who can most help advance her research, she probably won’t be much interested in their political or social views, and she’ll probably prefer an employer who doesn’t generally discriminate on such grounds, because she knows such discrimination could prevent her from working with people who might have a lot to offer. However, she may find certain views so abhorrent that she’d prefer a workplace that excludes their proponents entirely. When she’s looking for an advocacy organization or political party to join, she might prioritize robust ideological alignment; but she may be (largely or wholly) unconcerned with the political, social, or religious views of her grocer or swim instructor. There are different purposes for which our biologist might want to use social media—to connect with colleagues in her field, to monitor current events or follow the debates of the day, to connect with old friends and share anecdotes, etc. For different uses she might prefer different sites with different content policies.

Every individual will form some such constellation of values and attitudes, placing different weight on uniformity or diversity of opinions in different contexts. Some constellations of values will be irrational, unjust, and self-destructive. But many different constellations will be fully rational, especially if held by people in different circumstances with different levels of knowledge, different resources, and different goals. Among

those constellations that are less than fully rational, some will go wrong in relatively small ways, whereas others will be foolish and vicious. If all these individuals with their different constellations of values concerning ideological alignment and diversity are secure in their rights, such that each can choose to deal with each of the others or not, they will be able to use this freedom to negotiate terms of association that work for them.

Thus, in a free society, we should expect different organizations and institutions to emerge reflecting different values. Since (for the reasons Mill well described) knowledge requires some engagement with the full range of opinion on contentious subjects, those who value knowledge will create market demand for libraries, bookstores, and forums of various sorts that enable access to and dissemination of even the most disfavored views. But other forums will try to avoid offending anyone, and there will be everything in between.

Every cooperative endeavor presupposes specific points of agreement. For example, if our biologist seeks a collaborator for a research project on a specific organism's evolutionary history, a Young Earth creationist wouldn't be suitable, because the project presupposes the theory of evolution. Her project will also presuppose many more specific premises about the outlines of life on earth, about the specific species she's studying, about which research methods are promising, etc., and someone who disagrees with these presuppositions would not be suitable. This is true even though, as a biologist, she might benefit from being exposed to challenges to her presuppositions. If she lived in a society in which the theory of evolution was forcibly insulated from criticism, that would make it difficult for her to know that the theory is true (because she would be prevented from finding, engaging with, and evaluating the best arguments against the theory). Likewise, if despite living in a society with evolution skeptics, the biologist never gave a moment's thought to their view (and, in this case, it doesn't take much more than a moment), she may not be justified in her confidence in the presuppositions of her field. The same holds for the more specific presuppositions of her specific research project, many of which are bound to be controversial within her field. For her to be rationally confident in her own position, she needs to be *free* to learn about and consider alternatives, and she needs to take advantage of that freedom. But part of taking full advantage of that freedom is rejecting alternative approaches which she thinks are mistaken and building a research project based on the ideas and methods she judges to be right. As we've framed the example, pursuing this project will require finding a *like-minded* collaborator who agrees with her on the relevant points.

Just as her project would be undermined by a collaborator whose ideas were inconsistent with the biological premises underlying her project, so would it be undermined by a collaborator whose opinions prevented him from interacting with her respectfully. His viewing her as incompetent or dishonest would make him unfit for the role. This is true whether he views her this way because of some specific belief about her as an individual, or because he holds some such generalization as "women are no good at science," or "white people are exploiters," or "only researchers who studied at Harvard understand punctuated equilibrium." Our biologist cannot afford to be indifferent to potential collaborators' opinions on such matters, and there is not always a bright line to be drawn between such opinions and related political, religious, or ideological convictions. Of course, the biologist's project could also suffer if she rejects a potential collaborator because she falsely infers from his membership in a certain church or preference for a certain political candidate that he won't respect her or share the relevant scientific convictions.

In choosing a collaborator, she needs to find someone who agrees with her about what's needed to further the project, and she needs to allow such disagreements as are compatible with (and conducive to) this joint undertaking. Just which disagreements fit this bill will depend on innumerable factors, some of which may be idiosyncratic to the people involved. For example, if the biologist and potential collaborator have especially good interpersonal skills, they may be able to work together despite certain disagreements that would doom another pair of collaborators. Similarly, a pair of collaborators who are especially good at resisting confirmation bias might be needlessly slowed down by internal disagreements of a sort that another pair might need to help them avoid this cognitive pitfall.

There is no principle demanding that our biologist close her eyes to a potential collaborator's opinions (or any special subclass of his opinions), nor would it be prudent for her to do so. The relevant principles are that she cannot rationally expect any collaborator to agree with her on *everything* or on *nothing*, and she should

not place more value on any agreements or disagreements than is warranted by the full context of her own values, purposes, and circumstances.

Everything we've said about this one researcher's relation to a potential collaborator applies also to all of the relationships inherent in any large organization—such as a business, a university, or a social network. Each such organization has its own mission and values, which must be implemented in its policies and corporate culture if it is to be successful. And each individual associated with the organization will approach the association from the standpoint of his own hierarchy of values. An organization that demanded too much agreement would have trouble finding and attracting suitable associates, and those it did attract would be unable to do their best work. But an organization would also undermine itself by welcoming associates whose opinions are incompatible with its purpose and values. For any organization, there will be opinions that are directly incompatible with the organization's mission—as, for example, opposition to abortion rights is incompatible with the mission of Planned Parenthood, and atheism with the mission of the Catholic Church. There will also be opinions that are incompatible with the sort of corporate culture the organization regards as necessary to its mission. For most organizations this will include a culture of mutual respect that could be undermined, for example, by the opinion that people of African descent are stupid or that people of European descent are oppressors.

For almost any role in any group or organization, there are things that someone would be within his rights to say, but that would make him unsuited for that role, such that the organization could not tolerate this speech without undermining its purpose. Such speech is within the person's rights in that it would be wrong for anyone (whether a governmental actor or a private party) to forcibly prevent him from saying it. But this right does not obligate the organization to allow the speech on its platform or to associate with the speaker. For example, many social media sites that fancy themselves free-speech forums do not allow users to post pornographic content, even though such content is (properly) legal. And it makes sense for the platforms to exclude pornography, given the sorts of communities they're trying to build. Likewise, a law firm may have strong reasons not to retain an associate who has publicly voiced sympathy with the October 7 attacks on Israel—doubly so if it serves many Jewish clients who would interpret these remarks as antisemitic (as well as generally vile).⁵¹ And a university may not wish to employ a teacher whose racist remarks (voiced outside of class) raise questions about her ability to treat all students with respect and judge them objectively. All of these potentially disqualifying sorts of speech fall within the speaker's freedom of speech, in that it would be wrong for governments or private individuals to retaliate against them forcibly. But in each case, there's a reason for the organization to make such speech grounds for disassociation. In some cases, there are also reasons pulling in the opposite direction.

Because organizations differ in their missions and constituencies, it should be expected that they will adopt different policies and develop different cultures, with some welcoming a wider range of opinions than do others. There are some approaches to this issue that would be irrational, unjust, and self-defeating, but there are a range of different approaches by which organizations could rationally pursue a valid mission and attempt to attract and retain associates. How wide a range of opinions an organization welcomes among its employees or associates (and what policies it institutes regarding expressions of these opinions in various contexts) no more reflects its degree of commitment to free speech than the variety of a retailer's wares reflects the degree of its commitment to free trade.

Such variation in the policies and cultures of organizations is an expression of the freedoms of speech and association and a consequence of the pursuit by free individuals of their values. These values include (but are not limited to) the value of an environment that welcomes and fosters intellectual diversity. It is up to each of us to exercise these freedoms to seek these values for ourselves.

Individualists who share Mill's concerns about an intellectually stifling uniformity of opinion can work to create new institutions (institutes, businesses, universities, libraries, journals, grant-making bodies, etc.) to foster heterodoxy. There are many forms such institutions can take. For example, there are organizations, like the Ayn Rand Institute, dedicated to promoting specific ideas (or research programs) that lie outside the ideological mainstream. A heterodoxy-promoting individualist might support the work of some such

organizations, because he thinks their ideas (whether he agrees with them or not) fill an important gap in the discourse. Our heterodoxy-supporting individualist could also support publications like the *Journal of Controversial Ideas* that try to provide a home for ideas that have little in common except for falling far outside of the mainstream in one direction or another.⁵² Or he could try to forge an institution that facilitates exchange between people of differing viewpoints, making room for marginalized views without catering specifically to them. Examples of this approach include *Discourse* magazine, the Academy of Ideas (<https://academyofideas.org.uk/>), and the new University of Austin.

Finally, the individualist looking to support intellectual diversity can work to create institutions that facilitate the wide and rapid sharing of content, so that speakers of all sorts can more easily connect with an audience. By any measure, the most historically successful initiative of this last sort is the internet. The World Wide Web and most of its social media platforms were created by people who were motivated in part (at least) by the idea of empowering a wider range of people to share and discover ideas.

Anyone worried about a lack of intellectual diversity today should reflect that no person in history has had as easy access to as wide a range of ideas as anyone can find for free on YouTube, X or Reddit. Many of the people today who resent mainstream cultural institutions for marginalizing the opinions they've been exposed to on social media would have, in earlier eras, remained wholly ignorant of opinions outside of the mainstream. The specific currents of censoriousness in the world today are largely caused by the ease of exchanging ideas online. Some are backlashes by cultural elites against the mainstreaming of previously marginal streams of thought. Others, such as the "Twitter mobs" that have called for the hasty "cancellation" of those who offend against various *au courant* leftist strictures, are made up of scolds who have organized through social media to exert social pressure that would not have been possible to them in the past. These forms of censoriousness (however unjust some of them may be) are aspects of an intellectually diverse society, rather than signs that we lack one.

A Culture of Free Speech

I have treated intellectual diversity (and the sort of environment that fosters it) as one value among others that free individuals can pursue in their associations with one another. But, as I mentioned earlier, most discussions of this value proceed as if the needs of society as a whole place special obligations on certain societal institutions to embody or foster a "culture of free speech." To develop an individualist alternative, I'll focus on two sorts of institutions that have loomed large in recent free-speech controversies: social media platforms and universities. I'll expose the collectivist premises dominating thought about these institutions and I'll explain the individualist perspective on these issues—the perspective that, when embodied in a society's institutions and mores, constitutes a genuine culture of free speech.

Among the most prominent examples in recent years of the collectivist approach to these issues are Elon Musk's (2022) statements about Twitter, which he would later purchase: "Given that Twitter serves as the de facto public town square, failing to adhere to free speech principles fundamentally undermines democracy."⁵³ Twitter supposedly serves a certain societal function whose fulfillment requires abiding by certain "free speech principles." Because Musk thought the platform was failing to do this, he purchased it, not as a business venture but as a public service—"to try to help humanity, whom I love."⁵⁴

It is striking that Musk, who prides himself on his "first-principles thinking" in business, did not define the "free speech principles" to which he thinks Twitter should adhere. The nearest thing I have found to a public exposition of these principles in the months surrounding the acquisition is this statement:

By "free speech," I simply mean that which matches the law. I am against censorship that goes far beyond the law. If people want less free speech, they will ask government to pass laws to that effect. Therefore, going beyond the law is contrary to the will of the people.⁵⁵

This is no principled stand at all. It simply says that the platform shouldn't "censor"—i.e., refuse to provide a platform for—*much* legal content, without saying anything about *how much* or how this can be

determined.⁵⁶ Notice too Musk's indifference to the actual issue of free speech in his blithe acquiescence to limits on free speech imposed in accord with "the will of the people." Of course, it is precisely such limits that the First Amendment prohibits.⁵⁷ The idea that the *will of the people* should determine how a social media platform operates reflects the collectivist premise that the platform, though legally held as private property, is essentially an organ of humanity as a whole, which must somehow be operated by humanity's general will in the service of its collective good.

This same collectivist view dominates thinking about educational institutions and shapes discussion of speech there. The American Association of University Professors has long based its advocacy of "academic freedom" and the tenure system on the premise that "institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole."⁵⁸ The Association acknowledges that there are some "proprietary institutions" whose purpose is "to subsidize the promotion of opinions held by the persons, usually not of the scholar's calling, who provide the funds for their maintenance." But it concerns itself only with "ordinary institutions of learning" whose purpose is "to advance knowledge by the unrestricted research and unfettered discussion of impartial investigators." It holds that any such institution, whether run by the state or as nongovernmental entities, "constitutes a public trust" charged with carrying out a "threefold function": (1) "to promote inquiry and advance the sum of human knowledge," (2) "to provide general instruction to the students," and (3) "to develop experts for the various branches of the public service."

In order to fulfill this responsibility to "the community at large," the university must "enforc[e] to the fullest extent the principle of academic freedom" so that "the scholars who carry on the work of universities shall not be in a position of dependence upon the favor of any social class or group."⁵⁹ The university must be "an inviolable refuge" from "the tyranny of public opinion." Professors' academic freedom consists in their being insulated both from "political considerations" that might influence the legislators that appropriate funds for public universities and from the economic interests of "benefactors" and of "the parents who send their children to privately endowed institutions."⁶⁰ A professor's academic freedom, in other words, consists in the inability of the people who fund the universities to take his opinions into account when making any determinations about his employment. To facilitate this freedom, the AAUP advocated the establishment of what has come to be called the tenure system: "[T]he tenure of professorships and associate professorships, and of all positions above the grade of instructor after ten years of service, should be permanent (subject to the provisions hereinafter given for removal upon charges)."⁶¹

With universities as with Twitter, a supposed public function is thought to require institutions to provide people with a platform, regardless of the opinions they express. Because these non-governmental institutions supposedly serve a public function, they are expected to practice the sort of ideological neutrality that the law demands of government bodies. As a result, many of the individuals involved with institutions feel ill-used by policies that give them no option but to interact with people whose opinions they regard as odious, if they are to deal with the institution at all. And the institution's interest in maintaining its relations with these aggrieved associates is at odds with its commitment not to discriminate against the speakers whom they find objectionable.

On more than one occasion since Musk's purchase of Twitter (now X), several large advertisers have pulled or suspended their ads, fearing that some of Musk's policies (or his personal behavior on Twitter) would cause their brand to be associated with racist (or otherwise noxious) content.⁶² On one of these occasions, Musk responded by acknowledging that "in addition to adhering to the laws of the land, our platform must be warm and welcoming to all," rather than becoming "a free-for-all hellscape, where anything can be said with no consequences!"⁶³ On another occasion, he responded by accusing "many of the largest advertisers" of being "the greatest oppressors of your right to free speech."⁶⁴ He has since gone on to sue some of these advertisers for boycotting X, characterizing the suit as the beginning of a "war" and encouraging others who feel persecuted by boycotts to file similar suits.⁶⁵

In the first instance, we see Musk's collectivist conception of the need for intellectual diversity leading him to conclude that "free speech" cannot be an absolute. In the later episodes, we see his collectivist view of

Twitter as a public good, leading to the demand that advertisers sacrifice by continuing to run ads there, regardless of whether they judge that these ads will benefit their companies.

The problems Musk faced in his attempts to operate a “free speech” platform are not new. In 2012, a decade before Musk’s purchase, Twitter regarded itself as “the free speech wing of the free speech party.”⁶⁶ It professed a “John Stuart Mill-style philosophy” according to which “the most effective antidote to bad speech was good speech,” and so they engaged in little content moderation. By 2017 they had come to regard this philosophy as naive and felt a need “to take steps to limit the visibility of hateful symbols, to ban people from the platform who affiliate with violent groups.”⁶⁷ In 2019, (then) CEO Jack Dorsey said, “I don’t believe that we should optimize for neutrality Ultimately, I don’t think we can be this neutral, passive platform anymore.”⁶⁸ During the same period, Facebook and YouTube also began to moderate content on their platforms more aggressively.

The context for this was the rise of divisive political figures and movements like Donald Trump and Black Lives Matter and (eventually) the escalating acrimony over the COVID-19 pandemic. The platforms’ managers, who lean left politically, were especially concerned about Trump and right-wing populism, which they worried was fueled by misinformation and propaganda circulating on their platforms.⁶⁹ More generally the managers began to worry that the sorts of communities they had created online were not serving the values for the sake of which they had created them. Management responded with policy changes that resulted in a great deal of political content getting taken down, deemphasized or demonetized.⁷⁰ Many users were outraged at having been “censored,” and some sought restitution. One disgruntled YouTuber initiated a frivolous lawsuit against (YouTube’s parent company) Google.⁷¹ Another opened fire in YouTube’s offices, wounding three employees.⁷²

Complaints of “censorship” came from all quarters but especially from the political right. This intensified over the course of 2020 and 2021. Content skeptical of the government’s COVID-19 policy, which was especially popular in right-wing circles, was treated as misinformation. Twitter briefly blocked a *New York Post* story about Hunter Biden, on the premise that it was based on Russian disinformation.⁷³ Then, after January 6, 2021, Twitter and Facebook banned Donald Trump for posts they worried might incite violence.⁷⁴

There are many questions about the wisdom of various decisions made by the social media platforms in this difficult time. There is also evidence that some of these decisions were coerced by government actors, which would certainly be a violation of the platform’s right to free speech and of the First Amendment. But even apart from such violations, these platforms faced a difficult challenge, which ought to have been understood and faced in individualistic terms, but which was too often misconceived along collectivist, Millian lines. Essentially these platforms are in the business of *facilitating associations pertaining to speech*. In particular, they connect content providers with audiences and advertisers. The naive Millian approach that many of these companies took prior to 2015 was not a matter of overvaluing “free speech” or diversity of opinion. Rather, it represented too crude a view of what makes the relevant associations valuable to all the parties involved—including the speakers, the audience, the advertisers, and the owners and employees of the platform.

There are individuals and businesses who have succeeded by attending to the values and relationships at stake. Among public intellectuals, Sam Harris and Jordan Peterson stand out in this regard.⁷⁵ Over the course of years, Harris has taken steps to ensure that his financial incentives align with the sort of work he wants to be doing. To avoid pressures from advertisers who don’t want to be associated with controversial ideas, his podcast is supported entirely by subscriptions, a model that is now finding favor with an increasing number of content creators. He left the crowdfunding site Patreon (where he had one of the most subscribed accounts) after they had “banned several prominent content creators” in a way that he thought was likely due to “political bias.” Rather than accusing Patreon of violating anyone’s freedom of speech, Harris simply explained why it was no longer in his interest to utilize the service: “I consider it no longer tenable to expose any part of my podcast funding to the whims of Patreon’s ‘Trust and Safety’ committee.”⁷⁶ Jordan Peterson behaved similarly in the Patreon affair and has similarly taken responsibility for finding a way to profit from intellectual work that he knows to be controversial.⁷⁷

Among social media companies, Substack stands out. It prides itself on its “decentralized approach to content moderation, which gives power to readers and writers.”⁷⁸ The policy is evidently working, as the site hosts newsletters from a growing array of accomplished writers representing a wide range of ideologies, including many mainstream figures and many from wildly different ideological fringes. In late 2023, Substack’s cofounder, Hamish McKenzie, reaffirmed its commitment to its content policy in response to claims that the platform has a “Nazi problem” because, among the hundreds of thousands of newsletters on the site, one can find “scores of white-supremacist, neo-Confederate, and explicitly Nazi newsletters.”⁷⁹

Sadly, McKenzie couched this decision in terms of the Millian package-deal that equates demonetizing publications (a form of disassociation) with censorship and a lack of support for individual rights and civil liberties:

I just want to make it clear that we don’t like Nazis either—we wish no-one held those views. But some people do hold those and other extreme views. Given that, we don’t think that censorship (including through demonetizing publications) makes the problem go away—in fact, it makes it worse.

We believe that supporting individual rights and civil liberties while subjecting ideas to open discourse is the best way to strip bad ideas of their power. We are committed to upholding and protecting freedom of expression, even when it hurts.⁸⁰

But, of course, no one has an “individual right” to Substack’s services if Substack doesn’t want to provide them, and Substack is no more respecting the Nazis’ liberty by continuing to serve them than it would be infringing on their liberty if it decided to kick them off the platform. The issue is not one of liberty, but of the company’s view that there is great value in a content-neutral platform where even the most odious ideas can be voiced.

What distinguishes Substack from failed companies that also imagined themselves to be providing “free speech” platforms is that Substack has managed to create a network of mutually beneficial interactions among the members of the many different communities it hosts. Consider by contrast the case of Parler. It billed itself as “the premier global free speech platform” and promised to host content that was not welcome elsewhere, but unlike Substack, which hosts a wide range of creators, Parler was never more than a ghetto for marginal voices on the political right.⁸¹ It failed because it relied for all its essential services on companies like Amazon, Apple, and Google, which did not want to be party to the content it hosted. Those companies all withdrew their services in the wake of the storming of the U.S. Capitol on January 6, 2021, when Parler was becoming popular among members of the MAGA movement.⁸² The companies wanted nothing to do with Parler, because they thought its lax content-moderation policies made it a vector for incitement to violence. Parler denied that violence was being incited on its platform and complained that it was made a scapegoat.⁸³ Even if it was treated unjustly, the fundamental cause of its failure was that it had not found (or, seemingly, even sought) a way to build the sorts of relationships necessary to sustain a service that platforms even stigmatized speech. All Parler had to offer the parties on whom it relied were Millian demands for sacrifices on the altar of the supposed rights of people whom these parties regarded as deplorable and dangerous.

By contrast, Substack has thus far managed to retain mainstream content while also hosting respectable radicals as well as sundry crackpots and bigots. Its approach to content-moderation and online association enables readers, advertisers, and commentators to associate with the content that interests them without having to sanction content that they deplore—except in the very minimal sense of not boycotting Substack for continuing to provide services to the deplored customers. Creators’ willingness to deal with Substack on these terms doubtless owes a lot to their recognizing (with Mill) the value of intellectual diversity, to their being tired of a “cancel culture” that regards many widely held views as beyond the scope of acceptable debate, and to their valuing the assurance that they will not be deplatformed if they offend against some trendy shibboleth. But the value they get from Substack lies not simply in its refusal to deplatform (even) odious speech, but in its having developed policies that facilitate the exchange of heterodox ideas, and in having fostered a diverse community of creators and consumers who support these policies.

Substack promotes intellectual diversity by facilitating individual customers' individualistic pursuits, rather than by calling on them to sacrifice their own values for an alleged public benefit. The same is true of other social media platforms, including X, YouTube, Facebook, and Reddit. When they provide value, it is by facilitating relationships through which individuals can advance their own values, rather than by adhering to impracticable principles that purport to serve a greater collective good (but that produce only strife).

We see a similar dynamic at universities, where claims of "academic freedom" routinely clash with students', donors', and administrators' motives for associating with universities. Consider the cases of Amy Wax and Jodi Dean, who are both tenured professors—the former at the University of Pennsylvania Law School and the latter at Hobart and William Smith Colleges. Wax has a long history of racially charged comments, including comments about what she has observed about the character and performance of black and Asian students as groups. This has led many to question her ability to treat students with respect and to judge them objectively. In response to student complaints, the university imposed sanctions on her that she argues violate her academic freedom.⁸⁴ Dean is a Hamas sympathizer who wrote an essay thrilling over the "exhilarating" "images from October 7 of paragliders evading Israeli air defenses" on their way to rape and kill Israelis.⁸⁵ In an essay explaining that "Professor Dean has been relieved of classroom duties" while the administration determines how to "properly and fairly respond," the colleges' president pointed out that "as a result of Professor Dean's comments, there now may be students on our campus who feel threatened in or outside of the classroom."⁸⁶ His decision has been widely criticized for violating her academic freedom.⁸⁷

The disciplinary actions against Wax and Dean may be breaches of their contracts, and it may be wise for some institutions of learning to have tenure policies that protect faculty from suffering adverse employment consequences for expressing stigmatized opinions. But the AAUP's position goes far beyond this. Recall its view that any educational institution not explicitly devoted to the promulgation of some narrow creed is duty-bound to have a tenure policy protecting "academic freedom." On this view, *no* institution of higher education could morally take into account whether its faculty's pronouncements make students feel unwelcome and unsafe, repel donors and parents, or otherwise conflict with the values people seek from their association with the institution. Either these people are also duty-bound to continue associating with the university (violating their convictions and sacrificing their interests) or else they are free to disassociate, but the trustees of the institution are duty-bound to let the institution be blackballed along with its most odious professors.

Far from being anomalous, Wax's and Dean's comments are precisely the sort of speech that "academic freedom" has always been intended to protect. The AAUP was founded by John Dewey and Arthur Lovejoy. The latter was one of five professors who had resigned their positions at Stanford in 1900 to protest the university's dismissal of economics professor Edward Alsworth Ross—an affair that provided much of the impetus for the AAUP. Ross was an anti-capitalist bigot who would go on to argue that society needed to "muzzle" Jesuits and business magnates (whom he referred to as "men of prey").⁸⁸ In a story about a mass meeting of citizens asking for "protection from the influx of Asiatic hordes," the *San Francisco Call and Post* (of May 8, 1900) reports that Ross

declared primarily that the Chinese and Japanese are impossible among us because they cannot assimilate with us; they represent a different and inferior civilization to our own and mean by their presence the degradation of American labor and American life. We demand a protection for the American workmen as well as for American products. . . . And should the worst come to the worst it would be better for us if we were to turn our guns upon every vessel bringing Japanese to our shores rather than to permit them to land.⁸⁹

This article came to the attention of Jane Stanford, who had cofounded the university with her late husband and was financing it with the fortune he had made in the railroad business (employing many Japanese laborers). She held that Stanford University should stand above partisan political issues, and that faculty should therefore take care not to engage in forms of political advocacy that might reflect poorly on the university. She seems to have been especially concerned that the university or its faculty might be coopted as a force for "dangerous socialism," and thereby incur the rightful indignation of the community.⁹⁰ Evidently, she had

regarded some of Ross's earlier political activism as improper for a faculty member, but his violent rhetoric about the Japanese crossed a line, and she prevailed on the university's president, David Starr Jordan, not to renew his contract. Jordan resisted, arguing that dismissing Ross could result in the university's getting a reputation for firing faculty on ideological grounds, which would make it more difficult to retain good faculty. Eventually he relented and went on to defend Ross's firing.⁹¹

Jordan's initial argument against firing Ross embodies the especially strong reasons universities have for valuing the sort of job security that makes faculty members comfortable exploring controversial opinions. And many do consider this episode a black mark on the university's record. It is notable however that Stanford went on to become one of America's premiere institutions of higher education. This may be despite Ross's firing, or it may be in part because there were people (faculty, students, parents, and donors) who preferred to be affiliated with a university that didn't harbor professors who would prefer to murder immigrants *en masse* than to admit them. Likewise, there are people today who would regard it as a selling point if a university's faculty did not enthuse over the rape and murder of Israelis or demean students of certain races. Undoubtedly there are also professors who, though they may abhor some of these opinions, would prefer to work at a university where voicing them is not a firing offense; and there are students and donors who may regard the presence of faculty with such views as a bracing form of intellectual diversity.

Contra the AAUP, universities are not public trusts, and there is no *single* policy they should all adopt regarding the range of speech it will tolerate from its faculty or students. Rather, each university is a distinct community of faculty, students, and other interested parties. It is neither possible nor desirable to isolate the members of this community from the economic incentives that derive from the constellation of facts that lead people to value (or disvalue) the university. These facts include the professors' expressions of their opinions on controversial issues. The trustees and administrators of each institution can and should craft policies (and an institutional culture) that shape these incentives in support of its specific mission. This mission isn't a function the institution serves for the public at large, but a function it plays for the individuals who choose to associate with it in one capacity or another. Most notably, universities have *students*, and different universities may cater to different student populations with different needs and values. To choose an obvious example, a university that finds a niche educating the children of Japanese immigrants would be wise not to tolerate faculty like Ross, and one that caters largely to Jewish students would do well to stay away from Dean.

Most universities' missions include making an impact of some sort on the world. For example, Stanford was founded

to promote the public welfare by exercising an influence in behalf of humanity and civilization, teaching the blessings of liberty regulated by law, and inculcating love and reverence for the great principles of government as derived from the inalienable rights of man to life, liberty, and the pursuit of happiness.⁹²

Such a mission doesn't make a university a "public trust" in the manner that the AAUP imagines. Rather, the mission is a joint project of those individuals who choose to work together to pursue it. And this choice presupposes a common understanding (which may develop and alter over time) of the mission and how to advance it. Thus we should expect that even universities with similar missions may make different decisions about how to pursue intellectual diversity in the context of their other values.

For example, the University of Chicago and Princeton University have similar missions, and both claim to prioritize (what I am calling) welcoming heterodoxy.⁹³ But over the course of decades, they have adopted different policies and formed different cultures. The University of Chicago has a policy of "institutional neutrality" on social and political controversies.⁹⁴ Presidents of Princeton, thinking that universities are inherently value-laden, have argued that such neutrality is impossible or undesirable and so have instead favored a policy of "institutional restraint." This has led Princeton to participate in some divestment campaigns that the University of Chicago did not, and to be more supportive of certain student protest movements.⁹⁵ Potential students, faculty, and donors are aware of such differences between universities and can consider them (in the context of all their other relevant values) when deciding which institution to affiliate with.

Another respect in which universities might differ is whether to adopt the tenure system. The AAUP demanded this system as a requirement for “academic freedom.” Some recent critics have argued that, by entrenching the opinions of the established professoriate, the system “has paradoxically led to narrowing the confines of acceptable opinion and has encouraged political conformity.”⁹⁶ This is the opinion of the founders of the new University of Austin, who tout their decision to dispense with tenure as one of the ways in which they will “preserve” “academic freedom.” In place of tenure, they “propose to advance intellectual pluralism and avoid ideological sclerosis by offering graduated-term contracts with specifiable deliverables.”⁹⁷

Whatever specific policies and attitudes a given university, social media platform, or other institution adopts, they will not constitute a *culture of free speech* unless those adopting them do so by self-conscious choice, owning the fact that they are individuals exercising their own rights in pursuit of their own values. This entails their valuing their right to make this choice, which includes valuing their right to *choose differently*.

An excellent example of this approach in a corporate setting is Coinbase CEO Brian Armstrong’s 2020 blog post in which he clarified the company’s culture and laid out norms for keeping divisive cultural and political issues outside of the workplace.⁹⁸ Though many of the considerations Armstrong cites in support of Coinbase’s policies apply to other organizations, and though he does not shy away from this, his post is not a manifesto for the corporate world in general or an argument that every organization should emulate Coinbase. It is instead a wise attempt to reach alignment with those who choose to deal with his company about the terms on which they will interact. Importantly, he acknowledges that other companies may have different cultures, and that employees who aren’t aligned with Coinbase’s approach may want to seek employment elsewhere.

Armstrong’s post epitomizes the mindset of a genuine culture of free speech. It is the opposite of the Millian demand that individuals and organizations sacrifice their convictions and values by adopting ideologically neutral policies of association that may be inconsistent with their values. Such demands are premised on the notion that universities, social media companies, employers, and other businesses (such as internet service providers, banks, etc.) are obligated to operate with the ideological neutrality that is required of governments. There is no reason why all or most organizations should commit to any such policies, and for many it would be self-defeating.

When free speech is lauded as a collective value, it is often because the exchange of ideas allows truth to be discovered and error abandoned. But it is the individualistic culture of free speech, rather than the Millian, collectivistic alternative, that in fact promotes the discovery of truth and the countering of error. Louis D. Brandeis famously wrote that the “remedy to be applied” for “falsehood and fallacies” is “more speech, not enforced silence.”⁹⁹ There is truth in this. When one thinks that there is a falsehood or fallacy that has gone unanswered, one does well to answer it. But often falsehoods and fallacies continue to be repeated and spread, in their original forms or with trivial modifications, despite having been soundly answered. The rational course here is to *marginalize* them, rather than to devote one’s days to Sisyphean refutations of the same fallacies. We have seen that marginalizing ideas by refusing to platform them (or even, in some cases, by refusing to associate with their proponents) is an exercise of free speech. Like other exercises of free speech, policies that promote or marginalize certain types of speech can be mistaken or unjust. The way to fight such wrongs is not to *demand* that the policies be replaced to serve a collective good. It is to practice better policies oneself, not as a duty to society but in furtherance of one’s own values and those of one’s associates. This can include a policy of disassociating oneself with those whose policies one regards as especially unjust.

As applied to the issue of association or disassociation, valuing free speech amounts to valuing the freedom to associate with or disassociate from others based on their opinions (and on their approach to disagreement). It is not to prefer content-neutral terms of association over ideologically robust ones.

In general, freedom includes the ability to *disassociate from others*, whether on the grounds of their ideas or for any other reason. To be free is to be free from others imposing themselves on one, so that all one’s associations are voluntary. Rights are the principles defining this freedom. They are recognitions of the conditions that human beings need in order to coexist within a society, and they are distinct from the terms of association defining more specific relationships or institutions within the society. Rights should structure society: they delineate the spheres in which each person’s reason reigns and define what is up to whom in cases

of disagreement. Our rights set the background context in which we can choose whom to deal with and on what terms.

All the values we can gain from our associations with others are products of their thinking. One is only thinking insofar as one is thinking freely—allowing one’s thoughts to go wherever the evidence leads—and this will lead to disagreement sometimes. Therefore, we need to value disagreement as well as agreement, and make sure not to create a censorious environment in which a particular party line has to be toed. Rather, we need to value the expression of differences insofar as this is consistent with the kinds of agreements that are presupposed by the kinds of relationships we have.

The right to free speech (and the broader liberty from which it is inseparable) is necessary not merely to create wide-open forums where all ideas are welcome, but also to create narrow alliances based on robust shared convictions. It is needed also to enable every sort of association between these extremes. It is through relationships of *all* these sorts that liberty enriches our lives, and a true culture of free speech is one that recognizes and celebrates this, not one that parochially values ideological neutrality. Moreover, it is a culture that recognizes that the institutions within our society—the universities, the corner shops, the social media platforms, and the technological and financial infrastructure that underlies them—do not belong to *us* as a collective and do not exist for the sake of promoting some “public good.” Rather, these institutions belong to the specific individuals who create and sustain them (in myriad ways), and they exist for the sake of these individuals’ values.

There *is* such a thing as a culture of free speech, but it does not consist in any specific set of policies that a university, a publisher, a social media platform, a library, or a bookstore might adopt. Nor does it consist in ideological neutrality or welcoming of heterodoxy, for it can be embodied at least as fully by associations predicated on robust ideological agreements as by associations that are more welcoming of dissent. Wells and Fleming’s newspaper, the *Free Speech*, would not have been more aptly named if it had opened its editorial pages to those who condoned lynchings as well as those who opposed them. The paper was well named not because it was neutral, but because its editors were asserting their right to express their ideas (using their own resources), even in a context where they knew they might be met not only with disapproval, but with *force*.

This intransigence in the face of forcible suppression of speech is the defining feature of a culture of free speech. Too often today, those who have the resources to stand up to such force instead buckle in the face of it. Universities, for example, often cancel events with controversial speakers citing “security concerns.” Recently, the University of Southern California canceled a commencement speech by its valedictorian after receiving complaints about pro-Palestinian and arguably anti-Semitic content she had shared to social media. USC is a private university, and if it had canceled her speech in protest of her opinions, it would have been an exercise (whether just or unjust) of its freedom of speech. But the reason it gave for its action was *concern over her safety* in the face of the complaints.¹⁰⁰ In the past, similar security concerns have led to the cancellation or threatened cancellation of events by Milo Yiannopoulos, Ben Shapiro, Yaron Brook, and others.¹⁰¹

In a true culture of free speech, even people who detest a speaker will rally in the face of such forcible attempts to silence him. Volunteers will step forward to provide any needed security, because it will be generally understood that everyone is violated when anyone is forcibly silenced. Attempted silencing will fail, because people will amplify the threatened speech, in the understanding that intimidation cannot succeed when people stand united against it.

Such a culture is not possible among people who imagine that freedom of speech requires—or even gently suggests—that we give a hearing or a platform to all speakers, regardless of the content of their convictions or of our own. To embrace free speech as a cultural value, we must understand that the right that is *violated* by the forcible suppression of speech is *exercised* when someone peacefully chooses to deny a speaker her support. We must grasp that freedom of speech is, like all freedom, an instance of the principle that human beings must deal with one another by reason and persuasion, rather than force. In order to live by this principle, we must be keenly aware of the difference between expressing one’s opinion and forcing oneself on others. It is

this domain of peaceable expression that the right to free speech defines and sanctions. A culture of free speech is one in which individuals appreciate, utilize, and guard the full extent of this freedom.

¹ Writers advocating a “free speech culture” in addition to the protections for free speech under the law include: Jacob Mchangama, *Free Speech: A History from Socrates to Social Media* (New York: Basic Books: 2022); David French, “Campus Free Speech Can’t Survive Cultural Change,” *The Atlantic*, March 2022, <https://www.theatlantic.com/newsletters/archive/2022/03/campus-free-speech-cant-survive-cultural-change-emma-camp-self-censorship/676573/>; David French, “You Can Say That: Preserving Free Speech from Political Correctness,” John Locke Foundation (YouTube channel), posted December 11, 2018, <https://www.youtube.com/watch?v=RQF3HKcx52k&t=3065s>; Greg Lukianoff and Rikki Schlott, *The Canceling of the American Mind* (New York: Simon & Schuster: 2023), especially 293–313; Nico Perrino, “Free Speech Culture, Elon Musk, and Twitter,” FIRE blog, December 1, 2022, [https://www.thefire.org/news/free-speech-culture-elon-musk-and-twitter#:~:text=We%20need%20a%20free%20speech.ability%20to%20share%20our%20opinions](https://www.thefire.org/news/free-speech-culture-elon-musk-and-twitter#:~:text=We%20need%20a%20free%20speech.ability%20to%20share%20our%20opinions;); Robert Tracinski, “We Need More Than the First Amendment, We Need a ‘Culture of Free Speech,’” *Discourse*, June 14, 2021, <https://www.discoursemagazine.com/p/we-need-more-than-the-first-amendment-we-need-a-culture-of-free-speech>; Eugene Volokh, “Free Speech Rules, Free Speech Culture, and Legal Education,” *Hofstra Law Review* 51, no. 3 (June 2023); Nadine Strossen, *Free Speech: What Everyone Needs to Know* (New York: Oxford University Press, 2024) 9.

² On this aspect of the virtue of independence, see especially Leonard Peikoff, *Objectivism: The Philosophy of Ayn Rand* (Meridian, 1991), 251–59 and Tara Smith, *Ayn Rand’s Normative Ethics* (Cambridge University Press, 2006), 126–28).

³ Ayn Rand, “Man’s Rights.” in *The Virtue of Selfishness: A New Concept of Egoism* (New York: Signet, 1964 Centennial edition), 110.

⁴ Ida B. Wells, *Crusade for Justice: The Autobiography of Ida B. Wells*, 2d ed. (Negro American Biographies and Autobiographies) (Chicago: University of Chicago Press, 2020), 53.

⁵ Wells, *Crusade*, 54.

⁶ Ida B. Wells-Barnett, *Southern Horrors: Lynch Law in All Its Phases*, available online at <https://www.gutenberg.org/files/14975/14975-h/14975-h.htm>.

⁷ Wells-Barnett, *Southern Horrors*, 5–6.

⁸ Regarding the attacks on free speech by Islamists, see especially Steve Simpson, ed., *Defending Free Speech* (Irvine, CA: Ayn Rand Institute Press, 2016), and Flemming Rose, *The Tyranny of Silence* (Washington, DC: Cato Institute, 2014).

⁹ “Rev. Nightingale had, in the meantime, withdrawn from the paper. He had trouble with his congregation and he wanted to use the *Free Speech* to flay those who had opposed him and wanted to get rid of him. When we objected to the articles he wrote abusing his enemies, who were our supporters, he withdrew and we bought out his interest.” Wells, *Crusade*, 36.

¹⁰ “Six weeks after the lynching the superintendent and treasurer of the City Railway Company came into the office of the *Free Speech* and asked us to use our influence with the colored people to get them to ride on the streetcars again.” Wells, *Crusade*, 47. “‘You see it’s a matter of dollars and cents with us. If we don’t look after the loss and remedy the cause the company will get somebody else who will.’ ‘So your own job then depends on Negro patronage?’ I asked.” Wells, *Crusade*, 48.

¹¹ “Of course the *Free Speech* had a very caustic comment on this particular incident and that type of minister. The preachers’ alliance at its meeting the following Monday morning voted to boycott the *Free Speech* because of that comment and the exposure of that incident. They sent the presiding elder of the district to the office to threaten us with the loss of their patronage and the fight they were going to make against us in their congregations. We answered this threat by publishing the names of every minister who belonged to the alliance in the next issue of the *Free Speech*, and told the community that these men upheld the immoral conduct of one of their number and asked if they were willing to support preachers who would sneak into their homes when their backs were turned and debauch their wives. Needless to say we never heard any more about the boycott, and the *Free Speech* flourished like a green bay tree.” Wells, *Crusade*, 36–37.

¹² Consider a situation in which one party might be described as “threatening” to disassociate from a second unless the second agrees to his terms. If we regard this literally as a threat that would make second party’s acceptance of the terms involuntary, then, in order to avoid threatening the second party, the first would have to continue associating with the second even on terms that the first finds unacceptable, and so the relationship would not be voluntary for the first party.

¹³ The italicized formulation is a paraphrase of Rand, “Man’s Rights,” 110. For elaboration, see Leonard Peikoff, *Objectivism: The Philosophy of Ayn Rand* (New York: Dutton, 1991), 351–63; Darryl Wright “‘A Human Society’: Rand’s Social Philosophy” in Allan Gotthelf and Gregory Salmieri, eds., *A Companion to Ayn Rand* (Malden, MA: Wiley

Blackwell, 2016), 172–77; Gregory Salmieri, “Selfish Regard for the Rights of Others: Continuing a Discussion with Zwolinski, Miller, and Mossoff,” in Gregory Salmieri and Robert Mayhew, eds., *Foundations of a Free Society: Reflections on Ayn Rand’s Political Philosophy* (Pittsburgh, PA: University of Pittsburgh Press, 2019), 184–92; and Onkar Ghate “Rand (contra Nozick) on Individual Rights and the Emergence and Justification of Government,” in Salmieri and Mayhew, *Foundations*, 211–19.

¹⁴ Rand, “Man’s Rights.”

¹⁵ I exclude here cases of defamation, on which see below, note 26.

¹⁶ Wells, *Crusade*, 54–55. The power of disassociation is a theme in Wells’s autobiography, which begins with the story of her father leaving the man who was his employer, landlord, and former owner, over the latter’s attempt to pressure him into voting Democratic.

¹⁷ A notable case of this sort of disassociation over ideology in American history is the boycotting by some Hollywood studios of Communist writers (and the much less remarked-on boycotting by many sympathetic to these Communists of those who had testified about Communist activity in Hollywood before the House Un-American Activities Committee). This episode is often represented as a violation of the Communists’ freedom of speech. Rand argued compellingly it was not. See Michael S. Berliner, ed., *Letters of Ayn Rand* (New York: Dutton, 1995), 433–34, 435–36; Robert Mayhew, ed., *Ayn Rand Answers: The Best of Her Q&A* (New York: New American Library, 2005 Centennial edition), 80–85; David Harriman, ed., *Journals of Ayn Rand* (New York: Plume, 1999), 366; Robert Mayhew, *Ayn Rand and Song of Russia: Communism and Anti-Communism in 1940s Hollywood* (Lanham, MD: Scarecrow Press, 2005), 84–93; John David Lewis and Gregory Salmieri, “A Philosopher on Her Times: Ayn Rand’s Political and Cultural Commentary,” in Gotthelf and Salmieri, *Companion*, 354–55.

¹⁸ See Robert Garmong’s “The Arc of Liberalism” in Salmieri and Mayhew (eds.), *Foundations of a Free Society*.

¹⁹ John Stuart Mill, *On Liberty*, in Mary Warnock, ed., *Utilitarianism, On Liberty, Essay on Bentham* (New York: Meridian, 1974), 130, 159.

²⁰ For example, Mill speaks of the nascent labor movement’s employing “a moral police, which occasionally becomes a physical one” to impose its opinions on employers and workers (Mill, *On Liberty*, 219). The moral police is presumably the body of union members voicing their disapproval of or disassociating from those who voice (or act on) opinions contrary to their own; it becomes a physical police (I presume) when it resorts to violence. In fact, many of the tactics of the nineteenth- and twentieth-century labor movement violated rights. As Rand puts the point: “An individual has no right to do a ‘sit-in’ in the home or office of a person he disagrees with—and he does not acquire such a right by joining a gang. Rights are not a matter of numbers—and there can be no such thing, in law or in morality, as actions forbidden to an individual, but permitted to a mob” (Ayn Rand, “The Cashing-In: The Student ‘Rebellion,’” in *Capitalism: The Unknown Ideal* (New York: Signet, 1967 Centennial edition), 291).

²¹ On the fallacy of “package-dealing,” see Gregory Salmieri, “The Objectivist Epistemology,” in Gotthelf and Salmieri, *Companion*, 297–98, and the sources cited therein.

²² Rand, “Man’s Rights,” 110.

²³ My point here is not about the specific charges (“conspiracy,” “murder,” “mayhem”) under which these actions are or ought to be prosecutable, as these may differ from one jurisdiction to the next. The point is that these actions are akin to the rights-violations cognized under such laws, and ought to be prosecutable for the same underlying reasons, whether under these laws or under separate laws prohibiting threats or incitement.

²⁴ Some of those behind the social media campaign that led to Paty’s death were (properly) prosecuted by the French authorities. Juliette Jabkhiro and Clotaire Achi, “Six French Teenagers Convicted in Connection with 2020 Beheading of Teacher Paty,” Reuters (website), December 28, 2023, <https://www.reuters.com/world/europe/six-teenagers-convicted-connection-with-2020-beheading-teacher-paty-2023-12-08/>.

²⁵ Elan Journo, ed., *Winning the Unwinnable War* (Lanham, MD: Lexington Books: 2009); Leonard Peikoff, “Religious Terrorism vs. Free Speech,” Ayn Rand Institute (website), 1989, <https://ari.aynrand.org/issues/foreign-policy/foreign-policy-more/religious-terrorism-vs-free-speech/>.

²⁶ Fraud is not free speech, because a fraudster’s lies are a means of forcing himself on his victim, so that the transaction that takes place is not the one the victim consented to. Defamation (as distinct from mere criticizing or badmouthing) is a violation of a sort of property a person (or institution) has in his reputation—the same (broad) sort of property that is secured by trademark. Harry Binswanger explains: “Someone who impersonates me in order to sell to customers impressed by my reputation is, in effect, stealing this property from me (as well as defrauding the customers). And someone who defames me is damaging this property. The idea that a person can have property in his reputation follows

from Rand’s view that the basis for a property right is an individual’s creation of something that is of material value.” (Harry Binswanger, “Egoism, Force, and the Need for Government,” in Salmieri and Mayhew, *Foundations*, 274).

²⁷ It is worth mentioning in this connection the American Civil Liberties Union’s 1977 defense of the National Socialists’ right to stage a march in Skokie, Illinois, which is much celebrated by those who think of themselves as free-speech absolutists. The Nazis had no right to hold such an event, because no one has the right to stage events of this kind. However, in a context where other ideological groups were permitted to hold such events on public property, it was violation of free speech for the Nazis to be excluded on ideological grounds. Rand explains: “You do not have the right to parade through the public streets or to obstruct public thoroughfares. You have the right of assembly, yes, on your own property, and on the property of your adherents or your friends. But nobody has the ‘right’ to clog the streets. The streets are only for passage. The hippies, in the ’60s, should have been forbidden to lie down on city pavements. (They used to lie down across a street and cause dreadful traffic snarls, in order to display their views, to attract attention, to register a protest.) If they were permitted to do it, the Nazis should be permitted as well. Properly, both should have been forbidden. They may speak, yes. They may not take action at whim on public property” (Ayn Rand, “The First Amendment and ‘Symbolic Speech,’” in Peter Schwartz, ed., *Ayn Rand Column*, rev. ed. (Irvine, CA: Ayn Rand Institute, 2015), 117).

²⁸ On the issue of rights-violating protests generally, see Onkar Ghate’s talk “Questioning the Sacrosanct: Is There a Right to Protest?,” Salem Center for Policy (YouTube channel), November 2, 2021,

<https://www.youtube.com/watch?v=cdpu2JzzhFs>. On Occupy Wall Street, see James A. Anderson, “Some Say Occupy Wall Street Did Nothing. It Changed Us More than We Think,” *Time*, November 15, 2021,

<https://time.com/6117696/occupy-wall-street-10-years-later/>. On pro-Palestinian protesters occupying thoroughfares, see “Pro-Palestinian Demonstrators Shut Down Airport Highways and Bridges in Major Cities,” NPR (website), April 16,

2024, <https://www.npr.org/2024/04/16/1244990246/pro-palestinian-demonstrators-shut-down-airport-highways-and-bridges>. On their occupying campuses, see John McWhorter, “I’m a Columbia Professor. The Protests on My Campus Are Not Justice,” *New York Times*, John McWhorter newsletter, April 23, 2024,

<https://www.nytimes.com/2024/04/23/opinion/columbia-protests-israel.html> and Lily Kepner, Skye Seipp, Ella McCarthy and Serena Lin, “UT-Austin Students Hold Pro-Palestinian Protest; at least 50 arrested,” *Austin American-Statesman*,

April 25, 2024, <https://www.statesman.com/story/news/local/2024/04/24/ut-austin-campus-student-protest-arrest-pro-palestine-protests-walk-out/73425149007>. On their occupying someone’s home, see Vimal Patel, “At Berkeley, a Protest at a Dean’s Home Tests the Limits of Free Speech,” *New York Times*, April 12, 2024,

<https://www.nytimes.com/2024/04/12/us/uc-berkeley-palestinian-protest-free-speech.html>.

²⁹ For information on the events at Berkeley from authors largely sympathetic to the protesting students, see Robert Cohen and Reginald E. Zelnik, eds., *The Free Speech Movement: Reflections on Berkeley in the 1960s* (Berkeley, CA: University of California Press: 2002).

³⁰ Rand, “The Cashing-In,” 291.

³¹ See Simpson, *Defending Free Speech*, 87–89.

³² Onkar Ghate, “The Nature of Free Speech: An Interview with Onkar Ghate,” in Simpson, *Defending Free Speech*, 63). Ghate was presumably elaborating on this passage from Ayn Rand: “The right of free speech means that a man has the right to express his ideas without danger of suppression, interference or punitive action by the government. It does *not* mean that others must provide him with a lecture hall, a radio station or a printing press through which to express his ideas.” (Rand, “Man’s Rights,” 114). I am not certain whether Rand intended the adverbial phrase “by the government” to encompass “suppression” and “interference” in addition to “punitive action,” but in either case it is clear that she was especially concerned to assert the right of freedom of speech against censorship by governments and to oppose the “collectivist,” Millian attempt to subvert the right to free speech by “ascribing to private citizens the specific violations constitutionally forbidden to the government (which private citizens have no power to commit) and thus freeing the government from all restrictions”:

For years, the collectivists have been propagating the notion that a private individual’s refusal to finance an opponent is a violation of the opponent’s right of free speech and an act of “censorship.”

It is “censorship,” they claim, if a newspaper refuses to employ or publish writers whose ideas are diametrically opposed to its policy. It is “censorship,” they claim, if businessmen refuse to advertise in a magazine that denounces, insults and smears them. It is “censorship,” they claim, if a TV sponsor objects to some outrage perpetrated on a program he is financing—such as the incident of Alger Hiss being invited to denounce former Vice-President Nixon. . . .

“Censorship” is a term pertaining only to governmental action. No private action is censorship. No private individual or agency can silence a man or suppress a publication; only the government can do so. The freedom of speech of private individuals includes the right not to agree, not to listen and not to finance one’s own antagonists (Rand, “Man’s Rights,” 115–16).

³³ On restrictions of commercial speech, see: <https://ij.org/issues/first-amendment/commercial-speech/>. On campaign finance laws as violations of free speech, see Simpson, *Defending Free Speech*, 93–108.

³⁴ On why the “separation of church and state” demanded by the First Amendment should be applied to ideas more generally, see Onkar Ghate, “A Wall of Separation between Church and State: Understanding This Principle’s Supporting Arguments and Far-Reaching Implications,” in Salmieri and Mayhew, *Foundations*, 283–303, reprinted as chapter 2 of this volume.

³⁵ On the evil of public education, see Nathaniel Branden, “Common Fallacies about Capitalism,” in Rand, *Capitalism*, 92–96. See also “Is Public Education Compatible with Free Speech?,” Salem Center for Policy (YouTube channel), November 2, 2021, <https://www.youtube.com/watch?v=7zMtX0W82s>, and Matt Bateman, “Public Schools Exacerbate the Culture Wars,” *Montessorium* (blog), November 17, 2021, <https://montessorium.com/blog/public-schools-exacerbate-the-culture-wars>.

³⁶ For example, Jordan Peterson’s free speech was violated by the College of Psychologists of Ontario when it disciplined him (threatening to revoke his license to practice psychology) because of his controversial statements on a number of subjects. (Tyler Dawson, “Read Jordan Peterson’s Tweets That Prompted Complaints to Psychologists’ College,” *National Post*, January 6, 2023, <https://nationalpost.com/news/canada/read-jordan-petersons-tweets-that-prompted-complaints-to-psychologists-college>). But the underlying violation of free speech is the existence of the College itself *as a regulatory body*. An organization of psychologists making joint determinations about who is a qualified practitioner in their field may need to take cognizance of the practitioners’ opinions on a range of subjects (and of how they chose to express these opinions). And their doing so would be no violation of the freedom of speech if the organization were voluntary. However, when the decisions of the organization determine whether someone is to be legally allowed to practice, any consideration of such opinions becomes fraught. To minimize the evil inherent in the existence of such an organization, it is obligated to adopt the most neutral stance possible toward practitioners’ opinions, even if that reduces its work to a sort of box-checking exercise that is insufficient to make meaningful determinations about who is and is not fit to practice.

³⁷ Florida’s statute 501.2041(2)(b) demands a consistent standard for shadow-banning and deplatforming users on social media platforms

(http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0500-0599/0501/Sections/0501.2041.html). Texas’s H.B. 20 bars social media platforms with more than fifty million active users from blocking, removing, or demonetizing content of users based on their views

(<https://capitol.texas.gov/tlodocs/872/billtext/html/HB00020F.HTM>). Both laws were enjoined by district courts as a result of facial First Amendment challenges. The Eleventh Circuit upheld the injunction against the Florida law, but the Fifth Circuit reversed the injunction of the Texas law, creating a circuit split. The Supreme Court vacated both circuit court holdings and remanded the cases “because neither the Eleventh Circuit nor the Fifth Circuit conducted a proper analysis of the facial First Amendment challenges to Florida and Texas laws regulating large internet platforms” (*Moody v. NetChoice*, https://www.supremecourt.gov/opinions/23pdf/22-277_d18f.pdf). At present the district courts’ injunctions are in effect. The Supreme Court’s ruling makes clear that the specific provisions of the laws that were focused on by the circuit courts are unconstitutional and that the Fifth Circuit’s “decision rested on a serious misunderstanding of First Amendment precedent and principle,” so there is little doubt that the relevant provisions of the laws will ultimately be struck down (whether or not this facial challenge against the laws as wholes ultimately succeeds).

³⁸ For example, there are contexts in which burning a cross, drawing a swastika, or invoking the mottos or symbols of a violent group (such as ISIS, the Ku Klux Klan, or a street gang) could be reasonably understood as putting people on notice that they are subject to violence from these groups or as calling potential victims to the group’s attention. In such cases, the invocations could be tantamount to intimidation or coordination of criminal activity.

³⁹ Thus Wells’s right of free speech was violated when her contract as a public school teacher was not renewed because she had protested “conditions in the colored schools.” As she recounts the event: “No fault was found with my ability as a teacher or with my character, but the board had a copy of the *Free Speech* on file in the office showing criticism of them. They didn’t care to employ a teacher who had done this, and for that reason I had been left out.” (Wells, *Crusade*, 32–34) However, it would not have been a violation of Wells’s free speech rights if she had been fired by a private school for having published a similar criticism of it.

⁴⁰ Wells, *Crusade*, 48–49. For additional background on these events, see Damon Mitchell, “The People’s Grocery Lynching, Memphis, Tennessee,” *JSTOR Daily* (blog), January 24, 2018, <https://daily.jstor.org/peoples-grocery-lynching/>.

⁴¹ This is surely true during the period of lynch law when many racist state and federal officials neglected to investigate lynchings that happened in municipalities under their jurisdiction. There are numerous more recent examples involving smaller scale (but not insignificant) violations of rights by politically motivated criminals, whose crimes were ignored or minimized by government officials who share their ideologies:

Katie Shepherd and Mark Guarino, “Liberal Prosecutors Face Backlash over Lenient Charges Following Civil Unrest and Looting,” *Washington Post*, August 12, 2020, <https://www.washingtonpost.com/nation/2020/08/12/chicago-portland-protester-charges/>. Mariana Alfaro, “Trump Vows Pardons, Government Apology to Capitol Rioters if Elected,” *Washington Post*, September 1, 2022, <https://www.washingtonpost.com/national-security/2022/09/01/trump-jan-6-rioters-pardon/>.

In 1970, Ayn Rand criticized calls for “special leniency” for “criminals who claim to be motivated by political goals”: “Since an individual has the right to hold and propagate any ideas he chooses,” the government “may not take any judicial cognizance whatever of his ideology” (Ayn Rand, “‘Political’ Crimes,” in Ayn Rand, *Return of the Primitive: The Anti-Industrial Revolution* (New York: Meridian, 1999), 176).

⁴² Surely racism (and cowardice concerning it) does not exist in America today at the scale and in the form that it did in Wells’s time, but it persists in various forms, and questions about the extent, nature, causes, and effects of racism in present-day America continue to be controversial. I will not go further into this question here, except to say that whatever is the case with racism in particular, we must be ever vigilant about the possibility of widespread cultural prejudices within our society (and in ourselves) that can pervert the course of justice in some of the ways described.

⁴³ See George H.W. Bush’s remarks in the wake of the Ayatollah’s call for Salman Rushdie’s murder, remarks which the *New York Times* characterized as “intended to express condemnation in a low-key manner” (Thomas L. Friedman, “Bush Finds Threat to Murder Author ‘Deeply Offensive,’” *New York Times*, February 22, 1989, <https://archive.nytimes.com/www.nytimes.com/books/99/04/18/specials/rushdie-bush.html>); George W. Bush’s official statement that “Islam Is Peace” in the wake of the September 11, 2001, attacks (“‘Islam Is Peace,’ Says President,” White House press release, September 17, 2001, <https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010917-11.html>); Barack Obama, “Remarks by the President to the UN General Assembly,” White House press release, September 25, 2012, <https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/remarks-president-un-general-assembly> (“The future must not belong to those who slander the prophet of Islam”); Donald Trump’s tweet that it was “dumb” for the *Charlie Hebdo* magazine to criticize Mohammed in a cartoon that thereby “provoked” a violent response by terrorists (<https://tinyurl.com/m8pr8yr2>); David Frum, “Why Obama Won’t Talk about Islamic Terrorism,” *Atlantic*, February 16, 2015, <https://www.theatlantic.com/politics/archive/2015/02/why-obama-wont-talk-about-islamic-terrorism/385539/> (Obama describing terrorist attacks as “random” in order to avoid describing the perpetrators’ religious motives); Elan Journo, “After Orlando: Why Trump and Clinton Both Get the Jihadists Wrong,” in Onkar Ghate and Elan Journo, eds., *Failing to Confront Islamic Totalitarianism: What Went Wrong After 9/11*, 2d expanded ed. (Santa Ana, CA: Ayn Rand Institute Press, 2021), 166–68 (leading presidential candidates, Hillary Clinton and Donald Trump, “have put forward views that negate the ideological character of the enemy”).

⁴⁴ See Journo, *Winning the Unwinnable War*; Ghate and Journo, *Failing to Confront*; and Leonard Peikoff’s article following the 9/11 attacks, “End States Who Sponsor Terrorism,” in Ghate and Journo, *Failing to Confront*, xvii–xxii, <https://ari.aynrand.org/issues/foreign-policy/foreign-policy-more/end-states-who-sponsor-terrorism/>.

⁴⁵ For example, many of the organizations mentioned were subjects of the COINTELPRO, a counterintelligence program run by the FBI between 1956 and 1971. On this program, see the Church Committee’s report, <https://www.senate.gov/about/powers-procedures/investigations/church-committee.htm> NS, and David Cunningham, *There’s Something Happening Here: The New Left, the Klan, and FBI Counterintelligence* (Berkeley, CA: University of California Press, 2004).

⁴⁶ On the problems created by misconceptualizing in this field, see Tara Smith, “The Free Speech Vernacular: Conceptual Confusions in the Way We Speak about Speech,” chapter 4 in her *The First Amendment: Essays on the Imperative of Intellectual Freedom* (Santa Ana, CA: Ayn Rand Institute Press: 2024).

⁴⁷ See Ghate, “A Wall of Separation,” and Onkar Ghate, “Church-State Separation: A Principle, Not a ‘Wall,’” *New Ideal*, March 27, 2019, <https://newideal.aynrand.org/church-state-separation-a-principle-not-a-wall-part-1/>.

⁴⁸ In situations where there is no government (or the government is irredeemably unjust), the principle of rights demands that a just government be formed, and it obligates those living in the society either to work toward forming one (where there is any possibility of doing so) or else attempt to escape to a more moral society.

⁴⁹ Mill, *On Liberty*, 163–64.

⁵⁰ Mill, *On Liberty*, 164.

⁵¹ The law firm Davis Polk has rescinded offers to law students from Columbia and Harvard on these grounds: Adam Gabbatt, “Leading US Law Firm Says It Rescinded Job Offers to Students Who Backed Israel– Hamas Letters,” *Guardian*, October 18, 2023, <https://www.theguardian.com/us-news/2023/oct/18/student-palestine-letter-harvard-columbia-us-law-firm-jobs-revoked>.

⁵² <https://journalofcontroversialideas.org/>.

⁵³ Elon Musk (@elonmusk), “Given that Twitter serves as the de facto town square,” Twitter, March 26, 2022, 1:51 p.m., <https://twitter.com/elonmusk/status/1507777261654605828>.

⁵⁴ Elon Musk (@elonmusk), “Dear Twitter Advertisers,” Twitter, October 27, 2022, 9:08 a.m., <https://twitter.com/elonmusk/status/1585619322239561728/photo/2>.

⁵⁵ Elon Musk (@elonmusk), “By ‘free speech,’ I simply mean that which matches the law,” Twitter, April 26, 2022, 3:33 p.m., <https://twitter.com/elonmusk/status/1519036983137509376>.

⁵⁶ “Censorship” as used to include refusals-to-platform is an “anti-concept”—“an unnecessary and rationally unusable term designed to replace and obliterate some legitimate concept” (Ayn Rand, “Credibility and Polarization,” *Ayn Rand Letter* 1, no. 1 (October 11, 1971), 1. In particular, the term “censorship” was used by socialists in the mid-twentieth century to obliterate the legitimate concepts of “censorship” and “free speech.” Rand forcefully differentiates such refusals-to-platform from censorship: “‘Censorship’ is a term pertaining only to governmental action. No private action is censorship. No private individual or agency can silence a man or suppress a publication; only the government can do so. The freedom of speech of private individuals includes the right not to agree, not to listen and not to finance one’s own antagonists” (Rand, “Man’s Rights,” 116). The point is not merely semantic. If one accepts that there is a right to freedom of speech (as elaborated in the first section of this paper), then there can be no grounds for any concept that includes only *some* acts of content moderation (which are exercises of this right) and *all* acts of genuine censorship (which are violations of this same right).

⁵⁷ Of course the First Amendment, like all law (even fundamental law), is ultimately passed by the people’s representatives and can be changed by them in the future. Its status *as a law* reflects the will of the people whose duly elected representatives ratified it. But, what they were doing in ratifying it was *recognizing* and *protecting* a right that is inherent in human nature, and this is what makes it a *just* law. This relation between laws and rights is well reflected in the concluding text of the Virginia Statute for Religious Liberty (which was drafted by Thomas Jefferson, shepherded through the Virginia legislature by James Madison, and then served as a model for the First Amendment): “And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding assemblies constituted with powers equal to our own, and that, therefore, to declare this act to be irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind; and that if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right” (Va. Code Ann. § 57-1, <https://law.lis.virginia.gov/vacodefull/title57/chapter1/>).

⁵⁸ American Association of University Professors, “1940 Statement of Principles on Academic Freedom and Tenure,” 14, <https://www.aaup.org/file/1940%20Statement.pdf>.

⁵⁹ American Association of University Professors, “1915 Declaration of Principles on Academic Freedom and Academic Tenure,” 293, 296–97, <https://www.aaup.org/NR/rdonlyres/A6520A9D-0A9A-47B3-B550-C006B5B224E7/0/1915Declaration.pdf>.

⁶⁰ AAUP, “1915 Declaration,” 297.

⁶¹ AAUP, “1915 Declaration,” 300.

⁶² Tiffany Hsu, “Twitter’s Advertisers Pull Back as Layoffs Sweep Through Company,” *New York Times*, November 4, 2022, <https://www.nytimes.com/2022/11/04/technology/twitter-advertisers.html>; Nicholas Reimann, “Musk Says Apple Cutting Twitter Ads—Here Are Other Companies Rethinking Their Ties,” *Forbes.com* (website), November 28, 2022, <https://www.forbes.com/sites/nicholasreimann/2022/11/28/musk-says-apple-cutting-twitter-ads-here-are-the-other-companies-rethinking-their-ties/>; Kari Paul, “General Mills Latest to Halt Twitter Ads as Musk Takeover Sparks Brand Exodus,” *Guardian*, November 3, 2022, <https://www.theguardian.com/technology/2022/nov/03/general-mills-twitter-ads->

[halt-musk-takeover](#); Kate Congers and Tiffany Hsu, “More Advertisers Halt Spending on X in Growing Backlash Against Musk,” *New York Times*, November 18, 2023, <https://www.nytimes.com/2023/11/18/technology/elon-musk-twitter-x-advertisers.html>.

⁶³ Elon Musk, “Dear Twitter Advertisers.”

⁶⁴ Elon Musk (@elonmusk), “Premium+ also has no ads on your timeline,” X, November 17, 2023, 9:48 p.m., <https://twitter.com/elonmusk/status/1725707584555143602>.

⁶⁵ “Elon Musk’s X sues advertisers over alleged ‘massive advertiser boycott’ after Twitter takeover,” *Associated Press*, August 6, 2024, <https://apnews.com/article/x-sues-advertisers-unilever-cvs-mars-orsted-673d1ae88e9fb0ca5b170d238739453e>. Relevant Tweets: <https://x.com/lindayaX/status/1820838134470328676>, <https://x.com/elonmusk/status/1820849880283107725?lang=en>, <https://x.com/elonmusk/status/1820849358402670800?lang=en>, <https://x.com/elonmusk/status/1820852107932545242>, <https://x.com/elonmusk/status/1820851090138505570>.

⁶⁶ Josh Halliday, “Twitter’s Tony Wang: ‘We Are the Free Speech Wing of the Free Speech Party,’” *Guardian*, March 22, 2012, <https://www.theguardian.com/media/2012/mar/22/twitter-tony-wang-free-speech>.

⁶⁷ Sinead McSweeney (Twitter’s vice president for public policy and communications in Europe, the Middle East, and Africa) in 2017 testimony before British parliament (Shona Ghosh, “Twitter Was Once a Bastion of Free Speech but Now Says It’s ‘No Longer Possible to Stand Up for All Speech,’” *Business Insider*, December 19, 2017, <https://www.businessinsider.com/twitter-no-longer-possible-to-stand-up-for-all-speech-2017-12?r=nordic>).

⁶⁸ Ashe Schow, “Twitter CEO: ‘I Don’t Believe That We Can Afford to Take a Neutral Stance Anymore,’” *Daily Wire*, February 11, 2019, <https://www.dailywire.com/news/twitter-ceo-i-dont-believe-we-can-afford-take-ashe-schow>; “Jack Dorsey,” SamHarris.org (website), interview, February 5, 2019, <https://samharris.org/podcasts/148-jack-dorsey/>.

⁶⁹ The terms “left” and “right” as they are used in contemporary political discourse name rival tribes, each of which is united by its fear and hatred of the other, rather than by a shared ideology. On the constitution and history of these tribes (and the various ideas current in each of them), see Nikos Sotirakopoulos, *Identity Politics and Tribalism: The New Culture Wars* (Exeter, UK: Imprint Academic, 2021).

⁷⁰ Elizabeth Dwoskin and Tony Romm, “Facebook Purged over 800 U.S. Accounts and Pages for Pushing Political Spam,” *Washington Post*, October 11, 2018, <https://www.washingtonpost.com/technology/2018/10/11/facebook-purged-over-accounts-pages-pushing-political-messages-profit/>; “Removing Additional Inauthentic Activity from Facebook,” Meta (website), October 11, 2018, <https://about.fb.com/news/2018/10/removing-inauthentic-activity/>; Helen Lewis, “What You Can’t Say on YouTube,” *The Atlantic*, March 10, 2023, <https://www.theatlantic.com/ideas/archive/2023/03/youtube-content-moderation-rules/673322/>; Sam Levin, “YouTube’s Small Creators Pay Price of Policy Changes after Logan Paul Scandal,” *The Guardian*, January 18, 2018, <https://www.theguardian.com/technology/2018/jan/18/youtube-creators-vloggers-ads-logan-paul>; Jack Nicas, “Google’s YouTube Has Continued Showing Brands’ Ads With Racist and Other Objectionable Videos,” *Wall Street Journal*, March 24, 2017, <https://www.wsj.com/articles/googles-youtube-has-continued-showing-brands-ads-with-racist-and-other-objectionable-videos-1490380551>; Alexi Mostrous, “Big Brands Fund Terror Through Online Adverts,” *Sunday Times*, February 9, 2017, <https://www.thetimes.co.uk/article/big-brands-fund-terror-knnxfgb98>; Avi Selk, “Facebook Told Two Women Their Pro-Trump Videos Were ‘Unsafe,’” *Washington Post*, April 10, 2018, <https://www.washingtonpost.com/news/the-intersect/wp/2018/04/10/facebook-accused-of-deeming-black-pro-trump-sisters-unsafe/>; Ashley Gold, “‘We’ve Been Censored,’ Diamond and Silk Tell Congress,” *Politico*, April 26, 2018, <https://www.politico.com/story/2018/04/26/diamond-and-silk-congress-hearing-1116887>.

⁷¹ On the lawsuit, see *Prager University v. Google LLC*, No. 18-15712, slip op. (9th Cir. Feb. 26, 2020), <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/02/26/18-15712.pdf>; Nancy Scola, “Federal Court Tosses Conservatives’ First Amendment Suit against YouTube,” *Politico*, February 26, 2020, <https://www.politico.com/news/2020/02/26/youtube-court-first-amendment-117769>; NetChoice, Letter to Sen. Ted Cruz, Chairman, Subcommittee on the Constitution, Committee on the Judiciary, re: Hearing to Examine Google on Censorship Through Search Engines, July 15, 2019, <https://netchoice.org/wp-content/uploads/2020/04/NetChoice-comment-for-Sen-Judiciary-hearing-16-Jul-2019-1.pdf>.

⁷² On the shooting, see Nellie Bowles and Jack Nicas, “YouTube Attacker’s Complaints Echoed Fight over Ad Dollars,” *New York Times*, April 4, 2018, <https://www.nytimes.com/2018/04/04/technology/youtube-attacker-demonetization.html>.

⁷³ Kate Conger and Mike Isaac, “In Reversal, Twitter Is No Longer Blocking *New York Post* Article,” *New York Times*, October 16, 2020, <https://www.nytimes.com/2020/10/16/technology/twitter-new-york-post.html>; Noah Manskar, “Jack

Dorsey Says Blocking *Post*'s Hunter Biden Story Was 'Total Mistake'—But Won't Say Who Made It," *New York Post*, March 25, 2021, <https://nypost.com/2021/03/25/dorsey-says-blocking-posts-hunter-biden-story-was-total-mistake/>.

⁷⁴ Kate Conger, Mike Isaac and Sheera Frenkel, "Twitter and Facebook Lock Trump's Accounts after Violence on Capitol Hill," *New York Times*, January 6, 2021, <https://www.nytimes.com/2021/01/06/technology/capitol-twitter-facebook-trump.html>; Will Oremus, "Tech Giants Banned Trump. But Did They Censor Him?," *Washington Post*, January 7, 2022, <https://www.washingtonpost.com/technology/2022/01/07/trump-facebook-ban-censorship/>.

⁷⁵ Harris is especially good in his opening remarks on free speech in episode 344 of his podcast, <https://www.samharris.org/podcasts/making-sense-episodes/344-the-war-in-gaza>, and the two discuss their approaches to being a public intellectual (and engaging with social media) in the first thirty-three minutes of Harris's appearance on Peterson's podcast, <https://www.youtube.com/watch?v=2d3sk9gPFOA&t=207s>.

⁷⁶ Sam Harris, "Closing My Patreon Account," Patreon email, <https://mailchi.mp/samharris/closing-my-patreon-account>.

⁷⁷ Jordan Peterson, "Patreon Account Deletion," video, Jordan B. Peterson (YouTube channel), posted January 15, 2019, <https://www.youtube.com/watch?v=WrZDcEix7uk>.

⁷⁸ CEO's position statement, December 21, 2023, <https://substack.com/@hamish/note/c-45811343>.

⁷⁹ Jonathan M. Katz, "Substack Has a Nazi Problem," *Atlantic*, November 28, 2023, <https://www.theatlantic.com/ideas/archive/2023/11/substack-extremism-nazi-white-supremacy-newsletters/676156/>.

⁸⁰ CEO's position statement, <https://substack.com/@hamish/note/c-45811343>. Bryan Caplan, "Substack versus the Slippery Slope," January 28, 2024, <https://betonit.substack.com/p/substack-versus-the-slippery-slope>.

⁸¹ <https://web.archive.org/web/20220501001906/https://parler.com/>.

⁸² Jack Nicas and Davey Alba, "Amazon, Apple and Google Cut Off Parler, an App That Drew Trump Supporters," *New York Times*, Jan. 9, 2021, <https://www.nytimes.com/2021/01/09/technology/apple-google-parler.html>; Karen Weise and Nicole Perlroth, "Parler Accuses Amazon of Breaking Antitrust Law in Suspending Hosting Services," *New York Times*, Jan. 11, 2021, <https://www.nytimes.com/2021/01/11/business/parler-amazon.html>.

⁸³ Aatif Sulleyman, "Parler's Amy Peikoff Says Tech Giants Use '1984' Like 'An Instruction Manual,'" *Newsweek*, Jan 12, 2021, <https://www.newsweek.com/parler-amy-peikoff-says-tech-giants-use-1984-like-instruction-manual-1560730>.

⁸⁴ Vimal Patel, "UPenn Accuses a Law Professor of Racist Statements. Should She Be Fired?," *New York Times*, March 13, 2023, <https://www.nytimes.com/2023/03/13/us/upenn-law-professor-racism-freedom-speech.html>. Ethan Young, "Leaked documents shed new light on recommended Amy Wax sanctions, her appeal to Penn," *Daily Pennsylvanian*, 2/09/2024, <https://www.thedp.com/article/2024/02/amy-wax-hearing-leaked-documents-penn>.

⁸⁵ Jodi Dean, "Palestine Speaks for Everyone," *Verso* (blog), April 9, 2024, <https://www.versobooks.com/blogs/news/palestine-speaks-for-everyone>.

⁸⁶ Mark D. Gearan, "A Message from President Mark D. Gearan," Hobart and William Smith Colleges (website), April 13, 2024, <https://www.hws.edu/offices/president/statements/a-message-from-president-mark-d-gearan.aspx>.

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