

-Free Speech
-Dgn Gross dgross@msubillings.edu
Please send to me.

FREE SPEECH AND THE LIBERAL TRADITION

COURTING THE ABYSS

John Durham Peters

THE UNIVERSITY OF CHICAGO PRESS
Chicago and London

It is necessary that offenses come, but woe to the man through whom the offense comes.
ἀνάγκη γὰρ εἶθεῖν τὰ σκάνδαλα, τὴν οὖν τῷ διφθόρῳ δι' οὗ τὸ σκάνδαλον
ἔρχεται.

MATTHEW 18:7

The abyss was life itself.
Пучина эта была—сама жизнь.

TOLSTOY, Anna Karenina

CONTENTS

<i>Introduction: Hard-Hearted Liberalism</i>	1
<i>The Intellectual Options Today</i>	2
<i>Liberals, Civil Libertarians, and Liberalism</i>	9
<i>The Free Speech Story</i>	14
<i>Self-Abstraction and Stoicism</i>	22
<i>The Method of Perversity</i>	25
<i>Chapter 1. Saint Paul's Shudder</i>	29
<i>The Puzzle of Paul</i>	29
<i>The Case of Meat at Corinth</i>	36
<i>The Privilege of the Other</i>	45
<i>In Praise of Impersonality</i>	50
<i>Hosting Dangerous Discourse</i>	56
<i>Stoic, Rhetorician, Jew</i>	64
<i>Chapter 2. "Evil Be Thou My Good": Milton and Abyss-Redemption</i>	68
<i>Areopagitica, a Mislplaced Classic</i>	68
<i>Provoking Objects</i>	74
<i>Scouting into the Regions of Sin</i>	78
<i>Dramatis Personae</i>	83
<i>The Morality of Transgression</i>	97
<i>Chapter 3. Publicity and Pain</i>	100
<i>The Public Realm as Sublimation</i>	103
<i>Locke's Project of Self-Discipline</i>	110
<i>Adam Smith and the Fortunate Impossibility of Sympathy</i>	114
<i>Mill and the Historical Recession of Pain</i>	123
<i>Stoic Ear, Romantic Voice</i>	130
<i>Publicity and Pain</i>	136
<i>Chapter 4. Homeopathic Machismo in Free Speech Theory</i>	142
<i>The Traumatophilic First Amendment</i>	142
<i>Holmes and Hardness</i>	146
<i>Brandeis and Noxious Doctrine</i>	152
<i>Skokie Subjectivity</i>	155
<i>Hardball Public Space and the Suspended Soul</i>	166
<i>Impersonality, or Openness to Strangeness</i>	175

JOHN DURHAM PETERS is F. Wendell Miller Distinguished Professor of
Communication Studies at the University of Iowa.

FOR MARSHA

The University of Chicago Press, Chicago 60637
The University of Chicago Press, Ltd., London
© 2005 by The University of Chicago
All rights reserved. Published 2005
Printed in the United States of America

14 13 12 11 10 09 08 07 06 05 1 2 3 4 5

ISBN: 0-226-66274-8 (cloth)

Library of Congress Cataloging-in-Publication Data

Peters, John Durham.
Liberty and evil : the intellectual roots of free expression / John Durham Peters.

p. cm.

Includes index.

ISBN 0-226-66274-8 (cloth : alk. paper)

1. Freedom of expression—History. 2. Good and evil—History. 3. Political
science—Philosophy—History. I. Title.

JC585.P395 2005
323.44—dc22

2004018311

© The paper used in this publication meets the minimum requirements of the
American National Standard for Information Sciences—Permanence of Paper for
Printed Library Materials, ANSI Z39.48-1992.

Chapter 5. *Social Science as Public Communication* 181
 Positivism as Civic Discipline 182
 The Arts of Chaste Discourse 187
 Democracy and Numbers 191
 Objectivity and Self-Mortification 196
 Medical Composure 203
 Ways to Rehearse Death 208

Chapter 6. *"Watch, Therefore": Suffering and the Informed Citizen* 215
 Catharsis 217
 Compassion 222
 Courage 228
 Pity and Its Critics 232
 News and the Everlasting Now 240

Chapter 7. *"Meekness as a Dangerous Activity": Witnessing as Participation* 247
 Witnessing with the Body 249
 Witnessing from Captivity 257
 Persons as Objects 260
 Martin Luther King's Principled Passivity 265
 Transcendental Buffoonery 272
 Democracy and Imperfection 279
 Conclusion: *Responsibility to Things That Are Not* 284
 The Sustainability of Free Expression 284
 The Wages of Stoicism 289

Afterword 295
 Acknowledgments 297
 Index 299

INTRODUCTION

Hard-Hearted Liberalism

We boast our lights, but if we look not wisely on the sun itself, it smites us into darkness.
 —John Milton, *Areopagitica*

Ever since the beginnings of democratic theory and practice in ancient Athens, communication—understood as the general art of concerted living and acting in the polis through the gift of logos (speech or reason)—has been considered the lifeblood of public life. In the heart of every democrat since beats the pulse of Athens envy, a desire to put on a toga and speak swelling oratory. The early modern era adds a new item of apparel and medium of communication to the mix: friends of democracy like to fancy themselves donning powdered wigs and taking quill in hand to compose declarations and encyclopedias that will set tyrants trembling. Today voice and print media are alive and well, but being reshaped under the accumulated weight (or lightness) of the pictures, sounds, and bits that have proliferated since the late nineteenth century. Though our media environment raises questions that we are still learning how to ask, the vision of liberating—or vile—communication continues to follow and enchant every new medium, from radio to the internet. This book is about that enchantment, the ideas that shape thinking about communication's role in public and political life. More specifically, it traces the leading framework for understanding public communication in the Anglo-American world, namely, free expression, focusing especially on the notion that exposure to evil can be good for the public health.

THE INTELLECTUAL OPTIONS TODAY

From many sources we have inherited a rich broth of dreams and images about the intimate tie between democracy and communication, and many competing philosophies continue to vie for airtime in—and about—public life today.¹ On a planetary scale today, the late British anthropologist and social theorist Ernest Gellner argues, there are three basic options that vie for intellectual and moral allegiance: enlightenment doubt, cultural pluralism, and fundamentalism.² The first embraces modernity and its constant revolutionizing of human existence, especially the fertility of science for improving conditions. It finds the policy of rational inquiry an ennobling and energizing way to advance the common welfare and to live in the world. The second has lost faith in modernity's guarantees of progress and emancipation and points to the incommensurable swirl of moral and intellectual positions generated in human history. So abundant and conflicting are the visions of the good life that no rational or conclusive answer about the right way is possible. The third option is also nervous about modernity but in an antimodern rather than postmodern way, that is, it is alarmed rather than playful, or better, angry rather than nervous, and seeks security in sources such as revelation, scripture, and traditional authority. Unlike science, which suspends the quest for a final answer, or postmodernism, which abandons it altogether, fundamentalism prizes moral or ideological closure. The notion of the open-ended indifferent competition of ideas is itself one of the things it finds abhorrent.

Each option—modern, postmodern, and antimodern, as we might re-name them—can score points against the others. Like rock, paper, scissors, none wins all the time. The modern and postmodern views call the antimodern closed-minded; the modern and antimodern views blame the postmodern for coping out on the question of truth; and the postmodern and antimodern views rebuke the modern for its destructive hubris and self-confidence. Each view also has a meta-analysis of the fact of pluralism itself and a policy about how to choose among the options. Modern science exhorts us to test all ideas empirically and has no doubt that its own practice of open inquiry will prove the most fruitful in deciding among competing

1. I have treated the competing visions of communication more systematically in "Mass Communication, Normative Frameworks," in *International Encyclopedia of the Social and Behavioral Sciences*, ed. Neil J. Smelser and Paul B. Baltes (Oxford: Pergamon, 2001), 9328–9334.

2. Ernest Gellner, *Postmodernism, Reason, and Religion* (London: Routledge, 1992). Thus Gellner updates Malinowski's triad of Magic, Science, and Religion.

doctrines; postmodern relativism denies that an ideological end game can ever be reached and has no answer about how to decide besides fate, will, taste, or preference; and antimodern fundamentalism finds claims of open-ended testing or moral undecidability little more than excuses to avoid facing the riveting call of the sacred. In terms of the globe's inhabitants today, nontraditional faith is surely chosen as often as critical rationality or cultural relativism, though less often among readers of books like this. Fundamentalism is largely antimodern rather than premodern. Its renunciation of critical self-reflection about ideological alternatives suggests a traumatic encounter with modernity, not the innocence of a tradition undisturbed. The very notion is no older than the early twentieth century. The consciousness of a medieval Christian peasant is leagues distant from a twenty-first-century believer in biblical inerrancy, for instance. Fundamentalism should not be identified with religion in general or with one religion in particular. Judaism, Christianity, and Islam alike all breed fundamentalists, as do all the great traditions (and only certain American Protestants actually call themselves "fundamentalists"). There are plenty of nonreligious fundamentalists and religious nonfundamentalists around, and the border zones are of great interest. The key is that whatever the vaguely insulting term "fundamentalism" means, it stands less for a fight between religion and secularism than for a fight between different kinds of believers.³

This force-field of options seems our fate at the moment; part of the aim of this book is to explore ways around the impasse. Gellner, for his part, prefers enlightenment doubt. As a rare western thinker who insisted on the global intellectual importance of Islam prior to September 11, 2001, he has a sympathetic understanding of fundamentalism's motives for rejecting unlimited inquiry and saves his choicest barbs—funny, if not entirely fair—for the postmodernists: "Sturm und Drang und Tenure," he quips, should be their motto.⁴ Indeed, his stance of critical inquiry might seem the best equipped to mediate among the others and almost seems a prerequisite for even seeing the other two as options. And yet even the attempt to mediate rationally annuls both postmodernist incommensurability and fundamentalist single-mindedness, since it assumes first that evaluative criteria are possible and second that everything, even God, fire, or devotion, can be subject to inspection. From a rational point of view, cultural relativism looks like little more than a self-refutation. To say "everything is relative" fa-

3. Karen Armstrong, *The Battle for God: A History of Fundamentalism* (New York: Ballantine, 2000).

4. Gellner, *Postmodernism, Reason, and Religion*, 27.

mously implies that that statement is also relative, thus catching it in self-contradiction, just as the postmodernists' claim that there can be no more grand narratives about history presupposes a pretty comprehensive grasp of history's direction—precisely the kind of epistemological privilege that many postmodernists want to deny.⁵ To a rational point of view fundamentalism looks like tenacious blindness, a refusal to be reasonable at all. The sacred is as abhorrent to modern scientists as open debate is to true believers. As far as critical rationality is concerned, its rivals amount to little more than contradictory or deficient versions of itself.

But the debate among the three is not only about the best argument; it is also about whether argument and debate are the best way to settle moral enigmas. The three options are not just reasons, but whole visions of the cosmos and of the place of reason (among other things) in it. Each is a way of being or seeing as much as a logic of argument. Their force lies as much in their performances as in their statements. Enlightenment doubt, like fundamentalism, can be a bully, and perhaps only postmodernist relativism, if understood as a positive program of aesthetic appreciation of difference and as lassitude against the aggressions of any program of final answers, is hospitable enough to entertain the full babel of alternatives. But postmodernism's price is to remove both the privilege of reason and the force of taboo, demoting them into two competitors among others on a level playing field. Science becomes one more cultural system and devotion, one more variety of human experience. For fundamentalism critical rationality is a prideful and foolish trust in the human mind, and cultural relativism is a cop-out from moral judgment. Any resting point with respect to the three options yields unease. Each moral-intellectual game has rules that say why the others miss the point.

With some translation this loose triad of options provides a map for the ideological contours of debates about freedom of expression. Those who defend complete liberty of expression are almost invariably friends of modern rationality and enlightenment, and trust in open inquiry to take care of itself. Those who employ forms of expression that risk being considered sick or offensive share with postmodernists a sense of the non-bindingness of culture and the relativity of moral norms (and are close allies with the liberals; for reasons I will explore below). Those who are sickened and offended—and they are no less essential to the social drama of free speech than the civil libertarians and the culture-busters—resemble fundamental-

5. Jean-Francois Lyotard tries to wiggle out of this performative contradiction in *The Postmodern Condition: A Report on Knowledge* (Minneapolis: University of Minnesota Press, 1984).

ists in their comparatively low threshold for disgust and their sensitivity to violation and insult. Liberal tolerance, cultural transgression, and conservative offense: such seems the repeated dynamic of free expression in our time. This triad does not map perfectly onto Gellner's triumvirate of reason, postmodernism, and religion, but there is a certain family resemblance in tone and mood.

The three actors in the social drama of free expression are not in equilibrium: the first two have a long-standing alliance against the third. Liberals generally prefer those who relativize the sacred to those who absolutize it. Since the holy remains a live option for some citizens, they take offense more readily at its desecration and are typically the odd man out in free speech debates, being treated as having the wrong kind of soul for modern liberty or as censorious voluptuaries of the dungeon and the stake. They are less prone to read acts of cultural transgression ironically, as would-be contributions to public education or debate. There is something satanic about many liberal arguments in favor of free expression—satanic not in the sense of gratuitous evil but in the Miltonic sense of confronting or even sponsoring an adversary whose opposition provides material for redemptive struggle. Defenders of free speech often like to plumb the depths of the underworld. They tread where angels do not dare and reemerge escorting scruffy, marginal, or outlaw figures, many of whom spend their time planting slaps in the face of public taste. Like well-mannered circus barkers, the friends of free expression parade their exotic friends before a gawking public. They themselves, however, remain scrupulously well dressed, coiffures un mussed by their spelunking. They profess reluctance in this dirty job. Fraternization with the outcast they consider an act of social leadership, an exhibit of the vigorous toleration all citizens must attain, a public lesson in the art of how to consort civilly with denizens of the deep. To those familiar with the sick transit of fighting faiths, they think, hell is only a passing social construction. Even if hell were dangerous, exposure to its flames would only prove the measure of one's strength. What does not kill me, they say with Nietzsche, makes me stronger. The American Civil Liberties Union's (ACLU) defense of the Nazis' right to march in Skokie is the most famous example of this kind of contrarian flexing, but such strenuous libertarianism is found more widely in the culture.

Liberals depend upon a colorful cast of characters to keep them in business. A curious crowd, real and imagined, friend and foe, populates the intellectual history of arguments for free expression. Early modern theorists made use of lurking figures eager to squelch liberty to argue in favor of openness. For Milton in the seventeenth century it was Catholics (and the

Spanish Inquisition); for "Cato" in the eighteenth it was France and Turkey (and the specter of faroque and Oriental despotism, respectively). For John Stuart Mill in the nineteenth, China and Mormon polygamy represented the dangers of intellectual compulsion, while atheism stood in need of defense. For the U.S. Supreme Court in the twentieth century, the crew of provoking subjects was even motlier, though less international, socialists, religious pamphleteers and political users of sound trucks, civil rights protestors, Klansmen, Nazis, purveyors of porn and junk mail, comedians, flag-burners, and cross-burners. While early modern adversaries were treated as villains better kept at arm's length, Mill and his many twentieth-century followers discovered the utility of the outré for constructing arguments about free speech. This cast of characters has served as the irritants that helped goad the pearls of free expression theory into being. "In freedom-of-speech cases," said Archibald Cox, "the most effective kind of client is an unpopular cause, or just some S.O.B. who has a right to be heard."⁶ He had in mind his recent client—the Reverend Billy James Hargis, a 280-pound Oklahoman right-wing broadcaster and admirer of Joseph McCarthy, similarly a leader of the ACLU explained the codependence of the friends of liberty and the deviant: "Our fundamental civil rights often depend on defending some scuzball you don't like."⁷ There is an under-the-table transactional ethic in the free speech story, a curious coupling of straitlaced defenders of liberty and wacky or wicked pushers of limits.

The bond between liberals and transgressors points to the principle that I will call "homeopathic machismo," the daily imbibing of poisons in small doses so that large drafts will not hurt. This strategy proves to be a telling clue to the liberal temperament. The attitude of warming oneself in the fires of hell has both a long history and a wide purchase in contemporary culture, from ancient literary and religious sources through Romanticism and modernism. An understanding of these intellectual sources might help explain how some curious notions have gained widespread support—for example, that the presence of pornography or first-hand acquaintance with images and reports of mayhem is somehow good for the social order. Free speech is marvelous, and we have to pay a price for it, as we must for all marvelous things. But some friends of free expression take a positive pleasure in paying up, as if a lack of cultural transgressors on the loose would imperil

6. Quoted in Fred W. Friendly, *The Good Guys, the Bad Guys, and the First Amendment: Free Speech v. Fairness in Broadcasting* (New York: Random House, 1976), 76.

7. "A.C.L.U. Boasts Wide Portfolio of Cases, But Conservatives See Partisanship," *New York Times*, 2 Oct. 1968, 24, quoting Ira Glasser, who overlooks the possibility of a scuzball you do like.

the public intellectual and political welfare. Just as the aged Gandhi supposedly took naked young women into his bed in order to prove his powers of renunciation, so some liberals celebrate provocation as an opportunity to show off the advanced state of their self-mastery. Their prayer is not to be delivered from evil but to be led into temptation. Civil libertarians voluntarily expose themselves to trial by contraries. The free expression scholar, and currently Columbia University president, Lee Bollinger compares the toleration of extremist speech to spiritual asceticism: "In this secular context we derive something of the same personal meaning and satisfaction of the religious fast, a self-initiated and extraordinary exposure to temptation that reaffirms the possibility of self-control over generally troublesome impulses."⁸ The tolerated presence and perhaps even secret collusion with the culturally forbidden stand as a monument to civic righteousness. Liberals are confident that any doctrine, good, bad, or ugly, should be allowed its innings in the open air. Sometimes this implies a nose-holding tolerance, and sometimes it edges into exultation at the challenge of facing down toxic doctrine. "Let truth and falsehood grapple" say some liberals in the fashion of a Roman emperor declaring the gladiatorial contests open.

The pairing of liberals and consorts from the abyss can be a nice arrangement for both parties. Friends of liberty get to show off their broad-mindedness (and maybe get a secret buzz from the flirtation as well), even though they officially profess to be repulsed by the "scuzballs" they are squiring, and the outrage-artists get some welcome publicity. Cultural transgressors have a professional interest in expressive liberty and supply the liberals with something to defend; the liberals, in turn, are often wonderfully ingenious in interpreting offensive practices as defensible contributions to public life (almost anything with the right interpreter and enough tender loving care can have social redeeming value). Moral stunt pilots count on masochistic audiences who enjoy the abuse of being mocked: such enjoyment or at least sublimation of transgression is a key to the liberal soul. Spectators of such intellectual sado-masochism are supposed, in turn, to decode it ironically—to read "diabolically," as William Blake put it. Liberals and civil libertarians bank on the bystander's ability to look past the apparent chumminess of liberty and evil and understand the underlying and noble self-discipline that it takes to defend one's enemy. Indeed, the whole affair depends on the saving office of the commentator, the critic who can interpret the irony's social value. Like all dramas, the dialogue between the principals is designed with a third party in mind.

8. Lee C. Bollinger, *The Tolerant Society* (New York: Oxford University Press, 1986), 143.

But not everyone gets the irony. The romance of liberal tolerance and cultural transgression leaves some bystanders cold. Those who do not enjoy seeing Klansmen and Nazis receiving pride of place or religious symbols painted with bodily biodegradables being defended as artistic innovation, for instance, get huffy. They fail to achieve what liberals consider the requisite inversion in their heads and the requisite frigidity in their hearts. The offended critics are, again, central to the social drama: by losing their cool they provide the friends of free speech with a counterexample of the self-suspension citizens are supposed to possess and help provide the abysmal artists, as I dub them in chapter 2, succès de scandale. The threefold drama of the liberal enabler, the convention-buster, and the outraged bystander has been repeated often enough in recent years, especially in the visual arts, to show how neatly the liberals have rigged a double bind for anyone who might want to criticize their program. Speak up against the spectacle of fraternization in liberal circles and you risk being called a bigot, prude, scaredy-cat, or friend of censorship. Critics of cultural offensiveness, or even those who want to come to terms with the tangle of a conflicted public sphere today, are left with little room to maneuver.⁹

Liberal defenders of absolute freedom of expression can be impatient and illiberal with those who criticize their commitment to life without closure. As Charles Taylor notes, "liberalism can't and shouldn't claim complete cultural neutrality. Liberalism is also a fighting creed."¹⁰ For some, liberalism is explicitly hostile, not an open forum for the happy winnowing of competing claims. People bound by the sacred cannot embrace a doctrine advocating that everything should be out in the open. The sacred, taken as a structure of communication—or rather, noncommunication—sets apart certain things as off-limits to circulation and hems them in by prohibitions and sanctions. A policy that wants to cast light on all recesses and claims that all exploration is free of penalty can serve as a form of aggression, not just an amicable sweeping out of the closet. The sacred takes a hands-off stance to objects deemed precious or dangerous. Its obvious reference is to religion, but there are plenty of secular reasons for stopping short of complete openness of publication. Liberalism's policy of publicity is at odds with sanctity or even discretion: it never met a secret it could keep. It distrusts hermetic discourse spoken mouth to ear and is fine with almost

everything being spoken from the rooftops. "Uninhibited" is usually a term of praise for liberals; others prefer awe or circumspection. Where liberals see little besides the healthy ventilation of attics and crypts, others see a vaporization of the power they seek to preserve, whether it belongs to love, friendship, art, or religion, all of which flourish in the penumbra, not in the direct sunlight of reflection. "In nature, as in law," Melville wrote, "it may be libelous to speak some truths."¹¹

Most people who have thought about the trio of liberal defenders, habits of transgression, and offended bystanders consider the first the least worry. People on the Right generally think the problem is the abysmal artists who want to tickle every taboo and unhallow everything holy. People on the Left generally think the problem is the offended bystander, both freedom and state-sponsored, who would muzzle edgy experimentation and social progress. The Right attacks liberalism for not recognizing the potential for evil or moral erosion; the Left attacks it for not acknowledging social structure or concentrated power. Both are correct. The middle ground seems the most fruitful soil to till, if you can stand the cross fire. In this book I hope to offer something new, or rather something old, by taking liberalism itself as the chief problem. The liberal defense of free speech, as it is often told today, has a certain nihilist deposit. Defending the speech we hate does not mean we need to learn to love it or think it is really good stuff. Refusing to make laws prohibiting speech and expression does not mean that speech and expression are necessarily free of ill effects. One can oppose censorship while maintaining a capacity for judgments about the value and quality of cultural forms. The communicative conditions of our times offer unprecedented access to representations of things that were culturally contained through most of human history, and a commitment to abstract rights should not keep us from thinking intelligently about those conditions. Many liberals today have a profound respect for autonomy and liberty and a shallow understanding of human nature, social order, and mass media. The intellectual tradition, however, fortunately provides strong medicine against such recent flattening of vision.

LIBERALS, CIVIL LIBERTARIANS, AND LIBERALISM

My loose use of the term "liberal" thus far needs attention. Coined in Spain in the 1820s, "liberalism" is one of the most slippery of all modern political

9. I develop the notion of an ethics of not looking in "Beauty's Veils: The Ambivalent Iconoclast of Kierkegaard and Benjamin," in *The Image in Dispute: Visual Cultures in Modernity*, ed. Dudley Andrew (Austin: University of Texas Press, 1997), 9–32.

10. Charles Taylor, "The Politics of Recognition," in *Multiculturalism: Examining the Politics of Recognition*, ed. Amy Gutmann (Princeton, N.J.: Princeton University Press, 1994), 62.

11. Herman Melville, "The Encantadas or Enchanted Isles," in *Billy Budd and Other Stories* (New York: Penguin, 1986), 115. The law has since changed; whether nature has is unclear.

terms, and anyone who sets out to analyze it, as I do, has to take responsibility for the inevitable semantic variety of a concept whose dominion has grown so large. Already by 1877 its expansion of meaning was lamented: "It is unfortunate that the term 'liberal' is also wanted for other purposes, social and theological and it is perhaps to be regretted that we cannot go back to 'Whig' as the purely party definition."¹² Since the late nineteenth century, the term has had a split inheritance. In European and Australian politics "liberal" tends to mean conservative, that is, the advocacy of free markets; in the United States "liberal" tends to mean social democrat, that is, support for the state's role in sustaining social welfare, together with a respect for the unmanageable diversity of human choices. For Mill, who in many ways is the headwater of both streams, free trade and free expression were two sides of the same coin, the sovereignty of the individual to act as he or she pleased (within limits of social harm). This combustible mixture has yielded various and incompatible elements ever since: "liberal" can mean latitudinarian, socially tolerant, open-minded, fuzzy-minded, deregulationist, pro-state intervention, optimistic, and countless other things. Today the chief rifts in the term refer to free markets (neoliberal), free expression (civil libertarian), and an attitude of tragic acceptance of the plurality of human ends. That the term can encompass figures as diverse as the free-market economist Milton Friedman, the ACLU's Nadine Strossen, and the political philosopher Isaiah Berlin (who each represents these strands respectively) is part of its fuzziness and thus also of its usefulness. I will try to keep its usage within reasonable bounds, but I have no illusions that I can master this (or any other) signifier.

"Civil libertarian" refers to a slightly different constellation of meanings. Civil libertarians typically believe in strong laws (and such strength can include laws precisely *against* the mixing of church and state or laws *against* censorship) but often distrust the state. Though many liberals are also civil libertarians, these are not overlapping sets. Oliver Wendell Holmes Jr. was a civil libertarian but hardly a liberal: he had a Social Darwinist's vision of progress and a cynic's view of human nature. Anti-statist libertarians, anarchists, and even an occasional maverick Republican—none of whom we normally consider liberal—can be civil libertarians.¹³ Not everyone who believes in freedom of expression necessarily signs on for the accompany-

ing ideological package of faith in progress and hope for human nature that tend to mark liberal thinkers, though a majority probably does. Civil libertarians tend toward the colder and harder end of the emotional spectrum, and liberals tend toward the warmer and softer end. In what follows, the terms "liberal" and "civil libertarian" sometimes blur when I use liberal as the more encompassing term for the political-philosophical tradition of fighting for liberty. Cataloguing the full animal kingdom of liberal kinds awaits another day, though chapter 2 does focus on some of the leading figures of the drama of free expression.

The concept of "liberal" also creates some retroactive mischief, being applied to theorists who never heard of the term. The concept gathers diverse thinkers in its net—Milton, Thomas Hobbes, Benedictus de Spinoza, John Locke, Immanuel Kant, Mill, Oliver Wendell Holmes Jr., John Dewey, Jürgen Habermas, and John Rawls, among many others. Every concept, as the Argentine writer Jorge Luis Borges would say, invents its ancestors. In this case a lot of the inventing was done by twentieth-century civil libertarians eager to secure themselves a noble intellectual ancestry. As a rule historians dislike the term's crumbliness, and a common game in intellectual history involves showing why canonic "liberal" figures are the victims of post-hoc political readings. Milton, for instance, is better thought a Puritan radical or republican, many argue; others argue for Locke as a victim of retroactive myth-making. Mill as a radical, a Romantic, a utilitarian, or even a republican, Holmes as a pragmatist or nihilist, and Dewey as a radical democrat.¹⁴ Such revisionism is quite legitimate, since a hatred of paternalist meddling by state, church, or neighbors can go together with wildly diverse moral, political, epistemological, and aesthetic commitments. There should be something suspicious about a single category that nets the atheist Hobbes and the devout Milton, the empiricist Locke and the rationalist Spinoza, the deontologist Kant and the utilitarian Mill, the tender-minded Dewey and the tough-minded Holmes. Even so, thinkers can share an attitude without sharing everything else; a common element among many does not necessarily make a family, but *can* make a team. By "liberal" I mean a cluster of existential-political stances, such as insistence on religious and

12. Editor's note in George Cornewall Lewis, *Remarks on the Use and Abuse of Some Political Terms*, ed. Roland Krayvet Wilson (Oxford: Thornton, 1877), 188.

13. Consider Sheila Suss Kennedy's provocative book title, *What's a Nice Republican Girl Like Me Doing in the ACLU?* (Amherst, NY: Prometheus Books, 1997).

14. For two examples, see J. G. A. Pocock, "The Myth of John Locke and the Obsession with Liberalism," in *John Locke: Papers Read at a Clark Library Seminar, 10 December 1977* (Los Angeles, 1980), 3-24; Robert Weathbrock, *John Dewey and American Democracy* (Ithaca, NY: Cornell University Press, 1991). For Mill as a crypto- or ambivalent Miltonian republican, see Stewart Justman, *The Hidden Text of Mill's Liberty* (Savage, Md.: Rowman & Littlefield, 1991), especially chap. 2, an argument that works better for Mill's social thought in general than for *On Liberty* specifically.

other forms of ideological diversity, rejection of conscious design as the ultimate source of social order, respect for due process and for guarantees of equal protection against the tyranny of the majority, and appreciation for eccentric behavior. Liberals equally hate the sleep of reason and the frenzy of passion. That said, it will still be hard to keep such diverse thinkers safely herded into a single fold; at least all liberals abhor censorship.

Though clichéd, the liberal hall of fame gives us an ample array of resources, many of which can be used against the latter-day thinness of its heirs. By focusing on the lineage later invented by civil libertarians, "I consciously work within the framework I am trying to debunk (or enlarge)."¹⁵ It is a productive cliché that these thinkers all belong to a single marketplace-of-ideas tradition since each one offers something that undermines that cliché and opens new vistas of thought. Milton, after all, was one of history's great painters of hell in *Paradise Lost*; and the risky benefits of exploring its pits are central to his earlier call for uncensored printing in *Areopagitica*. Blistering political radical and devout Puritan, Milton defies the divisions of the contemporary intellectual landscape. Adam Smith places sympathy, and its inevitable failure, at the heart of social life in a way that both highlights the default Stoicism prescribed for the public subject and moves beyond it for an ethics of listening and openness. Mill's understanding of free discussion is shaped by both Romantic eccentricity and Stoic self-mastery, and his arguments are both symptomatic of and diagnostic for the muddled thinking that follows in his wake. Holmes sponsors a harsh and martial nihilism as the philosophical basis of free expression, something that his less sternly thoughtful heirs have smiled and hoped away. These figures would have all understood, with various qualifications, the point of Adam Michnik's dictum that the best society has weak laws and a strong church.¹⁶ Classic theorists of liberty—Milton, Smith, and Mill—knew how to make evil part of the equation. Twentieth-century libertarians as a rule have been less circumspect, some from optimism (such as Zechariah Chafee, the leading American scholar of free expression in the first half of the twentieth century), others from nihilism (such as Clarence Darow, the self-described "attorney for the damned"). Discovering how to sustain deep respect for liberty and evil at the same time is a chief task of this book. Contemporary intellectual defenses of freedom of speech are often hostile to the theological frameworks that warn against the potential harm or even

evil of certain speech acts. Many civil libertarians trace their lineage to the radical enlightenment of Spinoza, Voltaire, Thomas Paine, and others who generally (Spinoza is more complicated) saw in traditional religion little more than a dungeon thick with spider webs. A related story also inspires agitation for free speech, the battle against the Inquisition, which tells of a contest between a conveniently villainous church and conveniently heroic rebels.¹⁷ The battle of truth against power is a seductive narrative told for centuries by Protestant reformers, *philosophes*, and progressive crusaders who could possibly sign on with power, given that choice? But other things can be smuggled below the radar of the anticensorship crusader's upright conscience—a philosophy of history as progress, religion as neurosis, reason as panacea. Liberals can be fond of history as a graduation narrative: we have outgrown the old world and entered into a new one without angels or demons. Such a simple vision of progress often leaves liberals ill-equipped to deal with either the sublimity or the vehemence of doctrines that have doubts about publicity or the unending glare of critical reason, and silences people who protest the liberal philosophy of history, culture, or moral life. In the twentieth century such libertarian heirs of the radical enlightenment as Holmes, Bertrand Russell, I. F. Stone, even Noam Chomsky, relish their autonomy from theological sources. All are admirable at least for their courage and energy (and I often agree with their practical politics). But if these are the best liberal thought can offer, we have lost touch with important sources and shrunken in moral and intellectual vision. The project of liberty can no longer act as if religion is either a cardboard enemy or on the verge of withering away.

Liberalism both denies and depends on religion in public life. Much of what is best in liberalism derives from Greco-Roman and Judeo-Christian roots, and I would hesitate longer about both of those contentious elisions if they were not so apt for a certain Paul of Tarsus, the surprising hero, one of them at least, of this book. Paul believes in liberty, actively entertains the other side in his discourse, and has a robust account of cultural sensitivity. What is so suggestive about him is the way elements in his writings sustain—and also thus transcend—the rationalist, relativist, and fundamentalist options. Figures such as Paul and Milton combine a radical theory of liberty with a moral program of wary respect for the potential harms of crime and noxious doctrine. Paul is a libertarian who is also civil (Milton, in contrast, can only be called an uncivil libertarian). The philosophy of free

15. Stephen Jay Gould, *Time's Arrow, Time's Cycle* (Cambridge, Mass.: Harvard University Press, 1987), 4.

16. John Keane, personal communication, March 2000.

17. See Edward Peters's brilliant book *Inquisition* (Berkeley: University of California Press, 1988) for a critical analysis of these narratives.

expression does not fully make sense without its fertile theological roots, and it cannot flourish in the ideological competition of the contemporary world without a greater sympathy for those who object to its intolerance of arguments derived from the sacred. Enlightenment has many paths, and they all have something to do with liberty. Liberalism would foster a more genuine pluralism by forfeiting its monopoly claim on the proper management of pluralism.

Free speech theory, at base, is an antinomian heresy. Congress shall make no law. Antinomians believe that the law is suspended, and faith alone can save. Liberal defenses of open debate unerringly return to the night journey, salvation by passing through the flame of contraries, while long having abandoned an understanding of self or cosmos that would make a descent into hell even intelligible as a good thing for a person to seek. There is a long tradition, running from Greek and Hebrew antiquity to Christianity to Romanticism and modernism, that finds in evil lessons for the good and relishes the clash of the two: the dilution or hardening of this tradition makes moral and political deep-sea diving today less secure. Arguments defending freedom of expression are often twisted in their celebration of what they oppose. The First Amendment has become a chief latter-day site for the old heresy of redemption through sin. How did a high dose of negativity become institutionalized in the core doctrines of free speech? How did the ironic mode—the liberal *via negativa*, of sponsoring study-abroad sojourns in the land of fire and brimstone—become a favored option among people who believe in progress and reason? Whence came the policy that the best way to defend liberty is to defend its enemies? Liberal citizens are supposed to run the gauntlet of what disgusts them and to find a little poison gas in the air a good immunization against bigger woes. Citizens grow in wisdom by passing through folly, and dalliance with demons adds up to the greater education of all. Rancid discourse has become what early Christianity called the *felix culpa*, the happy sin. Our souls are supposed to be able to take publicly what we hate privately. This book is an attempt to understand this strange argument.

THE FREE SPEECH STORY

What is the current narrative and how did we get there? The heroic version of the liberal story about free speech continues to define much popular and academic thinking about the relation of democracy and communication (although the story's dominant form is a product of the middle of the twentieth century). The story tells of courageous revolutionists and stout-

hearted printers who risked life, limb, and profit by defying the censorship of crown or church (this, again, is a variant on the story of the fight against the Inquisition). By ignoring the inhibitions and edicts of the censors, these heroes (so the story goes) formed a "marketplace of ideas" where any notion, good, bad, or ugly, could be evaluated on its own merits and whose price would be set by nothing but free and open competition. This marketplace is supposed to be the motor of democratic life and the place where the public blossoming of the logos so central to democracy can occur. In Protestant nations the printing press attained near mythological status as a world-historical agency of enlightenment and emancipation and as the central enabling institution of popular sovereignty. The press had a privileged role in disseminating news and views; every citizen had the potential power to speak the word of truth. The intellectual hall of fame in this story includes such figures as Milton, Locke, the authors of *Cato's Letters*, Adam Smith, Thomas Jefferson, Mill, Holmes, and Louis Brandeis, among many others. More recently investigative journalists, members of the American Civil Liberties Union, librarians, radical reformers, and renegade lawyers are often (self) nominated for inclusion as well.

Most of the themes of the free speech story are well rooted in seventeenth- and eighteenth-century thought, though confidence in truth's ultimate triumph over error was a distinctive feature of both the biblical and the philosophic tradition. As Spinoza put it, "truth reveals itself," a characteristic belief, as Karl Popper argues, of liberal thought.¹⁸ Spinoza's confidence reflects the rationalism of the radical Enlightenment, as well as the Jewish tradition's deep confidence that speaking the right words can be a way to divide the light from the darkness. Locke's version follows Paul's conviction that a law is written in the hearts and conscience of few and Gentile alike (Rom. 2:15). Though the world is full of parties eager "to cram their Tenets down all Men's Throats," Locke says, using an idiom still favored by liberals annoyed at ideological pressure, yet "the Candle of the Lord [is] set up by Himself in Men's minds, which it is impossible by the Breath or Power of Man wholly to extinguish."¹⁹ How he squares the "Candle of the Lord" with his professed empiricism is a debated point in Locke studies, but he thereby expresses his confidence in the independent powers of mind that is so characteristic of free expression arguments. In a passage Jefferson would echo in his *Notes on the State of Virginia*, Locke writes: "the truth would cer-

18. Karl Popper, "On the Sources of Knowledge and Ignorance," in *Conjectures and Refutations* (New York: Harper & Row, 1963), 3–30.

19. John Locke, *An Essay Concerning Human Understanding*, IV:iii:20.

tainly do well enough if she were once left to shift for herself. . . . Errors, indeed, prevail by the assistance of foreign and borrowed succors. But if Truth makes not her way into the understanding by her own light, she will be but the weaker for any borrowed force violence can add to her."²⁰ Locke and Spinoza are two of the leading seventeenth-century representatives of the confidence that truth alone is persuasive.

Two decades after Locke's *Letter on Toleration* (1693), John Trenchard and Thomas Gordon, writing under the characteristically Roman Stoic pen name "Cato" on the benefits of a free press, asserted: "Only the wicked governors of men dread what is said of them. . . . Guilt only dreads liberty of speech, which drags it out of its lurking holes, and exposes its horror and deformity to day-light."²¹ Such words still inspire advocates of liberty, as well as those who do not care so much about liberty but like making money under its ideological protection (such as, indeed, Rupert Murdoch).²² "Cato" mobilizes all the righteousness on the side of publication, for only those who are "at enmity with the truth" fear free speech. "Misrepresentation of public measures is easily overturned, by representing public measures truly." There is a certain smugness in their certainty of the automatic victory of truth: "Truth has so many advantages above error, that she wants only to be shewn, to gain admiration and esteem."²³ A later American analogue can be found in Tunis Wortman's *Treatise Concerning Political Enquiry, and the Liberty of the Press* (1800), which Leonard Levy says is "the book that Jefferson did not write but should have."²⁴ Wortman calls for a society in which everybody would "be permitted to communicate their ideas with the energy and ingenuousness of truth. In such a state of intellectual freedom and activity, the progress of mind would infallibly become accelerated. . . . Exposed to the incessant attack of Argument, the existence of Error would be fleeting and transitory; while Truth would be seated upon a basis of adamant, and receive a perpetual accession to the number of her votaries."²⁵ In a comment on the *Times* of London, Ralph Waldo Emerson

did not quite scale the heights of bluster that Wortman did, but he did state the secret dream of every investigative journalist since: "There is no corner and no night. A relentless inquisition drags every secret to the day, turns the glare of this solar microscope on every malfeasance, so as to make the public a more terrible spy than any foreigner; and no weakness can be taken advantage of by an enemy, since the whole people are already forewarned."²⁶ This dream of universal surveillance, of panoptic light penetrating every nook and cranny, is still with us, for good and evil.

Alleles from such arguments persist in the intellectual gene pool. A faith in the power of the airing of ideas to reveal truth over the din of public relations and the dullness of public ignorance still pops up often and in the strangest places. "I believe in the right of people to judge the truth for themselves in the court of public opinion," said Mick Hume, editor of *LM/Living Marxism Magazine*, in an important British libel trial on 14 March 2000, whose harsh penalty for libel many interpreted as a symptom of the urgent need for a British equivalent to *Times v. Sullivan*, the 1964 case that raised the bar significantly for defamation suits against the press. Hume invoked all the key terms: the people, enthroned as a judge, autonomously sifting evidence, public opinion as a court. It does not matter that Hume is a Marxist; in a pinch, all the old liberal safety nets still come to the rescue. Liberal rhetoric is a standard default position for people who find their liberty threatened.

Another amusing example of the confidence that the public takes care of itself is a BBC television program that scored no viewers in the ratings system; it did not even attract the 2,500 pairs of eyeballs necessary to register at all. Was the program in danger of being cancelled? Not at all, said a BBC spokesman: "This is public service broadcasting and we're not in a ratings war." Mailing videotapes to the actual viewers, said an insider wit, would have been cheaper than broadcasting it.²⁷ The BBC's official line is that broadcasting is a duty and benefit regardless of the audience, and that some sort of service is rendered even if there is no one there to receive it. The ethic of abandonment and hope that lurks in such arguments for dissemination is deeply rooted in the intellectual tradition. That arguments about the self-righting public are still somehow persuasive after decades of debate about the public and its problems shows something about the immunity of the free speech story to theory or fact. The undeserved moral favor this story confers upon market economics does not seem to hurt its popularity either.

20. John Locke, *Letter on Toleration*, 3–4, 8, 15.

21. John Trenchard and Thomas Gordon, *Cato's Letters: Essays on Liberty, Civil and Religious, and Other Important Subjects*, ed. Ronald Hamowy, 2 vols. (Indianapolis: Liberty Fund, 1995), i: 111, 114.

22. James Curran, *Media and Power* (London: Routledge, 2002); John Keane, *The Media and Democracy* (London: Polity Press, 1991).

23. Trenchard and Gordon, *Cato's Letters*, 717.

24. Leonard Levy, *Emergence of a Free Press* (New York: Oxford University Press, 1985), 328.

25. Tunis Wortman, *A Treatise Concerning Political Enquiry, and the Liberty of the Press* (1800), ed. Leonard W. Levy (New York: DaCapo Press, 1970), 121.

26. Ralph Waldo Emerson, *English Traits*, in *The Selected Writings of Ralph Waldo Emerson*, ed. Brooks Atkinson (New York: Modern Library, 1992), 592.

27. Simon De Bruxelles, "BBC Show in Wales Attracts 'No Viewers,'" *The Times* 7 Mar. 2000, 2.

Despite the warning of pure *laissez-faire* thinking in economics (even the most fervid free-marketers have had to make their peace with national and global regulatory bodies) and a myriad of intellectual and historical dents in the Enlightenment credo of reason and progress, the free speech story is alive and kicking. The free speech story is as much a cultural commonplace as an explicit doctrine; it can be heard on daytime television, in undergraduate classes, in junior high social studies courses, in the voices that crowd one's head. It is a flattering tale for people who read and write for a living, and reporters, civil libertarians, civics teachers, among others, tell it often. They like to imagine themselves as *philosophes* fighting against clerics, dunces, popes, and inquisitions to establish liberty of speech and the press.²⁸ The *Des Moines Register*, for instance, ran a rather smarmy ad picturing five of its editors in 2001. The accompanying text read, in part: "The *Des Moines Register* is dedicated to bringing readers the complete news, every day. But sometimes elected officials or government agencies don't want the whole story told. That's when *Register* editors go to battle, with the First Amendment in hand, protecting your right to know."²⁹ The First Amendment here props up the privileged professional position of journalists as crusaders against the scheming state—*itself* a story as old as the eighteenth century, though Watergate gave it new life, at least in the United States.³⁰ Though I have no wish to disrespect excellent journalism, this bit of advertising flotsam mobilizes the First Amendment for private advantage and secures the forces of the good totally on one side (that of the newspaper). Such are common habits of talk among journalists and journalism educators.

Michael Moore's preface to the British edition of his bestseller *Stupid White Men* (2002) is another example of the dubious moral bonus that tellers of the free speech story can enjoy. He tells of a villainous publisher owned by the über-demon of media monopoly, Rupert Murdoch. The publisher wants Moore not only (horror!) to rewrite his book—in order to better fit the new sensibilities of a post-September 11 world in which the appetite for irreverent criticism of America might be dampened—but also to pay for the cost of a new printing. Moore, outraged but stymied, discusses his stalled book project on his cross-country lecture circuit. The hero of the piece is a librarian who attends one of his lectures and mobilizes an internet crusade against the "censorship" of the book (and librarians are perhaps the

28. As in the case of Milton and "Cato," the anti-Catholicism of this tradition is explicit, which also fits the Inquisition narrative.

29. *The Des Moines Register*, 1 Aug. 2001, 3C.

30. On eighteenth-century struggles over publicity, see Jürgen Habermas, *Structural Transformation of the Public Sphere* (1962) (Cambridge: MIT Press, 1989), secs. 4, 9, 12, 13.

most passionate believers in the free speech story in the United States, together with the ACLU). Before the collective wrath of the nation's librarians, the publisher wits into submission, and the book is published. Hooray for free speech! Moore gets to be a martyr in a noble cause and sell a lot of books at the same time. By attacking censorship he secures for himself an impragnable position—who, after all, could argue against someone who argues against something so obviously wicked as censorship?³¹ Noble ideals lend themselves to hijacking. Crusading against censorship can be a moral cloaking device. Moore writes well, raises important points, is often funny (even if he consigns a monopoly of stupidity to a class that already controls too many of the planet's other resources), offers wild and imaginative solutions to social problems, supplies a global demand for reasons to mock the United States, and above all, never takes himself out of the picture. He exemplifies the sin of pride that infests the free speech story.

To take a final and (let us hope) passing example, the George W. Bush administration's Patriot Act is a piece of legislation greeted as a sensible defense of homeland security by political conservatives and condemned by others as the entering wedge of Big Brotherism, the worst threat to human liberty since the invention of the Czarist police or the Brown Shirts. The one side claims the act is a reasonable measure in dark times, and the other sees it as a sinister effort to "roll back" (the verb of choice in this rhetoric) constitutional rights. Forced to choose, I would find the latter position easy to prefer, but I wish it were a more interesting choice. The twin bogeymen of government censors poring over my library check-out records and terrorists abusing the liberties of an open society scarcely seem adequate images of the danger and evil that are so obviously loose in the world today (or yesterday). These demons make evil something conveniently alien to our own lives and practices. The political scene seems destined to keep hosting fights between self-satisfied conservatives and shrill liberals. In the process we are often left to choose between a tepid theory of liberty and a tepid theory of evil.

These current American and British examples of the free speech story are not meant to be exhaustive, merely to point us to some of its central claims. Censorship is wicked; the truth will out; the public is best left to its own devices; even (or especially) vile people and doctrines deserve to be heard; the free market and the free press go hand in hand; and defenders of liberty can justifiably fraternize with extremists. Even if such views are sometimes implausible, the free speech story is remarkably resilient.

31. The morally and politically extortionist quality of the historical narrative of the battle against censorship is noted by Curran, *Media and Power*, especially 4–7, 79ff, 127ff, 227ff.

Though it can sound hackneyed, "a legacy of old saws," it refuses to go away, despite calls for a decent funeral.³² The newspaper, said Walter Lippmann, who more than anyone both destabilized and reinforced the dream of the press as a beacon of truth in a foggy social sea, "is in all literalness the bible of democracy; the book out of which a people determines its conduct."³³ In the face of ample opportunity for disillusionment—the checkered history of journalism, the manifest apathy and ignorance of much of the citizenry, the persuasive power of the market and the state, or the catastrophes of the last century—ideals of a free speech, free press, and autonomous public have hardly been scratched. The content of news seems to have little to do with its self-image. "Rome had her gladiators; Spain her bull-fighters; England her bear-baiting; and America her newspapers," Henry Ward Beecher wrote in 1879.³⁴ The free speech story is largely impervious to evidence, being a creature of collective identity and hence of collective wishful thinking. Talk of free speech often serves genuflection more than reflection and dooms most discussion of democracy and communication to oscillate between great expectations and great horrors. (Discourses of perfection have this polarizing effect.) Inspiring quotes about the glorious role of the press from some Founding Father will show up about as often as indignant complaints about the latest degradation of the media. The stubborn utopia of free speech will not go away.

One reason for its hold on the imagination has been mentioned already: the free speech story has an uncanny ability to secure itself a monopoly of righteousness. The defense of free expression can be an all but foolproof method of claiming the moral high ground. A favored pastime of the friends of liberty is to lather themselves into a righteous fury against censorship; bystanders eager to not be associated with the powers of darkness find themselves cheering on the spectacle of fearless souls speaking truth to power. Ironically, all the lather against censorship can end up creating a moral monopoly at exactly the same moment it is claiming to burst one. Making counterarguments against certain views is so ticklish that the opposition often chooses to remain silent.³⁵ During his administration, for in-

32. James Curran, "Mass Media and Democracy Revisited," in *Mass Media and Society*, ed. James Curran and Michael Gurevitch, 2nd ed. (London: Arnold, 1996), 81.

33. Walter Lippmann, *Liberty and the News* (1920) (New Brunswick, N.J.: Transaction, 1995), 44.

34. Quoted in Kenneth Cmiel, *Democratic Eloquence* (New York: Morrow, 1990), 135.

35. Paul F. Lazarfeld and Robert K. Merton, "Mass Communication, Popular Taste, and Organized Social Action," in *The Communication of Ideas*, ed. Lyman Bryson (New York: Cooper Square, 1948), 95–118.

stance, Ronald Reagan declared "war" on such enemies as drugs, terrorism, and kidnapping. All were false politically because critics of his policies would risk being seen as fans of drugs, terror, or child abuse. In the same way no one wants to look like a fan of censorship. To their credit some liberals have the courage of just this sort of perversity: "let the Nazis march" (sometimes followed quickly by the qualification, "so that we all can see how sick they are"). Ferocious anticensorship rhetoric can make those who have doubts about a lights-on-all-the-time policy into the bad guys. Some civil libertarians have a hard time imagining how anyone could possibly resist their vision of freedom of speech, thus shutting down the people who, according to the liberal love of contraries, they should be most eager to listen to (their critics). Anticensorship crusaders thus procure the spot of unquestionable truth that their own theory should deny them.³⁶ Fortunately, there is more space for life and thought than the simple choice between censorship and openness would suggest.

Liberal openness may have had its moment of supremacy as an official doctrine in the United States around the two middle quarters of the twentieth century, but it is now falling on hard times (as the Patriot Act suggests). In court decisions, legal theory, political will, and cultural mood, the faith in open-ended debate is losing ground as a mainstream consensus or is being kidnapped by the neoliberal narrative about the glories of free markets. Liberal *glasnost* and strenuous toleration of the extremist are no longer the lukewarm sea in which the common culture floats but rather a beleaguered, even minority position. Worldwide, relatively few nations prize freedom of expression as a leading value; it is found chiefly in historically Protestant zones. The global viability of liberalism requires a historic turn away from its antireligious past. Its drift from cultural eminence may owe something to its self-righteousness and its forgetfulness of its intellectual roots. Its critics are legion, and confidence in free expression as a political panacea has eroded, even though its tropes remain indispensable for anyone caught in a pinch. I join the chorus of critics in the past couple of decades, but with counter-cyclical aspirations: hoping to salvage the dangerous, unacknowledged, and sometimes valuable heart—the attitude toward pain and evil—that has often seemed the most objectionable part of liberal thought. In my view the liberal story needs spring cleaning. What has often been a robust vision has degenerated into platitudes and dogmas. We have irreconcilable stances: the strong nihilists of free speech who call for stoic cool in the face of offense, the sacharine defenders of truth's automatic victory who think

36. A danger clearly noted by Bollinger, *Tolerant Society*, especially 215.

everything's copacetic in the public realm without further trouble, and the critics of both who think, quite rightly, that the former are harsh, and the latter foolish. My aim is to defend liberal ideals in a fresh way: with a tragic philosophy of history (instead of optimism or meliorism), a social basis of solidarity or compassion (instead of veils of ignorance, norms of deliberation, or other equalizing expedients), and a communicative norm of receptivity (instead of interactivity or dialogue). Liberalism is in part a story about overcoming suffering (enduring offensive speech), and pain turns out to be a secret key to the puzzle of how the public life of democratic solidarity might work. In particular this book examines the prohibition of personal feeling in public life, an old bittersweet story. It is a meditation on Nietzsche's question, what is the meaning of ascetic ideals? One answer to "compassionate conservatism" might be hardhearted liberalism.

SELF-ABSTRACTION AND STOICISM

The Stoic tradition teaches a hard heart as the price of public life. Free speech is, to use the New Testament term, *skandalon*, an offense designed to bring about some greater end. In the face of offense citizens are supposed to be able to "take it," to see clearly rather than seeing red. The notion that the ability to suspend personal interests and sentiments is a prerequisite for public communication has been described in several overlapping vocabularies, notably, philosophical aloofness, cynical dissidence, Stoic indifference, epicurean moderation, Christian virtue, Gnostic escapism, gentlemanly honor, military discipline, Romantic transcendence, and most recently, professional objectivity. These deposits blur and blend in Anglo-American political culture, and this book examines several varieties of ethical suspension. (Something similar arose in the Confucian cultural zone of China, Japan, and Korea.) Sorting out the lineages is less important here than a more basic point about the afterlife of antiquity, whose fossil fuels have long inspired theorists of liberty. The Anglo-American tradition of free speech arose in the shadow of self-abstracted statesmen like Pericles, Cato, and Marcus Aurelius and, to a lesser degree, self-destructive mourners like Achilles, Antigone, and again Cato. With the waning of Greco-Roman antiquity as a moral and political model in Anglo-American education and culture, or more explicitly, of the genecal version of *Romantias*, the notion of self-abstraction has become detached from its intellectual moorings and has sometimes drifted into hard-boiled masculinity or just-doing-my-job professionalism. Legitimations of Stoic public character since the late nineteenth century have often lacked the cultural and literary context to sustain

them. The engine of professional objectivity, like that of civic self-denial, runs on nonrenewable moral resources; once they are used up, the defense of free speech can become arid and absolutist. One question taken up in this book is whether the gist of these doctrines can be saved without the brutality and machismo that long followed them.

The long history of disinterestedness dates probably to something primal in human history, the ecstatic emptying of the self before the sacred. For the ancient Greeks theoretical contemplation (*theōria*) meant transcending one's particularity. As Socrates says in the *Phaedo*, philosophy means learning how to die. Before the sublime vastness of the universe we sense our mortal puniness. *Theōria* is related to "theater," both of which come from the Greek verb *theaō*, meaning to look. (This link is also preserved in the Latin tie of "speculation" and "spectacle.") To look upon the universe in its beauty and order (we get the word cosmetic from *kosmos*) was to abandon oneself to something greater, and *theōria* may originally have suggested out-of-body experiences practiced in the mystery cults that sought to glimpse the place beyond the heavens Plato mentioned in the *Phaedrus*. Such abandonment of body and soul had both cognitive and moral aspects. Since order was not only seen but helped impregnate the soul with new truth. To view the cosmos, the self had to be purged. Part of this vision persists in the idea that science is an activity to which partisan interests are indifferent (i.e., objectivity). But the moral or aesthetic notion—that theory reveals the good and the beautiful as well as the true—has gone underground today.³⁷ Cognitive self-abandonment still is supposed to have a direct moral and political benefit.

Stoic and other ancient notions shape the free speech story not only in the vision of the moral life of the citizen, but also in the vision of the shape of public space.³⁸ Stoics praised the order of nature as the model for human life and rationality. Seen under the aspect of eternity, all people are kin, all countries are one's homeland, and no personal pain or worry is of any consequence. Cosmopolitanism—being a citizen (*politikós*) of the world (*kosmos*)—is a concept of Stoic origin. Indifference to one's own pain is in many ways the ethical analogue to the political act of toleration. The big picture vanquishes potential upset and offense. Stoicism gives a vision of public space as both ordered and beyond the control of any individual, and

37. Here I summarize Jürgen Habermas, "Knowledge and Human Interests" (1965), appendix to *Knowledge and Human Interests*, trans. Jeremy J. Shapiro (Boston: Beacon, 1971), 30–17.

38. For lucid and witty guidance in theorizing public space, see Michael Warner, *Publics and Counterpublics* (New York: Zone, 2002).

like many ancient teachings, exhorts us to love our fate (*amor fati*). In his claim that uncoordinated private enterprise adds up to public order, Adam Smith sits squarely in the neo-Stoic tradition, something that is even clearer in his moral theory. When Mill claims that censorship is a claim to infallibility, he echoes the old Stoic criticism of the hubris of forgetting that one is mortal. In the Stoics and their latter-day liberal followers, public openness licenses the ignoring of consequences. *Fiat libertas, pereat mundus*. Let there be freedom, though the world perish. The liberal public is a machine that will go of itself. Much that is good and bad in liberal thought owes to Stoic sources. I know of no clearer example of how classic (generally) and Stoic (specifically) notions inform the notions of public and private than the statement of Sir George Cornewall Lewis in 1832:

Public, as opposed to private, is that which has no immediate relation to any specified person or persons, but may directly concern any member or members of the community, without distinction. Thus the acts of a magistrate, or a member of a legislative assembly, done by them in those capacities, are called public; the acts done by the same persons towards their family or friends, or in their dealings with strangers for their own peculiar purposes, are called private. So a theatre, or a place of amusement, is said to be public not because it is actually visited by every member of the community, but because it is open to all indifferently; and any person may, if he desire, enter it. The same remark applies to public-houses, public inns, public meetings, &c. The publication of a book is the exposing of it to sale in such a manner that it may be procured by any person who desires to purchase it; it would be equally published, if not a single copy was sold. In the language of our law, public appear to be distinguished from private acts of parliament, on the ground that the one class directly affects the whole community, the other some definite person or persons.³⁹

Though Cornewall Lewis does not explicitly talk of classical virtue or enlightened self-suspension, the key Stoic themes are all here: impersonality, indifference, universality, publication as open exposure. The public involves official "capacities"; the private concerns "peculiar purposes" or "definite persons." The public, like a statute, remains invariant regardless of audience or response. Availability, not reception, is the criterion of publicity (the BBC defended its unwatched program on precisely these grounds). The actual audience does not affect the public nature of the act. Public places are open to all indifferently.⁴⁰ Private places, in contrast, may limit membership without censure. A book would be equally published whether

39. Cornewall Lewis, *Remarks on the Use and Abuse of Some Political Terms*, 163-64.

40. Cornewall Lewis's definition is also classic in the sense that only men can be "any person," given that women found it hard to enter public inns and meetings "indifferently."

it sold any copies or not. Individual persons are irrelevant to an act of parliament.⁴¹ The public is a place of indifference, an open empty space where personality does not matter. This conviction resonates through most twentieth-century thinking about mass communication. The ethic of the public, in a curious way, is not activity but passivity. Nowhere is there such a memorial to the virtue of passivity as the liberal hope that citizens can refrain from lashing out against the speech they hate. Perhaps this is the best way to save the long, deep ethic of Stoic withdrawal from its masochistically macho pleasure in pain.

THE METHOD OF PERVERSITY

Some may find the mission of this book too precious. Why in a world of increasingly concentrated corporate and state power in communications should one trouble oneself with the philosophical program of free speech or the foundations of democratic communication theory? Why in a world where poverty is a huge problem should one criticize humanitarianism's pity, condescension, or imperialism (as I do in chap. 6)? Why in a world filled with countries where censorship is still a major problem should one complain about the moral capital that people can accrue by waging war on censorship? Why, in short, pick at the foibles of the well-intended when there is so much more obvious evil from the ill-intended or the oblivious? No doubt fighting injustice and securing a deep respect for free speech, publication, worship, assembly, and creativity in all their infinite variety are crucial. Yet the irreducible pluralism of the world prevents any program—even the liberal one—from predominating without question. This book attempts to treat the problem of liberalism's illiberal tendencies. Though it opposes liberal high dudgeon, my argument is not censorious. It wants to perform surgical debridement on the illiberal argument culture around core liberal beliefs. "The doctrine of hatred must be preached as the counteraction of the doctrine of love when that pulses and whines," said Emerson.⁴² Sometimes one must part a path through the guano.

Without feeding on its opposite, liberal thought withers. Its preying on transgression deserves to be more explicit. Conscious perversity is usually

41. S. I. Deam and G. E. Gaus, *Public and Private in Social Life* (New York: St. Martin's, 1983), 31, call Cornewall Lewis's definition the best statement of the liberal vision of the public, but he is drawing on his classical education and interest in philology and is in fact quite critical of liberals such as Jeremy Bentham.

42. Ralph Waldo Emerson, "Self-Reliance," in *Selected Writings of Emerson*, ed. Donald McQuade (New York: Modern Library, 1981), 133.

practiced more often by liberalism's foes. Mocking bourgeois propriety, Marx indulged in a bit of black humor by praising the enormous productivity of the criminal, who, much more than the proprietor, exemplifies the logic of capitalism: the criminal sustains not only police and jails, but also novelists and social workers, and so on.⁴³ Nietzsche, sick of a pulsing and whining doctrine of love, argued that pity (*Mitleid*), sometimes thought to be an unmixt moral good, was the tool of an aggressive and subtle *Schadenfreude*, a delight in other people's suffering. In *Discipline and Punish* Foucault opens with a terrifyingly vivid description of a 1757 public execution: his point was not to indulge in a bout of nostalgia for the good old days of torture, as it might at first seem, but rather to show what is lost by the humanitarian horror of physical pain. The dean of contemporary cultural studies, Stuart Hall, with his colleagues, suggested that "mugging" in 1970s Britain created a moral panic that was more dangerous than the risk of being mugged: one is a street crime, the other is an oppressive social system resulting from a history of colonialism, collusion between the news media, "common sense," and the state.⁴⁴ The muggers are mugged by racism, as it were, but the authors take pains to neither praise violence nor treat it as an open-and-shut moral issue. Stuart Hall and colleagues risk perversity—suspending moral condemnation—to read crime as cultural and racial politics; they practice what Søren Kierkegaard called a "teleological suspension of the ethical."⁴⁵ All these theorists mine the dark side of moral oppositions—as Paul and Milton did before them.

Pointing out the crime of the culturally favored and the strength of the rejected portion is a frequent gesture in recent critical theory. Derrida repeatedly shows how the supposed effect turns out to be a cause. The art of deconstruction reveals how the accursed part that the social order has ritually singled out as exceptional and blameworthy actually represents the symptomatic truth of the whole order. The very fact of its exceptionalism reveals the processes of self-justification (rejective pure-making) that depend on exclusion. (Deconstruction is the technical name for the act of selective perversity.) William Blake's "proverb" suggests the method nicely and lays bare the alliance of liberty and transgression: "Prisons are built with stones of Law, Brothels with bricks of Religion." Public institutions

43. On the productivity of crime, see Ernest Mandel, *Delightful Murder: A Social History of the Crime Story* (London: Pluto Press, 1984).

44. Stuart Hall, Chas Critcher, Tony Jefferson, John Clarke, and Brian Roberts, *Policing the Crisis: Mugging, the State, and Law and Order* (New York: Holmes & Meier, 1978).

45. Søren Kierkegaard, *Fear and Trembling: A Dialectical Lyric* by Johannes de Silentio (1843), trans. Alastair Hannay (New York: Penguin, 1985), 83ff.

charged with uprightness might be secretly in league with the things they denounce. Blake, Marx, Nietzsche, Foucault, Derrida, and Hall all fit in the long post-Miltonic tradition of sympathy for the devil and redemption of criminal vitality. They sometimes like to flirt with hellish naughtiness, but their responsible critical purpose is to rescue the use from the abuse, to show that the part is not the whole. They show us how the ironic circular method of performance by liberals might be practiced more rigorously. And yet, because prisons feed off of law does not make all laws corrupt, as our sophomore deconstructionists might fancy. Just because mugging is a culturally constructed crime does not free the person who whacked me on the head and stole my wallet from the consequences of the law. Offenses must come, but woe unto him through whom they come (Matt. 18:7). The tragedy of transgression is that though it bears larger fruit, the transgressor must still pay the penalty.

Following free speech theory upstream to its headwaters brings us to a much larger question: when may we break the law? When is it good to be bad? Despite the stridently secular stance of civil libertarians, many of whom are still busy fighting off the Inquisition, the free speech story's central tenet that transgression can be redeemed for the benefit of the social whole has deep roots in the theological idea of the fortunate fall, the *felix culpa*, the notion that servitude in Egypt made the people of Israel better. This book probes, ultimately, the mystery of iniquity: how to deal with the harsh moral fact that evil seems in some way necessary and even at times beneficial.

This book is an exercise in anamnesis—unforgetting—that attempts to sound, banish, and rebuild the liberal tradition. It is an immanent critique and reconstruction of the default philosophy governing the relation of communication and democracy in the United States, England, and many other places. Its central method is to inventory intellectual resources, that is, to reread major texts by canonical figures to illuminate the choices and dilemmas that bother us in public and private life today. This is not to offer a botanical history of ideas but to attempt to understand current problems in the firelight of past arguments. Just because you cannot find a distinguished and articulate mouthpiece for a particular intellectual position (though you usually can) does not mean that it is not viable or influential. Philosophical texts can stand in as more articulate versions of the grammars and legacies that persist in ordinary thought. In this book I try to practice intellectual history as cultural criticism. The book reads canonic texts—Paul's epistles, Milton's *Areopagitica*, Smith's *Theory of Moral Sentiments*, Mill's *On Liberty*, key decisions of the U.S. Supreme Court—as com-

ments on larger moral and political problems. There may well be better ways to illuminate media and public life today; so much thinking and research remain to be done about the abundance of media content and channels, the alteration of modes of interaction, the respacing of communication, the political economy of global media industries, legal and policy transformations in a neoliberal era, and the tectonic shifts induced by digital technologies.⁴⁶ There are many laborers in the vineyard; this book aims to clarify the intellectual stakes and sources of current debates. It ponders media as if moral philosophy mattered and moral philosophy as if media mattered. I trace arguments to the source not only because the water is purer, but because the arguments are often balder and bolder; not because Mill and Holmes, say, made my students speak a certain way, but because they offer the strongest possible version of the argument to grapple with.

The book, like Gaul, is essentially divided into three parts. Chapters 1–2 treat the productivity of crime, and seek to enrich free expression theory by showing its long flirtation with transgression and sin. Chapters 3–5 show the unacknowledged centrality of suffering in liberal visions of public life. They examine varieties of moral suspension, ranging from self-control before pain, tolerance of offensive speech, and sublimating one's personal preference to the rigors of data. Such suspension is an unacknowledged deposit from the ancients within the principles and practice of public life in the Anglo-American world. John Stuart Mill and his legacy preside over all three chapters. Chapters 6–7 explore democratic communication theory and practice today, focusing especially on what it means to be a witness. The book's structure is at the same time chiasmic: chapters 1 and 7 ponder the advantages of impersonality; chapters 2 and 6 explore the abyss; chapters 3 and 5 address cognitive abstemiousness; and the First Amendment sits at the center in chapter 4. In a previous book I examined the history of the idea of communication, focusing especially on communication between two people in private settings. This book takes up questions of mass communication and the public sphere. *Speaking into the Air's* subtext was eros; this book's subtext is democracy. Since the Greek notions of eros and democracy have always gone together (minimally, eros is the mediated absence of two bodies, and democracy the mediated presence of many bodies), there is a deep kinship between the two books. Both aim to contribute to the project of understanding the meaning of communication in the modern world.

46. I have attempted an overview of the key issues confronting us today in "Media and Communications," in *Blackwell Companion to Sociology*, ed. Judith M. Blau (Oxford: Basil Blackwell, 2001), 16–29.

CHAPTER ONE

Saint Paul's Shudder

Sin is beloved,
—T. S. Eliot, *Little Gidding*

THE PUZZLE OF PAUL

Paul of Tarsus is one of those figures about whom too much has been written and said; his name is invoked for good and evil throughout the world. He is often associated with some of the most troubled sides of Christianity: the institutional church and its oppression of women, sexual minorities, and Jews;¹ Holy man or empire-builder, proud Roman citizen or defier of earthly powers, theological codifier or religious ecstatic, arch-patriarch or voice for equality of the sexes, joyous proclaimer that the law is dead or life-hating foe of the flesh: there is not much consensus about who he was. We hardly know what to call him. Saint Paul? Saul? Paul of Tarsus? This intense man stood, perhaps more than any other figure in history, at the railroad switch between Hebrew, Greek, Roman, and Christian civilizations. Whether he distilled or destroyed Jesus's message is still an open question. His legacies, real and imagined, are diverse: sources for universalism, racism, Protestantism, Romanticism, Marxism, liberalism, even psychoanalysis, can be found in him. Augustine saw in Paul a forerunner fighting the battle of the flesh and the spirit; Luther read him as foreshadowing his own religious agony; Renan, speaking for much of the nineteenth century,

1. Alain Badiou, *Saint Paul: La fondation de l'universalisme* (Paris: Presses universitaires de France, 1997), 1–3.