FARA DABHOIWALA

WHAT IS FREE SPEECH?

The History of a Dangerous Idea



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WHAT IS FREE SPEECH?

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ABOUT THE AUTHOR

Fara Dabhoiwala was born in England, grew up in Amsterdam, and was educated at York and Oxford. His previous book, *The Origins of Sex: A History of the First Sexual Revolution*, was an *Economist* and *Sunday Times* book of the year and has been translated into several languages. After many years teaching at Oxford, he is now a Senior Research Scholar in History at Princeton University.

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One Embassy Gardens, 8 Viaduct Gardens, London SW11 7BW

penguin.co.uk

Penguin
Random House
UK

First published by Allen Lane 2025
Published in Penguin Books 2026
001

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Typeset by Six Red Marbles UK, Thetford, Norfolk
Printed and bound in Great Britain by Clays Ltd, Elcograf S.p.A.

The authorized representative in the EEA is Penguin Random House Ireland,
Morrison Chambers, 32 Nassau Street, Dublin D02 YH68

A CIP catalogue record for this book is available from the British Library

ISBN: 978–0–141–98824–5

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For Harriet and Kate,
my favourite speakers

And for Jo,
again and always

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Introduction

What is the history of free speech? And why should anyone care?

I'd never thought about it myself until a few years ago, when a book I had written was translated into Chinese and I was invited to mainland China to speak about it. The book was a history of sexual attitudes, and I was used to readers around the world responding to it in different ways. But this time, something else happened, too. Though my contract prohibited any changes, the translation was censored – when the proofs arrived, I noticed that various things were missing. It turned out that an editor had removed them because in his view they were 'not appropriate'. When I pushed back, the editor-in-chief became involved. Eventually, I was told by email that the publishers had referred my complaints to 'the officials at the Press and Publication Bureau' in Nanjing, who had the final word. Those government censors agreed to reinstate a few of the cuts, but insisted on retaining the others.

In China, censorship was hard to ignore. Every newspaper, broadcaster and publishing house was owned by the state and expected to advance its ideological mission; millions of invisible monitors sanitized all online behaviour around the clock. As I travelled around, it dawned on me that I was witnessing something of a historical novelty. In the face of the internet, supposedly the most liberatory technology of free expression ever invented, the Chinese Communist Party seemed to have unleashed every tool previously devised to control opinion, as well as some totally new ones – and it was winning.

This was not supposed to be happening. For decades, western politicians had proclaimed that greater economic freedom would inevitably lead Chinese society to become more politically liberal,

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too. At the start of the twenty-first century, they were equally certain that the spread of the World Wide Web would speed up this process. Across the globe, free speech was meant to advance hand in hand with free trade. It might be true that the Chinese were trying to tame the internet, American president Bill Clinton quipped in 2000, but that would never work – 'Good luck! That's sort of like trying to nail Jell-O to the wall.'

Yet I was not entirely surprised by what I found. My trip took place in 2015, when Hillary Clinton was widely presumed to be the likely next president of the United States. A decade earlier, the best-selling Chinese edition of her memoir had been secretly censored by its publishers, who had rewritten and removed many passages on politically sensitive topics. These actions were outrageous, Clinton said when she found out, but also 'increasingly futile' – in the age of cyberspace, Chinese citizens would surely be ever more able to access the truth for themselves.

I'd noticed this story because, as it happened, the same, highly distinguished Chinese press that had done this to her book was now publishing mine. And then, on my final evening in China, I found myself having dinner with one of their senior editors. As we sat talking, it emerged that he was none other than the translator of Clinton's book, the very person who all those years ago had expurgated her text. I was transfixed, and eagerly tried to pump him for information. What was it like to be a censor, I wanted to find out. How did one know where the line was between the permissible and the impermissible – what words and topics were off limits, or not? What happened when the political situation changed and the guidelines altered? How did the officials at the Press and Publication Bureau communicate with him? (Mainly by phone, it turned out.) As my questions came tumbling out, he smiled condescendingly. We don't really use the word 'censor', he corrected me. When we work on a text, we prefer to think of it as 'tailoring'. A little snip here, a cut there, some patching up, and look – now it fits much better.

It struck me that this was exactly how official censors in eighteenth-century Europe had also often conceived of their work: as a kind of helpful, editorial collaboration with authors, intended to improve rather than diminish their text. The word 'censor' itself, both in its

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original Roman usage, and when resurrected in post-medieval Europe, simply described a public-spirited official whose job was to supervise the community's morals. What's more, for centuries, before 'liberty of the press' and 'free speech' became prominent ideologies, people everywhere had taken for granted that speech, writing and printing should be publicly regulated. In pre-modern courts, ordinary men and women were continually suing each other for speaking or writing bad words; their governments likewise routinely policed such things for the greater good. No one conceived of freedom of expression as a fundamental personal right. So why – and exactly when – did this change? What was the history of free speech?

Frustratingly, when I got back home to Oxford and tried to find books on the subject, it turned out that, although endless volumes had been written on censorship in every time and place you could think of, the history of free speech as a modern concept had attracted almost no attention – except from Americans fixated on their First Amendment. But then contemporary uses of the term appeared equally unclear – it mainly seemed to be a slogan that people brandished to gain publicity, or denounce their opponents.

These things were on my mind a few months later when, in the summer of 2016, I moved to America to take up a new job. Before long, I woke up one day to find that the citizens of my new homeland had not, after all, elected Hillary Clinton to be their next president. Instead, they had chosen a dangerously unhinged demagogue – a man who appeared to have catapulted himself into the most powerful office in the world mainly by broadcasting outrageous and hateful lies to tens of millions of people on social media. His elevation to the presidency only made this problem worse. No one could stop it, it seemed – it was all bound up with the sacrosanct right to free speech. Of course, the whole world was full of dangerous, lying demagogues. But the way that Americans talked about 'free speech', indeed obsessively celebrated it, was remarkably different from how it was conceived of in Britain, or Europe, or indeed in India, China, Indonesia, or anywhere else that I knew of. Why was this? When had these cultural differences come about? And how, I began to wonder, might tracing the history of free speech help me make sense of its contours in the modern world?

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Now that I am myself an American citizen, I've come to understand how my compatriots think about free speech. But I am also still an Englishman, as well as Indian by inheritance, and I grew up in Cold War Europe. So I'm keenly aware of how differently cultures around the world treat freedom of expression; of how globally distinctive the current American approach is; and of the extent to which this is not a matter of reason but essentially of faith. The meaning of the First Amendment is a complicated legal doctrine, but it is also a kind of secular religion, with its own shifting dogmas and hagiography.

None of these things can be easily explained if you study the history of free speech only as a national question. Given how much had already been written about the evolution of American free-speech ideas, for example, I didn't presume I'd uncover anything new. But to my surprise I did, almost immediately – partly just by approaching the evidence in a comparative way. To see what is different, you need to compare cultures with one another, and explore how their historical trajectories overlap or diverge. And there's another reason why a transnational approach is essential. The liberties of speech and of the press have always been international concepts, constantly borrowed and reinvented across borders. Whenever people invoked these freedoms in the past, they were invariably comparing their own situation to what had happened elsewhere, in other times and places. We still do that. Free speech means different things in different cultures, but it's also an archetypal global concept, which requires a global history.

That doesn't mean a comprehensive history of freedom of expression in every period and place – that would be an unreadable book. It would also be unwritable, because there is no single history of free speech. Despite our widespread desire to see the history of free speech as a story of intellectual progress, and despite the sophistication of its various theorists over the ages, it has always been a weaponized mantra, rather than a completely coherent concept. That is precisely why we can never agree on its exact definition. Free speech is not a natural condition and censorship unnatural, as treatments of these subjects often imply. Nor is it the case, as is usually presumed, that freedom of speech is basically a matter of what can be freely said. Its contours are never defined only by content. Nor, finally, is liberty of expression simply what arises from reducing restrictions. On the

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contrary, it is itself a deeply artificial concept. Both its theory and its practice always have a distinctive shape of their own. To trace that changing form, as this book will do, requires more than simply charting shifting taboos about particular words and ideas. It is also, always, about uncovering the unequal distribution of power: who can speak, and who is silenced; whose voices are amplified, and why. And it is about how these imbalances have been affected by the changing media landscape over the past five hundred years and more – from societies that were mainly oral, through the invention and spread of printing, right up to the global media revolutions of our own times. Those are the deeper, more illuminating questions about the history of free speech that this book will pursue.

In order to answer them, I have highlighted what seemed to me the most significant themes and episodes in the invention and spread of this slippery yet ever-appealing set of ideals. Laws and their enforcement are key indexes of how cultures define and practise liberty of expression – as well as of the distribution of power within those societies. Judicial developments thus play an important role in the story. Yet this is not a book about legal history but about the politics of free speech more generally, and its evolution over time – especially as an ideal. As will become clear, the theory of free speech has always lagged behind its practice – greed, technological change and political expediency invariably outpace lawmakers and philosophers.

Free speech is a dangerous idea for two reasons. One is its potential to unsettle orthodoxy, give voice to rebels and iconoclasts, and rouse people to action. That is why we tend to celebrate it. But the other reason is more troubling. Throughout history, this resonant ideal has also been perpetually manipulated by the powerful, the malicious and the self-interested – for personal gain, to silence others, to sow dissension or to subvert the truth.

Freedom of expression also can take many forms – from clothing and behaviour to film, music, cartoons and art of all kinds. But its modern history is especially bound up with the medium of print. In the eighteenth and nineteenth centuries, when free speech exploded into a globally influential ideology, the printing press was the most powerful technology of communication the world had ever seen. For that reason, laws and discussions about expression always focused

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especially on the liberty of printing. The final chapter of this book explores how that privileging of the press influenced attitudes to speech itself, and to later mass media like radio, television and the internet. Until then, we will be focusing largely on the spoken, written and printed word.

My argument also pays special attention to the anglophone world – setting it in a comparative framework, and drawing out its peculiarities. That is not just because some of the earliest and most influential models of speech and press freedom were developed there, but also because globally, in our own time, American media companies have come to dominate the online marketplace of communication. However we feel about this, all of us would benefit from understanding when, why and to what extent the English-speaking world evolved a distinctive outlook towards speech, and from contrasting this with the historical trajectories of other cultures.

Finally, the book approaches its subject at different scales of enquiry, at times zooming in to analyse in detail crucial individuals and ideas, at others panning out to survey broader topics and questions. The opening three chapters take us from the world before free speech to the invention of the modern concept in the early eighteenth century. Then, over the next four chapters, we'll explore how this ideal was manipulated to different effect in contrasting global settings, by various kinds of speakers: in the white-supremacist slave societies of the Caribbean and North America; in the poor, intellectually peripheral kingdoms of Scandinavia, which nonetheless passed the world's first free-speech laws; in France and the United States, whose intertwined early free-speech history had remarkable, far-reaching consequences, unnoticed until now; and by women and men, slavers and abolitionists, conservatives and radicals, fighting for different causes across Europe and America. The final chapter of the book, which explores the momentous history of changing twentieth-century American views and laws, also does so comparatively – especially by highlighting the enduring but underappreciated influence on American attitudes of international socialist and communist critiques.

The main reason for examining the subject in this way is to show that, wherever one looks, liberty of speech was never a stable concept either in theory or in practice, but always shaped by changing local

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priorities. Just as free speech has no single meaning in the present, so too in the past; one cannot analyse its evolution using fixed comparative categories. On the other hand, press and speech liberty was not a completely free-floating set of ideas: it also developed powerful intellectual lineages, which persist up to the present. Some of the chapters therefore explore in depth how this process of reinvention and appropriation took place at critical turning points. For example, one of the reasons for the distinctiveness of anglophone practices was the extraordinary sway of two key English texts: an eighteenth-century collection of anonymous essays entitled 'Cato's Letters', which essentially invented the modern ideal of political free speech, and the nineteenth-century treatise *On Liberty* by the philosopher John Stuart Mill, which developed it further in various original ways. In both cases, their arguments appeared to contemporary and later readers to be compellingly authoritative – yet they were, in fact, secretly shot through with personal prejudices and intellectual flaws that tell an ominously different story.

As we shall see, before the modern concepts of press and speech liberty were first conceived, people for millennia had thought very differently about the power of expression, and many of those presumptions still partly inform our outlook today. Ideals of free speech also evolved at different times for different purposes. There were ancient conceptions of it – as channelling God's voice, or boldly advising a ruler. There was a Renaissance, scholarly version, which underpinned the academic exchange of the Republic of Letters, as well as a Protestant one, centred on freedom of conscience. But the most consequential ideal was the right to speak out on matters of public concern. That was the last kind of free speech to be fully theorized, and it took diverse forms across European cultures, even as everywhere it was acknowledged to be the most obviously important. That type of expression – political speech, loosely defined – remains at the core of how we think about free speech around the world today, and it will therefore be the main focus of this book.

Whatever their differences, all modern models of free speech were originally western creations. Non-European cultures before 1700 had sophisticated cultures of oral, written and printed communication; some had long tolerated, even encouraged, freedom of religious

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expression, frank royal counsel and other forms of outspoken debate. But the specific concepts and practices traced in this book, especially that of liberty of speech and of the press as political rights, were invented in Europe and exported from there. How they came to be imposed and interpreted in different circumstances around the globe is therefore also a story about imperial practices and their legacies into the present. What did it mean for European settlers to claim liberty of speech while keeping other-skinned populations in bondage, denying them an equal voice, or purporting to 'civilize' them? How did people at the time make sense of this? What did freedom of speech signify to natives, slaves and anti-colonial activists? And what have been the lasting, postcolonial effects of this history? These general questions are examined throughout, and in detail in the two penultimate chapters, which trace the history of free speech in India from its colonial beginnings to its present, postcolonial state. Because I have chosen to focus on those places where the ideas of freedom of speech and of the press were earliest and most influentially taken up, the scope of my analysis leaves out later developments in the Far East, Africa and Latin America: I hope that historians of those parts of the world will be able to extend and correct my hypotheses as necessary.

In exploring these varied issues, my main intellectual stimulus has been the brilliant work of philosophers, lawyers, literary critics, feminist scholars and other thinkers who in recent decades have analysed questions of free speech and censorship in the present, including Catharine A. MacKinnon, Frederick Schauer, Jeremy Waldron, Ronald Dworkin, Robert Post, Stanley Fish and Rae Langton, among many others. These writers often vehemently disagree with one another, and I with them; and sometimes their work centres on topics, such as pornography, with which this book is only glancingly concerned. But part of my aim has simply been to apply their general insights to the study of history.

The traditional, commonsensical notion of free speech is that the more freedom of expression the better, both for individuals and for society – because speech is harmless, compared to action, and free debate advances truth. Likewise, we tend to presume that censorship restricts personal liberty; that it is usually imposed by governments; that it targets unwelcome ideas; and, in short, that it is an unnatural

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and undesirable practice. By contrast, most of the modern theorists I have mentioned take a rather different view – as, indeed, did many intelligent observers in the past. For example, they treat speech as a form of action, rather than making a strict separation between the two. (As Voltaire once explained to a friend, 'I write in order to act'.) They also tend to be attuned to the fact that authority and dominance take many different forms, not just those exercised by the state. They explore how the voices of the powerful in society can overwhelm those of the powerless, and how this is equally true of norms and laws about freedom of expression. The creation and interpretation of rules about 'free speech' is a perennially mutable and politicized process: freedom is never equally distributed. Nor is censorship only exercised by governments: formal and informal rules about expression are ubiquitous. We label such restraints 'censorship' when we disapprove of them, but in truth they are inescapable. That is because they are inherent in ordinary social norms and differentials of power, but also for a more fundamental reason. Communication itself always depends on rules and restrictions, simply to be intelligible – even when you're just talking to yourself in the shower, you're obeying some of those. Freedom requires constraint.

These are some of the intellectual approaches that have inspired me. I hope that my analysis will in turn persuade general readers, as well as lawyers, philosophers and other students of modern free speech, that its history can help us better understand and navigate its conundrums in the present. For my ultimate purpose, reader, is not to tell you *what* to think about free speech, but *how* to think about it, as a global as well as a local matter – to explain how we got into our current predicament, to show that history complicates our contemporary presumptions, and to suggest that it also raises new questions, and possibilities, for the future.

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The Power of Speech

For most of history, freedom of speech as we understand it today was not an intelligible concept, let alone an ideal. Sometimes, as we'll explore, people aspired to 'speak freely', outside the bounds of normal convention, for example when warning about imminent peril. But that was an exceptional mode, with its own long-established rhetorical rules. Overwhelmingly, pre-modern societies stressed the dangers, rather than the benefits, of outspokenness.

That was because they knew that words were powerful. In every culture in the world, speech was used to summon supernatural forces, through spells, curses, oaths, vows, prayers, blessings and incantations. In every culture, too, bad words could foment political discord and social disorder, divide families and injure reputations. Of course, even in largely illiterate societies, talking had always been understood to be an action of a particular kind. The moral code of the ancient Zoroastrians of Persia distinguished 'good thoughts, good words and good deeds' from one another, as having different effects in the world. So, too, sixteenth-century Europeans knew, as Shakespeare put it, that 'words are but wind': they were slippery and undependable things. But the overriding fact that everyone took for granted was that speech could be immensely potent, and should be carefully used. Every ancient civilization had taught this. 'A word is a bird,' an Assyrian proverb warned, 'once released, no man can recapture it.' 'All things are founded on speech,' cautioned the earliest Indian law code. 'A man who steals speech is guilty of stealing everything.' 'Be a craftsman in speech,' an Egyptian ruler was instructed, two thousand years before the birth of Christ, for 'the tongue is a sword to a man, and speech is more valorous than any fighting.'

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These were the principles that Jews and Christians inherited and perpetuated in their own Near Eastern and European cultures over the centuries that followed. At the heart of medieval Christianity was the ritual of transubstantiation, whereby the pronouncing of magical utterances turned wine and bread into the very body and blood of Christ. The Bible too was full of warnings about the force of speech. 'Death and life are in the power of the tongue,' said the Book of Proverbs. 'The tongue is a fire, a world of iniquity,' warned the apostle James. 'The tongue can no man tame; it is an unruly evil, full of deadly poison.' Other scriptural passages compared it to a scourge, a rod, a razor, a sword, a bow, an arrow, a deep pit or a burning fire – words were dangerous and deadly weapons.

As a result, the public policing and punishing of speech was a central feature of every pre-modern Christian society. Spoken words could be treated as crimes against another person, against the whole community, against the government or against God himself. By the middle ages, this was taken for granted. An English law of 1275 declared it a crime to 'tell or publish any false news or tales' that might create discord between the king and his people, on pain of imprisonment or worse. In 1378, the so-called Statute of Gloucester likewise prohibited slander, 'false news' or 'horrible and false lies' uttered against any noble or great officer of the realm. Ordinary men and women, too, frequently defended themselves at law against the bad words of others. Suits for defamation, 'scolding' and the spreading of false tales were extremely common in all kinds of courts throughout the later middle ages; verbal injury was punished as strictly as physical violence, and sometimes more. In medieval Iceland, where poetry was seen as an especially potent form of language, special laws restricted not only mocking verse but also unwanted adulation – if a man wrote an unsolicited love poem to a woman, she could have him punished for it. Most serious of all, in every community, were bad words against God: heresy and blasphemy, the two greatest injuries to divine authority, were both essentially crimes of speech.

The policing of expression was further tightened in the sixteenth and seventeenth centuries. The fracturing of Christianity into many opposing churches during the Reformation and Counter-Reformation created a new fixation with discovering and suppressing heterodoxy. As

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a result, both Catholics and different varieties of Protestants devoted themselves to continually monitoring and correcting the thoughts and words of their congregations. If you were to get tipsy in a tavern, as Alexander Champion of Wiltshire did one day in 1612, and speculate that heaven and hell were like your table and bench – so that, look, you could step from one to another! – that single slip could land you in the local church court for blasphemy. And, as everyone knew, if you persisted in serious heterodoxy, you would be executed: that's what happened to thousands of European men and women who were burnt at the stake during the sixteenth and early seventeenth centuries.

Secular governments, too, were increasingly intrusive about people's views. As monarchs in this period expanded their powers of warfare, taxation and religion, they likewise sought to wield ever-closer control over the opinions of their subjects, even inventing the usefully vague new crime of 'sedition' (essentially, disloyal speech) to facilitate this. Because verbal disaffection might easily infect others, it had to be rooted out. In Thomas More's *Utopia* (1516), it is a capital offence to discuss public affairs outside the assembly. Shortly afterwards, at the height of Henry VIII's political and religious changes, more than a hundred English men and women were executed in the space of just six years, for uttering supposedly treasonous or 'seditious' words. (More himself ended on the scaffold in 1535 on similar grounds – for refusing to swear a new loyalty oath.)

That was an exceptionally savage episode. But the underlying principle was shared by all European governments of the sixteenth and seventeenth centuries: it was imperative to punish disloyal speech. Indeed, we mainly know about popular political opinions in this period because men and women by their thousands got into trouble for expressing them. If you were unwise enough to speculate publicly about your king or queen's person or policies, you were liable to be arrested, pilloried, flung into jail, fined ruinously large amounts of money, or worse – a Scottish law of 1585 made spoken or written 'reproach, or slander' of the monarch or their laws a capital offence. In 1579, when the puritan (that is, zealously Protestant) lawyer John Stubbs dared write a pamphlet criticizing Queen Elizabeth's marriage negotiations with a French prince, he and his printer and publisher were punished by having their right hands chopped off at the public

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marketplace in Westminster. In later decades, laws against insubordinate criticism were extended to cover any 'magistrate or other public person', as well as the monarch and the government in general.

Beyond religious deviance and political criticism, many other kinds of expression were also dangerous. Spells and curses had been feared since time immemorial; the uttering of such bad words also lay at the heart of many seventeenth-century witchcraft prosecutions. In Scotland, statutes in 1551, 1561, 1567, 1609, 1645 and 1649 made cursing and swearing punishable by fines, public shaming and even death. Similar legislation was passed in England and its overseas colonies throughout the seventeenth century (including in Ireland – where the practice of malediction was so ingrained, not least among the Catholic clergy, that it remained a central feature of daily life well into the twentieth century). Ordinary communities also regularly punished women and men whose loose, unbridled tongues marked them out as 'scolds' and 'barrators': by 1600, every town and village in England was supposed to have installed a 'cucking-stool' for that purpose. In Scotland, they used the 'branks' – an iron cage and gag locked around the head of the offender. Bad words could not be allowed to disorder the harmony of the community.

Nor could they be tolerated between individuals. From the later sixteenth century onwards, interpersonal suits for defamation and slander became even more common than they had been in the middle ages, flooding the courts. Everyone agreed that insulting or insubordinate speech could seriously damage a person's standing in the community and was a breach of the peace. When, in January 1640, a Salisbury tailor got into an argument with one of his clients about a long-overdue bill, and had the temerity to assert that 'he was as good a man as the other', he soon found himself in court for this, condemned to pay damages. It was not just the honour and credit of monarchs and governors that needed to be publicly policed and defended against opprobrious words, but that of all reputable citizens – every year, thousands of men and women resorted to law to do just that.

In practice, of course, the pre-modern regulation of speech, as of other kinds of behaviour, was always patchy. Pre-modern communities and governments did not have infinite powers of surveillance or enforcement. Their world was full of noisy, loose, insubordinate, heterodox

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and otherwise dangerous talk that went unpunished or unnoticed. The exact limits of the law were fluid, changeable and frequently contested. Its reach inevitably constrained some people more than others: the words of shop women and servants were more obviously inhibited and liable to be punished than those of aristocrats. Nonetheless, this was also a world in which people in general thought very differently about words, actions and liberty. Instead of valuing freedom of expression, their main preoccupation was to limit it.

WORDS AS WEAPONS

Underlying this outlook was an age-old recognition of the power of words and the dangers of unbridled speech. As the Old Testament declared, 'The stroke of the whip maketh marks in the flesh: but the stroke of the tongue breaketh the bones.' Until the eighteenth century,* it was a commonplace that speaking ill of someone or something could be *more* harmful than any physical action. As Robert Burton put it in *The Anatomy of Melancholy* (1621), 'a bitter jest, a slander, a calumny, pierceth deeper than any loss, danger, bodily pain or injury whatsoever'. 'Many times a *scorn* cuts deeper than a *sword*,' the poet and preacher John Donne agreed.

In largely face-to-face cultures, where personal reputation was everything, verbal and physical violence were therefore commonly conflated or conjoined. Aside from the security of property, an early seventeenth-century legal treatise explained, the twin aims of the law were to protect persons against bodily harm and to preserve 'their good names from shame and infamy' – defamation was equivalent to assault. For Thomas Hobbes, likewise, it was a foundational principle of human society that no one should be permitted to 'declare hatred or contempt of another', 'by deed, word, countenance, or gesture'. On such grounds, some early law codes permitted a man to kill another outright in response not just to physical assault but also to a severe insult. In medieval Iceland, for example, 'if a man calls another man womanish or says he has been buggered or fucked . . . [he] has the right

* What changed then is explained in Chapter 16.

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to kill.' In later centuries, the same connection between verbal and corporal aggression was manifested in the conventions of the personal duel. The ritualized exchange of spoken, written and printed words was central to its conception of how personal honour was injured and defended; so was the basic point that a person's reputation was as valuable as their life; so too the intimate overlap between rhetorical and physical combat.

It was equally taken for granted that disorderly speech between individuals disrupted the community: it was not just a private but a public problem. Many laws epitomized this. A much-invoked English Act of 1551 penalized quarrelling in a church or churchyard. Defamation cases were sometimes brought by public prosecutors, on behalf of the community, rather than by the injured party. In the 1650s, the puritan government of Oliver Cromwell went so far as to prohibit not just overt insults and abuse, but all 'provoking words or gestures': any language that gave offence could be prosecuted. As the record makes clear, those enforcing such laws drew a direct connection between neighbourly discord and seditious speech against the state itself. European colonies across the oceans operated on the same basis, so that the founding laws of Pennsylvania in 1682, for example, prohibited not just 'offences against God, as swearing, cursing, lying, profane talking [and] obscene words', but also stipulated that 'all scandalous and malicious reporters, backbiters, defamers and spreaders of false news, whether against magistrates, or private persons, shall be ... severely punished, as enemies to the peace and concord of this province', as would anyone who 'shall abuse or deride any other for his or her different persuasion and practice in matters of religion'.

The principles underpinning this world view were rehearsed at length by many popular moralists of the sixteenth and seventeenth centuries. The first basic fact that they stressed was that speech was a physical act – and that, of all the parts of the human body, the tongue was by far the hardest to control. It was 'subject to more errors, slips and failings, than the hand, or any other member of the body', explained the puritan Edward Reyner, and needed constant watching and bridling. Like many others, he pointed out that God had created the lips and teeth as a physical guard, 'to keep the tongue in, and hath shut it up in the mouth as in a cloister ... to teach it modesty,

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and keep it under restraint, and make it slow to speak' – and yet that was not enough. 'Like a wild pampered horse', 'a cage full of unclean birds' or 'the chariot of the Devil', it often broke loose and created havoc.

Controlling your tongue was therefore a difficult, lifelong struggle. Ideally, one's speech should always be modest, reverent, truthful and sparing – learning when to keep silent was central to all codes of correct behaviour. But, in reality, both the temptations of the devil and the inherent corruption of human nature meant that tongues were perennially slipping out of control. As a result, evil words were everywhere: 'swearing, blaspheming, cursed speaking, railing, backbiting, slandering, chiding, quarrelling, contending, jesting, mocking, flattering, lying, dissembling, vain and idle talking overflow in all places'.

This was a serious problem, because pre-modern people took for granted that evil talk did real damage. It didn't just injure individuals: it poisoned the whole community. Bad words were like an infection: they defiled both speaker and hearers. Words could also provoke supernatural power. Spells brought out the devil; oaths summoned God; blasphemies assaulted him. History was full of men, women and children whose 'offending tongues' had been divinely punished by horrible deaths – the evil organ swelling up in their mouths to choke them, or bitten off, or eaten up by worms; or their whole bodies smitten with leprosy, swallowed up by the earth, consumed by fire or eaten alive by bears.

This focus on the physicality of bad words explains why their punishment often focused on the defective limbs that had allowed them to escape into the world. Just as Stubbs and his accomplices had been made to lose the hands that had written and published disloyal expressions, so not hearing the truth, and speaking ill instead, was to be punished by cutting off a person's ears, or nailing these to the pillory, or by 'burning in the face with letters, or by gagging his two jaws in painful manner, and so he cannot speak any words . . . or by burning through his tongue, or perchance cutting off his tongue', as an English judge advocated in 1577.

Nowadays, we don't tend to believe that human nature is intrinsically corrupt, or that spells can summon the devil. Physical mutilation seems to us a cruel and abhorrent punishment. Yet it's hard to deny

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the more basic pre-modern truth about the potency of words. Speech is an action; words do have consequences. They can be at least as damaging as physical blows. Anyone who has ever parented a teenager, or lived through a painful break-up, or been the victim of verbal abuse, knows this – words can leave deep and lasting scars. And this is not just a matter of damage to individuals, but to our society as a whole. All cultures of the past, and most in the present, acknowledge the fact that the repetition of harmful words and lies can poison public discourse: it can perpetuate sexual and racial discrimination, fuel religious persecution, sow social and political division, undermine legitimate political and scientific authority, or pave the way for violence. In other words, our modern distinction between words and actions, and their supposedly different potency, is just a convenient myth. As we shall see in the course of this book, it makes the ideology of free speech possible, but it's also an inherently unstable fiction. If we want to understand the history of free speech, it's best to be clear from the outset about that problematic fact.

HIERARCHY AND AUTHORITY

Another foundation of our current free-speech attitudes is that everyone's voice deserves an equal hearing. In the political and social worlds of the past, people tended to presume the opposite. Everybody took for granted that human societies were naturally hierarchical, and that the speech of higher persons had greater authority than that of their inferiors. As well as instilling the importance of verbal discipline and civility in everyone, early Hindu codes of law and ethics sharply distinguished between the speech rights of different castes. The speech of a Brahmin, the highest rank, was more powerful than that of a lower person; that person in turn 'should never say anything unpleasant to [the Brahmin] or use harsh words against him'. A low-caste man who spoke disdainfully of higher castes would have 'a red-hot iron nail ten fingers long . . . driven into his mouth'; for 'grossly abusive words . . . his tongue shall be cut off'; if he dared dispute with higher castes about law or ethics, 'the king should pour hot oil into his mouth and ears'.

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An analogous mindset is visible in the earliest known English law about words. In the year 695 CE, when the Anglo-Saxon king Wihtræd of Kent set down his law code, he decreed his own word to be 'incontrovertible': it was to be accepted without any oath or formality. The same was true of the word of a bishop. But below them was a strict hierarchy of status: the lower you were, the more trouble you had to go to in order to prove yourself. And no provision at all was made for the voice of any woman, child or slave. In 1215, Magna Carta, the great English charter of rights, likewise decreed that a woman's testimony was inadmissible at law in any case of criminal death, save that of her own husband.

Similar principles continued to hold sway in the sixteenth and seventeenth centuries. Every act of personal communication, whether oral or written, was calibrated according to status. When addressing another person, you would always consider their relative rank and tailor your language accordingly. 'If inferior persons write to you,' the Yorkshire gentleman William Wentworth advised his son Thomas in 1604, and *if* 'it be fit to return them answer', then 'either do it by word of mouth, or cause one of your servants to write to him your answer' – to write back in person to a subordinate would be demeaning. In similar vein, in his best-selling Elizabethan guide to conversation, William Perkins reminded his readers that 'our elders and betters . . . must [always] have leave and liberty to speak first'; that 'young men and women [are] only to speak when they are asked'; and that 'servants and children' should never answer back. These were pretty universal principles. Aztec youths in sixteenth- and seventeenth-century Mexico were taught essentially the same things about 'good speech'.

Among these many intersecting hierarchies of status that of sex was the oldest and most obvious. Other things being equal, male speech was more authoritative, and more permissible, than that of women. In all the religious, social and legal codes that Near Eastern and European men drew up over the centuries, the basic notion that women should hold their tongue was a perennial theme, as was the presumption that they, as the weaker sex, were more prone to dangerously loose and ungoverned talk. The Bible itself ordered that women must 'keep silence in the churches: for it is not permitted unto them to speak' nor

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'to teach, nor to usurp authority over the man, but to be in silence'. In this world view, verbal restraint was a mark of female virtue, garrulousness or 'freedom' of speech in a woman signified immodesty, and many subjects were 'improper' for female conversation. In almost the earliest text of European literature, Homer's *Odyssey*, the hero's son sharply admonishes Odysseus's grief-stricken wife Penelope, when she speaks out publicly in a gathering of men: 'Mother, go back up to your chamber, and busy yourself with your own work, the loom and the distaff, and bid your handmaids attend to their own tasks; but speech will be the business of men.' Penelope obeys, as Homer tells us in the next verse: 'She took to heart the clear good sense in what her son had said.' Female speech was always less free than that of men; female outspokenness more 'unnatural' and disorderly. Of the many sexist presumptions that our modern world has inherited from the distant past, this is surely one of the most deeply embedded and perniciously enduring.

In practice, of course, as far back as we can see, all these hierarchies of speech were also continually being challenged and subverted. When writing on their own behalf, women were perfectly capable of pointing out that stereotypes about their conduct were but male slanders and fantasies – this was a central theme of European feminist argument at least as early as Christine de Pizan's *Book of the City of Ladies* (1405). In fiction, the many tensions between male and female speech norms were rich subjects for comedy and contemplation. In real life, too, queens, female aristocrats and other powerful women spoke publicly in ways that crossed the gender divide. In 1648, in the midst of civil war, the rich and well-connected Maryland settler Margaret Brent, acting as executor for one late governor and legal representative for another, addressed the new colony's Assembly 'and requested to have vote in the house for herself – and voice also'; being denied, she 'protested against all proceedings in this present Assembly, unless she may be present and have vote'.

Less exalted women, too, expressed strong political opinions. They also continually raised their voices in public to abuse each other – or to sue over such defamation. The limits of female speech were constantly tested and reinscribed by women themselves, as well as by men. Small wonder that her sex prized talk, as the erudite Bathusa Makin summed up in 1673: 'It is objected against women, as a reproach, that

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they have too much tongue: but . . . the tongue is the only weapon women have to defend themselves with, and they had need to use it dextrously.' In short, the reason that so much effort had to be put into policing words was that, even in a world that generally deprecated freedom of speech, supposedly inferior people constantly spoke irreverently and out of turn.

The same tension was fundamental to pre-modern politics. This was a world in which, in theory, authority always came from above. Only a tiny minority of propertied men participated in national government, and only a handful of the monarch's closest councillors were even permitted to *discuss* royal policy. Those who dared libel a ruler were therefore 'enemies of common society'. As the English government official Sir Thomas Smith memorably put it in 1583, the mass of the population 'have no voice nor authorit[y] in our commonwealth'. 'No account is made of these [people],' he explained, 'but only to be ruled, not to rule other[s].' A century later, when the journalist Henry Carr was convicted for publishing an unauthorized weekly newspaper, the royal judges affirmed 'that no person whatsoever could expose to the public knowledge anything that concerned the affairs of the public, without license from the king . . . it is unlawful, whether it be malicious or not'. Yet in practice, as everyone was well aware, people at all levels of pre-modern society did constantly discuss political affairs, and often critically.

Time and again in the pre-modern world, the popular circulation of rumours led to riots, insurrections and social disorder. For most educated contemporaries, this confirmed ancient stereotypes about the ignorance of ordinary people, and bolstered the hierarchical principle that politics should be conducted in secret: even debates in parliament were meant to be strictly confidential. As the brilliant scholar and courtier Francis Bacon put it, 'matters of state . . . are no themes or subjects fit for vulgar persons' (even if they liked to think that 'now-a-days there is no vulgar, but all [are] statesmen'). Among the core powers of any sovereign, and key to avoiding civil war, as Hobbes explained in his *Leviathan* (1651), written in the midst of just such a conflict, was that of judging 'what opinions and doctrines are averse, and what conducing to Peace' and of regulating public speech and printed books accordingly.

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As a consequence, 'free' speech was mainly thought of as something negative, which disrupted the social, political, religious and cosmic order. People should be publicly punished for bad words, the Queen's Council ordered in 1587, 'for the example of others and restraining that liberty of speech'. A few years later, despairing about the difficulty of suppressing 'malicious pamphlets' that were received as if they were 'the flying sparks of truth', Bacon worried that 'they carry with them a presence and countenance of liberty of speech'. 'The ordinary precursors of civil war', an early seventeenth-century French ambassador agreed, were 'cartoons, defamatory libels' and 'free speaking'. Even King James, who prided himself on allowing 'convenient freedom of speech', issued repeated proclamations in the 1620s against 'the inordinate liberty of unreverent speech' among his subjects – not just the vulgar, but 'every [one] of them, from the highest to the lowest'.

The contrary idea, encapsulated in the proverb *vox populi, vox Dei* ('the voice of the people is the voice of God'), was sometimes invoked by religious polemicists, authors of complaint literature and political theorists. 'Not without good reason is the voice of the people likened to that of God,' argued Machiavelli, 'for public opinion is remarkably accurate in its prognostications.' But he, too, warned against the dangers of slander and public misjudgement, and conceded that 'common opinion' saw the multitude as fickle and easily led astray.

In consequence, all pre-modern governments put huge efforts into restricting and controlling political information and opinion, whether spoken, written or otherwise. Printing presses in this period almost invariably operated under licence; their output was meant to be vetted before publication. Historians usually describe all this as 'censorship'. But that's a rather anachronistic way of interpreting it. Because in the pre-modern world, even when they were mouthing off, people usually didn't presume that they had a *right* to liberty of expression. On the contrary, they largely accepted and agreed with the principle of speech regulation, and enthusiastically participated in it. Partly that was because they believed, much more strongly than we do, in the existence of absolute truth and error. Yet their ultimate concern was not to combat falsehood but to maintain social harmony. Whereas we tend to celebrate freedom of expression as invariably advancing the truth, they saw the relationship between speech and truth as more

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complicated. For them, speech was not a simple right, but a complicated ethical matter. The permissibility of spoken or written words always depended on their exact circumstance: who was speaking, who was listening, what was the tone and intention of the words, and what was their medium. The words themselves were always only part of the answer; the ultimate judgement was contextual.

For example, though it was generally held that lying was always wrong, many serious theorists of religion and politics also argued that it was sometimes necessary for people to dissimulate and deceive. The notion that speech should be used to conceal the truth was especially developed among persecuted religious groups, such as the medieval Waldensians, the English Lollards, the crypto-Jewish *conversos* of Spain, and underground Catholic and Protestant minorities after the Reformation. But it was also routinely endorsed by leading political commentators, such as Machiavelli, Montaigne, Bacon and Justus Lipsius, on the grounds that dissimulation was an essential tool for rulers and courtiers. As Montaigne observed in 1580, 'truth for us nowadays is not what is, but what others can be brought to accept'.

More generally, it was also a well-established principle that speaking candidly was sometimes wrong, or even criminal. Perkins's *A Direction for the Government of the Tongue* included a chapter about the many occasions when it was necessary to conceal the truth. One should never reveal anything hurtful, dangerous or secret, and always keep quiet about 'the infirmities and sins of our neighbours' – 'if any truth be to the hindrance of God's glory, or of the good of our neighbour', it must be concealed. No one should presume to speak of 'things unknown, things which concern us not, things above our reach'. Instead of individual rights, this outlook prioritized the social fabric. Words, like other actions, should be used to bolster charity and civility, rather than to destroy them. Holding your tongue was as vital as using it. 'Be rather silent than speak ill of any man, though he deserve it,' Elizabeth Jocelin summarized the conventional sentiment in 1622. In the eyes of the law, too, words that created disorder were punishable even if accurate. Truth was not a sufficient defence for anyone sued in the church courts; nor against a charge of sedition. On the contrary, veracity was commonly treated as an aggravating factor – after all, a true accusation was more likely to cause a breach of the peace than a false one.

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On the other hand, people in the pre-modern world were also acutely focused on the dangers of untruth. That was why they saw the regulation of speech and print as a vitally necessary safeguard against forgery, falsehood and misrepresentation – what one seventeenth-century observer described as 'that great and immoderate liberty of lying'. Policing expression was about protecting individuals against the damage caused by malice and defamation; it was an ethical struggle to maintain the cohesion of civil society; and it was also about upholding truth and fighting back against lies.

Indeed, the most rigorously policed and suppressed texts in Elizabethan and Jacobean England were not those that set out reasoned religious and political arguments, but ones that trafficked in scurrilous slanders and outrageous conspiracy theories. It was the underground tracts that portrayed Queen Elizabeth as a lustful whore, who had borne many bastards; or 'revealed' that her favourites were adulterers and murderers; or 'exposed' leading churchmen as secret sodomites; or whipped up endless panics about covert plots and uprisings. The same kinds of wild rumours and slanders dominated the world of verbal 'seditious words'. These stories were notoriously popular. They spread like wildfire, they were very hard to suppress, and they didn't just poison people's minds: they motivated them to action. As everyone knew, revolts and risings were invariably provoked and accompanied by popular rumour-mongering.

In early July 1628, for example, just a few years after his accession, a report of the death of King Charles I began to circulate in the borderlands of England and Wales. When the tale reached the town of Llanelli, it set off a mass panic. More than a hundred of the town's inhabitants, apparently under the illusion that a Spanish army had also landed on the coast, set off across the countryside to raise the alarm, 'crying most fearfully' along the way. As they marched, they were joined by more recruits, and the story was elaborated to the effect that the king had been poisoned by the Duke of Buckingham, who had staged a coup and seized the throne for himself. When the crowd swarmed into Swansea, the local authorities immediately sent word of the king's death to the county's chief inhabitants, and publicly announced the news in the market square, where it was greeted 'with a general lamentation of the whole people, who gave out that

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they feared that the papists would rise up in arms and kill them in their sleep'. By the end of the week the news had spread as far as Cornwall, and much of the south-west coast appears to have been on the alert for invasion and rebellion.

That's just a single instance of how powerfully disruptive a completely baseless political rumour could be – one week in the never-ending pre-modern onslaught of fake news. The story that the Duke of Buckingham was a serial murderer, who had killed his rivals and then successively poisoned both James I and Charles I, was secretly promoted by the undercover propaganda networks of the British monarchy's foreign enemies. It paved the way for the grisly murder of Buckingham's supposed accomplice, Dr John Lamb, and for Buckingham's own very public assassination a few weeks later, in August 1628. It also directly influenced the parliamentary politics of the 1620s, the growing public mistrust of Charles I, and the bitter divisions of the civil wars in the 1640s. In short, it was a slanderous lie whose perpetuation had enormous consequences.

Over the past few decades, historians have uncovered a huge amount about European popular political consciousness from the middle ages through to the eighteenth century. It's clear that, in pre-modern society, people of all ranks talked about news and politics all the time, that they had strong opinions about it, and that this fact was vitally important to the conduct of politics. Historians invariably celebrate these findings, just as they applaud the growth of manuscript and printed news and commentary in this period – as signs of the vitality of popular political opinion, and of the expansion of the public sphere. We see in these developments the origins of our own democratic culture.

And yet what we tend to overlook is that the overwhelming currency of popular political discourse was not reasoned debate but hateful lies and conspiracy theories, inflammatory misinformation, crazy rumours and outright fakery. Politicians themselves often believed and fuelled such falsehoods, as part of their own attempts to pacify or win over public opinion: they actively created forgeries, spread rumours and inflamed people's delusions about conspiracies and cover-ups. Ordinary people in turn often trusted this flood of untruth because it seemed plausible – usually such stories embroidered on a few established

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facts, threw in some topical fears and confirmed existing prejudices. As a result, people supposed they were being given a glimpse into the hidden reality of politics, when in reality they were swallowing a toxic stew of propaganda and untruth.

So when we celebrate the growth of the public sphere, or the failures of pre-modern censorship, or the rise of public opinion, what we're often describing is the growing political influence of a deluded and hugely misinformed public. As recent research has shown, for example, it was the increasing hold of rival conspiracy theories that caused the final breakdown of politics across the British Isles in the 1640s, and the ensuing carnage of the civil wars, in which hundreds of thousands of people lost their lives – precisely the kind of disastrous chaos that the ideology of speech regulation had always warned about, and been intended to prevent.

Out of this cataclysmic breakdown in the regulation of speech and print there eventually emerged new practices and ideas about freedom of expression, as we'll see shortly. The ideal of political free speech developed first in the anglophone world because of the precocious peculiarities of English politics in the late seventeenth and early eighteenth centuries. Yet that in turn was only possible because by 1700 there had already emerged, across Europe, a new theory of *religious* free speech – as part of efforts by intellectuals and rulers, in the fractured world of post-Reformation Christendom, to enable religious enemies to live alongside each other without violence. As we shall see next, the rise of this doctrine was itself a momentous social and intellectual development, which undermined some of the traditional, age-old principles of speech regulation.

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Tolerating Words

Before 1500, across Christian Europe, religious plurality was a largely unthinkable concept. Even though popular religious practice was never uniform, deviations from the Church's orthodoxy were meant to be treated as error or heresy – dangerous untruths that could not be allowed to spread. The Protestant Reformation of the mid sixteenth century, which fragmented Christendom into ever more numerous warring sects, did not immediately change this basic outlook, but merely multiplied it – each religious group continued to presume that it possessed the sole truth, and to condemn deviant ideas. This led to more than a century of intense bloodshed, not just between Catholics and reformers, but also between the many different Protestant groups that emerged. Yet, in the longer term, the predicament of constant religious strife also gave rise, mainly among Protestants, to new ideas about the potential benefits of allowing differing religious ideas to be freely aired within a single society.

PLURALITY AND TRUTH

This development built upon a much older classical and Judeo-Christian tradition of valorizing the frank speaking of truth. In both the Old and New Testaments, it was clear that God sometimes spoke through prophets, martyrs and saints – and that they in turn could communicate directly with him. For such people to speak out boldly, irrespective of the circumstances, was a sign of virtue and of divine inspiration. From the earliest days of the Church, Christians high and low invoked that model whenever they were minded to deliver potentially unwelcome

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messages to those in power. In sixteenth-century Scotland, some local congregations even decreed that, to prevent the festering of secret 'backbite and slander' against parish elders, there should be special biannual occasions when 'every man shall have liberty to speak', to criticize their leaders openly.

These long-standing religious notions of prophesy, jeremiad and reproof overlapped with the secular idea, first developed in Athens in the fifth century BCE, of free speech as a sign of independence – the liberty of the free citizen or the virtuous philosopher to speak their mind on matters of public moment. Such forms of truthful outspokenness in religious or civic matters (referred to in Greek as *parrhesia*, in Latin as *licentia* or *libertas*) developed into familiar medieval and Renaissance genres of rhetoric. Yet this was a very different concept of 'free speech' from our modern one, and was applied primarily to the question of how best to counsel a superior. In 1523, it was this humanist ideal of frank counsel that inspired Thomas More, as Speaker of the House of Commons in England, to ask the king for his 'gracious licence and pardon' that every member of parliament should 'freely . . . and boldly . . . declare his advice', without having to fear 'your dreadful displeasure'. This was the origin of parliamentary 'freedom of speech and debate', as it became known. Until the very end of the seventeenth century, this liberty was conceived of as a special, temporary privilege granted to chosen counsellors to deliberate frankly and in secret, in order to offer the monarch their honest advice. On occasion this outlook spilled over into arguments about the exact boundaries of frank counsel or complaints about censorship, especially when unwelcome warnings were delivered publicly or in print. But its general conception of free speech was part of the language of hierarchy, duty, deference and decorum – far removed from the modern notion of universal, individual rights.

In the aftermath of the Reformation, however, some zealous Christians developed new ideas about religious freedom of expression. This began with Protestant reformers attacking the Catholic Church's edicts against 'heretical' books, and its other attempts to silence them, which they portrayed as attempts to suppress 'God's holy truth' because it threatened the papists' 'manifest idolatry and palpable abomination'.

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It's true that, for their own part, most Protestant groups were also keen to enforce conformity, in order to prevent the spread of error: in 1554, for example, John Calvin instigated the execution of his rival reformer Michael Servetus for publishing heretical ideas. Yet, partly in reaction to such episodes, a few reformed thinkers began to develop a more radical critique of religious censorship. 'To kill a man is not to defend a doctrine, but to kill a man,' argued the influential writer Sebastian Castellio, himself a refugee from both the Catholic Inquisition and the intolerance of Calvin's Geneva: persuasion and debate were the proper responses to heterodoxy. The popular German spiritualist Sebastian Franck went further, arguing that, ultimately, only God could judge the difference between true and false religious beliefs: humans, who could presume no such certainty, should leave each other in peace.

In the face of religious fragmentation, a few sixteenth-century governments, too, experimented with toleration. To ensure peace, economic prosperity and political stability, some allowed private freedom of conscience; others permitted public worship by significant minorities. In Transylvania, the four largest denominations (Catholic, Lutheran, Calvinist and Unitarian) were given equal liberty, on the principle that 'faith is the gift of God' and could not be imposed. In the religiously diverse multi-ethnic republic of Poland–Lithuania, the Warsaw Confederation of 1573, drawn up soon after the horrific Bartholomew's Day massacre of Protestants in France, enjoined peace and cooperation between confessional groups, given the 'great dissidence in the affairs of the Christian Religion in our country, and to prevent any sedition for this reason among the people such as we clearly perceive in other realms'.

These developments were more prudential than principled. But in the newly created Dutch Republic, which experimented with various degrees of practical toleration in the aftermath of a largely Protestant rebellion against Spanish Catholic overlordship, the polymath humanist Dirck Volkertszoon Coornhert in 1582 went so far as to propose a complete liberty for 'the writing, publishing, printing, selling, having, and reading of tracts and books' on religious subjects. 'Freedom,' he wrote, 'has always consisted chiefly in the fact that someone is allowed freely to speak his mind, and truth was no respecter of status or

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authority. Lies and errors should certainly be refuted, but this could never be done by force, only by countering them 'verbally or in writing . . . [with] the divine and all-powerful truth herself'. Repression and censorship, by contrast, might 'suppress lies and heresies for a while', but ultimately were 'not just useless, but harmful', because they only made the forbidden ideas seem more interesting and potent, and undermined confidence in the authorities.

Implicit in assertions like those of Castellio and Coornhert were two novel presumptions about conscience and human nature that gained ground in Protestant theological debates from the later sixteenth century onwards. Both helped advance a more explicit case for spiritual freedom of expression. The first was that one's inner convictions could never be changed by force but only through persuasion; the second, that individuals could (and, indeed, should) find their own way to religious truth, and might do so through different routes. Nowadays these seem like unexceptionable views. Yet before 1700 they directly repudiated conventional Christian teaching, which for centuries had stressed the weakness of people's minds and consciences, the necessary guidance of scripture, laws and teachers, and the dangers of religious divergence.

In the middle of the seventeenth century there was also an important practical impetus, which shifted the centre of discussion to the English-speaking world. In 1641, during the civil wars, England's system of governmental print control, which had allowed only a limited number of presses to operate, and required all controversial texts to be approved before publication, broke down. Amid the chaos of combat, a multitude of new religious sects sprang up, and a tsunami of popular religious discussion flooded off London's printing presses. This novel liberty, and repeated efforts to rein it in, forged a fresh connection between freedom of expression and freedom of conscience. The two things were not equally valued: to its advocates, the ultimate aim of liberty of conscience was never diversity, but truth. As the puritan MP Francis Rous explained: 'I contend not for variety of opinions; I know there is but one truth. But this truth cannot be so easily brought forth without this liberty.' The hope was that with 'free trading of truth set on foot, and liberty given to try all things', errors would be exploded, 'straying brethren' set right and Christians

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united. We all know that 'there is but one truth', agreed the brilliant puritan politician Sir Henry Vane the Younger, 'which ever thrives best in fair and open debates': despite their fallen nature, all humans 'cannot but see good and light when it comes forth, and be in some part convinced of it'.

In the view of such thinkers, Christ's gospel permitted only 'gentle exhortation and friendly admonition' to be used against religious error. Because of their stress on the primacy of 'inner light' as a spiritual guide, and their millenarian beliefs about the 'discovery' of religious truth, they often argued that no one should be punished for sincerely following their conscience, even if it led them into error. Conscientious idolaters were less sinful than mere conformists, urged Vane, for at least they possessed a genuine spirit of inquiry. The influential London merchant and controversialist Henry Robinson took a similar view. Everyone had a perfect right to 'teach or publish erroneous doctrines, which they in their own opinion thought had been sound', and in any religious dispute every party deserved equal 'liberty of speech, writing, printing, or whatsoever else'. To be sure, he conceded, the establishment of such freedom would throw society into a great 'confusion' of divergent religious ideas – but that was preferable to hypocritically forcing people into mere outward conformity to things they did not truly believe. Besides, he mused in 1643, drawing on his own experience of living abroad among Catholics, Jews and Muslims, how could anyone ever be persuaded to change their beliefs and acknowledge error, except in a free exchange of ideas?

Robinson was friendly with many other mid-century advocates of religious free expression, including Roger Williams, William Walwyn and John Milton. Around this time, Milton, an erudite poet and schoolmaster in his mid-thirties, had made a disastrous, short-lived marriage to a teenager he barely knew, Mary Powell. After a few weeks living together, she returned for good to her parents' home. Milton, ever the academic, responded to this personal trauma by publishing a series of learned theological tracts on why a husband should be allowed to divorce his wife if their marriage had broken down (because it was always *her* fault). When these were denounced in parliament as examples of dangerous, unlicensed religious speculation, his anger turned against the whole system of pre-publication print control.

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The resulting critique of religious censorship that Milton produced in 1644, a pamphlet entitled *Areopagitica*, was the first detailed treatment of the subject in English. Addressing parliament using the rhetoric of *parrhesia*, it developed the idea that pre-publication licensing was itself a popish invention, aimed at keeping people in the dark. Like previous authors, Milton claimed that such restraint was not just harmful but unnecessary, for in open debate truth always prevailed: 'Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?' But he went further in implying that almost all kinds of knowledge, not just overtly religious writing, was spiritually beneficial – arguing for the benefits of allowing even erroneous and immoral ideas to circulate. This was because truth 'may have more shapes than one', and 'faith and knowledge thrives by exercise . . . where there is much desire to learn, there of necessity will be much arguing, much writing, many opinions: for opinion in good men is but knowledge in the making'. Above all, 'the knowledge of good is so involved and interwoven with the knowledge of evil' that exposure to bad books and immoral opinions was actually essential: only by actively engaging with and rejecting vice could one forge true virtue and understanding. 'The liberty to know, to utter, and to argue freely according to conscience' was therefore the greatest freedom of all.

Though his synthesis of them was brilliantly provocative, Milton's basic ideas were hardly original. The saying that 'there is no book so bad that you cannot get some good from it' dated back to the Roman author Pliny, and was a much-rehearsed humanist cliché. But in this case its invocation served a deeply spiritual doctrine. For Milton, as for other puritans who advocated 'free debate', only opinions 'probable by scripture' deserved airing in 'free and lawful debate'. Nor did their testing involve reason so much as divine inspiration. As his hero Henry Vane put it, mere 'fleshly wisdom' or 'natural reason . . . will not know what opinion to follow' – 'all the struggling of . . . natural understanding' could never divine God's purpose. Instead, 'the light within us must be our guide, to lead us into all that understanding of the Scripture, or other truths, which are fitting for us to know'. It wasn't a capacity given to everyone; it certainly had nothing to

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do with rights. You had to wait for the Holy Spirit to enter into and enlighten you.

RELIGIOUS AND SECULAR SPEECH

None of these stirring ideals had much immediate effect beyond radical Protestant and sectarian circles. Though considerable liberty of conscience prevailed in England from the 1640s until the restoration of the monarchy and state church in 1660, Milton's views on freedom of expression were extreme, and there is no record of anyone paying them the slightest bit of attention during his own lifetime. Censorship remained widely acceptable; new laws were regularly passed to enforce it. For several years after publishing *Areopagitica*, ironically enough Milton himself worked as a government licenser of printed works.

All this began to change towards the end of the seventeenth century. In 1685, after decades of failed attempts to enforce religious uniformity, the accession of the openly Catholic King James II to the throne, and thus the headship of the staunchly Protestant state church, created a novel constitutional crisis. As part of their power struggle, both the new king and his political opponents tried desperately to win the support of the country's influential minority of Presbyterians, Congregationalists and other Protestant sects. After the invasion and deposition of James in 1688 by William of Orange, his Dutch Protestant son-in-law, in what became known as the 'Glorious Revolution', the English parliament a few months later reluctantly legalized a degree of nonconformity, to shore up support for the new regime by such religious dissenters.

Shortly afterwards it also abandoned the system of pre-publication licensing. Partly this happened because of increasing resentment against the printing monopoly of the London Stationers' Company, but more generally it reflected a lack of agreement about how to control the public discussion of religious doctrine in the new tolerationist environment. In 1695, when the licensing law came up for renewal, members of parliament couldn't agree on a workable solution: and so it simply lapsed. At this point the intellectual arguments for religious

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free expression, though increasingly prominent, were still deeply controversial. Many orthodox Christians continued to regard tolerance of heterodox ideas as dangerous to the state church. Greater print freedom, likewise, was often condemned for fuelling irreligion. In practice, too, the immediate consequence of toleration was not greater concord but increasingly open religious conflict.

Yet slowly but surely the official establishment of religious plurality did elevate its principles into mainstream presumptions: over time, in the English context, they became explanations of the status quo, rather than radical challenges to it. Milton's *Areopagitica* gradually became a canonical text, after its author's late celebrity and posthumous reputation led to its being rediscovered and popularized by several later seventeenth-century religious and political freethinkers. Similar authority accrued to the writings of John Locke, who in 1689 set out what rapidly became one of the most influential of all European defences of freedom of conscience and expression – not because its claims were original, but because it so fluently repackaged for a general audience all the main lines of Protestant reasoning developed by earlier advocates of toleration.

Locke's *Letter Concerning Toleration* and its three sequels first of all reasserted the premise that Truth (for him, too, a capitalized female entity) always prevailed in open discussion, and that pre-publication censorship, by contrast, only helped to perpetuate falsehoods: 'She is not taught by laws, nor has she any need of force to procure her entrance into the minds of men ... if Truth makes not into the understanding by her own light, she will be but the weaker for any borrowed force.' On the other hand, though continuing to cleave to the presumption that there was in fact 'but one Truth, one way to Heaven', Locke also adopted the position that ultimately it was unknowable, visible only to God. That was one reason why freedom of religion was essential. The other was that beliefs could never be changed by force, and were in any case harmless things – laws and governments should address only outward actions, not inner thoughts. In consequence, Locke advocated a complete freedom for all 'speculative opinions', even 'false and absurd' ones, for 'the business of laws is not to provide for the truth of opinions, but for the safety and security of the commonwealth'. Indeed, he argued, reversing conventional wisdom in the same way as some

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sixteenth-century tolerationists had done, it 'is not the diversity of opinions (which cannot be avoided), but the refusal of toleration to those that are of different opinions (which might have been granted) that has produced all the bustles and wars, that have been in the Christian world, upon account of religion' – diversity of opinion itself was inevitable, beneficial and harmless.

Both the theory and practice of religious toleration differed considerably across European cultures. In England and its North American colonies, ideals of free expression were from the outset closely bound up with freethinking about religion, as they were too for many writers of the French Enlightenment. But in other places, Protestant as well as Catholic, religious uniformity remained central to national identity long beyond 1700, so that, as we'll see, freedom of speech did not automatically include, or derive from, religious toleration. What's more, even in the most spiritually permissive cultures, there were always two obvious ways in which the freedom of religious speech was limited.

One of these was the question of whose speech should be permitted. The orthodox view remained that women had no place in religious debate, let alone in teaching men. Yet the history of Christianity also included plenty of female prophesy. During and after the Reformation, some radical strands of Protestantism gave further impetus to feminine outspokenness. Women were prominent among separatist sects in seventeenth-century Britain, Holland and New England, such as the Baptists and Quakers, whose doctrines stressed the spiritual equality of the sexes and the ultimate authority of inner conscience. Many such congregations allowed women to debate, vote and prophesy – sometimes even to preach. Yet this remained only a marginal and widely deprecated phenomenon. In 1763, after James Boswell heard a woman preaching at a Quaker meeting, Dr Johnson compared the phenomenon to a dog walking on its hind legs: 'It is not done well; but you are surprised to find it done at all.' In the following century, this deep-seated bigotry against women preaching and publicly debating spiritual matters was to become one of the chief targets of early campaigns for women's rights on both sides of the Atlantic.

The other strong limit on religious free speech was that of tone and content. Advocates of religious liberty invariably stressed that such freedom could never extend to insult. 'Reproachful language, against

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either men or opinions', should be punished, argued William Walwyn, for 'though reason and argument is allowable and necessary for the finding out of truth, yet reviling railing, bitter taunts, and reproaches, tends to the disturbance of civil peace.' Nor would they permit words that might injure the 'public good' or 'civil society' – a prohibition they usually also extended to spiritual doctrines, such as Catholicism or atheism, which were perceived to have dangerous political implications. Coornhert had strictly excluded anything 'slanderous' or 'seditious': his concern was only 'the improvement of the church'. The overriding aim of puritan writers such as Rous, Milton and Vane was likewise to advance the spiritual enlightenment of God's people. For them, liberty of conscience obviously excluded anything contrary to 'the manifest good of societies' or 'public peace' – such as 'the doctrines of the Papists', 'open superstition', expressions 'impious or evil absolutely either against faith or manners' or anything 'mischievous and libellous'. Such toxic ideas should be prohibited and punished. Locke took the same view: freedom of expression could never extend to 'opinions contrary to human society, or to those moral rules which are necessary to the preservation of civil society'. For him, that meant anything from promiscuity to Catholicism to atheism: even advocating religious intolerance was beyond the pale. In short, no theorist of religious freedom would allow speech that they presumed might provoke social disorder; all of them would punish opinions that they deemed to be dangerous.

As a result, over and over again, both in Europe and its overseas colonies, the most self-consciously tolerationist religious communities ended up censoring, banning and expelling people whose expressions of religious zeal strayed too far. In the 1650s, the English puritan regime proudly enacted one of the most tolerant policies in Europe, readmitting Jews (who had been horribly persecuted and then expelled in the thirteenth century) and allowing all Protestants to worship as they pleased. But most of them abhorred the aggressively unconventional behaviour of the Quakers, the fastest-growing new sect, who distinguished themselves partly by their radical, spiritually inspired attitude to speech and communication – interrupting sermons, condemning the use of oaths, reviling other Christians as fools and idiots, refusing to use titles or to remove their hats in deference to social

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superiors, referring to everyone as 'thee' and 'thou' rather than the more respectful 'you', and even going unclothed in public as a metaphor of spiritual nakedness. When, in this shameless vein, their leader James Nayler rode into Bristol on a donkey one day in October 1656, seeming to mimic Christ's entry into Jerusalem, he was therefore immediately arrested, and many outraged MPs sought to have him summarily put to death. Only after weeks of impassioned debate on the matter did they give up on his execution – instead settling for boring through his tongue with a red-hot poker, branding his forehead with the letter B (for Blasphemer) and having him publicly pilloried, whipped through the streets and then imprisoned at hard labour. He died not long afterwards. In Massachusetts, fears of Quaker anarchy led similarly to the public flogging, mutilation, banishment and execution of its proselytizers.

The principle of limiting religious free speech according to the prevailing orthodoxy has proved to be impressively long-lasting, even in those societies ostensibly most committed to religious toleration. Across the western world, prosecutions for atheism and blasphemy persisted throughout the eighteenth, nineteenth and twentieth centuries. Indeed, several US state constitutions still, on paper at least, bar atheists from holding office. As late as the 1990s, a non-believing professor of mathematics in South Carolina had to spend years battling at law to be allowed to serve as a notary public; while it took until 2016 for a New Jersey driver to be allowed to keep her vanity licence plate '8THEIST', previously deemed 'offensive to good taste and decency'. Meanwhile, in 2023 the United States Supreme Court ruled that religious liberty of speech allows public businesses to discriminate against certain types of customers – for example, if a fundamentalist Christian business owner is opposed to gay marriage. The question of how far religious freedom of speech and action should extend is obviously far from settled.

This is not a new problem. From the moment that the ideals of liberty of conscience and expression first became influential, they were taken up, manipulated and extended in all sorts of novel ways. In the seventeenth and eighteenth centuries, even arguments for sexual promiscuity were often derived from ideas about religious toleration – despite the urgent attempts that authors like Locke repeatedly made

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to prevent such (to their mind) dangerous misappropriations of their ideas. No matter how firmly the theorists of religious toleration sought to distinguish between permissible spiritual discussion and impermissible social and political controversy, the distinction between divine and secular subjects was, ultimately, unstable – it rested more on the power to define what was legitimate than on anything else. Soon after 1700, in fact, the rhetoric of religious liberty was to be cleverly hijacked to advance a radically new and momentous argument: the right to political freedom of speech.

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3
Inventing Free Speech

Walk into the grand, marbled halls of the United States Capitol in Washington, DC, and you are in the world's greatest centre of power. Every day, the legislators in this building take decisions that affect the lives of millions, sometimes billions of people, within the US and around the globe. Its architecture is meant to convey the dignity of that task – and also to impress upon American lawmakers that they are part of a glorious history. Everywhere there are statues, inscriptions and other reminders of the proud democratic traditions of this pioneering nation, born in a revolution of liberty two hundred and fifty years ago.

In the Senate's part of the building, the walls commemorate important events in the early years of the republic. Over in the House of Representatives' wing, the decor exalts legislative landmarks. At the apex of its central corridor is depicted the nation's foundational law, the constitution. Beside a mural captioned 'The First Federal Congress, 1789' are vignettes of a preacher and a printer, to symbolize the First Amendment. And beneath these images is an explanatory quotation: 'Without Freedom of Thought there can be no such thing as Wisdom & no such thing as publick Liberty without Freedom of Speech'.

It's a rousing and entirely appropriate statement – those lines are taken from the ultimate source of the First Amendment's conception of free speech. Who composed them? The inscription explains – 'Benjamin Franklin 1722'. Type the quote into any internet search engine, and page after page of results will whole-heartedly concur: the sixteen-year-old Franklin coined this sentence in a newspaper column he published in July 1722. What a precocious genius he must have

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