

Yale Law School Occasional Papers

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Yale Law School

Year 1995

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First Amendment

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1995.

Milton's *Areopagitica* and the Modern First Amendment

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The Elliot Lectureship is the gift of Ralph Gregory Elliot, a 1961 graduate of Yale Law School and a distinguished practitioner and teacher in the field of First Amendment law.

I.

The traditional liberal argument for free speech is now under fire from several directions. Critics from the left, the center, and the right find simplistic the claim that unregulated expression promotes the search for truth, the project of self-government, the autonomy of individuals, or the control of concentrated power. Even if free speech does serve these values to a considerable degree, there are costs associated with liberty, costs the critics say are not sufficiently recognized or valorized in the standard liberal accounts.

As a general matter, but especially regarding the freedom of speech, liberalism is seen as too doctrinaire, too optimistic about human capacities and intentions, too complacent, too inattentive to questions of responsibility and virtue. It is condemned, moreover, as elitist in its regard for intellectual inquiry and disregard for faith, affection, tradition, security, and sense of place. The liberal view of the First Amendment is said to ignore the badly skewed distribution of communicative power, the impact of technology, and the potential severity of nonphysical harms.

Some or all of these criticisms may be true, but we cannot evaluate them if the liberal tradition regarding free speech is known only in its reductionist version, stripped of its moorings in actual historical struggles, flattened out by accumulated summation and extraction.

Few liberal arguments for free expression have suffered more from this reductionism than John Milton's 1644 tract, *Areopagitica*. In some respects the foundational essay of the free speech tradition, *Areopagitica* is a subtle, richly textured polemic that displays not only the wit, eloquence, and dense, evocative imagery one expects from its author but also considerable political and theological sophistication, as well as cunning and passion born of Milton's active engagement in the revolutionary struggles of his day. Yet modern lawyers encounter the essay primarily for two of its passages:

And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting, to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open

encounter?

I mean not tolerated popery, and open superstition, which, as it extirpates all religions and civil supremacies, so itself should be extirpate, provided first that all charitable and compassionate means be used to win and regain the weak and the misled.

Together, these excerpts can be read to encapsulate much of what seems wrong with the liberal case for free speech: both an undue faith in the value and power of reason and a smug, unacknowledged intolerance at the root. But Milton's tract is more complicated than this, and so is the tradition it helped to spawn.

A fuller acquaintance with the *Areopagitica*, particularly with its context and some of its neglected themes, can bring to the fore certain arguments for freedom of expression that have not been given their due in recent years, and push to the rear other arguments that have received excessive attention from defenders and critics alike. Of course, no matter how perceptive and how astute in its emphasis, no seventeenth century pamphlet will answer all the objections that critics writing in the 1990s can muster. Such a work nevertheless can interrogate a later age. It can ask modern critics of the free speech tradition to confront, as by and large they have yet to do, some of the enduring concerns about censorship that Milton expressed.

II.

When King Charles I was forced by financial exigencies to convene the Long Parliament in November of 1640, he set in motion a political dynamic that led to civil war less than two years later, and his own beheading within the decade. One of the first actions of the new parliament was to abolish the Court of Star Chamber, the infamous offshoot of the King's Privy Council that had served as the principal forum for calling to account political opponents, religious dissenters, and those who defied crown-granted monopolies of the printing trade. The abolition of Star Chamber meant, in effect, suspension of the licensing system that had been in operation for over a century. A regulatory hiatus was created, more a by-product of the attack on royal prerogative than any kind of deliberate policy in favor of a free press.

The immediate result was a flourishing of political and religious ideas the likes of which England had never before experienced. Tudor and early Stuart licensing had been variable though sometimes Draconian, often corrupt, and usually porous. The elimination in 1641 of the institutions of press control caused a dramatic increase in both the volume of advocacy and the range of views expressed. By one count, the number of pamphlets published during the year 1640 was 22; in 1642, it was 1,966.

In this atmosphere of excited disputation among antiroyalist factions, King Charles raised his standard at Nottingham in August of 1642. Civil war was at hand.

The royalist prospect was by no means bleak. Throughout 1642, as various schemes for accommodation failed, about two-fifths of the House of Commons and most of the Lords chose to side with the King. The early skirmishes of the war were indecisive. In mid-1643, the parliamentary armies suffered serious setbacks. Those who believed the parliamentary cause to be the work of divine providence began to have doubts.

Concerned both about disunity in its own ranks and the effectiveness of Crown propaganda,

Parliament in June of 1643 decided to reinstate government control over printing. A small number of master printers was authorized to operate presses. Those who held printing patents were enlisted, through their trade organization, the Stationers' Company, to search out and bring to justice all who printed without a license. The economic self-interest of monopoly privilege was thus united with the demand for religious and political conformity.

Specialized licensers were appointed to examine writings in specified categories. Four censors were named, for example, to scrutinize law books, three for books of philosophy and history, one for "mathematics, almanacks, and prognostications." Parliament served as the enforcement agency, usually through its committees. Not only miscreant authors and printers but also licensers who had been too permissive were subject to imprisonment.

During the period of low military morale when the Licensing Order was enacted, the leaders of Parliament decided they could no longer postpone coming to grips with the volatile religious issues they had to that point shrewdly kept off the agenda for fear of dividing the antiroyalist coalition. Now they needed a Scottish alliance. In return for lending their military resources to the parliamentary cause, the Scots wanted a religious settlement in England along strict Presbyterian lines.

This prospect drew mixed reviews among the rank and file in Parliament. While many members considered themselves Presbyterians, most were unsympathetic to the severe Calvinist theology and the theocratic subordination of secular institutions that were features of Scottish Presbyterianism.

In the hope of generating a mutually acceptable religious settlement, Parliament created the Westminster Assembly, a convocation of 120 English clerics, 30 laymen from the Lords and Commons, and 8 Scottish representatives. Debate within the Assembly proceeded continuously for months at a high level of piety and prolixity. Intense and bitter disagreements persisted, however, on such issues as congregational autonomy and toleration. The fierce disputes within the Assembly spilled over into the House of Commons, the pulpits, the army camps, and the streets, and generated some notable essays on the subject of religious toleration. Several of these were published in violation of the Licensing Order of 1643.

John Milton was not initially a participant in these fundamental debates concerning church governance and toleration. It is true that in 1641, at the age of thirty-two, he put on hold his carefully prepared career as a poet and joined in the pamphlet warfare that swirled all around him, sacrificing what he termed his "calm and pleasing solitariness" to embark in "a troubled sea of noises and hoarse disputes." He became a controversialist, however, only to attack the pretensions, ignorance, venality, and laziness of the Anglican bishops. The five pamphlets he devoted to that worthy cause certainly display a poison pen and a capacity for personal animus but show no deep interest in the theological questions that were tearing apart the Westminster Assembly and the wider Puritan nation. Once the Church of England was disestablished and its bishops expelled from the House of Lords, Milton turned his attention to an issue of small general but immense personal concern: the legitimate grounds of divorce.

During the summer of 1642 he traveled to Oxford, where he met and quickly married the vivacious, attractive teen-age daughter of one of his father's debtors. Mary Powell, seventeen

years Milton's junior, was accustomed to a large household and an active social life. She seems to have had little in common with her studious, devout, and brilliant husband. Her family was royalist. After a month or so of living with Milton in London, she deserted him and rejoined her parents. War broke out shortly thereafter, and Mary remained in the royalist stronghold of Oxford for the next three years.

This was a shattering experience for a man of Milton's pride and idealism, particularly because an important strain of Puritan theology viewed marital love as a manifestation of the love of God. Although his wife eventually returned and bore four children by him (dying in childbirth with the last), Milton's travail prompted him to examine whether a marriage could properly be terminated for incompatibility alone, without the adultery required by law and almost everyone's understanding of the scriptures. James Holly Hanford nicely summarizes the thesis of Milton's 1643 pamphlet *The Doctrine and Discipline of Divorce*:

His main plea is that incompatibility of temper is a more vital impediment to the higher objects of marriage than any other, and that the will of the parties should therefore be admitted as decisive for the continuance or dissolution of the bond.... The principle is in perfect accord with Milton's whole philosophy. It was because he thought nobly of marriage as a spiritual rather than a merely physical union that he resented the common idea that it was dissoluble only on physical grounds. The idea of an external compulsion, binding two human beings together when mutual love and sympathy had departed, was repellant to his reason and excited him to eloquent and passionate denunciation.

In the course of his divorce analysis, developed over the next two years in a much expanded second edition as well as three subsequent tracts, Milton produced arguments concerning the nature of truth, the grip of custom, and the principle of consent that he would draw upon in his later polemics, including the *Areopagitica*.

The immediate consequence of his effort, however, was to mark him in the eyes of the English and Scottish Presbyterians as a dangerous radical with licentious sympathies. One minister went so far as to make these accusations the subject of a sermon preached before the House of Commons.

The boldness and singularity of Milton's views on divorce cannot be denied, but the sexual innuendo was manifestly unfair and deeply hurtful to him. Whatever else one might wish to accuse Milton of, a lack of personal discipline or an affinity for others who succumb to their impulses is surely wide of the mark. His views on divorce derived from his idealism and sense of Christian duty, not any form of libertinism. The censoriousness and calumny that his divorce pamphlets engendered almost certainly contributed to Milton's conclusion, at the heart of the *Areopagitica*, that the newly ascendant Presbyterians in the Westminster Assembly and Parliament were as pretentious, bigoted, and potentially oppressive as the hated Anglican hierarchy whose overthrow had been the first priority of the Puritan revolution. As he later put it in a sonnet: "New Presbyter is but Old Priest writ large."

Milton apparently tried to get *The Doctrine and Discipline of Divorce* licensed for publication. When approval was denied, he published his tract in defiance of the law. Only one of his subsequent divorce pamphlets appeared with a licenser's imprimatur. It is possible that his

personal experience with the censor prompted his polemic against licensing. It is also possible that he wrote the *Areopagitica* at the behest of the journeymen printers of the City of London. This politically active group, with whom Milton was in contact, saw its livelihood threatened by the prospect of strict enforcement of the Licensing Order for the benefit of the limited number of master printers favored by Parliament with monopoly privileges. The argument of *Areopagitica* seems to reflect both of these influences, as well as Milton's growing concern about church-state relations and toleration.

III.

The *Areopagitica* is addressed to Parliament and adopts the form of an oration, written rather than spoken, following the rules of classical rhetoric. In his choice of title Milton alludes to an analogous written oration of Isocrates presented in 355 b.c. to the Athenian Ecclesia, advocating a return of certain powers to the aristocratic Council of the Areopagus. Abiding by the precepts of rhetorical form, Milton announces the four divisions of his argument urging Parliament to reconsider its decision to censor. He will first trace the idea of licensing to its inventors, "those whom ye will be loath to own." Second, he will discuss "what is to be thought in general of reading, whatever sort the books be." His third point will be that the Licensing Order cannot possibly achieve its intended objective, such are the practical barriers to effective implementation. Fourth, he will assess the costs of this scheme to learning and to national religious and political renewal.

In tracing the lineage of licensing, Milton's primary goal is to identify the practice with Roman Catholicism. He contends that except for one period during the later Roman Empire, the regulation of speech in ancient and medieval times was infrequent, irregular, and never comprehensive. Only in 1418, with the Vatican's campaign to suppress the writings of Wycliffe and Huss, precursors of the Reformation, did systematic censorship begin, culminating some years later in the infamous persecutions of the Council of Trent and the Spanish Inquisition. Playing further on the anti-Catholic sentiments of his audience, Milton observes that even as carried over to England and implemented by Anglican bishops, the idea of licensing was "so apishly Romanizing, that the word of command still was set down in Latin."

The historical narrative serves a variety of purposes in addition to establishing the Catholic connection. Licensing is portrayed as a relatively recent expedient, eschewed throughout history by enlightened states, and always characterized by selective enforcement for ulterior ends. Papal censors, for example, did not "stay in matters heretical," but asserted authority over "any subject that was not to their palate."

Milton's second point concerns the value in general of reading. Early in the essay he characterizes books as "the purest efficacy and extraction of that living intellect that bred them." Later he describes how Moses, Daniel, Paul, and the great theologians of early Christianity profited from reading heathen authors. In response to the objection that bad ideas will extend their influence if allowed to circulate freely, he argues that heretical notions can always find ways to spread without reliance on the written medium. What checks the spread of sin is the strength and will of the populace, fortified by knowledge, including knowledge of evil gained by reading. When discussing the benefits of the freedom he advocates, Milton repeatedly speaks of its strengthening effect on the character of the reader.

In developing his third point, that the licensing order cannot possibly achieve its desired end, Milton adopts the posture of a modern pragmatist. The licensing of books must be seen for what it is, a partial and thus necessarily ineffectual attempt to prevent wrongdoing. For control to be effective, all the sources of sin must be addressed: songs, dances, lutes, whispers at balconies, food and drink, wanton clothing, temptations to idleness. Parliament's gesture in licensing books resembles "the exploit of that gallant man who thought to pound up the crows by shutting his park gate."

Moreover, to evaluate the operational consequences of the Licensing Order, one must take into account how difficult it is to judge writings wisely, and how improbable it is that a licensing system will be staffed by persons who are up to the task. For, "there cannot be a more tedious and unpleasing journey-work, a greater loss of time levied upon [a man's] head, than to be made the perpetual reader of unchosen books and pamphlets, oftentimes huge volumes.... and in a hand scarce legible, whereof three pages would not down at any time in the fairest print." With such a job description, "we may easily foresee what kind of licensers we are to expect hereafter, either ignorant, imperious, and remiss, or basely pecuniary." At several points in the essay such practical considerations figure prominently.

The last and longest of the four parts into which Milton divides his argument concerns the "manifest hurt" that licensing causes. He makes several claims in this part, many of which depend on the proposition that vigorous disputation is good for both the individual soul and the elect nation. He is particularly concerned that religious and intellectual energy not be stifled. Passivity and its twin, conformity, were for Milton vices of the first order. He feared that licensing would encourage both. "Hereafter," he laments, "the only pleasant life" will be "in higher matters to be ignorant and slothful."

His concern for the maintenance of disputational vigor leads Milton to what is perhaps his boldest claim. Rather than treating the recent effusion of radical religious ideas as a threat to the Reformation, he asserts that the sectaries have much to contribute to the collective search for salvation. He describes London as "the mansion house of liberty" filled with "pens and heads ... revolving new notions and ideas ... reading, trying all things, assenting to the force of reason and convincement." Where the Presbyterians (and others) see "fantastic terrors of sect and schism," Milton sees "the earnest and zealous thirst after knowledge and understanding which God hath stirred up in this city." Despite the intensity of his own religious convictions, he seems actually to celebrate disagreement. "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." He views the sects as deserving of more than toleration and respect. He accords them a vital role in the nation's religious renewal: "There must be many schisms and many dissections made in the quarry and in the timber, ere the house of God can be built."

Among those salutary "many schisms and many dissections" Milton does not, of course, include Catholicism. He does not consider that belief system to be among the "strong and healthful commotions," the "neighboring differences" that "need not interrupt the unity of spirit." The limited range of his toleration, disconcertingly narrow to the modern reader, Milton justifies in terms of civil order. He notes that Catholic doctrine does not accept "civil supremacies" and does not tolerate other religions. Twenty-nine years later, in his last pamphlet, he was still railing about

how the Pope "absolves the people from their obedience to [civil rulers]" and sends his "spies and agents, bulls and emissaries ... to destroy both king and parliament."

Milton's apologists remind us of a nightmare that gripped large numbers of Englishmen for much of the seventeenth century. The unspeakable carnage of the Thirty Years War on the continent (in its twenty-seventh year in 1644) they feared could be merely a prologue to the militant Counter-Reformation's designs on the sceptered isle. Prominent among the object lessons they studied was the Venetian Interdict of 1606, by which the Vatican formally asserted civil authority over the political community many English republicans took as their model. The leader of the Venetian resistance on that occasion, Fra Paolo Sarpi, Milton extols as "the great unmasker" of papal persecution. (Sarpi's devastating history of the Council of Trent was much acclaimed in England at the time.) Milton also recounts in *Areopagitica* how during his journey to Italy in the late 1630s he had the opportunity to speak with a good friend of Sarpi's whom the redoubtable Venetian friar had tried to protect from the reach of Rome. "There it was," says Milton, "that I found and visited the famous Galileo, grown old a prisoner to the Inquisition, for thinking in astronomy otherwise than the Franciscan and Dominican licensers thought." The Guy Fawkes conspiracy to blow up Parliament in 1605, the aborting of which is commemorated in England to this day, was yet another source of the anxiety over a potential Catholic takeover.

It would be a mistake, however, to view Milton's intolerance of Catholics as wholly grounded in national security concerns. He failed to extend toleration to Catholics because he thought they had nothing to contribute to the quest for spiritual truth. Milton believed in progressive revelation. "The light which we have gained was given us," he tells his countrymen, "not to be ever staring on, but by it to discover onward things more remote from our knowledge." "Searching what we know not by what we know ... closing up truth to truth"--this is how he describes the process that religious liberty is meant to foster.

"By what we know." For Milton, one thing "we know" is the utter falsity of the teachings of the Roman Catholic faith. Those who reject the supremacy of scripture and affirm the authority of an earthly spiritual hierarchy, those who insist on "crowding free consciences and Christian liberties into canons and precepts of men," those persons cannot possibly be a part of what Milton calls the "brotherly search after truth."

He does not claim to have found the true way to worship God. In fact, he derides the liturgical certitude emanating from the Westminster Assembly. "Anyone," he says, "who thinks we are to pitch our tent here, and have attained the utmost prospect of reformation that the mortal glass wherein we contemplate can show us ... that man by this very opinion declares that he is yet far short of truth." But Milton does claim that progressive revelation has shown some beliefs to be false, and they include the fundamental tenets of the Catholic religion. As Professor Ernest Sirluck, editor of the Yale Press edition of *Areopagitica*, concludes: "We may think Milton's proscription of Roman Catholicism unnecessarily severe, but we cannot think it is inconsistent with the principles upon which he based his plea for toleration."

IV.

Both grounds for the Catholic exception, the civil and the religious, make the *Areopagitica* seem especially dated. So what does this seventeenth century polemic have to say to a modern world no less divided and confused than Milton's, and a good deal more complicated due to technological,

demographic, and intellectual developments he could hardly have imagined? Specifically, what part of the liberal tradition that we have inherited, and now must evaluate, can be clarified by attending to Milton's arguments and characterizations?

In attempting to answer this question, I want to begin with an important and extended admonition. We must not try to secularize Milton. Religious conviction was central to his thought and to that of his audience. And I do not mean the type of rationalistic, latitudinarian religious conviction that may explain the tolerationist positions of later thinkers in the tradition such as Jefferson and Madison, and perhaps even John Locke. Milton read the Bible (in Hebrew and Greek) for several hours every day. He wrote an ambitious theological treatise. When his political world lay in ruins at the Stuart Restoration, a regression welcomed by the very English people in whom he had once placed so much trust, Milton's undespering response was to complete the Christian epic for which he is best known, to "assert eternal providence, and justify the ways of God to men." Those of us who do not share his profound theological convictions may be able to profit from some features of his thought, and perhaps even employ them for our own purposes. But such a venture in intellectual scavenging must be undertaken with caution and awareness.

Let me specify three significant ideas in *Areopagitica*--in fact the list could be much longer--that a modern reader might be tempted to draw upon in fashioning a secular argument for the freedom of speech but would be wrong to do so. In each instance, the meaning of the idea and the source of its appeal in Milton's day was so much a function of its religious underpinnings that the secular counterpart must be considered a separate notion that can draw no sustenance from Milton's thought.

One idea is that truth is strong and will prevail without the help of the censor's coercive assistance. This is the point of the famous "winds of doctrine" passage with its striking, if unfortunate, wrestling metaphor. Elsewhere in the tract Milton proclaims, referring to truth: "she needs no policies, nor stratagems, nor licensings to make her victorious; those are the shifts and the defenses that error uses against her power." Surely his assertion regarding the likely consequences of freedom was an important part of his case, but we must realize that Milton's sweeping generalization about the strength of truth was not offered in the spirit of empirical demonstration, nor even that of didactic history. Milton here was simply affirming, once again, his faith in divine providence.

"For who knows not," he says, "that Truth is strong, next to the Almighty." He concedes that in turbulent times "false teachers are then busiest in seducing." Not to worry: "God then raises to his own work men of rare abilities and more than common industry ... to go on some new enlightened steps in the discovery of truth." Even the limits of human understanding he attributes to the divine plan: "for such is the order of God's enlightening his church, to dispense and deal out by degrees his beam, so as our earthly eyes may best sustain it." Truth in Milton's cosmos is destined to prevail in due time, for a reason that can have no secular analogue.

A second feature of Milton's thought that First Amendment votaries have no business using concerns what may be the most crucial step in any truth-based argument for the freedom of speech. This is the claim that the endeavor of seeking to know the truth--or to put it in less grandiose terms, to improve one's understanding--has particular priority. Modern liberals are often challenged on this point and some, including the designers of the catalogue room of the New

York Public Library, have not resisted the urge to enlist Milton in their defense. Several of the most eloquent passages of the *Areopagitica* exalt the importance and dignity of learning. With his absurd yet endearing exuberance at full throttle, Milton describes authors as "laboring the hardest labor in the deep mines of knowledge." He asserts that "a good book is the precious life-blood of a master spirit embalmed and treasured up on purpose to a life beyond life." (This is the quote that broods over the catalogue room.) He calls truth "our richest merchandise." Nor is Milton's admiration for truth seekers confined to rare persons with unusual gifts like his own. In the London of 1644, he exults, "all the Lord's people are become prophets." He plays the patriotism card in a revealing way. "England," he says, "is a nation ... prone to seek after knowledge," a "nation ... acute to invent, subtle and sinewy to discourse."

Like his faith in the strength of truth, Milton's belief in the priority of truth seeking derived from his theology. The great project that summoned the matchless talents of the English people was, in his words, "the reforming of Reformation itself." Recall his picture of London, the "mansion house of liberty" with its citizens "sitting by their studious lamps, musing, searching, revolving new notions and ideas." In the very same sentence, Milton specifies *why* these energetic thinkers are so hard at work: "to present, as with their homage and their fealty, the approaching Reformation." Individually no less than collectively, the virtue of "fearless scouting into the regions of sin and falsity" is to discover God's will and to do God's work, to achieve salvation, to run, as he puts it, "for that immortal garland," to experience the spiritual struggle of "the true warfaring Christian."

I do not claim that Milton's prodigious intellectual curiosity had no secular dimension. He was the finest Latinist in England, who knew Virgil and Ovid almost by heart. His interest in the astronomical discoveries of his age was keen and even finds expression in the pages of *Paradise Lost*. He wrote a lengthy history of England and a brief history of Russia. He was a man of the Renaissance as well as the Reformation. But much as Milton valued many forms of secular knowledge, the argument of *Areopagitica* is for a purposive liberty: the Christian Liberty of the Puritan saint searching after God's partially revealed truth. We are exploring, remember, not the multifarious advantages of truth seeking, but the question of its priority. Milton's judgment of priority marks him, I believe, as a Christian perfectionist, not a utilitarian: "God sure esteems the growth and completing of one virtuous person," he says, "more than the restraint of ten vicious." That is why for Milton the search for understanding is not to be balanced against the material harms it may cause--harms he fully acknowledges.

A third idea in Milton that has achieved some undeserved modern currency is that exposure to falsity is valuable to the appreciation of truth. Erroneous opinions he characterizes as "dust and cinders" that "may yet serve to polish and brighten the armory of truth." He describes how a "discreet and judicious" reader can use bad books "to discover, to confute, to forewarn, and to illustrate." More than two hundred years after Milton wrote, John Stuart Mill was to build his *Essay On Liberty* around a secular reformulation of these notions.

I have no doubt of the validity of this line of argument. In fact, I regard as possibly the two most important pages I have ever read the passage in *On Liberty* in which Mill argues, from Cicero, that a person should strive to understand his opponents' ideas with greater imagination and sympathy than he devotes to knowing his own. If every advocate and every scholar would only

reread those pages before entering the lists, the world would be a better place.

The thought is magnificent, but it is not Milton's. However important falsity may be to the search for truth, or foolishness to the search for wisdom, or exaggeration to the search for accuracy, or radicalism to the search for moderation, Milton's argument in *Areopagitica* provides scant reason for a secular appreciation of uncongenial ideas. For Milton was not in pursuit of either capacious sensibility or dialectical facility, though in fact he possessed both. What he valued was the ability to resist temptation. Self-discipline in the service of God, an integral component of Christian Liberty, is for him the overriding objective of the freedom he urges upon the English nation. "That which purifies us is trial," he says, "and trial is by what is contrary." "[B]ooks freely permitted" are means, he asserts, "both to the trial of virtue and the exercise of truth." That is why the "the high providence of God ... gives us minds that can wander beyond all limit and satiety." "Trial" and "exercise"--the imagery is physical, even martial. Milton's concern here is Christian discipline and fortitude, not intellectual curiosity.

I could, if time permitted, demonstrate further how thoroughly Milton's conception of truth is bound up in his religious convictions--how, for example, his emphasis on the fallibility of human judgment, rooted in the fallen condition of postlapsarian man, has little in common with modern skepticism, or how his temperamental respect for radical, seemingly bizarre ideas derived from his belief that in millennial times the Word of God can emanate from the most unlikely sources. My principal point should be clear: those parts of Milton's argument in *Areopagitica* that rest heavily on his claims and assumptions regarding truth--its nature, its strength, its function, its importance--cannot rightly be employed to make the secular case for the freedom of speech. Furthermore, the limits Milton recognized to the principle of toleration, so much a product of his view of truth, cannot inform the modern project of defining the boundaries of expressive freedom.

V.

So what is left? Can the *Areopagitica* help us at all as we struggle to interpret the modern First Amendment? As you might have guessed, I think so.

"If it were seriously asked," begins Milton's pamphlet *The Doctrine and Discipline of Divorce*, "and it would be no untimely question ... who of all teachers and masters that have ever taught have drawn the most disciples after him, both in religion and in manners, it might be not untruly answered Custom. Though Virtue be commended for the most persuasive in her theory, and Conscience in the plain demonstration of the spirit ... so it happens for the most part that Custom still is silently received for the best instructor." Were Milton pressed to name the *second* most esteemed teacher through the ages, almost certainly he would have said Authority. *Areopagitica* is about more than religious truth: Milton's case for free expression depends in no small degree on his observation, repeated throughout the tract in a variety of figurations, that vitality is the defining quality of a political community, and that vitality cannot be maintained--stagnation will inevitably set in--if the prescriptions of Custom and Authority are allowed to go unchallenged. Milton's theology may be dated, or least unconvincing to most moderns, but his grasp of political dynamics should command our attention.

Milton is often thought of as a dreamer, but he valued highly the art of shrewd observation. He was a close student and admirer of Machiavelli and adopted the Florentine as his mentor on the subject of how to write history. The *Areopagitica* is couched in the argot of political realism: "to

sequester out of the world in Atlantic and Utopian polities which can never be drawn into use will not mend our condition," Milton states. Instead, he urges his countrymen to "ordain wisely ... in this world of evil." In Book VIII of *Paradise Lost*, the angel Raphael counsels Adam: "be lowly wise. ... Dream not of other worlds."

The lowly wisdom of *Areopagitica* is considerable. I have already recounted how Milton insists that the policy of licensing cannot be assessed without taking into account the capacities, incentives, working conditions, loyalties, and temperaments of the regulatory foot soldiers. He rests his case also on some practical observations regarding the dynamics of persuasion. "How can a man teach with authority," he asks, "which is the life of teaching, how can he be a doctor in his book," if what he presents to the public is known to be "under the tuition, under the correction of his patriarchal licenser ...?"

Milton realized how integral to authorship is the need to revise, and how the intrusion of a licenser can thwart the quest for the perfect word, the felicitous phrase, or the precise formulation. "The greatest melancholy and vexation that can befall" a diligent writer, he says, when improvements in analysis or exposition come to mind, is to delay publication and "trudge to his leave-giver" for each new revision, or else "lose his accuratest thoughts, and send the book forth" worse than it could have been. This may seem a parochial concern, born of Milton's boundless literary pride, but I think his recognition of the importance and fragility of discursive integrity counts as one of his most enduring insights.

He asserts the inevitable futility of censorship and notes the pressure for more severe measures that such futility begets. Each failed regulatory venture will lead, he predicts, to additional such efforts "as will make us all both ridiculous and weary, and yet frustrate." Still another practical feature of licensing he identifies is how responsibility for the censorial decision is often divided and accountability thereby evaded. This is a problem, we might believe, that also plagues the modern administrative state. "Sometimes," Milton says, "five imprimaturs are seen together dialogue-wise in the piazza of one title-page complimenting and ducking each to other with their shaven reverences, whether the author, who stands by in perplexity at the foot of his epistle, shall to the press or to the sponge." This metaphor employs Catholic allusions--elsewhere he describes licensers as "glutton friars"--and so might be read to state only a particular grievance. It is important to the argument in *Areopagitica*, however, that Milton accuses the new Presbyterian censors of being as overreaching and unaccountable, as "puffed up" as he puts it, as their precursors in Rome, Madrid, and Canterbury. "The episcopal arts begin to bud again," he laments, sounding like no one so much as Lord Acton.

Milton's observations concerning the corruptions of power deserve to be as numbingly familiar as they now are. No less valid, though less commonly acknowledged in the free-speech controversies of our day, is his point that public order, public morality, and mutual respect among citizens simply cannot be achieved by coercive legislation alone. Realistic, effective control of evil and disorder, says Milton, must depend heavily on "those unwritten, or at least unconstraining laws of virtuous education, religious and civil nurture." These, as Plato recognized, are "the bonds and ligaments of the commonwealth, the pillars and sustainers of every written statute." A government that looks down upon its citizens, that dares "not trust them with an English pamphlet," will see those bonds and ligaments atrophy. The new Parliamentary censorship Milton calls a reproach to

the common people, treating them as "giddy, vicious, and ungrounde . . . in such a sick and weak state of faith and discretion as to be able to take nothing down but through the pipe of a licenser."

Some of you might be tempted to respond that whether or not the people on the streets of London in 1644 were indeed "an unprincipled, unedified laic rabble" likely to stagger at "the whiff of every new pamphlet," as Milton berates the Presbyterian censors for assuming, the targets of today's demagogues answer well to that description. Never before, you might want to add, have the technologies of mass communication made the susceptibilities of audiences so dangerous. These objections have some force, I do not doubt. We must remember, however, that this is exactly the argument that gripped the regulators of Milton's day. Then the new technology of mass communication was the unlicensed pamphlet, printed in bulk, in the vernacular, no longer confined to abstruse theological disquisitions. The new audience consisted of Hobbes's masterless men, many of them previously illiterate sectaries apparently receptive to the most disruptive religious and civil nostrums. The guardians of public order doubted whether a war could be fought and a Reformation completed if the masses were subject to such unscrupulous manipulation. Milton believed, on the other hand, that the war could be fought and the Reformation advanced only by permitting the unsettling free thinking to flourish.

The disagreement was basic but it was not really empirical. Nor has it been in its many reenactments since Milton's time. There will always be demagogues; there will always be gullible masses; there will usually be new technologies; there will often be urgent and vulnerable social projects. How we resolve the great issues of freedom will not turn on how we calibrate the costs and benefits. The decision to embrace the freedom of speech is, as Milton well recognized, a decision to embrace a future that cannot be controlled or computed. In fact, observes Stanley Fish, the most incisive Milton scholar of our age but no kindred spirit in these matters, the future we embrace by protecting free speech we cannot even *describe*.

What we *can* say, and this seems to me the crux of *Areopagitica*, is that without a robust commitment to free-wheeling disputation, without what Jeremy Waldron has usefully termed "ethical confrontation" of the most pervasive sort, it is impossible to sustain an energetic, adaptive, vibrant society. Like Machiavelli before him, Milton was preoccupied with the question of political energy. He valued strength of will, acuteness of perception, ingenuity, self-discipline, engagement, breadth of vision, perseverance; he detested rigidity, stasis, withdrawal, timidity, small-mindedness, indecision, laziness, deference to authority. "I cannot praise," he says, "a fugitive and cloistered virtue, unexercised and unbreathed, that never sallies out and sees her adversary."

Responding to his own adversaries who were asserting the need for more order, more standards, more authority in the realm of religious inquiry, Milton scornfully describes the "fruits which a dull ease and cessation of our knowledge will bring forth among the people." "How goodly and how to be wished were such an obedient unanimity as this, what a fine conformity would it starch us all into! Doubtless a staunch and solid piece of framework as any January could freeze together." He excoriates the sentinels of orthodoxy for taking comfort in "the forced and outward union of cold and neutral, and inwardly divided minds."

"The greatest menace to freedom is an inert people." This statement comes not from Milton's pen

but from Justice Brandeis's great opinion in *Whitney v. California*. It would fit perfectly in the *Areopagitica*.

Milton's concern for dynamism and engagement might be viewed as still another product of his religious convictions. Active, alert, unremitting spiritual struggle was a fundamental tenet of Puritanism in all of its many varieties. But Milton's contribution--not his alone, but his most memorably--was in the degree to which he extended this ethic to the wider political realm. *Areopagitica* both begins and ends with the observation that while "errors in a good government and in a bad are equally almost incident," what distinguishes a wise ruler is the ability to perceive and correct errors, to accept criticism and to change. The epigraph, loosely translated from Euripides' *Suppliant Women*, proclaims that advice from private citizens can contribute to the process of governmental adaptation and self-correction.

A modern proponent of grass-roots democracy, an Alexander Meiklejohn perhaps, might want to draw from this part of Milton's argument a view of free speech as a fundamentally democratic procedure. That would be a mistake. Milton's interest in the forms of civil governance was no deeper than his interest in the forms of church governance, which is to say not deep at all. He favored whatever form he believed at the moment would most respect the principle of toleration. This might be in turn a mixed constitution in the ancient mode, a supreme Parliament broadly representative of the gentry class, a distinctly unrepresentative regicide Rump, or a Lord Protector with a New Model Army. He was not a democrat, except in the peculiar sense that he believed each citizen must exercise sovereignty over his own mind and must use that mind to help energize the society and hold its leaders accountable. In one of his regicide pamphlets, *The Tenure of Kings and Magistrates*, Milton does indeed argue that political authority derives from the consent of the governed. That hardly brands him as a devotee of participatory democracy, as the slightest acquaintance with the controversial literature of his day makes plain.

VI.

To find in Milton wisdom that can help us give meaning to the modern First Amendment, we needn't turn him into a skeptic or a democrat. It is enough that we appreciate him for what he was: a gifted and courageous writer, sympathetic to an aristocracy of merit, who explained in unforgettable prose how the freedom of speech can serve as a powerful force against political abuse and stagnation. Milton has little to teach us about truth or democracy but much to teach us about corruption, accountability, character, and vitality. In this respect, among major contributors to the First Amendment tradition, he has more in common with Madison than with Mill, more with Justice Black than Justice Holmes. To my mind, those affinities make him all the more worth reading today.

The liberal case for free speech has suffered in recent years from misplaced emphasis. Contemporary critics have rightly punctured extravagant claims for expressive liberty made in the name of truth and democracy. Some of these critics, flushed with forensic success, have produced their own "Atlantic and Utopian" schemes for regulating speech anew, this time on the side of the angels. The *Areopagitica* suggests, however, that one would have to "sequester out" of "this world of evil" to believe that the power to censor will ever be employed other than in a partial and vindictive spirit. It suggests also that political and social enervation--the collective weakening of aspiration, will, and taste for controversy--is the risk most to be feared from the regulation of

speech. Those messages of Milton's dated polemic remain timeless.
