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Freedom of Speech in the United States

Free speech theory in the United States is largely, although not entirely, a creation of the twentieth century.[1] To be sure, the very first Congress enacted the Bill of Rights, including the First Amendment, in its first session and the requisite supermajority of states quickly ratified virtually all of its provisions. Nevertheless, routine litigation of claims arising under the Free Speech Clause did not really exist prior to World War I.

Even after the Supreme Court began hearing and deciding free speech claims against both the federal and state governments, it was not until the Warren Court issued its landmark opinions in *New York Times Company v. Sullivan*[2] and *Brandenburg v. Ohio*[3] that the contemporary free speech orthodoxy took firm root in the collective consciousness of the legal and political communities. In more recent years, legal scholars, generally associated with Critical Legal Studies, Critical Race Theory, and Feminist Jurisprudence, have questioned the hierarchy of values advanced by free speech orthodoxy.[4] Those who support the Warren Court's expansive protection of the freedom of speech now face the challenge of justifying a judicial preference for free speech claims over efforts to promote social equality. Whether free speech should displace efforts to advance the project of creating and maintaining equal citizenship remains a hotly contested question.

One potentially useful way of thinking about the conflict between commitments to free speech and to equality would be to inquire into the first principles of free speech law; that is to say, why do we protect speech at all? Moreover, the question is even more complex than this rather simplistic formulation would suggest. The real question to be asked and answered is "Why do we protect some speech, but not other speech?" What leads courts to shield certain kinds of utterances from state suppression or from

engendering civil or criminal liability, while withholding comparable protection from other sorts of speech? Ultimately, one must have a theory of free speech that draws lines around protected and unprotected discourse in a rational, principled fashion. A serious commitment to the Rule of Law demands nothing less.[5]

In the balance of this chapter, I will discuss the two principal domestic theories of the Free Speech Clause, with attention to case law showing these theories in action. Although trends exist, the United States Supreme Court generally has failed to pursue a single vision of the Free Speech Clause, applying one theory or the other as the circumstances seem to warrant. This has resulted in a highly nuanced, although arguably unprincipled, free speech jurisprudence.

I. Competing Theories of the Free Speech Clause

Over the course of twentieth century and continuing into the twenty-first, two basic models of the First Amendment's Free Speech Clause have emerged: the marketplace of ideas metaphor and the democratic self-government paradigm. Both models have appeared in decisions of the United States Supreme Court, and both models enjoy significant support within the academic community. There are, to be sure, other frameworks for theorizing the freedom of speech.

Professor Frederick Schauer has observed that "[p]rescriptive theories abound" and include "[t]heories based on self-government," the "[s]earch for truth," and theories premised on "[p]ersonal autonomy and self-expression."[6] He notes, correctly, that "if there exists a single theory that can explain the First Amendment's coverage, it has not yet been found."[7] All theories, however, ultimately assume either an openness or hostility toward the basic proposition that government efforts to regulate "free speech" (however narrowly or expansively defined) are either presumptively legitimate or presumptively illegitimate. The democratic self-government and marketplace theories provide useful paradigms for this bipolar choice. One's view of whether government presents the greatest threat or constitutes an essential midwife to free speech should prefigure the overall persuasive force of one paradigm (free markets with little or no government regulation/intervention) or the other (government regulation designed to facilitate and enhance deliberative discourse is both constitutional and desirable).

A. The Marketplace of Ideas

Justice Oliver Wendell Holmes's great dissents in *Abrams*[8] and *Gitlow*[9] evoked the metaphor of a "marketplace of ideas" in which various ideas compete for acceptance within the community as a framing device for the freedom of speech. Justice Holmes best expressed this iteration of the underlying values behind the First Amendment in *Abrams*:

> [W]hen men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution.[10]

The marketplace of ideas understanding of the freedom of speech embraces an evolutionary process, not one predetermined by social, economic, or political results. As Justice Holmes explained, "[e]very idea is an incitement," and "[e]loquence may set fire to reason."[11]

The Holmesian marketplace of ideas conception of the Free Speech Clause broadly embraces John Stuart Mill's liberty ethic[12] and reflects an abiding faith in the capacity of reason to facilitate the sifting of wheat from chaff.[13] Citizens are free both to speak and to listen as they think best; truth is served by a free and full competition of ideas within the community, rather than by paternalistic state-sponsored efforts to protect citizens from the ill effects of bad ideas. At its best, the Holmesian view ensures that nondominant views are not squelched simply because they are different; thus, the Heaven's Gate cult[14] must enjoy the same right to hold and disseminate its beliefs as the Republican National Committee. Moreover, the competition of ideas within the marketplace of public opinion may result in virtually any set of social, economic, or political outcomes: "If in the long run the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way."[15]

The principal objection to this conception of the Free Speech Clause is that in practice it proves to be both overinclusive and underinclusive. It is overinclusive because it mandates the protection of "low value" speech, including both racist and sexually explicit speech.[16] The marketplace metaphor is also underinclusive because it permits the marginalization of speakers who lack the financial or political wherewithal to disseminate their views; market forces will drown out voices that deserve to be heard.[17]

These objections notwithstanding, the marketplace metaphor has proven durable, both at the Supreme Court and within the legal academy.[18] The theory has an intrinsic appeal because it is completely viewpoint neutral: The marketplace metaphor denies government the power to pick and choose which speakers shall be heard and which shall be silenced.[19] In a pluralistic nation populated by persons hailing from all points of the compass, government neutrality regarding the modalities and content of free expression arguably serves the citizenry very well.[20] The marketplace of ideas metaphor generally requires government to avoid making subjective value judgments about either the specific content of speech or the means of communication.[21] Alternative theories of the First Amendment require government officials (whether legislators, executive branch personnel, or judges) to make inherently subjective determinations about the nature of particular speech activity: For instance, is the speech political, and does it properly relate to the project of democratic self-governance?[22]

Of course, definitional difficulties haunt the marketplace metaphor too. Is flag burning speech or conduct?[23] Does nude dancing come within the protection of the First Amendment?[24] Should commercial speech enjoy the same First Amendment protection as noncommercial speech?[25] The resolution of these questions involves the exercise of judgment, which necessarily includes an element of subjectivity.[26] Even if one makes this concession, however, the marketplace metaphor offers a powerful and internally coherent account of the First Amendment and its role in facilitating the free exchange of ideas and information.[27]

B. Enhancing Democracy

Alexander Meiklejohn forcefully articulated the leading alternative account of the First Amendment.[28] In his view, the free speech guarantee of the First Amendment exists principally to facilitate democratic self-governance. Invoking the metaphor of the town hall, Professor Meiklejohn argued that the First Amendment required not that all opinions be heard but, rather, "that everything worth saying shall be said."[29] Meiklejohn's theory of the First Amendment has attracted a distinguished following of

legal scholars, including Professors Harry Kalven, Owen Fiss, and Cass Sunstein.[30]

Meiklejohn's theory of the First Amendment tolerates government action aimed at ensuring that "everything worth saying" gets said. For example, if concentrations of wealth or limited access to the electronic media muzzled important voices within the community, the government could adopt measures aimed at leveling the playing field, including limitations on the use of wealth to disseminate a particular idea or advocate the election of a particular candidate.[31] Likewise, government could adopt regulations aimed at enhancing the relative voice of minorities within the community to ensure that citizens hear and consider all relevant viewpoints.[32]

The Meiklejohn theory of the First Amendment emphasizes Justice Brandeis's linkage of the Free Speech Clause to free and open democratic deliberation in his concurring opinion in *Whitney v. California*.[33] Unlike Justice Holmes, Justice Brandeis espoused a functional view of free speech:

> Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. . . . They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.[34]

For Justice Brandeis, "the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies" and "the fitting remedy for evil counsels is good ones."[35] In Justice Brandeis's view, freedom of speech facilitates democratic self-government by generating open discussion of matters of public concern.[36]

Under the Brandeis approach, the deliberative process is a means toward the end of effective self-government. Accordingly, bad ideas or proposals should receive a full and free airing unless they present an immediate and palpable threat to the community. As Justice Brandeis puts it, "[i]f there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."[37]

This instrumentalist view of freedom of speech differs significantly from the Holmesian marketplace paradigm.[38] For Justice Holmes, free speech is an end in itself, not a means to some other good.[39] Although Holmes's approach ostensibly seeks truth, "truth" in the Holmesian tradition is socially constructed by operation of the market; hence, if Marxist socialism proves sufficiently persuasive to enough voters, its tenets must be true.[40] In addition, socially constructed truth is valid only within a community that shares a common set of premises. Thus, for members of the Heaven's Gate cult, the Hale-Bopp Comet represented an intergalactic taxicab—although the general population did not concur in this assessment of the available data.

Under the Holmesian approach, the First Amendment requires tolerance of speech activity literally "fraught with death" absent a clear and present danger of serious harm, harm so grave that "an immediate check is required to save the country."[41] To the extent that Justice Holmes endorsed a functional role for free speech, it is the relation of free speech to the search for truth that is paramount, not the relation of free speech to good government.[42]

Although the primary exponents of the Meiklejohn theory of the First Amendment tend to be Civic Republicans (like Professor Cass Sunstein) or traditional liberals (like Professor Owen Fiss), the theory has attracted an eclectic following. For example, former Judge (and then-Professor) Robert Bork has embraced Meiklejohn's argument that the First Amendment should protect only political speech.[43] Needless to say, Bork is far from liberal in his views.[44]

The main attraction of Meiklejohn's theory is that it provides a plausible rationale for protecting speech over other important values, such as equality. When the Ku Klux Klan marches down the streets carrying banners proclaiming racist, sexist, or homophobic messages, the community's commitment to equality suffers.[45] The Meiklejohn theory supports the Klan's right to speak not on a libertarian basis (i.e., people have the right to be racists if they so choose) but rests, instead, on the notion that such activity assists the community in deciding who should govern and what rules should apply to the community (i.e., given the existence of these racist viewpoints, perhaps affirmative action remains a necessary social policy).

The Meiklejohn theory both recognizes and celebrates the inexorable connection between a functioning democracy and freedom of expression. As Professor Robert Reich has explained, representative government requires an active and ongoing debate to legitimate the public policy choices advanced by those holding office:

> Democracy requires deliberation and discussion. It entails public inquiry and discovery. Citizens need to be actively engaged. Political leaders must offer visions of the future and arguments to support the visions, and then must listen carefully for the response. A health-care plan devised by Plato's philosopher-king won't wash.[46]

The Meiklejohn theory is both optimistic (for it posits that meaningful self-government is possible) and pragmatic (for it acknowledges that achieving and maintaining a participatory democracy will not be an easy task).

The Meiklejohn theory's most significant drawback is its inability to provide a cogent rationale for protecting speech unrelated to politics or self-governance.[47] Meiklejohn himself argued that scientific and artistic expression is necessary to enable people to make wise political decisions and therefore should be deemed protected.[48] The arts and sciences, however, constitute positive social goods and ought to be (and are) valued for themselves.[49]

C. Other Competing Theories of the Free Speech Clause

In deciding particular cases, federal courts have relied on a variety of theories that help to explain or justify the protection of speech activity. Most of these theories can be traced to two basic frameworks. That is to say, free speech theories inevitably espouse either a market-based approach to the subject (Holmes) or a public-good-based approach (Meiklejohn and Brandeis).

Market-based theories tend to associate the freedom of speech with facilitating conditions conducive to the attainment of private goods by individual citizens without much regard for the social costs of such activities. The individual may exercise her free speech rights in the pursuit of truth, to enhance personal autonomy, or to facilitate self-realization. An individual citizen might well use free speech to advance truly awful substantive

ends (such as racial discrimination) without transgressing the limits of the right.

Moreover, the state should not attempt to censor speakers absent extraordinary circumstances. The autonomy values advanced by the Free Speech Clause outweigh all other social concerns. If pressed, adherents of these approaches would probably concede that their faith in markets might be overstated, but they would argue that it represents a better alternative than faith in a censorial government. But, as Professor Martin Redish has explained, "[w]ere those in power able to selectively restrict private expression on the basis of the government's normative view of the positions expressed, the entire governing process would be seriously distorted and society's initial commitment to democracy threatened."[50]

Public-good-based approaches to the freedom of speech generally condition the protection of particular speech to a persuasive relationship between the expression and another governmental policy objective. Free speech is not an end in itself but merely a useful tool for advancing other, state-identified objectives (such as empowering subordinated groups within the community, or advancing "good governance").

Professor Redish aptly has observed that "[s]cholars and jurists have never achieved anything approaching unanimity on either the values served by the First Amendment guarantee of free expression or the doctrinal principles necessary to implement those values."[51] It is therefore not surprising to find that legal scholars (and sometimes courts) have offered up many variations on the basic marketplace and democratic self-governance theories of the Free Speech Clause. These include related, but distinct, theories such as libertarian approaches tying free speech to self-realization or personal autonomy,[52] theories that protect speech of a dissenting cast,[53] and more practically oriented theories that justify privileging free speech as a kind of social-safety valve that permits disgruntled political minorities to vent without resorting to acts of violence.[54] The degree to which particular speech activity advances these or other court-identified interests prefigures the amount of protection that the speech will receive.

Notwithstanding the prevalence of free speech theories relying on the content of the speech to determine the appropriate scope of First Amendment protection, some scholars and jurists have interpreted the First Amendment's free speech clause as representing a kind of absolute value that cannot be compromised.[55] These scholars take the position that free speech and the values it represents are a preferred freedom, a constitu-

tional value that constitutes a "first among equals." From this perspective, free speech values cannot be compromised in order to serve other important values (even constitutional values), no matter how socially or politically desirable.

Most recently, these scholars have questioned campus speech codes and the recognition of hostile work environment claims under Title VII. They argue that such speech regulations have the effect of censoring free speech in the workplace and on college campuses and, therefore, should be deemed unconstitutional.[56] Based on the First Amendment values mentioned above, their basic argument is that the value of free speech trumps society's efforts to achieve racial and gender equality. They assert that the constitutional protection accorded to the freedom of speech simply reflects the benefits that society reaps from the free flow of information and exchange of ideas. Moreover, adherents of this approach to free speech questions believe that these benefits easily outweigh any costs that society incurs by permitting hurtful or even affirmatively dangerous ideas to circulate freely.[57]

A reasonable person might find it difficult to understand precisely *why* free speech concerns should always and routinely take precedence over society's efforts to eliminate various forms of discrimination. When weighing the social values implicated by permitting greater access to jobs on an equal basis to all members of society and the right to display the most graphic forms of pornography in the workplace, it hardly seems unreasonable to conclude that an individual's right to work might, under some circumstances, displace another individual's right to free expression.[58]

Similarly, informing a young college student that he cannot wear a T-shirt bearing a sexist message in the university library does not seem seriously to threaten core speech values. Such a conclusion appears eminently reasonable if, as a society, we value the ability of all students, male and female, to have an equal opportunity to receive an education and to use the university's library. After all, as authors like Professors Richard Delgado and Mari Matsuda have noted, equality is a constitutional value too, reflected in the text of both the Fourteenth and Thirteenth Amendments.[59] As a matter of logic and text, equality of the sexes and races stems from the Fourteenth Amendment, a later-in-time provision that modifies earlier constitutional provisions, presumably including the First Amendment.[60]

Despite the existence of a dedicated corps of free speech absolutists, most constitutional theorists agree that the government must be permitted to limit some forms of speech.[61] "[T]he First Amendment does not guarantee an absolute right to anyone to express their views any place, at any time, and in any way they want."[62] Indeed, even the Founding Fathers, in writing the Bill of Rights, probably envisioned some limits to the right of free expression.[63] This is not to say that not all statements are speech but, rather, that not all statements are protected speech. For example, even the relative absolutists would permit the criminalization of fraud, even though the fraud involves speech activity. Likewise, few would suggest that laws criminalizing threats against the life of the president violate the Free Speech Clause, or that the First Amendment protects your right to "joke" with airport security about explosive materials in your luggage.[64] As Professor Stanley Fish has explained, any plausible theory of free speech requires significant line drawing.[65] Whether the line drawing constitutes a principled or political exercise is largely in the eyes of the beholder.

II. The Supreme Court's Choice

Despite the ardor of the Meiklejohn adherents and the cogency of their arguments, the Supreme Court has, for the most part, rejected their vision of the First Amendment. Take, for example, the case of dial-a-porn services. It is difficult to fathom how the dial-a-porn industry or its services further democratic self-governance. On the contrary, one could make powerful arguments that pornography—regardless of its precise form—debases society and inhibits the creation of a polity capable of rational self-governance.[66]

Nevertheless, in *Sable Communications v. FCC*,[67] the Supreme Court held that dial-a-porn services enjoy significant First Amendment protection.[68] The outcome reflects the Supreme Court's rejection of the idea that entertainment lacks any serious claim on the Free Speech Clause.[69] This result is inconsistent with the Meiklejohn theory of the First Amendment, whether explicated by Fiss, Sunstein, Bork, or Meiklejohn himself.[70] On the other hand, the result comports nicely with the Holmesian marketplace of ideas model. If citizens wish to talk dirty to one another over the telephone, so be it; the government cannot prohibit such communications, however meager the civic value of such speech activity.[71]

The Meiklejohn theory of the First Amendment also is difficult to square with the result in *44 Liquormart, Inc. v. Rhode Island*.[72] In *44 Liquormart*, the Supreme Court held that the First Amendment protected the right of liquor stores to advertise their prices, notwithstanding Rhode

Island's objection that price-based advertising would tend to promote active price competition among retailers, result in lower prices to consumers, and thereby increase the consumption of alcohol among its citizens.[73]

Rhode Island asserted, reasonably enough, that the social ills associated with the consumption of alcohol justified restrictions on alcohol advertising.[74] Under the Meiklejohn theory of the First Amendment, Rhode Island should have prevailed: Advertising alcohol does nothing to enrich civic life, encourage active citizenship, or otherwise improve the overall state of well-being of the community. On the contrary, alcohol advertising, like cigarette advertising, is likely to impose significant social costs on the community. Advertising of this sort tends to generate increased consumption of alcohol because of both increased public awareness of its availability and lower prices.[75]

In this respect, the Supreme Court's decision in *Posadas de Puerto Rico Association v. Tourism Company,*[76] which sustained Puerto Rico's ban on casino advertising, better comported with the Meiklejohn theory of the First Amendment. Speech that does not directly or indirectly benefit the community by facilitating its ability to oversee the government is outside the First Amendment's free speech guarantee.[77]

Notwithstanding its earlier precedent in *Posadas,* the Supreme Court struck down the Rhode Island prohibition on price advertising, noting that Rhode Island could directly regulate the sale of alcohol but could not regulate speech associated with the sale of alcohol: "[A] state legislature does not have the broad discretion to suppress truthful, nonmisleading information for the paternalistic purposes that the *Posadas* majority was willing to tolerate."[78] Speaking for a plurality of four Justices, Justice Stevens emphasized that "the First Amendment directs that government may not suppress speech as easily as it may suppress conduct, and that speech restrictions cannot be treated as simply another means that the government may use to achieve its ends."[79] This approach to protecting commercial speech incorporates and reflects the Holmesian speech ethic.

Subsequent decisions have confirmed the Supreme Court's near-complete abandonment of *Posadas.*[80] The new general rule requires government to refrain from regulating speech if the government can achieve its objectives through the use of direct regulations or taxation.[81] Although the result in *Posadas* enjoyed substantial support in some quarters,[82] the Supreme Court's repudiation of the precedent reconfirms the ascendancy of the marketplace of ideas conception of the freedom of speech.

All of this is not to say that the Meiklejohn theory of the First Amendment has failed to influence the Supreme Court at all. On the contrary, the Supreme Court has embraced Meiklejohn's assertion that freedom of speech is intertwined inextricably with the project of democratic self-government; thus, the Supreme Court from time to time has noted that political speech is at the "center" or "core" of the First Amendment. In *New York Times Co. v. Sullivan,* for example, Justice Brennan's opinion for the majority essentially embraced Meiklejohn's argument that freedom to criticize the government is crucial to the proper functioning of a democracy.[83] Similarly, in cases involving "low value" speech, such as nude dancing or dial-a-porn, the Supreme Court has carefully distinguished marginal speech activities that lie at the "outer perimeters of the First Amendment"[84] from political, artistic, and scientific speech.

Finally, the Supreme Court's refusal to afford obscene materials[85] or materials featuring nude depictions of children[86] *any* First Amendment protection, and its decisions affording erotic nude dancing only minimal protection,[87] depart substantially from a pure market-based approach to enforcing the Free Speech Clause.[88] If the Justices were absolutely committed to the marketplace metaphor, graphic sexual depictions of children should be no less protected than a "Vote for Kerry" bumper sticker. The fact that government enjoys a relatively free hand when regulating child pornography precludes an unqualified claim that the Supreme Court invariably and reflexively abjures communitarian understandings of the Free Speech Clause. But these exceptions simply demonstrate the more general rule: in most cases, most of the time, the United States Supreme Court embraces and enforces the marketplace theory.[89]

Thus, the Supreme Court's approach essentially adopts aspects of both the Holmesian and Meiklejohn theories of the First Amendment. The Supreme Court has embraced both the marketplace metaphor and the notion that political speech is a special concern of the First Amendment. Its decisions also have recognized that the First Amendment protects individual autonomy, even when individuals or corporations elect to exercise that autonomy in ways inconsistent with the best interests of the community (or, for that matter, their own best interests). Cases like *Stanley v. Georgia,*[90] *Sable Communications,*[91] and *44 Liquormart*[92] reflect the Supreme Court's willingness to vindicate individual liberty, even at the expense of the community. The government, rather than self-interested private actors, presents the most pressing threat to free speech values.[93] In this way, it has maintained the Holmesian tradition of liberty.

At the same time, the Supreme Court has signaled its basic agreement with Meiklejohn's larger thesis. While embracing the marketplace metaphor, the Supreme Court has endorsed the proposition that political speech and speech that otherwise facilitates democratic self-governance enjoys the most robust First Amendment protection, a degree of protection more demanding than that applied to other forms of speech activity. Unlike Judge Alex Kozinski and some others in the law and economics movement,[94] the Justices have rejected the argument that all speech is of equal value for First Amendment purposes.

Under a pure market-based approach to the First Amendment, speech should be treated the same regardless of its content. Its success or failure would be a function of its ability to persuade. A flyer for a Macy's Labor Day sale, or an erotic picture of a six-year-old child, should receive no more, and no less, First Amendment protection than a flyer for a candidate for political office.[95] To date, however, the Supreme Court has maintained a dichotomy between political speech and other kinds of speech activity.[96]

There is, to be sure, a pronounced trend toward the marketplace metaphor in contemporary Supreme Court cases. Increasingly, the Holmesian view seems to be in ascendancy.[97] But the defenders of the Meiklejohn theory have not ceded the field just yet.[98]

III. Conclusion

As Professor Sunstein has noted, the Holmesian and Meiklejohn theories of free expression reflect a genuine dichotomy: results in concrete cases will differ depending on which theory the reviewing court embraces.[99] The United States Supreme Court's failure to make a firm choice may reflect an ambivalence about the proper role of the freedom of speech in a pluralistic society. At the same time, an examination of the free speech case law in other countries will demonstrate that a society's choice between the Holmesian and Meiklejohnian visions of the First Amendment may well be a function of its sense of community and shared values.

An examination of the free speech case law in Canada, Germany, Japan, and the United Kingdom should shed light on the relative strength of the Holmesian and Meiklejohnian accounts of freedom of speech. Moreover, this exercise should lead to a better understanding of the implicit values reflected in the United States Supreme Court's partial embrace of both

theories. It might even suggest a proverbial "third way," an approach to freedom of speech that rejects both accounts in favor of some other set of values.

Socrates admonished that an unexamined life is not worth living.[100] So too, a circular jurisprudence that posits its own conclusions as justifications is intellectually indefensible. With the onslaught from both the left and the right,[101] traditional free speech advocates in the United States must be prepared to make their case persuasively within the academy, to the courts, and to the citizenry.[102] In the end, advocates of strong First Amendment protection for free expression will prevail only if we can offer compelling rationales for elevating speech over other important (constitutional) values, such as equality, civility, or comity within the community. Consideration of free speech traditions in other industrial democracies that have self-consciously embraced freedom of speech as a core social value will better prepare those who support freedom of speech here in the United States to meet both the present challenges and those that lie ahead.