

*Speciale*

## Forside til specialet

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**Freedom of Expression in the Modern Age of Information:  
- Hate Speech and Political Correctness**



*“If liberty means anything at all, it means the right to tell people what they do not want to hear.”*

- George Orwell

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## Abstract

I de foregående år er ytringsfrihed igen blevet en vigtig samfundsdebat, som nu ikke længere blot beror sig på friheden til hverdagslige politiske samtaler men også på internettet. Dette speciales hovedformål har været at undersøge ytringsfrihedens tilstand, med USA som centrum samt Storbritannien og Canada i kredsløb. Specialets analyse søger at afklare, hvorvidt og hvordan ytringsfriheden er truet eller forsvaret i vores nye informationsalder ved bl.a. at analysere krænkeleskulturen og den politiske korrekthedsindflydelse på de Amerikanske universiteter. Tilgangen er en ”for” og ”imod” skildring af argumenterne, som bliver bedømt på moralsk filosofiske sondringer samt en lovgivnings- og kulturforståelse. Herfra forstatter analysen til nærliggende områder af relevans for ytringsfrihedens eksistens, som politisk vold, hate speech og sociale medier. I sine spædeste år har internettet været forudsagt at indlede en guldalder for ytringsfriheden. Specialets analyse undersøger, hvordan politisk pres og skandalesager har medført omfattende ændringer til sociale medier og søgemaskiner. Tech-virksomhederne udvikler censurretskaber og bliver pålagt ansvaret for god tone og politisk korrekte budskaber af staten og aktivistgrupper. Specialet kategoriserer internettet for det nye ”offentlige torv”, som har overtaget taleren på sæbekassen og skabt kommunikationsmuligheder så banebrydende, at det bedst kan betale sig at føre debat online. Efter første del af analysen påviser, hvor og hvordan ytringsfriheden er truet, påbegynder en undersøgelse af ytringsfrihedens forfædre Baruch Spinoza og hans værk *Tractatus Theologicus-Politicus* samt John Stuart Mills værk *On Liberty*, som begge er populært betegnet for de mest toneangivende indenfor den filosofiske debat af ytringsfrihedens nødvendighed. Her findes i analysen de filosofiske argumenter for ytringsfriheden, som vha. Quentin Skinners kontekstualistiske fremgangsmetode forsøger at belyse de filosofiske artikulationers kontekst og bevise om de stadigvæk holder vand i moderne kontekst. Specialets konklusion fastlår, at ytringsfriheden er truet i en ny politisk, polariseret kultur med hate speech og vold samt Tech-virksomheder, som begår censur. Argumenterne fra Spinoza og Mill bygger hovedsageligt på menneskets natur, som gør det umuligt at censurere og medføre uundgåeligt et opgør. Specialet påviser, at det bedste for samfundets fremtid og stabilitet er mere ytringsfrihed ikke mindre.

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## Introduction

Freedom of expression is widely regarded as central to human rights. This right is formally recognized by The Universal Declaration of Human Rights, declared by the General Assembly of the United Nations in 1948, under article 19: *“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”*<sup>2</sup>

Despite this human right formally recognized by international law, the issue of freedom of expression is today considered by some to be under attack. If you look back through the tumultuous history of our forefathers, where freedom of expression did not exist, or if so, very limited by state censorship – we should consider ourselves to be living in the golden age of freedom of expression. Most people in the world, who own a computer or a smartphone with internet access, can easily enter any website and receive or impart information. Never before in the history of mankind has this been possible.

However, according to former Attorney General Jeff Sessions, who spoke at Georgetown University Law Center in 2017 on the issue of Free speech: *“Freedom of thought and speech on American campus are under attack. The American university was once the center of academic freedom, a place of robust debate, a forum for the competition of ideas. But it is transforming into an echo chamber of political correctness and homogeneous thought, a shelter for fragile egos.”*<sup>3</sup> The often controversial topic of *political correctness* has spread the notion that groups and individuals have a right not to be offended. Most people wouldn’t hurt to be more nice to each other, but if not being offended, can constitute a “right”, then to what degree does this trump the right to expression? Furthermore, being offended is a subjective feeling, and therefore may vary from person to person. It would also seem near impossible for policymakers to legislate anything that wouldn’t be very difficult to police. And in what quantity would the right not to be offended supersede the right to free expression? It’s impossible to say anything of meaning to a thousand people, without someone disagreeing with it. And if we define offensive material in subjective terms, that could easily exclude just about anything of substantial meaning.

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<sup>2</sup> United Nations 1948, Article 19

<sup>3</sup> PBS NewsHour 2019

We know from past experience, that offensive religious material, also referred to as blasphemy, can be a real powder keg. When the Danish newspaper *Jyllands-Posten* published their 12 caricatures of the prophet Muhammed in 2005, a massive uproar from the Islamic community around the world voiced their anger at this offensive expression. A similar but deadly instance was the Charlie Hebdo attack in Paris which occurred in January 2015. Two Islamic terrorists shot and killed 12 people working at the offices that produced caricatures of the prophet Muhammed. A rallying cry across the world, “Je suis Charlie”, staunchly proclaimed that freedom of expression would not submit to extremism.

One can also observe an encroachment on freedom of expression from the legislative branch, in the form of Hate speech laws. The first hate speech law drafts were formulated by the UN in 1947 and originally only defined these, as the *incitement to violence*, based on race, religion or nationality. But in large part thanks totalitarian socialist states and third world authoritarian regimes, *incitement to hatred* was also included as a limitation to freedom of expression and thus imposing these laws onto the liberal west.<sup>4</sup> Today, hate speech laws have also become increasingly connected with the subjective feeling of being offended, and has thus widened the scope of what constitutes hate speech.

Likewise on social media, the spreading of misinformation with the intent of political influence is rampant. In a bid to counter the spread of fake news, many social media platforms are removing content they deem fake, in most cases at the behest of politicians. Facebook for example, now use a third-party “fact-checking” organization that deem the authenticity of content and can limit the outreach or remove the content and its creator effectively.<sup>5</sup> Sites such as Facebook are where most of the modern day political debate takes place. To a large degree, they have replaced the Town Hall discussions of past decades. It would be a slippery slope for these sites to have sole authority over who can part with information and who can receive it, without any legal requirement to respect freedom of expression.

The creative destruction of our current social fabric by social media underlines potentially huge and imminent changes to everyday life. The overarching nature of political correctness as propagated through universities and students either present a cultural shift towards the protection

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<sup>4</sup> Mchangama 2010, p. 2

<sup>5</sup> Lauritzen & Stjernfelt 2018, p. 110

of wellbeing and inclusion or a *guise* for power at the cost of freedom. Despite the uncertainty of the future, we can always draw knowledge from history and from that knowledge we may venture a guess as to what lies between the *Nexus* of social media, universities and culture.

### **Reason of Interest**

For the most part, it has become extremely easy, due to social media, to impart with information and likewise to receive it. The utopian idea of the late 1990's was that the internet would be a free speech sanctuary for everyone.<sup>6</sup> Every year, a new corner of the world is connected to the, brining millions of people into the common ground of the internet. Millions of people, whose ideas and traditions are different than western liberal Judeo-Christian traditions.

With the world becoming more globalized and interconnected, the incidents of the *Muhammed caricatures* suggest that the whole world cannot live together under the same roof if differences are not accounted for. So at what point supersedes an individual's right to toleration and respect that of anyone's right to freedom of expression? Should liberal ideas of free speech continue as the foundation for global communication? And to what degree are we required to protect our democratic institutions and electoral processes from the spread of fake news by extremists or foreign meddling?

These questions naturally prompt the historian to ask; why do we have this freedom in the first place? What are the classical arguments for freedom of expression? We know it's important, and it sits firmly rooted in our constitutions, but since many of us today, have never experienced what it means to live in a society without this freedom, we might be inclined to think we can discard it.

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<sup>6</sup> Lauritzen & Stjernfelt 2018, p. 29-30

## **Problem Statement**

*Centered on western liberal powers as the object of interest, it will be examined if to what extent and how, Freedom of Expression is either endangered or fortified, in a new digital and political age.*

*What are the classical liberal arguments for Freedom of Expression in the age of enlightenment, why was there a necessity for this freedom in the first place and what are the popular limitations to this freedom?*

*On the basis of subsequent findings in light of the above stated questions: are the present and classical arguments applicable?*

The societies in focus are in broad terms defined as ‘western liberal powers’ but this label does not account for the vast differences both culturally and legislatively among the many countries of this origin. The focus of this paper will be the United States of America as the center of gravity. The American universities are ground zero for the current political battles taking place in regards to freedom of expression and the majority of tech-companies are located in Silicon Valley. In the adjacent orbit of the US, this paper will also look into Canada and the United Kingdom, who between themselves share common origin and are also increasingly relevant in the battles centered on freedom of expression.

Up to this point; the paper has identified political correctness and hate speech laws as limitations to Freedom of Expression and will thus be examined further. Social media and search engine tech-companies are becoming increasingly active in moderating their platforms for fake news, hate speech and extremism and thus deeming who has a place in the new town square. Therefore focusing on platforms such as Facebook, Twitter, Google and YouTube for the analysis of the digital sphere of our current age would seem as the ideal candidates.

Political battles usually take place on the streets. More specifically; there have been a lot of recent events on college campuses, either protesting for or against freedom of expression. One such example of this would be the cancellation of the conservative provocateur Milo Yiannopoulos at UC Berkeley in 2017, after protesters caused massive property damage.<sup>7</sup> Much of this debate has consistently been acted out on college campuses, where student activists take

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<sup>7</sup> Svrluga 2019

up ideological battles and act them out, much like the past free-speech movements of the 1960's. In analyzing freedom of expression in our current political age, this paper will primarily focus on the American college campuses where we will examine the many cases of freedom of expression being stifled

After analyzing the state of freedom of expression in today's society, it will be imperative to understand its roots. Why was freedom of expression argued in favor of, what were the societal challenges that brought it about, what were its popular limits? To answer these questions, the paper will examine the arguments for freedom of expression as articulated by Baruch Spinoza and John Stuart Mill who both wrote the bedrock principles of this freedom.

In summation of this analysis, the paper will discuss and evaluate the arguments on their merit from both utilitarian and deontological perspectives. On the basis of this discussion, the paper will conclude if freedom of expression is truly harmful or as a venting mechanism to prevent societies from boiling over? Subsequently the paper will attempt to answer if and how both perspectives can be united or not.

### **Clarification of Concept**

The concept of freedom of expression is an umbrella term that covers the rights of any group or individual to freely articulate their ideas or beliefs through any medium of expression, without the fear of reprisals or censorship by another group, individual or the state. The concept of freedom of expression does not only constitute what a person can say but also what one may write, paint, create or do as a form of expressing their ideas or beliefs. Moreover, freedom of expression also ensures a person can freely seek information, as well as part with it.

Freedom of expression is by many considered to be the freedom that secures all the other freedoms. The freedom to criticize the government, freedom of religion, speech, press and assembly are all covered under freedom of expression.<sup>8</sup> This paper will generally use the term '*Freedom of Expression*' over the more commonly used term of '*Free Speech*', unless the latter term is referenced directly.

Defining freedom of expression is legally complex around the world as well as within liberal democracies. Freedom of expression is usually regarded as a negative freedom, in so far as it

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<sup>8</sup> FFI 2019

exists without the interference of the state but it also has positive attributes of freedom, such as police protection at the threat of violence. The popular arguments for freedom of expression also have limitations, and it is these limitations that may vary depending on national legislation. (This paper will discuss the popular arguments for freedom of expression in a later chapter.) In the UK, freedom of expression is limited, among others, by the Public Order Act, which forbids expressing or distributing material which might stir up racial hatred anywhere, except within a private dwelling. In the US, the case of *Brandenburg v. Ohio* in 1969, constituted a precedent, where Ku Klux Klan members marched and held speeches and proclaimed “*revengeance*” against Jews and Blacks in the country. The Supreme Court held, and created the principle, that states are not allowed to forbid speech that proscribes the advocacy or use of force or of law violation, unless it produces imminent danger.<sup>9</sup> Thus it is clear, that despite the long shared history of culture, religion and political philosophy between the UK and the US, their interpretation of freedom and its limitations differ considerably.

Another aspect is that the state of freedom of expression is not solely formed within the framework of national or international legislation, but also from the dominant culture of a society. The notion of what is “taboo” or considered “obscene” can also effectively put a limitation on freedom of expression.

This allows us to distinguish between two approaches to limiting freedom of expression through the means of legislation and cultural “oppression” by a homogenous cultural majority. This distinction is important, because it’s entirely different to call for legislation limiting freedom of expression than it is to create a culture that seeks to problematize certain expressions on the basis that they are ill favored.

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<sup>9</sup> United States Supreme Court 2019

## **Outline of the Thesis**

The aim of the thesis is to answer the three pronged question if and how freedom of expression is endangered or fortified in our present time, what are the classical arguments for freedom of expression in the first place, and on the basis of this, are our present day need for freedom of expression comparable to the Age of Enlightenments, are our situations applicable?

The thesis will begin with the research review, which aims to establish the broad arguments, for and against freedom of expression in modern academic circles. This is to better understand the groundwork of ideas that are fueling the political battles of today. After that, the thesis will move on to the theory and methodology chapter, which will begin with explaining the contextual approach by Quentin Skinner. The thesis will also introduce the philosophical theories of Utilitarianism and deontology. Subsequently the thesis will use these theories along with a law and culture distinction, which will form an axis that will help the thesis pinpoint where to place the arguments. The chapter will end with an explanation to the thesis methodological approach to sources and literature.

The thesis analysis is broken down into two parts, each respectively to the problem statement. The first half of part 1 will deal with the political battles of today, on colleges and in everyday life of society at large. The second half of part 1 will examine freedom of expression in the digital sphere, with social media tech-companies, the worries of politicians, search engine manipulation studies and internal leaks. Part 2 of the analysis will answer the problem statements second question and examine the classical arguments by Baruch Spinoza and John Stuart Mill. The thesis has chosen *Tractatus Theologicus-Politicus* and *On Liberty*, as the most important works, respectively, by these two influential forefathers to our freedom of expression.

This will lead to the final part of the analysis and discussion, wherein the present day arguments and their context will be compared with the arguments and context of the past philosophical thinkers. Are they applicable? In the conclusion, the thesis will also answer what the diagnosis for freedom of expression is in our current time.

## Research Review

This research review will seek to clarify and outline the debate currently taking place on the issue of freedom of expression. Primarily, it will be necessary to draw the contours of the opposing arguments. The purpose is to more clearly illustrate the “battlefield” as it were, of who argues what and why. There is obviously no unison on either side, so they will broadly be defined as *for* and *against*. For – refers to an advocacy in favor of freedom of expression, and against refers to the advocacy of limiting freedom of expression in one way or another.

This approach to the research review seeks to introduce the dominating arguments for and against freedom of expression. The objective is to acquaint the reader with these arguments, in order to develop a bird-eye-view of the battlefield, before diving in to the analysis.

The research review will begin with the camp opposed or seeking to limit freedom of expression.

## Against

There is a broad range of reasoning behind those who argue against freedom of expression; some are grounded in ideology and some are grounded in an inclusive idea of progressivism. This chapter focuses on the mainstream arguments, wherein freedom of expression is important, but not prioritized, like the faculty members at the liberal arts College Wellesley in Massachusetts. The faculty members protested in an email to the faculty community in 2017, that several controversial speakers at the college “*with controversial and objectionable beliefs have presented their ideas at Wellesley*” and that these ideas put the students “*... in distress as a result of a speaker’s words...*” Furthermore, the faculty members argued that a speaker should not be valued on their credentials but standing in their discipline. “*...arguments pertaining to race, ethnicity, sexuality, religion, and other identity markers are equally inappropriate.*”<sup>10</sup> This attempt to insulate the students from inappropriate ideas is argued on the basis of the emotional distress and instability these speakers inflict on students and thus inflicting harm. Moreover, the faculty members argue that controversial speakers may offend the disempowered, which imposes on their liberty.<sup>11</sup> In the letter, the faculty members cite the African-American historian Jelani Cobb who has noted on the issue of liberty and free speech: “*The freedom to offend the powerful is not equivalent to the freedom to bully the relatively disempowered. The enlightenment*

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<sup>10</sup> FIRE 2019

<sup>11</sup> Ibid.

*principles that undergird free speech also prescribed that the natural limits of one's liberty lie at the precise point at which it begins to impose upon the liberty of another."*

The latter part of the quote refers to the popular *harm-principle* argument. The first part ties into the *intersectionality* framework, a term originally coined by Kimberlé Crenshaw (KC). KC is a professor of law at Columbia Law School and University of California<sup>12</sup>. Her 1989 work:

*Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, is the corner stone of intersectional theory. The theory of intersectionality studies the intersection of disenfranchised and minority groups based on race, gender, sexuality, class and religion and how these are all tied together and contribute to systemic oppression. This creates a hierarchy of oppression, which validates the experiences of a gay black male over a straight white male. Moreover, intersectionality attempts to create a language that *"is critical of the dominant view and which provides some basis for unifying activity. The goal of the activity should be to facilitate the inclusion of marginalized groups for whom it can be said: "When they enter, we all enter."*<sup>13</sup>

Intersectional theory can best be described as a framework to unify marginalized groups and to join cause with each other. The link between the theory of intersectionality and the rationale behind the linear class struggle viewpoint that is Marxism - is clearly identifiable. Much like Marxist theory organizes through the *oppressed* and *oppressor* narrative, so too does intersectionality. The main difference is, rather than focusing on the working class, intersectionality has broadened the scope to include a far wider range of oppressed groups. Today intersectionality is widely acknowledged and taught at many universities throughout the west. Intersectional theory is also used to categorize certain speaker's words or opinions as especially harmful to disempowered students, because of the intersectional framework of the oppression hierarchy. Through this lens, the case of the Wellesley faculty members argues that certain speakers and topics are causing distress and subsequent harm to students. This perspective effectively limits freedom of expression at Wellesley.

The notion of harm through words have recently taken a further extension, as argued by professor Lisa Feldman Barrett (LFB), distinguished professor of psychology at Northeastern

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<sup>12</sup> Faculty Columbia Law School 2019

<sup>13</sup> Crenshaw 1989, p. 167

University.<sup>14</sup> In a recent op-ed in the New York Times, the professor equates the biological effect of physical violence with psychological adversity. When you are physically injured, a protein called cytokines cause inflammation and can cause damage or illness. These proteins can also be triggered by chronic stress. “*If words can cause stress, and if prolonged stress can cause physical harm, then it seems that speech — at least certain types of speech — can be a form of violence.*”<sup>15</sup> LFB goes on to say, that this empirical guidance can help pave the way for figuring out which kinds of controversial topics should be allowed, and which should not. LFB does however distinguish between abusive and offensive speech, one being harmful to your body, the other not. She gives the example of Milo Yiannopoulos as an abusive provocateur and hater, which, according to the science of LFB, causes harmful violence through words and should subsequently be barred from speaking. It is unclear if LFB's op-ed is politically motivated, or if her own bias is a relevant element in the publishing of this research. The simplistic approach to which LFB chooses to deduce that certain types of speech or topics are equivalent to violence appears lazy. The conclusions LFB presents can easily be construed to be a pretext for censorship of certain ideas or topics, because they can be harmful to some people.

Outside the realm of college campuses, there is also the opposition to *offensive public speech*. Pertaining to this sort of speech can be anything from racism to sexual harassment in which women, people of color, people of different sexual orientations or identities and disabled may experience public harassment from offensive public speech. Laura Beth Nielsen (LBN), a professor of sociology at Northwestern University and a legal scholar, wrote in 2004 “*License to Harass: Law, Hierarchy, and Offensive Public Speech*.”<sup>16</sup> The book undertakes an investigation into the reality of offensive speech in the public, in part by conducting public observations and interviews of various groups of people. The book explores three themes; first how different social groups experience being in public, second, how the legal consciousness shapes people's behavior in public and third, a debate between free speech and hate speech.<sup>17</sup> LBN argues that the first amendments protection and the court's interpretation of freedom of expression, has created an environment of offensive public speech which largely disaffects marginalized groups, and

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<sup>14</sup> Barrett. *Lisafeldmanbarrett* 2019

<sup>15</sup> Barrett. *The New York Times* 2019

<sup>16</sup> Nielsen 2004.

<sup>17</sup> *Ibid.* p. 5

empowers privileged groups such as white men.<sup>18</sup> “... *the public sphere is shot through with invocation of hierarchy: women are sexually harassed with surprising regularity; and people of color are the targets of racist harassment regularly and with ferocity.*”<sup>19</sup> Moreover, LBN underpins the serious consequences of this climate for women in general, whereby as a result of offensive sexual speech, women internalize the blame for their victimization. “*Gender discrimination and domination all can be rationally explained (...) Women are paid less because they choose the mommy track at work. Women are date raped because they led the man on. Women are stranger raped because they fail to take proper precautions. Women are victims of domestic violence because they remained in the relationship after he showed signs that he was a batterer. Similarly, women bring on street harassment by failing to dress modestly. Or, even more insidiously, women actually appreciate these comments as forms of flattery. These societal myths are believable only if one fails to see the connection between them. These are all forms of sexual subordination that are rationalized by a particular underlying view of the world—unarticulated, taken for granted notions about gender relations.*”<sup>20</sup> LBN’s claim is that the current state of freedom of expression in America creates a license for privileged social groups to oppress marginalized social groups. The legal consciousness of freedom of expression creates a hierarchy that puts white men at the top, and women and marginalized groups at the bottom.<sup>21</sup> LBN’s own empirical data and conclusion support the popular claims of critical race theorists and feminist scholars, which in turn ties into the framework of intersectional theory. Although LBN also conclude that regulating freedom of expression in order to curb offensive public speech and in turn the hierarchy it supports, she sees “... *no viable, culturally appropriate legal mechanism for redressing these problems.*”<sup>22</sup>

Fast-forward to 2017, LBN writes in an op-ed in the *Los Angeles Times*, about “*The case for restricting hate speech*”.<sup>23</sup> In the op-ed, LBN argues that because freedom of expression is already regulated in many ways, such as “*advertising, obscenity, slander, libel and inciting lawless action*”, it is puzzling why racist and sexist speech is not already regulated under hate

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<sup>18</sup> Ibid. p. 166

<sup>19</sup> Ibid. p 167

<sup>20</sup> Ibid. p. 168

<sup>21</sup> Ibid. p 175-176

<sup>22</sup> Ibid. p. 176

<sup>23</sup> Nielsen 2019

speech. When judges rule on freedom of expression like in the examples stated above, they balance benefits and harms. Currently judges choose to value the constitutional right of freedom of expression over that of hurt feelings. LBN argues that categorizing and subsequently diminishing racist and sexist speech as “*hurt feelings*” is an indicant of the “*deep inequalities of our society*”. LBN gives the example of the Westboro Baptist Church who was forbidden by an Act of Congress to protest soldiers’ funerals from less than 300-500 feet away. Soldiers’ families are therefore protected from troubling speech but marginalized groups are not in the same sense. LBN cites empirical data on the harm that racist and sexist speech affects those subjected to it, which ties into what LFB argued, that some type of speech equals violence. “*These negative physical and mental health outcomes — which embody the historical roots of race and gender oppression — mean that hate speech is not “just speech.” Hate speech is doing something. It results in tangible harms that are serious in and of themselves and that collectively amount to the harm of subordination. The harm of perpetuating discrimination. The harm of creating inequality.*”<sup>24</sup> LBN concludes that US Courts must restrict racist and sexists hate speech on the grounds of the research proving there is harm. On the basis that free speech is already not absolute, and the disadvantaged groups are forced to shoulder the burdens of privileged groups’ freedom, these forms of speech must be restricted.

The arguments “*against*” freedom of expression are not grounded in a direct opposition to the right as a whole. They are formulated from an intersectional perspective, as originally proposed by Kimberlé Crenshaw, wherein historically marginalized or minority social groups are at the bottom of the hierarchy. LFB argues that certain forms of abusive speech can constitute violence, and that violence, LBN argues, is what reinforces the historically empowered social groups over the historically disempowered groups thus continuing the oppression hierarchy. For society to keep allowing sexist and racists speech through freedom of expression is a systemic perpetuation of the oppressive empowered majority. Moreover they argue that it robs the disempowered of their access to freedom of expression. Therefore, the reasoning behind the against side, is that in order for society to secure that the marketplace of ideas can enjoy full access to the many diverse voices and ideas of all people, the disempowered must be empowered through protection from speech in order to be elevated to speak. Empowered social groups at the top of the hierarchy

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<sup>24</sup> Ibid.

must be filtered so that offensive and racist speech does not hurt the bottom of the hierarchy. This perspective is grounded in a utilitarian logic; society will be better off if we secure the rights of everyone to speak, thus it will be necessary for some to be limited. The means by which this is achieved is not universally agreed upon. Legally it's complicated to enforce speech codes that limit some, while favoring others, especially in a free democratic society. One way of course, is through hate speech laws.

## **For**

On the opposite side of the argument, it holds equally true, that there are many facets to the reasoning of the argument for freedom of expression. Whether it is to properly discern truth or oppose the government, those advocating for freedom of expression generally concur that this freedom is under attack. The main focus of those on the barricades, defending freedom of expression is usually not the argument for freedom of expression itself, because this argument is sufficiently established in society and in turn self-evident. A Rasmussen Report taken amidst the free speech controversies of UC Berkeley in mid-2017, show that 85 % of American adults believe free speech is more important than feelings<sup>25</sup>. So despite the fact that the vast majority of Americans believes freedom of expression is critically essential to society, how is it reasonable to pull alarm and decry that freedom of expression is under attack?

The main focus for those advocating for freedom of expression, does not appear to be to prove the validity of freedom of expression, because as shown before, it's widely accepted in society. Therefore the main focus in advocating for freedom of expression is to point out where it is endangered, and where opposing viewpoints to freedom of expression show their pitfalls. Some of these places are colleges and universities.

Greg Lukianoff, attorney, New York Times best-selling author and CEO of the Foundation for Individual Rights in Education (FIRE),<sup>26</sup> recently gained national notoriety along with Jonathan Haidt, a social psychologist and professor of Ethical Leadership at NYU's Stern School of Business.<sup>27</sup> Together they wrote the book; *The Coddling of The American Mind*, recently published in September of 2018 and is an expansion of the popular essay of the same name

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<sup>25</sup> Pulse Opinion Research 2019

<sup>26</sup> FIRE Greg lukianoff 2019

<sup>27</sup> Jonathan Haidt 2019

posted in the *The Atlantic* in September of 2015. In the 2015 essay, they describe the ever more prevalent case in today's colleges and universities, where students and professors remove or censor anything that could cause someone discomfort or give rise to offense. Students at Harvard asked their professors not to teach about rape law, because it might make someone with those experiences uncomfortable, professor Laura Kipnis wrote an essay about the new campus politics due to sexual paranoia at Northwestern University and suffered an investigation because Students were offended.<sup>28</sup> The essay argues that two terms in particular are central in this development; micro aggressions and trigger warnings. The first is a "...*small actions or word choices that seem on their face to have no malicious intent but that are thought of as a kind of violence nonetheless.*" Asking an Asian or Latino American where they are from is considered a micro aggression because it implies they are not real Americans. The latter term are alerts students expect professors to give before showing or talking about something some of the students might have an emotional reaction to. Reading a racist book or sexist material might "trigger" a student with past experiences of that topic. This oversensitive climate is spreading and being institutionalized in colleges and universities across the USA, the essay warns. University of Minnesota compiled a list of micro aggressions to better counter it, some examples are: "*You are so articulate*", asking an Asian for help with math, "*When I look at you, I don't see color*", "*America is a melting pot*", "*I believe the most qualified person should get the job*", asking a black person "*Why do you have to be so loud?*"<sup>29</sup>

The movement happening is partly a continuation of the political correctness of the 80's and 90's that sought to limit speech to protect marginalized social groups, the essay argues. The new movement however, seeks an emotional well-being, with the intention "... *to turn campuses into "safe spaces" where young adults are shielded from words and ideas that make some uncomfortable. (...) this movement seeks to punish anyone who interferes with that aim, even accidentally. You might call this impulse vindictive protectiveness.*"<sup>30</sup> This will result in a culture where one has to think twice before speaking up. The authors do not agree that this environment of vindictive protectiveness helps anyone. Moreover the logic applied, is fundamentally flawed.

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<sup>28</sup> Lukianof & Haidt 2019

<sup>29</sup> School of Public Health 2019

<sup>30</sup> Lukianof & Haidt 2019

In psychology, the best choice is to confront an anxiety, not cower. Students are spending 4 years learning what to think, not how to think.

The essay blames this development on how millennials were raised; Boomers and Gen X could ride their bikes without supervision in the street and come home with scrapes and bruises and new experience. Crime surges from the 60's to 90's and media coverage of kidnappings made Boomer and Gen X parents more protective of their babies. Dangerous playgrounds were torn down, peanut butter was banned from lunches, and schools had a zero tolerance on bullying. “... children born after 1980—the Millennials—got a consistent message from adults: life is dangerous, but adults will do everything in their power to protect you from harm...”<sup>31</sup>”

So even if 85 % of adult Americans believe in Free speech over feelings, in time that might change. The students of today are the leaders of tomorrow; and according to survey data by Pew Research Center in 2015, 40 % of millennials were in favor of limiting speech so as to not offend minorities.<sup>32</sup>

The Coddling of The American Mind confirms this growing trend, and puts it in a long developing perspective. Since the 1990's and onwards there have been dozens of absurd cases of overly sensitive students claiming a right not to be offended, and this right is continually reaffirmed by college and university institutions. A white student was found guilty of racial harassment for reading *Notre Dame vs. the Klan*, in 2008 at Indiana University. The book is about student opposition to the Klan in 1924, but the cover picture of a Klan's member offended fellow students. There is an established precedent in Academic circles not to blame the victim, and thus is “... considered unacceptable to question the reasonableness of someone's emotional state, particularly if those emotions are linked to one's group identity.”<sup>33</sup> Essentially giving a carte blanche to anyone who says they're offended.

One of the many points of critique, from those advocating for freedom of expression, is the ever more pervasive subject of hate speech laws. One of those critics; is Jacob Mchangama (JM), a Danish lawyer, founder of the Danish legal think tank *Justitia* and frequent pundit on several

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<sup>31</sup> Ibid.

<sup>32</sup> Poushter 2019

<sup>33</sup> Lukianof & Haidt 2019

news outlets as well as several authorships on the topic of freedom of expression.<sup>34</sup> JM argues, that it might be worth paying the price of “...*legal uncertainty and the risk of abuse*”<sup>35</sup> that comes along with hate speech laws, if the result of those were the “...*prevention of social unrest and intolerance (...) witnessed in Rwanda, the former Yugoslavia, or even the Holocaust.*”<sup>36</sup> But as JM points out, there exists no correlative evidence that hate speech laws or restrictions on speech are useful in preventing such harms. “*In fact, recent research shows that countries that restrict freedom of expression through blasphemy laws experience more religiously motivated social unrest and violence than countries that do not enforce such laws (Pew 2011).*”<sup>37</sup> JM refers to the American models firm protection of freedom of expression in its first amendment and subsequent Supreme Court interpretations like *Brandenburg v. Ohio* as well as strong religious freedom, which have showed a measureable increase in tolerance. “*American attitudes toward interracial marriages have shown a dramatic shift towards acceptance from 4 percent in 1958 to 87 percent approval in 2013. (...) in 2013, 12 percent of Americans harbored anti-Semitic attitudes, as opposed to 29 percent in 1964 (...) The steady drop in American anti-Semitism and an increase in the levels of racial tolerance and interracial marriages has taken place concurrently with the US Supreme Court’s strengthening of the First Amendment’s protection of free speech.*”<sup>38</sup> In Europe, where hate speech laws are prevalent, data shows the exact opposite, 76 % of 5000 Jews surveyed in Europe in 2013 reported that anti-Semitism had worsened. Correlation does not prove causation however, but; “*Those who favor hate speech bans may also consider whether such bans are not only illiberal and ineffectual, but also counterproductive...*”<sup>39</sup> JM’s central argument is that without evidence to support the claim that hate speech laws works, of which he claim there are none, there is no reasonable argument to institute effectual censorship in a liberal democracy. Doing so only bolsters the support of those affected by hate speech laws such as the Dutch politician Geert Wilders, whose party has soared since battling hate speech laws in court.<sup>40</sup>

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<sup>34</sup> Mchangama 2019

<sup>35</sup> Mchangama 2015, p. 80

<sup>36</sup> Ibid p. 80

<sup>37</sup> Ibid p. 81

<sup>38</sup> Ibid p. 81

<sup>39</sup> Ibid p. 81

<sup>40</sup> Ibid p. 81

JM's argument is constructed in a utilitarian framework; where the cons of hate speech laws are shown to outweigh the pros. JM's arguments however, speak only to legislative clamps on freedom of expression, not culturally such as political correctness.

The argument "*for*" freedom of expression has many multitudes in a greater philosophical harmony. It is however rarely explored in public discourse, and more often than not taken for granted. Survey data of public opinion at large show freedom of expression is not immediately threatened, but generations from 1980 and onwards are increasingly likely to prefer speech limitations to protect feelings. Why is this? Haidt and Lukianoff argue it is the way millennials and Gen Z were raised, in an overprotective environment, and the overly sensitive state of college campuses and universities today, is a manifestation of that need for a protected environment. This outlines two different although compatible explanations as to how freedom of expression is threatened; one is through new generations of overly sensitive students and activists who seek to protect feelings and avoid differing opinions. The second is a systematic enforcement through culture and legislation that seeks to undermine the founding principles of our free society. While those arguing against freedom of expression point to provable harm as a consequence of some speech, those arguing for, points to forces undermining freedom of expression, which is intellectually lazy. Others, like JM, point to the lack of evidence that legislation, such as hate speech laws, actually work. They are in fact, counterproductive.

## **Theory and Methodology**

This chapter will outline the theoretical perspectives that will attempt to describe the logic in a given trail of thought and help the paper create a conceptual framework. Secondly this chapter will clarify the methodological approach to analyzing the problem statement as well as the considerations undertaken and which established school of thought pertaining to the subject that will be dominant throughout the paper.

## **Theory**

To better clarify different perspectives and logics of reasoning, this paper will apply a set of theoretical considerations when analyzing sources and arguments. This chapter will begin with an introduction to Quentin Skinner's (QS) *contextual approach* to intellectual history, as well as describing how this paper intends to use it and the ambition to go beyond. Secondly, the chapter

will explain the theory of *utilitarianism* and *deontological ethics* and then move on to *societal law vs societal culture*. These theories are essential analytical aids to uncover the meanings of an argument, and are therefore critical in ascertaining the logic as well as the background from which the arguments are formulated. These analytical aids will help the papers endeavor to map the meaning of arguments, in a larger ideological and philosophical battlefield.

Subscribing to the thinking set forth by the Cambridge School of intellectual history, this paper will seek to emphasize not only the ideas written, but also the context to which they are written. The intellectual historian Quentin Skinner (QS) has emphasized the “...*importance of placing texts in their historical setting*”<sup>41</sup> rather than taking them out of context. QS is a former Regius professor at Cambridge University and is currently teaching at Queen Mary’s University of London. He is widely acknowledged as the head of the Cambridge School, because he, among others, criticized the ahistorical approach to history of ideas, taking ideas and characters out of their historical context. His criticism, as part of the linguistic turn, led to the development of his own contextual methodology wherein the historian must not only consider the political outcome of a document, but also in what wider societal debate it was a part of, who it was a response to - and what conventions or norms it was in opposition or supporting of.<sup>42</sup> It’s important to clarify, that QS’s contextual approach is a methodology, but the philosophical arguments underlining the approach are highly theoretical, as will be examined later, and therefore it is located in the theory chapter. QS, has in his own historical work been highly preoccupied with the function of political ideas; and how they have expanded or restricted our societal structures.<sup>43</sup> One such example is QS’s article *The Principles and Practice of Opposition: The Case of Bolingbroke versus Walpole*, which investigated the origin of the idea of an opposition. In the 18<sup>th</sup> century there was no such thing as a general opposition to a government, not until after Bolingbroke led an open criticism of the Walpole-government. It was border lining treasonous and did not result in much, other than the wider societal acceptance of a general opposition, which is today the norm.<sup>44</sup> What QS managed to show, is that political speech and theories are intentional attempts

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<sup>41</sup> Munro 2019

<sup>42</sup> Skinner 2009, p. 11-12

<sup>43</sup> Munro 2019

<sup>44</sup> Skinner 2009, p. 7-9.

to re-shape how our societies function, by changing the words we use.<sup>45</sup> By understanding the context of ideas and terms we use today, it allows us to reflect and not misapply them.

The classical textual analytical approach, which is to outline a thesis and then repeatedly read a text as a closed circuit, not considering any other aspect but the text itself, is, according to QS ahistorical and anachronistic. There is a large tendency to create anachronistic scientific studies which is hugely problematic. We lose sight of the diversity of the author's intentions, his motivation and spirit. By reducing an author's work as comments to our own questions we assign it answers it did not seek to make.<sup>46</sup>

Using QS's contextual approach to analysis, this paper will not seek to answer the problem statement by conjoining arguments from the past to the present, but instead seek to understand the conditions they were written in, and see if they are applicable to our situation. By not insisting on a connection to our problems, the analysis will not derive into an anachronistic study.

**Utilitarianism** is the moral theory based on the “...*the maximization of overall well-being*”<sup>47</sup> for the most amount of people. The basis of right and wrong is thus determined from the perspective of maximum utility such as happiness or preventing harm. In recent and contemporary time, Utilitarianism is at the core of moral philosophy as well as much controversy. The father of utilitarianism is attributed to Jeremy Bentham in his work; *An introduction to the principles of Morales and Legislation* from 1789, but many elements of it can be traced back the ancient philosophers such as Epicurus who claimed “...*one's primary concern should be the attainment of pleasure and, especially, the avoidance of pain.*”<sup>48</sup> The utilitarian elements would first be sophisticatedly assembled by Bentham, who argued that nature has forced mankind under two masters; pain and pleasure – and it is by this distinction every choice and legislation should be made. This is also referred to as the *greatest happiness principle*.<sup>49</sup> Bentham formulated the *felicific calculus*, which was meant to calculate the degree of pleasure or

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<sup>45</sup> Ibid. p. 10

<sup>46</sup> Ibid. p. 17-18

<sup>47</sup> Eggleston & Miller 2014, p. 1

<sup>48</sup> Ibid. p. 3-4

<sup>49</sup> Ibid. p. 38-39

pain from any action.<sup>50</sup> The idea of utilitarian really begins to take root in broader society in the nineteenth century, most prominently as articulated by John Stuart Mill's *Utilitarianism* from 1861. Mill distinguishes between higher and lower forms of pleasure, one being an intellectual pleasure and the other more basic physical pleasures.<sup>51</sup>

Utilitarianism has drawn much criticism, arguably aiding in its ascension, notably by Karl Marx and Friederich Nietzsche.<sup>52</sup> There are many key points of criticism that has surrounded the theory since its inception; one of the more prominent of accusations is that at its root, utilitarianism is a search for hedonism, seeking pleasure over pain. Another is that utilitarianism cannot possibly calculate any measure of happiness or pain in any quantity and therefore it is folly to suggest decisions should be based upon a flawed. Utilitarian logic would also support actions such as torture if doing so would lead to betterment for more people.

Since the emergence of utilitarianism, it has been formulated and theorized into many different and distinct variations. Some of the more prominent are *act utilitarianism* and *rule utilitarianism*. The former is defined as "...an act is right if and only if it results in at least as much overall well-being as any act the agent could have performed."<sup>53</sup> The agent has only acted rightly if the choice is that which produced the highest well-being over any other. This also applies over time; meaning if the immediate present proves a negative well-being, the maximization of well-being over time counterbalances the present over the future as a result of that act.<sup>54</sup> The latter, rule utilitarianism, is defined by David Lyones as the: "...theory according to which the rightness or wrongness of particular acts can (or must) be determined by reference to a set of rules having some utilitarian defense, justification, or derivation."<sup>55</sup> Meaning, that acts must abide by a supreme moral code that satisfies a utilitarian criteria as a necessary condition, and committing acts which are not in line with this code is thus a moral wrong.

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<sup>50</sup> Ibid. p. 41

<sup>51</sup> Ibid. p. 71

<sup>52</sup> Ibid. p. 5-6

<sup>53</sup> Ibid. p. 125

<sup>54</sup> Ibid. p. 125-126

<sup>55</sup> Ibid. p. 146

**Deontological Ethics** is an ethical theory within philosophy that emphasizes the connection”...*between duty and the morality of human actions.*”<sup>56</sup> The term deontology is derived from the Greek *Deon* “duty” and *Logos*, “science”. In deontological ethics an action is considered good - not because of the overall outcome but in the characteristics of the action itself. Some actions are morally obligatory regardless of either consequence for human well-being as a result of the action committed. Such ethical expressions are well known as “*Duty for duty’s sake (...)* *Virtue is its own reward (...)* *Let justice be done though the heavens fall.*”<sup>57</sup> The first known philosopher to articulate the principles of deontology was Immanuel Kant in the 18<sup>th</sup> century. Kant’s belief was that no act is “...*good without qualification except a good will, and a good will is one that wills to act in accord with the moral law and out of respect for that law rather than out of natural inclinations.*”<sup>58</sup> If, according to deontological ethics, freedom of expression is a principle of moral good, then abiding by that principle no matter what is said, threatened or agitated to violence, is a moral good. There is no nation where freedom of expression is absolute, and definitions of such, are usually found in between a utilitarian consideration of well-being for most, and a strong principled deontology upheld even at the inconvenience of others.

### **Societal Law vs Societal Culture**

Robert C. Post (RCP), Sterling Professor of Law at Yale University with focus on constitutional law, First amendment and legal history,<sup>59</sup> argues in theory, that legal institutions perform two functions: first: the law is used by the government as an instrument of social engineering in order to further political goals. Second: law is used to “...*revise and reshape culture.*”<sup>60</sup> On the basis of this, law can arguably be defined as an institution that not only represents already existing cultures but also creates culture. This view affirms LBN’s own claim that the legal consciousness of freedom of expression in America also creates from the inside out a culture of public discourse, which in her example is one of malice. Law does however enforce antecedent cultural norms, such as the traditional view of the family role, and accompanying responsibilities such as parental obligations, but at the same time law also modifies itself and subsequently the norms

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<sup>56</sup> Britannica Academic Deontological Ethics 2019

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Faculty Yale Law School 2019

<sup>60</sup> Post 2003, p. 488

when it undercuts the stigma, historically associated with illegitimate births or single parent households, which is supported by the welfare state.<sup>61</sup>

Culture establishes a framework of shared meanings, and within that meaning it: “...allow for the possibility of dispute and contest.”<sup>62</sup> Therefore if culture is in contest with disputed meanings of itself, then when law is “...invoked to enforce “cultural values” (...) it is often being used to advance one or another side of an ongoing cultural disagreement.”<sup>63</sup> An example of this would be western countries that are now legislating a ban on the Burqa, as a way to enforce antecedent culture over new culture.

If we accept the premise that law can perform both a preservation of antecedent culture as well as create culture, which is constantly battling itself for new meaning, and is supported or suppressed by law; we can also acknowledge; that freedom of expression is guaranteed by neither. This theoretical composition implies that if the cultural battle of today is about freedom of expression, which is currently supported by the law, but is culturally contested – then the outcome hangs in the balance. Future legislation may choose to support the cultural side against freedom of expression. This theoretical perspective will be used to understand the evolving nature of culture and how it relates to law and vice versa.

Societal law and societal culture, with regards to how freedom of expression exists is also of relevance. As briefly explained earlier in the *clarification of concept* chapter, we can distinguish between two variations freedom of expression exists within. First is the law of society. Freedom of expression is extended or limited by what the state has legislated; this is also done on the basis of the common bonds of meaning in society. Second is the culture of society. The extensive reach of freedom of expression is dependent on what societal culture allows for. An example of this is 19<sup>th</sup> century Great Britain at the height of the strict Victorian sexual morality which outlawed visual pornographic material as well as corruptible morality in literature. The Obscene Publication Act of 1857 handed police and judicial institutions powers to limit the freedom of

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<sup>61</sup> Ibid. p. 489-490

<sup>62</sup> Ibid. p. 492

<sup>63</sup> Ibid. p. 492

expression of anyone guilty by expression, of that which did not conform to the strict notion of Victorian sexual morality.<sup>64</sup>

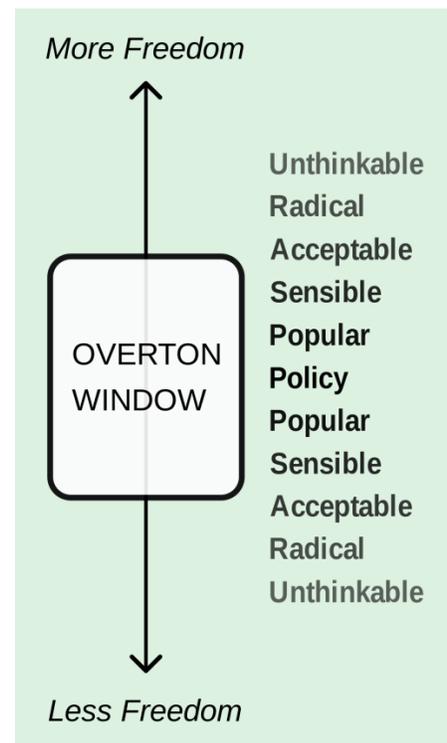
This two way distinction will serve in the analysis to clarify which is argued for, law or culture. There are also cultural forces that are proponents of freedom of expression, some going so far as to say offensive things purely to be offensive, and push the limit, such as the Swedish painter Dan Park. Legislation today might also focus to extend or limit freedom of expression, an example of the former would be Denmark's decision to abolish its blasphemy laws in 2015, thus choosing freedom of expression over religion.

The distinction between utilitarian and deontological ethics will be concatenated in a string with culture and law, as distinct interpretations of the existence of freedom of expression. This axis of theories will more accurately help to answer the problem statement, by punctuating *how* freedom of expression is either endangered or fortified and from *where* this is most clearly seen.

### Overton's Window

This theory is a conceptualized model that explains what policies are acceptable in the current time and which are limited by public opinion. Politicians can only champion policies that lie within Overton's window, because these policies: "...are widely accepted throughout society as legitimate policy options."<sup>65</sup> Policies located outside the window are generally avoided by politicians because this will make them lose popular support by the public.

Overton's window can shift over time but this is rarely the case. An example of this would be Senator Bernie Sanders support for socialism in America, which has always been widely considered taboo, but is now closing in, to becoming mainstream. Younger voters aged 18-24 reacted positively to 'Socialism' at 61 %, beating 'Capitalism' at 58 %,



<sup>64</sup> Britannica Academic 2019a

<sup>65</sup> Lehman 2019

according to a poll done by Harris Poll in January 2019.<sup>66</sup> But most of the time, the window moves gradually with the evolution of societal values and norms, to either more freedom or less freedom. The theoretical conceptualization of Overton's Window is a perfect example of how freedom of expression is tolerated within society. The American 1<sup>st</sup> amendment protects ideas at the far reaches of the window, whilst other western liberal countries do not. This theory will be beneficial in determining, in relevance to the problem statement, which subjects lay outside the window of acceptable discourse.

## **Methodology**

The analysis will begin in part 1, *Freedom of Expression in the Modern Age*. This chapter will in part be a continuation of the research review, which formed the outlines of the debate this paper will fully embark upon. Part 1 will look at the political battles currently taking place, where freedom of expression is at the center of the issue, as well as dive in to adjacent battlegrounds that pertain to the main subject. Part 1 will also look into social media as the proverbial town square of modern politics. The main issue at hand will be to see how freedom of expression works in the digital world compared to the real world. It is the intention of that chapter to determine if freedom of expression is endangered by the creative destruction of digital platforms. Therefore the analysis will explore cases of suppression of political and independent actors and analyze the root causes.

It's important to mention, that part 1 of the analysis will be weighed heavily on sources not commonly applied in traditional historical papers. Some of the fallbacks of this approach will now briefly be discussed. Sources may typically be that of news sites found on the web or clips and interviews with individuals important to the issues. Sources such as articles will be heavily weighted based on their credibility before applied in the paper. A study by Pew Research Center in 2014<sup>67</sup> on the (dis)trustworthiness of news sources, in relation to how they are perceived and on the basis of ideological leanings; show which news sites - on a spectrum are neutral, leaning or biased. This paper will apply this study to determine the trustworthiness of an online source and if a biased source is applied, this will be mentioned in relations to the aforementioned study. The core issue this paper seeks to redress is for the most part, *ongoing*, and in some instances is happening whilst writing or happen after writing. This puts the paper at risk of coming to a false

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<sup>66</sup> Salmon 2019

<sup>67</sup> Mitchell, Kiley, Gottfried, Matsa 2019

conclusion. One of the ultimate benefits of writing as an historian is the superpower of hindsight. This paper, has in part, forfeited this superpower in order to apply history with contemporary issues. In hindsight, this paper may prove to be incorrect. It may also aid in better understanding current issues as they unfold and take their place in the vast line of history.

The second part of the analysis will consist of a conceptual analysis of *Freedom of Expression*, which aims to understand the underlying arguments as articulated by Baruch Spinoza and John Stuart Mill. The *works* or *sources*; chosen from these philosophers has been done so on the basis of their eternal and continual significance on the subject of individual freedom and expression. Baruch Spinoza was one of the founders of rationalism and paved the way for the Age of Enlightenment with his work *Tractatus Theologico-Politicus*. John Stuart Mill's work *On Liberty* is widely seen as the basis for modern liberal thought. These sources and in particular the writers are chosen because they are continually echoed to this day. Although they are not all representative of society as a whole immediately in their own time, their effects gradually helped shape the modern political era. The intended utilization of the sources is to study the arguments shaping societal thought and subsequently the political structure of the western liberal tradition. This paper could have chosen sources picked from obscurity and dealt with them as representative in their immediate present. This would however not assist the paper in analyzing what actually created the setting for the freedoms we now presently enjoy, but rather highlight what the menial public opinion was at the time. For a more extensive analysis it would have been equally beneficial to include sources in the same relative period as the ones chosen for this paper, which argued the opposing side of freedom of expression. This paper will however, explore in the analysis what were the settings in the relative period that prompted the writings of these works.

To create a better and firm understanding, consistently through all the source materials included, the method by which the analysis in part 1 and 2 will be conducted will be through a principled set of inquiries. The first and essential to the analysis is; does freedom of expression appear in the text? This does not require the exact phrase but the philosophical context of freedom in that regard. If yes, then what is the author arguing; limitations or expansions to freedom of expression? How is it argued; does it take root in philosophical thinking or is it driven by a form of ideology or religious conviction? What motivation drives the author? This line of questioning

will be the prime focus when approaching the source material to ensure the same equal treatment and obtaining the highest yield from each source. Simultaneously the contextual approach will seek to emphasize the reasoning and *context* of what is said.

The application of the contextual approach in part 1 of the analysis, which is focused on the arguments surrounding freedom of expression today, is expanding on the subject of history by diving into present day events not yet analyzed by any historian.

## **Analysis**

### **Part 1: Freedom of Expression in the Modern Age of Information**

The analysis will begin with examining the political battles fought on the issue of freedom of expression which are occurring in our current time, in western liberal powers. The ambition is to map the arguments for and against freedom of expression taking place, using the contextual approach. This will focus on what is said and what is done and then analyze the context. In the research review, the paper has already established what the mainstream arguments for and against freedom of expression is from an academic standpoint. In the analysis, the paper will go deeper down that route and uncover the nuances of the arguments from both academics, key actors in the debate, politicians and tech-companies. The side *against* has argued, that the existing social and political structures form a hierarchy, that rewards the historically empowered and oppresses the disempowered and marginalized. The roots of this are grounded in the intersectionality theory by KC. Oppression today is not slavery, segregation, or lack of rights but in most cases is defined as speech. Racist, sexist, hate speech make up the majority of what is usually articulated as oppression. In turn, this sort of speech may also lead to violence but more importantly, it is now also categorized as violence. LFBs research has led her to conclude that certain types of speech or topics are equivalent to violence. LBNs investigation into offensive public speech showed that our societal hierarchies are reinforced by the extent of freedom of expression; enabling gender discrimination and racism towards people of color. But the political battles of today have a far wider reach, and thus a much more competent bid for societal changes than if they were exclusively argued on colleges. The side *for*, Haidt and Lukianoff argue that the current climate on colleges are a result of overprotective parenting in millennial generations and Gen Z. They lack robustness and prefer censorship over hurt feelings (40% of millennials in

2015). JM has argued that there are no empirical data to support that censorship in the form of hate speech laws work, and in fact they only lead to more escalated hate or even violence.

Part 1 of the analysis will follow and uncover the trail of breadcrumbs discovered in the paper up to this point. The subject matter and order by which the analysis is built, is by analyzing one point and then moving to the next logical adjacent point, each time, uncovering the arguments and context of freedom of expression. The first point which addresses freedom of expression today is colleges and universities, as shown in the research review. From within these walls, a schism between freedom of expression and inclusion has appeared. Here the analysis will introduce the pro-freedom of expression organization *Turning Point USA*, and conservative commentator *Ben Shapiro*. This initial step will lead the analysis unto the next logical point; from the safe spaces of the academic walls to political correctness, which the analysis will look deeper into in society at large. One of the strongest critics of political correctness is *Jordan B. Peterson*, whom the analysis will dive into. This will open up the issue of Bill C-16 and hate speech, which is not only fought legislatively but also culturally in the streets by *Anti-Fascist Action*, which is both a manifestation of political correctness and political violence. The analysis will cover the instituted hate speech laws of international organizations and the places they are relevant. Conjoining political violence and hate speech, the analysis will look into recent historical examples of this, and how it worked. This will introduce us to *Flemming Rose* and the *British Union of Fascists*. From there the analysis will conduct a lane change, and address the problem statements inquiry into the digital spheres. The analysis will investigate internet platforms, which will open up several avenues of interest; *social media* platforms as the *proverbial town square*, Google leaked document *The Good Censor*, and the nature of the *rabbit hole of the internet*. This will conclude part 1 and being part 2, which will uncover the classical arguments for freedom of expression in the work of *Baruch Spinoza* and *John Stuart Mill*.

### **Political Battles**

President Trump recently signed into effect; an executive order on the 21<sup>st</sup> of March 2019, in an effort to secure free speech on college campuses in the US The order comes after an incident at UC Berkeley where a conservative free speech activist was attacked.<sup>68</sup> Republicans and

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<sup>68</sup> Mastrangelo 2019

conservatives have long complained about censorship on colleges and this order attempts to address that by requiring colleges to secure students right to free speech. President Trump said in a press conference at the signing of the order; “... *if a college or university doesn't allow you to speak, we will not give them money, it's very simple.*”<sup>69</sup> The central motivation behind the executive order is the perceived notion that conservatives are being censored and silenced by an ominous liberal bias on colleges and universities. For the past few years there have been climactic events regarding the issue of controversial speakers on campuses, with some leading to small scale riots, such as the Berkeley protests in 2017. The analysis will now explore the various political battles taking place in relation to freedom of expression.

### **Turning Point USA**

The charter of Turning Point USA, a conservative grassroots activist network, is to compete with “*leftwing propaganda*” on college campuses and teach students about freedom, free market and limited government. The organization was founded in 2012 by Charlie Kirk, and has a presence on 1.300 college campuses all around the USA, as well as recent expansions into Canada and the United Kingdom.<sup>70</sup> They train activists and engage students on campuses where they teach about conservative free market values re-branded with popular culture to better appeal to their peers.

One of the many issues the organization has increasingly been forced to deal with on college campuses, are the designated “*free speech zones*” and the “*safe space zones*”. These designated areas confine the 1<sup>st</sup> amendment on college campuses to a certain area, and restrict the 1<sup>st</sup> amendment in other areas. “*Very recently, students participating in Turning Point USA’s Free Speech Week were threatened with arrest by the College of DuPage campus police for handing out pamphlets. The pamphlets were written about “free speech zones” and the dangers they imposed on the free exchange of ideas and opinions on campus.*”<sup>71</sup> According to Turning Point USA 1 in 6 of America’s top colleges and universities have free speech zones. While this isn’t outright censorship, it’s certainly clear that there is an on-going effort to tuck away student activists, by confining them to designated zones for speech. In one particular case at Southern Oregon University, students were threatened with the police and disciplinary action by

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<sup>69</sup> Heavey 2019

<sup>70</sup> TPUSA 2019

<sup>71</sup> Turning Point USA 2016, p. 7-8

administrators, for handing out copies of the United States Constitution.<sup>72</sup> The same thing happened in 2017 at Kellogg Community College in Michigan, where students have now filed a lawsuit against the college, claiming their constitutional rights were violated when they were arrested for refusing to stop handing out the Constitution. They had not “*obtained a permit and because expression was only permitted in one location.*”<sup>73</sup> Turning Point USA characterizes the segregation of free speech and safe zones on colleges and universities as counterproductive, when it comes to creating an atmosphere for learning. Safe spaces stop students from being exposed to different opinions. “*...they are telling students they can run away from people that disagree with them.*”<sup>74</sup>

### **Ben Shapiro**

The oversensitive increase to the college climate has created what conservative commentator and writer Ben Shapiro (BS) calls a “*hecklers veto*” that the left use in universities to shut down free speech, and by threatening to become violent.<sup>75</sup> BS is a young Jewish conservative lawyer, media pundit and host of *The Ben Shapiro Show*, who has made a career out of triggering the political left and expressing his conservative values unapologetically to fuming crowds of protesters on campuses. He has a large young conservative following on social media, where he is best known for his YouTube clips with millions of views. “*Now I don't want to pretend this is happening at every campus but it is happening to a lot of conservatives. (...) I'm talking about people who range from Jordan Peterson to Jason Riley (...) There is a wide variety of conservatives who are being really raided against in some cases on campus.*” BS is one of those controversial speakers who have drawn headlines from his many speaking tours to colleges, where some of those have turned into protests with the ensuing of violence to shut his speech down. [Event reference]. “*Everything has been deemed hate speech on campuses (...) there is a big part of the left and it's growing, that says that it is incumbent to protect the campus from ideas that are dissenting and everyone who dissent must be thrown off.*”<sup>76</sup> BS credits the state of College and universities polarized environment to “*the left*”, which is a vague definition that includes many labels. The overwhelming majority of the left in American politics would be

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<sup>72</sup> Ibid. p. 8

<sup>73</sup> Haskins 2019

<sup>74</sup> Turning Point USA 2016 p. 9

<sup>75</sup> Fox News 2019

<sup>76</sup> Ibid.

liberals, who vastly outnumber conservatives in Academia. A study published in the *Econ Journal Watch* in 2016 surveyed professors in 40 leading universities, all across the USA and found Liberals outnumber Conservatives 11.5: 1.<sup>77</sup> Students spend some of their most formative years in college and may never encounter a conservative idea. In response to the hectic political correct environment on colleges, BS says in an interview with ABC in October of 2017: “*It’s the furthest extension of political correctness. That when you say something it’s not just me disagreeing with you, it is me destroying your identity as a human being in a way that is akin to violence.*”<sup>78</sup> Students today are overwhelmingly met with politically correct, liberal viewpoints, and conjoining with the overprotectiveness in of their childhood, many students are more prone to a conformity that keeps them safe rather than to be challenged. The state of overprotected vindictiveness, as suggested in the *Coddling of The American Mind*, is one that resonates with the statements by BS. It’s a force of hostile political correctness, which throws off dissenting ideas that don’t conform to the usual script. BS has been at the center stage of college controversies for a long time, and according to him it is a distinct hostile shade of political correctness that is the forefront of suppressing freedom of expression of some ideas. Conservative ideas for the most lie within the window of acceptable discourse, so why is political correctness bent against conservatives?

### **Political Correctness**

The term *political correctness* is often cited today as a threat to freedom of expression. It limits what people can, and should say, so as not to offend anyone. The general culture of political correctness is widespread but the label of being political correct is much more an accusation than an identity. According to postdoctoral scholar at the Harvard Society of Fellows, Moira Weigel (MW), political correctness is a vague term invented by the right to smear their opponents. The implications of the phrase: “*politically correct*” also has sinister undertones, which implies someone is speaking with “*...ulterior motives, and is hiding the truth in order to advance an agenda or to signal moral superiority.*”<sup>79</sup> MW argues this is what secured Donald Trump his presidency, by running as an anti-PC candidate. Time and time again Trump defended his actions and words by stating he refused to be politically correct. “*Throughout an erratic campaign,*

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<sup>77</sup> Langbert, Quain, Klein 2016

<sup>78</sup> ABC News 2019

<sup>79</sup> Weigel 2019

*Trump consistently blasted political correctness, blaming it for an extraordinary range of ills and using the phrase to deflect any and every criticism.*”<sup>80</sup> The origin of the terms rise to prominence comes from articles in the early 1990’s that criticized political correctness on colleges but the term, according to MW, “...rarely appeared before 1990. That year, it turned up more than 700 times. In 1991 there are more than 2,500 instances.”<sup>81</sup> MW argues that political correctness was an invention by the republican right, which sought to divide the working-class from the Democratic Party whom it used to represent. “*”Political correctness” became a term used to drum into the public imagination the idea that there was a deep divide between the “ordinary people” and the “liberal elite”, who sought to control the speech and thoughts of regular folk.*” This form of political speech, labelling ones political opponents as *PC* is an intentional attempt at re-shaping the context of how they are viewed. Much like the label of *nazi* or *racist* is used to slam a political opponent, *PC* is equally that; a weapon.

The underlining context behind political correctness today is the theory of intersectionality, but most who identify with it, would define it as merely being respectful and understanding of other people. Mark Hannah (MH), Ph.D. and research fellow at Eurasia Group Foundation and former Obama campaign strategist argues that the founding fathers only extended freedom of expression so far because “*They rejected government censorship precisely because they trusted individuals could and would regulate themselves in our proverbial “free marketplace of ideas”.*”<sup>82</sup> Meaning, political correctness as the term stands, is not necessarily ideological conformity but the filter of an individual’s speech. “*The opposite of political correctness is not unvarnished truth-telling. It is political expression that is careless toward the beliefs and attitudes different than one’s own. In its more extreme fashion, it is incivility, indecency or vulgarity.*”<sup>83</sup>

If one considers the historical context of American politics however, speech appears to have always been of a crude substance. The infamous presidential election of 1800 between Thomas Jefferson and John Adams saw obscene accusations directed towards John Adams, the presidential incumbent, that he was a “*hideous hermaphroditical character, which has neither*

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<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Hannah 2019

<sup>83</sup> Ibid.

*the force and firmness of a man, nor the gentleness and sensibility of a woman.*”<sup>84</sup> MH also mentions Alexis de Tocqueville on the tone of American journalists in 1831, which Tocqueville in his *Democracy in America*, describes as vulgar, and guilty of abusing the powers of thought and they “...*abandon the principles of political science to assail the characters of individuals...*”<sup>85</sup> The American journalists tone is coarse and they appeal to the lowest denominator. From a historical perspective, the American politician and journalist has always been abrasive. MH would rather see a change to the French journalists, which Tocqueville describes as “... *an eloquent and lofty, manner of discussing politics of the day...*”<sup>86</sup>

In the context of this, political correctness is by some, like BS; viewed as intrusive censorship, while others like MW and MH sees it as a civilized manner of conducting debate. An obvious distinction to make is that one’s definition of political correctness usually depends on one’s political alignment. BS who is a rightwing conservative argues political correctness is a culture of censorship, because his conservative viewpoints are at odds with what others deem as hate speech and violence, and subsequently feels he is restrained. MW, who is a democratic liberal, argues political correctness is more a strategy than conformity. In the case of President Barack Obama, who was heavily criticized by Trump on the issue of calling out “*radical Islam*”, and it’s relation to terror around the world; Obama responded that it was better to create a distinction between their true enemies and the rest of the worlds Muslims. “*It would alienate our allies and motivate our adversaries.*”<sup>87</sup> This battle of ideas is a part of a larger cultural contest which, from one perspective could seem like civilized, filtered debate against unfiltered debate. From another perspective, MW is conflating political correctness as a form of politeness, with self-censorship, where one refrains from speaking their mind out of fear. The latter perspective is also echoed by a Canadian psychologist and professor, whose argument we will now examine.

### **Jordan B. Peterson**

One of the more recent and very influential voices in the fight for freedom of expression is Dr. Jordan B. Peterson (JBP). He is a professor of psychology at the University of Toronto, a clinical

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<sup>84</sup> Thomas Jefferson Encyclopedia 2019

<sup>85</sup> Tocqueville 1831, p. 220

<sup>86</sup> Ibid. p. 221

<sup>87</sup> Hannah 2019

psychologist and author of the very popular bestselling book of 2018; *12 Rules for Life*.<sup>88</sup> In 2016 JBP posted a series of videos critiquing political correctness, postmodernism, cultural Marxism and the then proposed amendment, Bill C-16<sup>89</sup> into the Canadian Human Rights Act and the Criminal Code, which launched him into both infamy and fame. JBP's ardent defense of freedom of expression further hurled him into international prominence, with close to 100.000.000 hits on his YouTube lectures and podcasts. JBP is also one of the few in favor of freedom of expression, who also articulate why it's important, rather than assuming everyone knows why. JBP argues free speech is not only necessary to criticize ones leaders, but also because: *"Freedom of speech protects our societies from shipwreck on the Scylla of tyranny and the Charybdis of nihilism and despair. Freedom of speech allows us to identify the problems that beset us. Freedom of speech allows us to formulate solutions to those problems, and to reach consensus on the solutions."*<sup>90</sup> JBP instills the inherent value of freedom of expression as not only a compass for any individual to find ones path, but also what made western society great and successful in the first place. It kept us from tyranny and fostered democracy. This is argued from a deontological ethical viewpoint, wherein this set of rules are the founding principles by which we build our societies.

In one of JBPs online lectures from 2017, he formulates the very basic reason why freedom of expression is important, as it relates to human nature. *"I'm not a free speech advocate I'm a true speech advocate, which is to say that I believe that people should say what they believe to be true. (...) But I don't believe true speech is possible without free speech because you're just not very good at thinking and so you have to stumble around when you are first formulating ideas and wandering into territory that is not necessarily productive and manifest your biases and in short you have to be a fool. (...) a lot of what is necessary with regards to thinking is the freedom to make mistakes because what, you're going to do it right the first time? I don't think so."*<sup>91</sup>

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<sup>88</sup> Peterson JordanBPeterson 2019

<sup>89</sup> Bill C-16 passed into law in 2017 and amends the Canadian Human Rights Act to protect individuals from discrimination on the basis of their gender identity and gender expression by adding it to the list of prohibited grounds for discrimination as well as adding it to the list of identifiable groups protected from hate propaganda in the Criminal Code. It also adds that an offence committed on the basis of bias, prejudice or hate based on a person's gender identify or expression can constitute a circumstance in which a court may impose a criminal sentence.

Parliament of Canada 2019

<sup>90</sup> Peterson The Hill 2019

<sup>91</sup> Peterson YouTube 2019

What JBP argues is that truth is important above all, otherwise we descend into chaos. In order for truth to be spoken, we have to think and find what is true. This is done through formulating ideas, debating and discussing them and in so doing realizing the error, and then going back and re-think it. None of this is possible without being able to say out loud something which is factually wrong or politically incorrect. More to the point, this means that the right to freedom of expression has to trump the right to not be offended, which is a jab on JBP's side against intersectionality and political correctness.

In 2016, JBP protested legislation Bill C-16 and argued the doctrines behind it were ideologically based and would result in a curtailment of freedom of expression in Canada. JBP came to this conclusion on that basis of the bill itself and the intended interpretation by the Ontario Human Rights Commission, which would make it a hate crime or harassment to refuse to use a person's self-identified name or preferred pronoun. JBP testified before the Canadian Senate in response to the Bill, saying: *"I think that's appalling first of all because there hasn't been a piece of legislation that requires Canadians to utter a particular form of address that has particular ideological implications before and I think it's a line that we shouldn't cross."*<sup>92</sup> JBP also refers to this as *"compelled speech"* and he argues it would effectively require Canadians to use certain words enforced by other people's subjective interpretation of their gender identity or expression. Moreover, it would force Canadians to accept and surrender their linguistic sovereignty to a political language, where gender is a social construct and is adaptable to a person's self-perception rather than the traditional and conservative view, that gender is biological and binary.

Since the legislation has been passed, it is only recently as of the 27<sup>th</sup> of March 2019, that a court case has set precedent for the future. In the case of *Oger v. Whatcott*, a Christian activist has been fined 55,000 \$ for purposefully misgendering a transgender woman running for political office, by distributing flyers which referred to the person as a *"biological male"* and a call to action not to vote for Ms. Oger. The defendant, Mr. Whatcott argued that what he published was factually true, and he used his freedom of expression and religion. The court ruled that *"the*

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<sup>92</sup> Peterson YouTube 2019a

*"truth" of the statements is not a defence" and that "even truthful statements may be expressed in language or context that exposes a vulnerable group to hatred."*<sup>93</sup>

It is clear that the amendment is, as JBP puts it, compelled speech. There is by no means a consensus on the gender debate and gender feminists and transgender activists advocating that gender is a social construct, are completely in opposition to evolutionary theorists who say it's all biologically determined.<sup>94</sup> Therefore, legislation such as Bill C-16 compels people to use a scientifically controversial and politically motivated form of speech, no matter their own belief or opinion, on the basis of ideology. It is however important to note, that the threshold to conduce an offense is limited to provable intent of malice, and not accidental misgendering, as in the case of *Oger v. Whatcott*.

This type of legislation is not exclusive to Canada and has already been passed in New York City<sup>95</sup> and the State of California<sup>96</sup>. JBP's foreboding warnings of ideological totalitarianism seeping into the Canadian legislation under the guise of good intentions, has been called out numerous times as being a bid to sensationalize his fear mongering. But with the recent case of *Oger v. Whatcott* there is now some merit to the argument of compelled speech in Canada.

The paper will now move on to examine the political battles taking place in the streets, and explore how they are influential on the issue of freedom of expression.

### **Anti-Fascist Action**

*Anti-Fascists Action* also known as "Antifa". They are a de-centralized international movement with chapters all around the world. They engage in "*black bloc*" tactics, in which they cover themselves completely in black clothing to prevent authorities from identifying and prosecuting them. They "*engage in violence, throwing eggs and water bottles and shooting fireworks at police officers.*"<sup>97</sup> The name Antifa is an attempt to emulate the group of the same name who vigorously fought the rise of fascisms during the 1920-30's. The choice of name is clearly to create a historical continuity between the time of the rise of fascism and Hitler's National Socialism, and parallel it to the present. Antifa claims that the historical similarities of Hitler's

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<sup>93</sup> Human Rights Tribunal 2019, p. 84-86

<sup>94</sup> Soh 2019

<sup>95</sup> Volokh 2019

<sup>96</sup> Legislative Counsel's Digest 2019

<sup>97</sup> Williams 2019

rise to power match that of President Donald Trump in 2016 and when they march in the streets they do it to the chant of “*No Trump, No KKK, No Fascists USA*”.

In recent years Antifa have had fierce clashes with rightwing groups and white supremacist groups in Charlottesville, Berkeley and Portland.<sup>98</sup> “*What unites them is the belief that free speech is secondary to squashing fascism before it takes root in the United States.*”<sup>99</sup>

The movement is clearly out to stop what they interpret as a rise of fascism in America, and with a common recollection of the horrors of World War 2 as the pinnacle of the worst chapter in human history, many, and rightly so, would seek to stop it from repeating. “*...had more people joined far-left militants in fighting fascists in prewar Germany and Italy, Adolf Hitler and Benito Mussolini never would have come to power.*”<sup>100</sup> Quoted from an interview in the Washington Post of an Antifa member, this is the logic that motivates the movement and its militancy.

According to Philly Antifa, their stated goal is: “*We are in direct conflict with Racism, Homophobia, Sexism, Anti-Semitism, Islamophobia, Transphobia, and all the various other flavors of Fascism.*”<sup>101</sup> The implications of this logic is that, according to Antifa one would warrant the label of “fascists” or “Nazi” by being critical of any topics that might pertain to the above stated categories. This widens the scope of who they are fighting from white supremacists, Fascists to Republicans, Conservatives and even Liberals. One example of this would be Milo Yiannopoulos, who is both gay and Jewish and who has frequently been the target of Antifa. Their general policy is “*no platform*” for racist and fascists: “*we would oppose their organizations attempts to speak in public, hold political demonstrations, or recruit openly. History has shown time and time again what happens when demagogues are allowed to lie and inflame people’s bigotries in short-sighted pursuit of power. Only the most privileged or naive can still assume a “wait and see” attitude towards Nazis and Fascists.*”<sup>102</sup>

The reasoning behind Antifa is both radical and utilitarian. It’s obvious that fighting a potential resurgence of Fascism, leading to ethnic cleansing, war and atrocities is a noble cause and comes from a good place. If the potential for such a catastrophic repeat of history comes at the price of violence against fascists, and removing the platform of people or groups advocating that type of

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<sup>98</sup> Alcorn 2019

<sup>99</sup> Miller 2019

<sup>100</sup> Ibid.

<sup>101</sup> Philly Antifa “about” 2019

<sup>102</sup> Philly Antifa “Frequently Asked Questions” 2019

ideology, then that is a small price to pay for protecting the rest of society. So while the harm and violence perpetrated in the moment by Antifa, by act utilitarian logic, this is second to stopping what they perceive as the spread of fascism, because in the end that is considered the most harmful of futures in the context of history.

Their policy of no platform for racists and fascists is a calling for de facto censorship. The troubling aspect of this is that according to Antifa, one warrants such a label easily by disagreeing with their own narrow definition of acceptable public discourse, tailored around their own ideology. One could argue they are policing hate speech in the public square, but with a much smaller threshold for offense.

### **Hate Speech**

This paper has previously identified hate speech laws as a restriction on freedom of expression. Hate speech laws moderate public discourse, and thus this paper will now further explore such laws as an endangerment to freedom of expression, or perhaps a sensible restriction?

In 1966, the United Nations General Assembly passed the *International Covenant on Civil and Political Rights* (ICCPR). Unlike the *Universal Declaration of Human Rights* (UDHR) passed in 1946, the ICCPR is legally binding by the 167 nations that ratified it.<sup>103</sup> Article 19 includes almost the same provision on freedom of expression as the UDHR except with the added phrase of “*special duties and responsibilities (...) subject to certain restrictions*”<sup>104</sup>. This is further elaborated in article 20, §2, which states: “*Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*”<sup>105</sup> JM explains in a 2015 article, posted in the *The Review of Faith & International Affairs*, how the drafts preceding the ICCPR, initially only intended to define the article as “*incitement to violence*”, but was expanded to include a further extension of discrimination and hostility on the grounds of national, racial and religious hatred. This was primarily argued by the Soviet union and later ratified by a majority of “*...communist states of Eastern Europe, as well as non-Western countries with very questionable human rights records such as Saudi Arabia, Haiti, Sudan, and Thailand.*”<sup>106</sup> In a way, the issue of hate speech became a proxy war between the east

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<sup>103</sup> Mchangama 2015, p. 76

<sup>104</sup> United Nations 1967, Article 19, §3

<sup>105</sup> Ibid. Article 20, §2

<sup>106</sup> Mchangama 2015, p. 76

and the west. The General Assembly ratified article 20 with 52 votes in favor and 19 votes against. The 19 nations that voted against were primarily western liberal countries. They had argued that terms such as *hatred* and *hostility* are inadequate and vague definitions that might lead to an undermining of freedom of expression. JM further elaborates that; “*Eleanor Roosevelt, then chairman of the UN’s Commission on Human Rights, found the language “extremely dangerous” and warned against provisions “likely to be exploited by totalitarian states for the purpose of rendering the other articles null and void.” She also feared that the provision “would encourage governments to punish all criticism under the guise of protecting against religious or national hostility”*<sup>107</sup> The 52 nations that voted for the article, argued in reference to World War 2 and the atrocities of the Holocaust, that such laws would have prevented this. This argument is still propelled as the main reason for hate speech laws, as well as colonialism and the apartheid. The European Commission against Racism and Intolerance (ECRI) states that Hate speech is a major threat to the cohesion of a democratic society and if Hate speech is “*...left unaddressed, it can lead to acts of violence and conflict on a wider scale.*”<sup>108</sup>

Since 1966, the resistance by western liberal democracies has turned to enthusiasm for hate speech laws. “*At the heart of this shift is the belief that social peace in an increasingly multiculturalist Europe requires certain restrictions on expressions aimed at racial, ethnic, and religious (and recently also sexual) minorities.*”<sup>109</sup> This belief has since been supported in several instances by the Council of Europe, for example in the 2008 *Decision on Combating Racism and Xenophobia*<sup>110</sup>. JM argues that there is no clear and widely accepted definition of hate speech, which is largely thanks to its vague origins in article 20. This makes it hard to tell what the permissible limit to speech is. According to JM, the laws threshold for a breach of hate speech seems higher than the actual court precedent. As previously covered in the Research review, JM argues that if there was some evidence of hate speech laws working, they might be worth it. But there is none. The places that have strict hate speech laws see a rise in hate crime, and the ones that don’t, like USA, see an increase in racial tolerance. Hate speech laws were argued on a post-world war 2 hangover that witnessed human atrocities on a mass scale. This

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<sup>107</sup> Ibid. p. 76

<sup>108</sup> ECRI 2019

<sup>109</sup> Mchangama 2015, p. 77

<sup>110</sup> Council of Europe 2019

was fueled by hate, so the logic is clearly if we restrict hate by outlawing it, society can keep evil at bay. Antifa also argues that if more had been done to resist fascists in pre-war Germany, World War 2 would never have happened. The paper will now look closer at this claim, as well as the historical context of it.

Besides being contra-factual, it's closer to wishful thinking, according to Flemming Rose (FR), publisher of the 2005 Muhammed caricatures in Jyllands-Posten. In his book *Tyranny of Silence*, FR refutes the historical claim that is the founding principle in International and European enactment of hate speech laws; which is the narrative that anti-Semitic hate speech was the catalyst for the holocaust. *"If evil words beget evil deeds, then forbidding evil words will lead to fewer evil deeds."*<sup>111</sup> FR was confronted with the same argument during the Muhammad crisis in 2006. *"People condemned the cartoons as Islamophobic, and warned that the demonization of Muslims might trigger mass violence."*<sup>112</sup> In researching for his book, FR found that the Weimar Republic did have laws similar to modern day hate speech laws. Insulting religious communities, including Jews was a punishable offense with up to three years in prison. *"Inciting class warfare or acts of violence toward other social classes was also prohibited by law."*<sup>113</sup> FR found that the Jewish community often used this law for protection to some success. Prominent Nazis such as Joseph Goebbels, Theodor Fritsch and Julius Streicher (publisher of *Der Stürmer*) were all prosecuted by the Weimar state for anti-Semitic speech under these laws. Streicher, who served two prison terms, used the courtroom as: *"...an effective public-relations machinery for his efforts. The more charges he faced, the greater became the admiration of his supporters. On the occasions on which he was sent to jail, Streicher was accompanied on his way by hundreds of sympathizers in what looked like his triumphal entry into martyrdom. In 1930, he was greeted by thousands of fans outside the prison, among them Hitler himself. The German courts became an important platform for Streicher's campaign against the Jews."*<sup>114</sup> In the period between: 1923 to 1933, *Der Stürmer* and Streicher was taken to court thirty six times, which afforded the Nazis an unprecedented platform otherwise not available in a free speech environment.<sup>115</sup> In 1925, Hitler was banned from speaking by the Bavarian government, which prompted the Nazis to

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<sup>111</sup> Rose 2014, p. 54

<sup>112</sup> Mankoff 2019

<sup>113</sup> Rose 2014, p. 54

<sup>114</sup> Ibid. p. 54

<sup>115</sup> Mankoff 2019

mass print and distribute a propaganda poster with Hitler's mouth taped shut and the caption below "*One alone of 2,000 million people of the world is forbidden to speak in Germany*".<sup>116</sup> The Nazis utilized the government's speech restrictions on Hitler in their favor by turning it into a propaganda weapon.

FR refers to the notorious Aryeh Neier, who in 1939 fled Germany and became a human-rights activist in the USA. In 1977 he was the leader of the American Civil Liberties Union (ACLU) and was widely criticized when he defended the rights of Neo-Nazis to protest in front of Holocaust survivors in Illinois. Neier's story, which FR points out, is a perfect example of why freedom of expression is important, and should be protected no matter what your political ideas are. "*...after they won the right to demonstrate, the Nazis failed to gain much attention, and the movement died soon afterward.*"<sup>117</sup> Neier says in his book; *Defending My Enemy*, that the best way to prevent another Holocaust is by resisting every incursion on freedom. On the basis of these findings FR argues that hate speech as the catalyst for the Holocaust has no empirical support. In fact, it seems to have produced the opposite of results and it could be argued that the hate speech laws of the Weimar Republic paved the way for the Holocaust, because it handed the Nazis "*...a glorious opportunity to bait the Jewish community in the bully pulpit of the courtroom.*"<sup>118</sup> Between the two world wars in Europe, support for free speech was low, and rather than suppress Nazi speech, the Weimar Republic would have done better to address their propaganda in a free and open debate.

The final argument made by FR is, that the Weimar Republic failed to protect against political violence, which was very common. People who spoke out against the Nazis were politically murdered, and the state failed to protect these individuals, which in turn created an atmosphere of silence. FR once again quotes Neier's book: "*The lesson of Germany in the 1920s is that a free society cannot be established and maintained if it will not act vigorously and forcefully to punish political violence (...) Violence is the antithesis of speech. Through speech, we try to persuade others with the force of our ideas. Violence, on the other hand, terrorizes with the force of arms. It shuts off opposing points of view.*" This argument is in direct contest with that of Antifa, who

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<sup>116</sup> Lukianoff 2019

<sup>117</sup> Rose 2014, p. 54

<sup>118</sup> Ibid. p. 55

advocate political violence as an antidote to fascism. The opposing side of the argument, as articulated above, is that the antidote to violence is not violence or censorship, but more speech.

The arguments of FR refute two stories prevalent in today's perception of how to properly fight bad ideas like fascism. The first story is that a lack of hate speech laws allowed the Nazis rise to power. This story is what is at the center of legitimizing hate speech laws today as JM points out. The second story, which Antifa has argued, is that the only way to beat authoritative anti-democratic ideas like Fascism is with violence. In light of the arguments articulated by FR, that is sort of like fighting fire with fire.

The analysis will now look further into the claim of political violence and hate speech laws as an antidote to extremism. One such example is easily found in the 1930's Great Britain, where the *British Union of Fascists* (BUF), led by Oswald Mosley hoped to spread the ideology of fascism in the country. They wore black shirts as a uniform, the symbol of fascism, and railed against British Jews in East End London.<sup>119</sup> The BUF frequently fought with Anti-Fascists, most notoriously in a street clash called; *The Battle of Cable Street* in London, which formed a founding story of resistance to fascism with the use of violence.<sup>120</sup> The government of the UK subsequently sought to limit the spread of fascism and passed the Public Order Act in 1936 which was specifically aimed at suppressing and arresting fascist elements in society. The law has since been kept in place, as mentioned earlier in the clarification of concept chapter.

Gerald C. Weber (GCW) has looked into these two instances of suppression of fascism in the pre-war UK. He has a degree in government and political theory; he has a D.Phil. which he got from his work *The Ideology of The British Right 1918-1939*.<sup>121</sup> In an article to the *Journal of Contemporary History* from 1984, GCW writes that the BUF were not in decline as a consequence of cultural or legislative suppression, but on the contrary these helped the organization immensely. "...in the wake of the 'Battle of Cable Street' (a running battle between anti-fascists and the police which took place in east London on 4 October and which the Left claimed 'smashed fascism'), the movement quickly gained an extra 2,000 members, most of them in the East End." As a result of the battle, the government decided to pass the Public Order Act

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<sup>119</sup> Webber 1984, p. 577

<sup>120</sup> HOPE not hate 2019

<sup>121</sup> AHUA 2019

which enacted several restrictions such as making it an offence to wear any form of political uniform, under section 1. It prohibited the formation of quasi-military organization under section 2. The Law provided the chief officer of police with the authority to ban political marches under section 3 and a prohibition on *offensive conduct conducive to breaches of peace* under section 5.<sup>122</sup> The latter meant a person would be guilty of an offence if they used threatening, abusive or insulting words with the intention of breaching the peace, or if a breach of the peace happens as a consequence of those words, and thereby guilty of an offence. The same logic that is applied in act utilitarianism is the same that is applied here, only it measures in harm rather than pleasure. “...it may even have been the case that insofar as the Public Order Act was successful in forcing the BUF to become more restrained and 'respectable' after 1936, it actually helped the movement to attract the middle classes thereafter.”<sup>123</sup> One of the indirect consequences of the Public Order Act was that BUF began to pursue clean political goals rather than street fights, and they became legitimate in the eyes of the public and this surged their memberships. Moreover, the direct confrontational approach by the Anti-Fascists only prevented a political march, which is a short term goal. In the long run, it helped the BUF organization. This example clearly reiterates the point that violence is a poor solution to confronting bad ideas. Moreover, in their attempts to suppress the rise of fascism, by allowing the government to enact the Public Order Act, which is objectively an incursion on negative freedom. In 1986 the act was refurbished by the Thatcher government to control leftwing protesters, particular after several protests and riots in the early 1980's.<sup>124</sup> The act allowed for police to arrest based on words /signs that were abusive, threatening or insulting (the phrase insulting was removed by pressure from the public in 2014).<sup>125</sup> This lends credit to the argument that one should never put laws in place to suppress anyone's freedom of expression, because it will ultimately be used against one self. Or as Benjamin Franklin put it: “*Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety*”.

The paper will now change lane, and examine the digital sphere, in order to answer the problem statement; to uncover if this new frontier in human communication is strengthening or diminishing freedom of expression.

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<sup>122</sup> Parliament of the United Kingdom 2019

<sup>123</sup> Webber 1984, p. 597

<sup>124</sup> Strickland & Douse 2019

<sup>125</sup> Ibid.

## Social media

With the advent of the printing press in the 16<sup>th</sup> century, the printing of a pamphlet or, pamphleteering, became a common way of debate. They became widely used in England, France and Germany where they played a pivotal role in swaying public opinion on key religious and political issues. It was a powerful tool for mass distributing information and ideas to an increasingly literate population.<sup>126</sup> Although the invention of the printing press and production of pamphlets sparked a remarkable change in human exchange of information, they came with weeks or months in between replies or updates to one another. Today the pamphlet has been replaced with an infinitely greater tool for the exchange of information; the internet and social media. The stream of information ferrying via these tools are constant, counting in billions upon billions of codes, daily, which transform into readable and visual, digital information. The stream of information is so vast and constant, that one might ask how we can possibly extract any sensible meaning from this deafening stream. Especially considering that so much of it is completely useless, false and intentionally misleading. It might prompt some to ask; if there should be tools put in place, to filter out the noise of this stream of information, in order to hear the sound of reason and truth? Who should be responsible for that? The government -or someone else?

On the 25<sup>th</sup> of January 2019, YouTube announced on its blog, that they would change their algorithms to “...reduce the spread of content that comes close to-but doesn't quite cross the line of-violating our Community Guidelines.”<sup>127</sup> On the 20th of March 2018 Google announced on their blog, that “It's becoming increasingly difficult to distinguish what's true (and not true) online”. In an effort to help out the traditional mainstream media, who are failing under the pressure of creative destruction, Google announced its intention to change their algorithms to promote more “authoritative content.”<sup>128</sup> Results that might otherwise be more related to the search will be passed over by sites deemed by Google as authoritative. In the same blogpost, Google also announced a “fact-checking” unit called *Disinfo Lab*, which will distinguish fact from falsehood. On the 30<sup>th</sup> of June 2017, Vice president of Facebook, Adam Mosseri announced on Facebooks blog that an update to Facebooks News Feed algorithm aimed to show users more

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<sup>126</sup> Britannica Academic 2019b

<sup>127</sup> YouTube Team 2019

<sup>128</sup> Schindler 2019

“*informative and entertaining*” content and would seek to “...*reduce low quality links in News Feed (...) and reduce the spread of problematic links such as clickbait, sensationalism and misinformation.*”<sup>129</sup> Also in June 2017, Facebook, Microsoft, Twitter and YouTube in collaboration with the UN, formed the Global Internet Forum to Counter Terrorism (GIFCT) which is a shared hash database that combines all known terrorist and extremist content such as text, photos and videos and through machine learning, has created a system that can remove such content much faster than humans on these platforms.<sup>130</sup>

What has prompted most of these initiatives and changes to be put in place on these platforms is a general pressure by politicians. Most recently as a consequence of the *Cambridge Analytica* scandal, which news of broke in March of 2018. It was revealed that the British owned company, specializing in election manipulation had obtained and used 87 million of Facebook users’ data in the Brexit vote and in the American presidential election of 2016.<sup>131</sup> This has since led to multiple hearings with Facebook CEO Mark Zuckerberg and executive representatives in the US senate, EU Parliament and UK Parliament. These hearings reflected the concerns many politicians on both sides of the political spectrum have of tech-companies such as Facebook, and their powers. It also created an opportunity for politicians to address certain issues they have with tech-companies. One of these concerns is the issue of freedom of expression.

US Senator Ted Cruz asked Mr. Zuckerberg during the senate judiciary committees hearing on the 10<sup>th</sup> of April 2018, if Facebook had a political bias, to which Mr. Zuckerberg denied, stating Facebook consider itself to be a platform for all ideas. Ted Cruz replies: “*Mr. Zuckerberg, I will say there are a great many Americans who I think are deeply concerned that that Facebook and other tech companies are engaged in a pervasive pattern of bias and political censorship*”. Mr. Zuckerberg conceded that because Facebook is located in Silicon Valley, which is an extremely left-leaning place, “...*this is actually a concern that I have and that I try to root out in the company, is making sure that we do not have any bias in the work that we do...*”<sup>132</sup> The latter part, speaks to a political echo chamber at Facebook. If the vast majority of the people working at Facebook located in the notoriously left-leaning liberal Silicon Valley, then they undoubtedly

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<sup>129</sup> Mosseri 2019

<sup>130</sup> GIFCT 2019

<sup>131</sup> Lauritzen & Stjernfelt 2018, p. 10

<sup>132</sup> Bloomberg Government 2019

have a liberal bias. When Facebook employees are confronted with the multitudes of political pluralism represented by the 2.3 billion users on Facebook, it's very likely they will view, from their perspective, some of those political views as outside Overton's Window, as radical or unthinkable, even though those views may be within the window of acceptable discourse.

During the hearing of Mr. Zuckerberg at the EU Parliament on the 22<sup>nd</sup> of May 2018, MEP Nigel Farage stated in response to Mr. Zuckerberg: *"You say that Facebook is a platform for all ideas. Now historically of course, it is true that through Facebook and other form of social media, there is no way that Brexit, or Trump or the Italian elections could ever have possibly happened. It was social media that allowed people to get round the back of mainstream media. Now perhaps you are horrified about this creation of yours and what it's led to (...). But what is absolutely true is that since January of this year, you've changed your modus operandi, you changed your algorithms and it has led to a very substantial drop in views and engagements for those who have got right of center, political opinions. (...) look at President Trumps numbers, are at a much smaller scale, look at mine, look at thousands of other conservative commentators and on average, we are down about twenty percent over the course of this year. And that's happening on a platform for all ideas."*<sup>133</sup> The right-leaning conservative news site *Breitbart*, reported that after another change to Facebooks algorithm in January 2018, President Trump's engagement dropped with 45 percent.<sup>134</sup> There is a wide concern in the US and abroad, that social medial platforms like Facebook are suppressing people right of center, which there is tangible evidence.

### **The Proverbial Town Square**

Suppression of opinions right of center, speaks to a political bias, which would influence political outcomes, because so many people in today's digital age get their news from sites like Facebook. A study by Pew Research published in May of 2016 showed that 62 percent of all adults in the US get their news from social media platforms. Of those who responded yes, 64 percent reported only getting news from one social media site.<sup>135</sup> If Facebook decides to alter their algorithms to favor one political side over another, then they cannot be considered neutral. But is that mere speculation?

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<sup>133</sup> CNBC 2019

<sup>134</sup> Bokhari 2019

<sup>135</sup> Gottfried & Shearer 2019

In December of 2015, Israeli NGO *Shurat HaDin*, created two separate Facebook pages, one anti-Israel and another anti-Palestinian, both featuring similarly racist content. Facebook removed the anti-Palestinian<sup>136</sup> but not the other. The NGO and 20,000 plaintiffs subsequently sued Facebook for allowing “...terrorists to incite violent attacks against Israeli citizens and Jews in general.”<sup>137</sup> In 2016 the tech-site *Gizmodo* revealed that Facebook, according to former employees, were editing the news material on the sites “Trending” feature, and routinely removed conservative news. Moreover, the “curators” of Facebook also injected stories on the Trending feature, even though they weren’t trending. They also removed news critical of Facebook.<sup>138</sup> *Gizmodo* claimed Facebook was therefore not a neutral platform but an opinioned news publisher.

There are similar concerns to share, when looking at Google. Google’s parent company *Alphabet Inc.* is the fourth largest public traded company by market capitalization in the world<sup>139</sup> “Google now processes over 40,000 search queries every second on average, which translates to over 3.5 billion searches per day and 1.2 trillion searches per year worldwide.”<sup>140</sup> In June of 2016, the American Ph.D. Psychologist professor, Robert Epstein (RE) wrote in an Op-Ed on US News, titled “*The New Censorship*”, about how Google is the largest purveyor of information in the world, and with that power they are actively censoring information. RE argues Google can block access to information pivotal to a political candidate or a business which can result in a shift of vote or a ruined company. “*Because online censorship is entirely unregulated at the moment, victims have little or no recourse when they have been harmed.*”<sup>141</sup> According to RE, Google has at least nine blacklists. The first is the multiple autocomplete search phrases that appear in your Google search, which is determined by an algorithm. The utility is for users to easier find search results. During the 2016 presidential election, if you searched “lying”, the autocomplete would suggest “Ted” which was Trump’s nickname for Senator Ted Cruz. However, if you searched “crooked” then “Hillary” - Trump’s nickname for Hillary Clinton “Crooked Hillary” did not appear. Even if you searched “Crooked Hilla” it would recommend something else. This

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<sup>136</sup> Lauritzen & Stjernfelt 2018, p. 130-131

<sup>137</sup> Braun & Bob 2019

<sup>138</sup> Lauritzen & Stjernfelt 2018, p. 131

<sup>139</sup> Ychart 2019

<sup>140</sup> Internet live stats 2019

<sup>141</sup> Epstein 2019

suggests a protection of Hillary Clinton but not Ted. That constitutes meddling in search results to influence an election. According to Lauritzen and Stjernfelts work, if you in 2018 searched on the Danish google “Islam is”; the autocomplete search suggestions were “Islam is peace” and “Islam is a peaceful religion” – and in comparison if you searched “democracy is” suggestions such as “bad”, “dead”, “failing” and “not good” would appear.<sup>142</sup>

Another blacklist is news. Google has become the world’s largest aggregator in the world, and as RE asks; *“What happens when most of the librarians in the world have been replaced by a single company?”*<sup>143</sup> They track tens of thousands of news sources in more than thirty languages, and can ban anyone they please. In 2014 Google shut down its service in Spain due to a proposed Bill that would charge Google for using Spanish news content. The drop in traffic was immediate and devastating for Spanish publishers. *“That drop in traffic is the problem: When a large aggregator bans you from its service, fewer people find your news stories, which means opinions will shift away from those you support. Selective blacklisting of news sources is a powerful way of promoting a political, religious or moral agenda, with no one the wiser.”*<sup>144</sup> This goes beyond Google News, and widely pertains to the Google search engine as well, which they can manipulate the results at will. Businesses or political ideas can find themselves at the mercy of the search engine. Google did this to the news organization Russia Today (RT) and Sputnik in November of 2017 after allegations of being propagandist and peddling fake news.<sup>145</sup> While there is no evidence of outright censorship, Google does however limit its user’s scope of information, by selectively picking winners and losers.

PJ Media broke a story 25<sup>th</sup> of august 2018, that Google were prioritizing liberal media outlets on its search results when searching for “Trump”. By conducting a search on “Trump” in the google search engine, Paula Bolyard used a media bias chart to calculate that 96 percent of the results were all left leaning liberal outlets.<sup>146</sup> This would appear problematic because freedom of expression cannot exist in monolithic news coverage. It is fair to point out however that according to a study from 2013 by the School of Journalism at Indiana University showed that

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<sup>142</sup> Lauritzen & Stjernfelt 2018, p. 138

<sup>143</sup> Epstein 2019

<sup>144</sup> Ibid.

<sup>145</sup> Hern 2019

<sup>146</sup> Bolyard 2019

only 7.1 % of all American journalists had affiliations with the Republican Party.<sup>147</sup> It's therefore unsurprising that there is less conservative journalism on Google's search results. A study done by CanIRank, a San Francisco SEO software company which specializes in search engines, conducted a much further and methodologically meticulous analysis of a possible bias in Google's algorithms. By collecting over 1,200 highly ranked URLs in the Google search engine, and then searching through them for politically charged keywords with each URL assessed for political leanings and by then using the company's search engine software, analyzing how each URL compared in different ranking factors, to determine a differential discrepancy in Google's algorithm. The study underpins that web search is extremely important to democracy, because in today's society, most people rely on Google for information to answers.<sup>148</sup> *"The extent to which a single private company now controls the flow of information is unprecedented in a country historically characterized by pluralistic and ideologically diverse media."*<sup>149</sup> Google's ranking scores are determined by a variety of factors, one of them being internal links. CanIRank found that despite right-leaning sites featuring consistently more internal links than left-leaning sites, the latter were favored by the search engine and represented a greater portion of the top search results.<sup>150</sup> The study however, was unable to find conclusive evidence of a bias within the search algorithm. *"The evidence (...), is not strong enough to prove an inherent bias within Google's algorithm."*<sup>151</sup> This comes despite the fact that they were able to find left-leaning sites much more prominently featured in top results. To this end, the study points out, that users of Google's search engine should be aware that results do not incorporate an assessment of political bias, despite having already incorporated a fact-checking mechanism. *"No attempt is made to present multiple viewpoints on controversial political issues, and the algorithm in its current form does not return results equally distributed across the entire political spectrum."*<sup>152</sup> One might argue this should only be the case in Public Service were both right and left issues and viewpoints are featured to better educate the public at large.

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<sup>147</sup> Wilnat & Weaver 2019

<sup>148</sup> Gevelber 2019

<sup>149</sup> CanIRank 2019

<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

The study argues this point from a deontological perspective. For the sake of pluralism, Google should uphold a culture that equally features both right and left perspectives. The study does not call for legislative measures, although it does reference the *Fairness Doctrine*, which since 1927 required holders of a broadcast license such as radio or TV, to “...*present both sides of controversial issues in an honest and equitable manner.*”<sup>153</sup> This doctrine is one built on a principle of fairness, and the notion that in order to discern truth, all perspectives must be respected and examined. A question then emerges; now that radio and TV has practically been taken over by the internet and social media, should “...*web search results...*” and social media, “...*also be expected to present both sides of an issue?*”<sup>154</sup>

This is a rather challenging issue, because everything Google, Facebook and other tech-companies has done is completely legitimate under current legislation. They are a private company and since none of them are classified as a publisher, but rather a conduit of information like phone companies (who are not responsible for what is said on the phone), they are not responsible under such laws. Tech-companies can circumvent constitutional rights such as the 1<sup>st</sup> amendment because they are a private company, even though their platforms have in the last 10 years become essential to our combined freedoms. This is an emerging trend, where private companies can re-invent the town square for a digital platform, or a Taxi service via an App on your phone like *Über*, or the food delivering App *Wolt*. What they are doing, is re-inventing old concepts for the digital world, and avoiding existing legislation such as 1<sup>st</sup> amendment rights to speech, or labor laws with *Über* and *Wolt*.

### **‘The Good Censor’**

In October of 2018, Breitbart News published an internal Google leak, titled “*The Good Censor*” which offers an insight into the minds of Google HQ. The leak is an 85-page internal briefing document that examines the question “*Can Google protect free-speech and police harmful content?*”<sup>155</sup> The exact author(s) of the document are unknown, so this paper will merely refer to it as the *document*. According to Breitbart, Google has responded with regards to the leaked

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<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

<sup>155</sup> Insights Lab 2019

document, that it “...*should be considered internal research, and not an official company position.*”<sup>156</sup>

The document argues that the internet is in a state of mayhem: trolls, bigotry and hate speech run amok. Faceless users have weaponized free speech. The government is struggling to apply legislation and all the while, the public are becoming increasingly impatient. With all this hatred and intolerance on the internet, is it possible for the internet to remain open and inclusive? “*Who should be responsible for censoring ‘unwanted’ conversation, anyway? Government? Users? Google?*”<sup>157</sup> The document points out, that the free speech ideal was instilled in the DNA of the Silicon Valley tech-companies like Google, Facebook and Twitter, who “...*now control the majority of our online conversation...*”<sup>158</sup> Up to this point, the document argues, free speech on the internet has been a force of good. It’s because of the Communications Decency Act of 1996, which allowed tech-companies to have legal immunity for the content on their platforms unlike the media under publisher laws. Free speech on the internet helped start the Arab Spring, and everywhere around the globe has helped people against oppressive governments. “*But recent global events have undermined this utopian narrative*”<sup>159</sup>, the document argues. It refers to the election of Donald Trump and Russian meddling, the rise of the Alt-Right, the trolling of Leslie Jones and banning of Milo Yiannopoulos from Twitter, as well as the rise of ISIS who utilized social media platforms to recruit and spread propaganda. The document argues that people behave badly on the internet because it is anonymous, we think with our emotional brain before our rational brain, and “...*it’s more tempting to be nasty and aggressive when there are no warning signals or hurdles to slow people down.*”<sup>160</sup> We avoid confrontations offline because that may lead to physical violence. The opposite is true of online. The document states that while “...*emerging talent, revolutionaries, whistleblowers and campaigners (...)*”, enjoy the right to freedom of expression, so too does “...*terrorists, racists, misogynists and oppressors.*”<sup>161</sup> And while people are united across borders thanks to the internet, it has also allowed crummy

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<sup>156</sup> Bokhari 2019a

<sup>157</sup> Insights Lab 2019, p. 2

<sup>158</sup> Ibid. p. 14

<sup>159</sup> Ibid. p. 19

<sup>160</sup> Ibid. p. 30

<sup>161</sup> Ibid. p. 32

politicians to expand their influence amidst the confusion. “...*rational debate is damaged when authoritative voices and ‘have a go’ commentators receive equal weighting.*”<sup>162</sup>

This speaks to Google's regret of the state of web 2.0 where ordinary people can speak. Mainstream media such as the New York Times and CNN, million dollar news organizations are now in direct competition with ‘have a go’ commentators speaking about controversial issues on a laptop in their kitchen, and some of those commentators are receiving more views than the aforementioned mainstream media. While this shift seems ludicrous, it's also important to note that it happened in the free marketplace of ideas and if the ideas of ‘have a go’ commentators reach a higher value than mainstream media, then is the problem truly Google's to fix, by promoting “authoritative content” over common people?

The document states that governments are behaving badly, by creating “troll farms” that employ people to spread propaganda and misinformation, as well as cyber-attacks. Moreover, Google acknowledges that governments are increasingly eager to tighten their grip on political discourse, by having Google and others censor content.<sup>163</sup> At the same time, the document admits to aiding foreign governments in censorship, like in China, Pakistan, Turkey, where different google search engines exist.<sup>164</sup> The document states that governments are attempting to assert control over tech companies. One problem with this is when American values, which founded the social media platforms, come into contact with other global values not otherwise aligned. “*Now, governments are seeking to balance their national values with those of the tech giants through increasingly strong measures. And because the internet is a global platform, many want those nationally-desired protections to be enacted globally – influencing how the entire internet functions.*”<sup>165</sup> Countries such as Germany have very strong hate speech laws, with the enactment of Network Enforcement Act, which require social media platforms to remove hate speech content within 24 hours or face a fine of €50 million. The internet has always been an unfiltered wild west, but now governments are looking to take steps to make the online space safer, where you are protected from speech, much like governments are making offline spaces safer.<sup>166</sup> One could argue that the internet, via social media is a large battleground for cultural contest, and no

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<sup>162</sup> Ibid. p. 45

<sup>163</sup> Ibid. p. 43

<sup>164</sup> Ibid. p. 48

<sup>165</sup> Ibid. p. 56

<sup>166</sup> Ibid. p. 58

longer can one government define through a legal framework who should win, and how it should operate. Both culture and law are now in a global contest.

The document sums up; that tech-companies like Google, Facebook, Twitter and YouTube are caught between two incompatible positions; the American tradition and the European tradition. The former, is the “...unmediated marketplace of ideas (...) that prioritizes free speech for democracy, not civility (...) by creating spaces where all values including civility norms are always open for debate.”<sup>167</sup> This is the position wherein tech-companies initially stood. The latter position “Create well-ordered spaces for safety and civility (...) that favors dignity over liberty, and civility over freedom (...) by censoring racial and religious hatred, even when there’s no provocation of violence.”<sup>168</sup> According to the document, tech-companies are now moving away from the American tradition towards the European tradition. This means tech-companies can no longer be neutral aggregators of information but will become politicized editors and publishers, bound by regulation. In summation the document states the reasons for this move is to “appease users” while maintaining platform loyalty and responding to regulation demands and “...maintain global expansion”, and instead of promoting neutral content, begin monetizing politicized content and increase revenue, as well as “Protect advertisers from controversial content...”<sup>169</sup>

In conclusion the document states that no matter what, Google will not be able to please everyone, and it has become a mainstream position, to be concerned about tech-companies, rather than a fringe issue. Meaning all eyes are on Google. It’s important to remember, that Google has stated this document is not official policy but only research. That being said, it’s clearly within the context of the massive problems and issues Google is faced with. The American tradition vs. the European tradition, freedom vs. civility. It’s worth considering whether or not tech-companies like Google, would rather see themselves be regulated according to the European tradition, in face of so much controversy and criticism. Google is faced with a difficult task because global culture and laws differ vastly, it’s impossible to fit everyone’s needs and between an American or European ‘one-size-fits-all’ model, the European model would impose respect and civility to the global differences rather than let the concept of freedom of

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<sup>167</sup> Ibid. p. 66

<sup>168</sup> Ibid. p. 66

<sup>169</sup> Ibid. p. 70

expression be applied in a vacuum. In the past decades we've seen what happens when a caricature of another culture's religious symbol is published and through the internet instantly goes global without context. This creates chaos. The document argues in a utilitarian logic. There are no identifiable sets of principles bound to a moral ethos within this document. The only clear motivation that is articulated in the document is that Google finds itself between a rock and a hard place, and from this point they must choose and ensure profitability. It is not argued from any traditional ideology, but rather a *technocratic* ideology; wherein the state is largely fused with technological corporations and experts. Freedom of expression is clearly viewed as secondary to safety and future revenue.

### **The Rabbit Hole of the Internet**

The “rabbit-hole effect” is commonly used to describe the experience of watching something on the internet, a YouTube video for example. Afterwards, YouTube recommendation algorithm suggests you something similar, that you may like. You watch it, and then another and another. Before you know it, you've gone from watching a cat video to watching people stomp animals with boots. This is the rabbit-hole effect of the YouTube recommendation algorithm. It's designed to keep you on the site. It also exposes you to material that you might otherwise not have seen. According to a report written for *Data&Society* in September 2018, by Rebecca Lewis (RL), titled: *Alternative Influence: Broadcasting the Reactionary Right on YouTube*,<sup>170</sup> the recommendation algorithm does not only expose you to weird videos, it also exposes you to extremist content. The report identifies extremist rightwing political influencers “...who adopt the techniques of brand influencers to build audiences and “sell” them on far-right ideology.”<sup>171</sup> RL has identified what she calls the “*Alternative Influence Network*” (AIN), as a group of scholars, media pundits and YouTubers who range from liberal to white nationalists. The AIN claims to be an alternative to mainstream media, and provide information and commentary. The report has identified 65 political actors from 81 channels and through cross-promotion of each other and their ideas they have successfully broadcasted a general opposition to feminism, social justice and leftwing politics.<sup>172</sup> The AIN broadcast themselves as the underdog to mainstream media, and create relatability, authenticity through a countercultural appeal. Through social

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<sup>170</sup> Lewis 2019

<sup>171</sup> *Ibid.* p. 1

<sup>172</sup> *Ibid.* p. 1

networking practices the AIN facilitate a radicalization of viewers, “By connecting to and interacting with one another through YouTube videos, influencers with mainstream audiences lend their credibility to openly white nationalist and other extremist content creators.”<sup>173</sup> Even though the content is framed as funny, well-intended and perhaps a bit edgy, it:

“...fundamentally obscures the impact that issues have on vulnerable and underrepresented populations—the LGBTQ community, women, immigrants, and people of color. And in many ways, YouTube is built to incentivize this behavior. The platform needs to not only assess what channels say in their content, but also who they host and what their guests say. In a media environment consisting of networked influencers, YouTube must respond with policies that account for influence and amplification, as well as social networks.”<sup>174</sup> From this quote, it’s

clear that the intersectional perspective is central, and that freedom of expression should not be exercised to hurt marginalized groups, intentional or not. The report’s recommendation for YouTube is extremely radical. RL wants YouTube to monitor all of what these channels say and punish according to the amount of influence and effect a channel has, as well as their networking partners. It’s unclear if this means guilt by association. The report calls for outright censorship of political commentary right of center. It’s also argued from an act utilitarian perspective. The greater the AIN’s influence and success becomes, the greater the harm to society at large. RL argues that the openness and neutrality of YouTube as a platform has created incentive for exploitation by these influencers who reject objectivity and embrace reactionary ideas.

“...platforms like YouTube have an imperative to govern content and behavior for explicit values, such as the rejection of content that promotes white supremacy, regardless of whether it includes slurs.” RL puts forward a demand for YouTube to take up the role of speech police, and only allow content with correct values, aligned with the mainstream. This is a clear cut argument in favor of censorship. Much like Antifa argues that utterance of bad ideas such as racism or fascism necessitates silencing, so too does RL; not by violence but by technological censorship. White supremacist content should be removed, even if it does not use slurs. This is a very vague formulation. Who would determine what white supremacy is? In April of 2019, the *Library Journal*, a 140 year old respected publication posted to its 200,000 followers on Twitter a blogpost from Sofia Leung, a librarian, who argued that “*Library collections continue to promote*

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<sup>173</sup> Ibid. p. 13

<sup>174</sup> Ibid. p. 1

*and proliferate whiteness with their very existence...*<sup>175</sup> The author makes a rather extreme point; that the most important works part of the western liberal tradition is the equivalent of white supremacy. By putting forward vague definitions of what should not be allowed, it becomes impossible to determine where to stop.

The Alternative Influence report has received a lot of praise and attention from mainstream media such as The Guardian, The National Review, NPR, Vox and Wired. The new change to YouTube's algorithm put in place in January 2019, sought to stop recommending or showing videos that were close but not quite crossed community standards. This also included what can best be described as conspiracy videos: "*claiming the earth is flat, or making blatantly false claims about historic events like 9/11.*"<sup>176</sup> According to a study by Nicolas Suzor on *Digital Social Contract*, written for Medium.com, the 81 channels identified as the AIN by RL, have since the change to YouTube's recommendation algorithm gone from being recommended 10-12 % on related videos to 0.4 % of the time. This means a massive drop in traffic for both the AIN channels but also YouTube revenue. After YouTube parent company Alphabet published in April its Q1 report, which showed ad revenue had dropped 10% in growth, the stock fell 8 % on trading day and wiped out \$70 billion in market cap.<sup>177</sup> This is an obvious result of YouTube's algorithm changes. The business model YouTube created was built to incentivize users to stay longer on the site because of the recommended video feature, sending them down a rabbit hole of new content to explore, but now YouTube has been forced due to criticism, to remove large chunks of its content and instead recommend "authoritative content" e.g. mainstream media like BBC or CNN, as recommended videos on political issues. Lauritzen and Stjernfelt argue in their work, that it's fundamentally wrong to censor or punish something like conspiracy theories just because they are perceived by the majority as false. In Denmark, a Nazi journalist named Harald Tandrup was sentenced to three years in prison for falsely printing that the Katyn massacre, in which 8000 Polish officers perished, was perpetrated by the Soviets, not the Nazis. At the time, this was considered outrageous and his statement was adjudicated as "Nazi propaganda". In 1952 an American inquiry committee determined the Soviets were behind the act, and in 1990

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<sup>175</sup> Leung 2019

<sup>176</sup> YouTube Team 2019

<sup>177</sup> Kovach 2019

Gorbatjov admitted to the war crime.<sup>178</sup> Tandrup was right, even though a large and contemptuous majority said otherwise.

One of the more prominent YouTube channels that have been banned is Alex Jones' Infowars. Alex Jones is known for peddling conspiracy theories most famously about 9/11, the Sandy Hook shooting and the government putting chemicals in the water which inadvertently turns frogs gay.<sup>179</sup> In the course of 24 hours, Alex Jones was banned from Apple, Facebook, Spotify and YouTube in August of 2018. He wasn't banned for conspiracy theories, but hate speech, which Facebook define as "*a direct attack on people based on what we call protected characteristics — race, ethnicity, national origin, religious affiliation, sexual orientation, caste, sex, gender, gender identity...*"<sup>180</sup> YouTube's definition is similar, while Apples is a lot more ambiguous; "...content may be removed or rejected if it could be construed as racist, misogynist, or homophobic, or depicts hate themes."<sup>181</sup> In a statement made to BuzzFeed, Apple explains that: "...we have clear guidelines that creators and developers must follow to ensure we provide a safe environment for all of our users."<sup>182</sup> Apple will remove content if it can be construed as hate speech, meaning a subjective interpretation. Moreover, they wish to ensure a *safe environment* for all users. This is similar to the intersectional argument, which argues that marginalized groups are not safe in a free speech environment.

On social media platforms like Twitter, who see themselves as a platform for the public conversation, freedom of expression is naturally important. "*Twitter's mission is to give everyone the power to create and share ideas and information, and to express their opinions and beliefs without barriers.*" The barriers referred to in this quote, has long been an issue of criticism towards Twitter for allowing hateful speech and adjacent forms of abuse. In 2015, former CEO of Twitter Dick Costolo acknowledged the criticism that Twitter was filled with hateful speech.<sup>183</sup> As a result of this admission, Twitter updated its rules on the 30<sup>th</sup> of December 2015 and vowed to protect freedom of expression by fighting

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<sup>178</sup> Lauritzen & Stjernfelt 2018, p. 142

<sup>179</sup> Tobias 2019

<sup>180</sup> Ibid.

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

<sup>183</sup> Tiku 2019

abuse.<sup>184</sup> In order to keep users on Twitter, the platform launched its *hateful conduct policy*, which defines abusive behavior and hateful conduct, in order to remove trolls and hateful content from the platform. The approach is multi-layered, and in most instances will not outright ban users for violations but through “... *mandatory actions for suspected behavior*” try and help “... *the community understand what is acceptable on our platform*”.<sup>185</sup> The argument for Twitters implementation of these rules is that the idea of total freedom of expression creates an environment which fosters an amplified tendency towards behaviors such as harassment and intimidation on the platform, which in turn silences users and drives them away. Ergo; to protect freedom of expression on the platform, twitter must protect its users from abuse and harassment, in order to keep a diverse platform of opinions and beliefs.<sup>186</sup> Since introducing its hateful conduct policy, Twitter has updated it several times. Latest update to the policy came in October 2018,<sup>187</sup> which prohibits the misgendering<sup>188</sup> and deadnaming<sup>189</sup> of transpeople. “*Research has shown that some groups of people are disproportionately targeted with abuse online. This includes; women, people of color, lesbian, gay, bisexual, transgender, queer, intersex, asexual individuals, marginalized and historically underrepresented communities. For those who identity with multiple underrepresented groups, abuse may be more common, more severe in nature and have a higher impact on those targeted.*”<sup>190</sup> This policy adaptation is defined through the framework of intersectionality, as it ranks the scale of abuse in proportion to the oppression hierarchy. The rationale of the policy is based on the academic research in the field. Which specific; is unknown. In an interview on The Joe Rogan Podcast, Twitter executive Vijaya Gadde explained, that the update to the policy with regards to transpeople, came as a result of research by the American Association of Pediatrics.<sup>191</sup> “*For this reason, we prohibit behavior that targets individuals with abuse based on protected category.*”<sup>192</sup> This essentially means that Twitter has created a system, which

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<sup>184</sup> @Meganchristina 2019

<sup>185</sup> Twitter Help Center 2019

<sup>186</sup> @Meganchristina 2019

<sup>187</sup> Twitter Help Center 2019

<sup>188</sup> Refers to using the wrong gender while talking to or of a transperson

<sup>189</sup> Refers to using a transpersons old birth name

<sup>190</sup> Twitter Help Center 2019

<sup>191</sup> JRE Clips 2019

<sup>192</sup> Twitter Help Center 2019

categorizes users as *protected*, according to which historically marginalized or underrepresented group(s) they belong to.

Facebook also judges hate speech by the intersectional hierarchy, which they call protected characteristics. There have recently been examples of online hate speech on social media, playing out its consequences in the real world. In the United Kingdom, under the Public Communication Act section 127 on *Improper use of public electronic communications network*, a person can be guilty of an offence for sending a message that is offensive, obscene, intentionally causes annoyance, inconvenience or needless anxiety to a person. Under this law a person can receive jail time up to 6 months.<sup>193</sup> In December of 2018 Kate Scottow, mother of 3, whom she was arrested in front of hours after she had an argument with a transperson on Twitter, where Kate Scottow deadnamed the transperson. She was detained for 7 hours at a police station and received a court order banning her from misgendering the transperson.<sup>194</sup> Following the Brussel bombings 22<sup>nd</sup> of March 2016, Matthew Doyle tweeted “*I confronted a Muslim woman yesterday in Croydon. I asked her to explain Brussels. She said 'Nothing to do with me'. A mealy mouthed reply*” for which he was later arrested by Scotland Yard. These are not isolated incidents. They are part of a trend that has steadily been rising. Figures from the Metropolitan Police show that from 2010 to 2015, 3,669 arrests were made in the London area under section 127.<sup>195</sup> These legal repercussions fall under what Google defines as the European tradition.

On the 20th of February 2019 French president Emmanuel Macron gave a speech to the *Representative Council of Jewish Institutions* in France, where he addressed the rise of anti-Semitism online, with the proposal of a bill that would ban people convicted of hate speech from all social media platforms.<sup>196</sup> At its current stage it’s not come to fruition, but the proposal points to what this paper has already discussed; the distinction between freedom of expression within a European and American doctrine. The former is now increasingly becoming more acquainted with tech-companies, and a French law such as this could set precedent within a larger European Union legal framework.

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<sup>193</sup> Parliament of the United Kingdom 2019a

<sup>194</sup> Waugh 2019

<sup>195</sup> Corfield 2019

<sup>196</sup> Dumonteil 2019

## **Partial Conclusion**

Part 1 of the analysis has documented the polarized climate on colleges and universities in the USA. Speakers, students, professors, right of center are being protested and silenced. Dissenting ideas on campus are met with anger and hostility, primarily because dissent can be construed as an attack on the identity of disempowered social groups. According to BS this is the furthest extension of political correctness.

According to MW, political correctness is just a weapon invented and used by the political right against the political center and left. MH argues political correctness is civility but in a historical context speech, especially important speech, is often uttered abrasive and unapologetic. There is a fine line between self-censorship and civility, sometimes that line can be blurred and political correctness becomes intrusive.

According to JBP in order to speak truth you need full freedom of expression, because truth is hard to find and it requires experimenting, and the possibility of being wrong. Political correctness interferes with that process. Bill C-16, which JBP fought, is a political correct encroachment on freedom of expression. The law is compelling the speech of Canadians into using a politically charged language that is centered on disputed science.

Organizations such as Antifa engage in street activism to throw off dissenting ideas and politically incorrect speakers who don't conform to the principles of the intersectional oppression hierarchy. Antifa argue political violence is necessary to keep fascism at bay. However, if you disagree with their ideas, more often than not that makes you as a fascist, which is a fallacy of their logic.

The analysis examined hate speech laws; which proved to be ineffectual in actually increasing tolerance. They are counterproductive and increase intolerance.

On the basis of Antifa logic, and the founding story of hate speech laws, we examined the works of FR and how political violence and hate speech laws in the Weimar republic only helped advance the Nazi party. The anti-fascists resistance myth was also disproven in pre-war Britain, where parliament legislation and street fights only helped bolster the British Union of Fascists.

The analysis then ventured on to examine the digital sphere. Information networks are so vast that they also create a lot of false information and hate is rampant on social media platforms. Tech-companies are now tightening their control of their platforms by removing content deemed false or hateful. They are also directing traffic towards authoritative sources rather than new alternative media sources. Tech-companies have almost full control of communication online. These platforms have swayed elections, and the companies are now aware of it. RE and a study by CanIRank showed that Google has several blacklists which are powerful tools for censorship and political influencing.

The Google leak document *The Good Censor* gave an insight into the crossroad Google is positioned in. They are unhappy with current political conditions, and governments are increasing their pressure on tech-companies to act as censors. Google and other companies seem to be moving away from The American tradition of freedom towards the European tradition of civility.

There are many groups pushing for the removal of content and creators on social media. The AIN report identified creators whom they claim radicalize users with extremist content through the rabbit hole of the internet. Tech-companies are now closing traffic and removing these creators. Their conduct and community standard policies are now setup to reinforce the intersectional hierarchy, which values expression based on protected categories. Tech-companies argue they must censor in order to protect free speech.

The paper can therefore conclude, for the moment, that aspects of freedom of expression are under pressure in a new political and digital age.

## **Part 2: Freedom of Expression and the Classical Arguments**

The first part of the analysis examined how freedom of expression is endangered today and why that is. This part of the analysis will seek to examine and understand the classical arguments advocating for freedom of expression. Through the contextual approach, as outlined by QS, this paper will seek to understand the arguments as a contemporary reaction of its environment. The objective is to understand these arguments not as universal statements applicable through time and space, but as they formed in the context of history. This leads to a two-pronged inquiry central to the analysis: What are the classical arguments for freedom of expression? What are the

circumstances wherein the need for freedom of expression arises? After this analysis, the paper will discuss the arguments found in part 1 and 2, and evaluate. The classical liberal arguments are of particular importance, because although they are an echo of past times, they have also formed the bedrock of modern philosophical understanding and rational thought and are therefore an invaluable perspective on freedom of expression.

### **Baruch Spinoza**

The Jewish philosopher Baruch Spinoza is widely acknowledged as the epitome of the 17<sup>th</sup> century philosophers. Roger Scruton describes Spinoza, as one of the great rationalists.<sup>197</sup>

Bertrand Russell praises Spinoza's philosophy as "...one of the noblest monuments of human genius."<sup>198</sup>

Spinoza was born in 1632 to a Jewish family, who had previously emigrated from Portugal to the Dutch Republic. They had fled from the increasingly religious intolerance of the Spanish monarchy that had begun to exert vengeance on the enemies of Christ after the fall of Granada.<sup>199</sup> In the Jewish quarter of Amsterdam, Spinoza grew up as an intelligent and inquisitive man.<sup>200</sup> In 1656, at the age of 24 this nature of his upset the Jewish community and he was issued with a *cherem*, an excommunication from Amsterdam's Jewish community.<sup>201</sup> In the proclamation, Jews were forbidden to communicate with Spinoza, not do him any favors or stay with him under the same roof, nor read anything ever written by Spinoza. In 1670 he anonymously published *TRACTATUS THEOLOGICO-POLITICUS*, which immediately received wide hostile criticism and was banned by ecclesiastical and civil authorities in both Germany and Holland.<sup>202</sup> In this work, Spinoza articulates a formidable defense of Freedom of Expression in his 20<sup>th</sup> and final chapter titled: *Freedom of Thought and Speech*. In the chapters' first line: "*That in a Free State Every Man May Think What He Likes, and Say What He Thinks*"<sup>203</sup>, Spinoza borrows this phrase from Tacitus's: *The Histories*, which states: "...enjoying the rare happiness of times, when we may think what we please, and express what we think."<sup>204</sup> Spinoza and his

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<sup>197</sup> Scruton 2002, p. 26

<sup>198</sup> Russell 2019

<sup>199</sup> Scruton 2002, p. 1-3

<sup>200</sup> Gottlieb 2019

<sup>201</sup> Campos 2015, p. 5

<sup>202</sup> Ibid. p. 5

<sup>203</sup> Spinoza 1891, p. 257

<sup>204</sup> Tacitus 1942, p. 1

philosophy were highly influenced by the ancient Greeks and Romans. Aristotle's view of man as a rational being is according to Scruton central in Spinoza's philosophy, which lay the groundwork for the philosophy of rationalism. Spinoza was more of a stoic however when it came to the happiness of man; regardless of one's circumstances, a man may always by his own resource bring about happiness.<sup>205</sup> The first argument Spinoza puts forward, is "*...that no man's mind can possibly lie wholly at the disposition of another, for no one can willingly transfer his natural right of free reason and judgment, or be compelled so to do.*"<sup>206</sup> This means that humans are naturally inclined to hold diverse thoughts, and even if a person would consent to conform to an ordered interpretation, he would nonetheless still think differently invariably of the consequences. If governments try and control the minds of its subjects, it will be viewed as tyrannical and an abuse of its sovereignty to try and direct what is true and what is false. But as the holders of political and religious power, it can punish anyone whose opinion does not coincide with its own. Spinoza acknowledges that this is the prerogative of the state, and it is by their right they can deem anyone they view as troublesome as an enemy. But this is not the right course of action Spinoza argues; without ample reason to do so, it would cost more in peril to the state to punish man for the diversity of their thoughts, than it would to allow them their own judgement. "*Since, therefore, no one can abdicate his freedom of judgment and feeling; since every man is by indefeasible natural right the master of his own thoughts, it follows that men thinking in diverse and contradictory fashions, cannot, without disastrous results, be compelled to speak only according to the dictates of the supreme power.*"<sup>207</sup> Spinoza adds that words may be as dangerous to a state as actions can be and therefore he begins to explore the limits of this freedom. What is clear is that freedom of expression cannot be given in unlimited concession.<sup>208</sup> The role of the state, Spinoza argues, is not to rule by fear or to solely demand obedience, but it is: "*...to free every man from fear, that he may live in all possible security; in other words, to strengthen his natural right to exist and work without injury to himself or others. (...) In fact, the true aim of government is liberty.*"<sup>209</sup> What Spinoza is referring to here is the social contract, which is what legitimizes the authority of the state. Through the social contract, citizens surrender their natural rights of action in accordance with their own judgement in exchange for

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<sup>205</sup> Scruton 2002, p. 27-28

<sup>206</sup> Spinoza 1891, p. 257

<sup>207</sup> Ibid. p. 258

<sup>208</sup> Ibid. p. 258

<sup>209</sup> Ibid. p. 259

security from the state. He does not however, cede free reason and judgement. Spinoza identifies that the limit of liberty lies where the social contract is broken. A person may disagree with the order of the state: “...*he may even speak against them, provided that he does so from rational conviction, not from fraud, anger, or hatred, and provided that he does not attempt to introduce any change on his private authority.*”<sup>210</sup> If a person disagrees with a law, he can submit a complaint to lawmakers, in so far he does nothing else; he is a good citizen. If he engages in subversive means, by bringing about public disorder, e.g. breaking the social contract, he is an agitator and a rebel. “*He who seeks to regulate everything by law, is more likely to arouse vices than to reform them. It is best to grant what cannot be abolished, even though it be in itself harmful. How many evils spring from luxury, envy, avarice, drunkenness, and the like, yet these are tolerated--vices as they are--because they cannot be prevented by legal enactments. How much more then should free thought be granted, seeing that it is in itself a virtue and that it cannot be crushed!*”<sup>211</sup> Spinoza has shown it’s counterproductive to regulate speech, because it’s impossible to fully prevent, and since free thought brings about good things, such as the progress of science, and the liberal arts. Spinoza also argues, that because bad things are already legal, why would this inherently good virtue not be legal? If men were silenced by tyranny, they would say one thing and think another, and would eventually lead to the corruption of society. “*It is far from possible to impose uniformity of speech, for the more rulers strive to curtail freedom of speech, the more obstinately are they resisted.*”<sup>212</sup> Spinoza states, that it is the general constitution of all men to resist the branding of criminal opinions they believe to be true, and if a piety they worship is branded as wicked, then they are ready to: “...*forswear the laws and conspire against the authorities, thinking it not shameful but honourable to stir up seditions and perpetuate any sort of crime with this end in view.*”<sup>213</sup> It is an unavoidable outcome that sedition will follow censorship. Spinoza refers to the many great schism of the Christian church, which have followed when theological controversies has been decided by authorities into law. If men were not lured by the power of the law, and did not strive to get it on their side in order to triumph over their adversaries, men would not act so malicious and they would not have such fury. Here Spinoza touches on a subject this paper has previously covered, which is the constant

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<sup>210</sup> Ibid. p. 259

<sup>211</sup> Ibid. p. 261

<sup>212</sup> Ibid. p. 261-262

<sup>213</sup> Ibid. p. 262

cultural contest that seeks to be decided by law. The law may pick winners and losers in such a contest, but Spinoza argues that if there were no such possibility of bringing down the law upon someone you despise, then hate would not fester so viciously. In reflection of what Spinoza says, the introduction of bill C-16 is perhaps an example of this sort of cultural contest, which seeks the reinforcement of legislative authorities to clamp down on an opposing side.

Spinoza adds, that laws of this nature which seeks to forbid or legislate an opinion, have often been passed, as a concession to angry mobs. Spinoza says, people “...*who cannot tolerate men of enlightenment...*”<sup>214</sup> and by means of lying can easily turn a crowd into a furious mob who will do what they say. In context, Spinoza is purposely or unknowingly reflecting on his own experiences which led to his excommunication from the Jewish community in Amsterdam. Spinoza was inquisitive, and although he has often been accused with the stigma of being an atheist but never confessed to it, from a very early age he questioned the scriptures and interpreted the role of God and nature differently. He was a man of enlightenment, and Spinoza clearly refers to himself in this paragraph. Spinoza was driven away by his community for questioning God, and after the publishing of *Tractatus Theologicus-Politicus*, it was banned. Spinoza is clearly self-motivated in his advocating of freedom of expression.

The best men, Spinoza argues, are the ones who dare resist unjust laws, for them punishment, even death is a price gladly paid; death for a good cause is no punishment but honor, and death for freedom is glory.<sup>215</sup> Spinoza makes the argument, that only men of character would dare oppose the states authority. “...*if governments are to retain a firm hold of authority and not be compelled to yield to agitators, it is imperative that freedom of judgment should be granted, so that men may live together in harmony, however diverse, or even openly contradictory their opinions may be. We cannot doubt that such is the best system of government and open to the fewest objections, since it is the one most in harmony with human nature.*”<sup>216</sup> Not allowing freedom of judgement creates conflicts, one side will seek to win over the other by bringing about the states authority. This will lead to unrest among the censored population and unrest will increase. The only ideal solution, Spinoza argues, is that everyone be allowed to think what they want, without repercussions – as long as they don’t break the social contract.

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<sup>214</sup> Ibid. p. 262

<sup>215</sup> Ibid. p. 263

<sup>216</sup> Ibid. p. 263

Spinoza says freedom of judgement and speech can be given to the public without problems. He cites the example of the multicultural city of Amsterdam, that houses many religions and cultures and harmoniously work together, until politicians and the state took up the issues of the *Remonstrants* against the *Counter-Remonstrants*. With the founding of the Dutch Republic, the Union of Utrecht in 1579 promised freedom of religion and toleration to all, which prompted many to emigrate, including Spinoza's family. This sparked the Eighty Year's War (1568-1648).<sup>217</sup> In the early years of the Dutch Republic a religious controversy emerged. The doctrine of predestination became Calvinist orthodoxy, and because the political and social system was founded on this belief it had to be protected by the state from unbelievers. In opposition to this increasing intolerance, contrary to what was promised by the Union of Utrecht, the theology professor Arminius issued a "Remonstrance" in 1610 addressing this grievance.<sup>218</sup> The Stadtholder declared against the Remonstrant movement and anyone who spoke out in favor of religious toleration began to feel the heat. The Remonstrants were widely attacked and expelled from the Netherlands by the Synod of Dort in 1618 which declared in favor of Calvinist theology. The Remonstrants were allowed back into the Netherlands in 1630.<sup>219</sup> Spinoza argues that when this schism began, it escalated because the state got involved. Laws that attempt to deal with religious controversies are calculated to irritate rather than reform, which give rise to extremism. "*...further, it was seen that schisms do not originate in a love of truth, which is a source of courtesy and gentleness, but rather in an inordinate desire for supremacy.*" Again Spinoza addresses the midst of a cultural contest, which is ultimately a battle for supremacy by begetting the authority of the state. Spinoza says; the true schismatics are those who condemn other men's writings, and stir up trouble. "*In fact, the real disturbers of the peace are those who, in a free state, seek to curtail the liberty of judgment which they are unable to tyrannize over.*"<sup>220</sup> When people try and take away your right to freedom of judgement, on not just action alone but also mere opinion, what they ultimately succeed in doing is to make a martyr out of their victim and thus give them pity and desire for revenge among the general public, rather than terror.<sup>221</sup>

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<sup>217</sup> Scruton 2002, p. 4-5

<sup>218</sup> Ibid. p. 5

<sup>219</sup> Britannica Academic 2019c

<sup>220</sup> Spinoza 1891, p. 265

<sup>221</sup> Ibid. p. 265

Spinoza says freedom of judgement is individually infeasible, perhaps so too is the human desire for supremacy? The context to which Spinoza articulates his arguments, are not in relevance to offensive public speech against marginalized communities, misgendering transpeople or hate speech on social media. Spinoza largely refers to the period of his day in which freedom of religion was central. 150 years prior to Spinoza's writing, Protestantism lit a fuse in the religious powder keg of Europe and started some of the most brutal conflicts in human history like the Eighty Years War and the Thirty Years War, both ending in 1648.<sup>222</sup> Spinoza's family immigrated to the Dutch Republic at the promise of religious toleration. He was excommunicated for questioning the nature of God. He witnessed the aftermath of the controversy with the Remonstrants. Spinoza's philosophical aspiration can be described as liberation; he wishes to overturn a system of thought that forces humans into bondage. In a divide between freedom of speech/judgement and bondage through ethical, political and theological ideas, Spinoza attempts to produce the former in an attempt to confront the latter.<sup>223</sup> Liberation from the constraints of unreasonable ideas and tradition through philosophical thinking is the aspiration of Spinoza.

### **John Stuart Mill**

John Stuart Mill lived from 1806 to 1873. He grew up in London where he was born to his father, James Mill, who was a philosopher, economist and historian. James Mill and Jeremy Bentham both taught Mill about philosophical thinking, in particular utilitarianism. Mill became a prominent member of his father and Bentham's philosophy society, which played a key role in the intellectual development of Mill.<sup>224</sup> Mill is mostly known for his philosophical writings, but he also ran for Parliament as a Liberal, and was the first Member of Parliament to offer a bill, giving women the right to vote.<sup>225</sup> Mill's magnum opus is the short essay; *On Liberty*, which stands today as the hallmark of liberal thought. Many who read it today often misunderstand its message, Richard Reeves (RR) argues; Mill's essay is not a criticism of the state, but of any social conditions that seek to undermine individual autonomy.<sup>226</sup> *On Liberty* was published in

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<sup>222</sup> Britannica Academic 2019d

<sup>223</sup> Campos 2015, p. 8

<sup>224</sup> Wendy & Fumerton 2009, p. 1

<sup>225</sup> Ibid. p. 2

<sup>226</sup> Reeves 2008, p. 262-263

February of 1859 and it immediately elevated Mill to the pantheon of intellectuals.<sup>227</sup> Ever since its publication it is still reprinted to this day. The essay is heavily influenced by Mills moral philosophy of utilitarianism, which serves as a moral compass for Mill.

The object of the essay is to assert the principle that no one, through legal or public force may coerce an individual to do anything against their will. The only reason to justifiably do so is to prevent harm to others.<sup>228</sup> Mill praised individuality and self-development, which can only exist without an oppressive majority that seeks to impose conformity at large. Mill borrows the phrase “...*tyranny of the majority*”, from Tocqueville, and argues that, social tyranny not political tyranny is a more evil tyrant which require society to be on its guard.<sup>229</sup> “...*there needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development, and, if possible, prevent the formation, of any individuality not in harmony with its ways, and compels all characters to fashion themselves upon the model of its own. There is a limit to the legitimate interference of collective opinion with individual independence: and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs, as protection against political despotism.*”<sup>230</sup> Society during Mills time was in an unprecedented transformation from the rule of kings and aristocracy to parliaments and democratic institutions. Tyranny no longer comes from kings or lords, but can be exercised by the people, a combined social mass of people. Mill gives the example of the French Revolution as tyranny of the majority run amok, which was still fresh in memory when Mill grew up. “*The will of the people, moreover, practically means the will of the most numerous or the most active part of the people; the majority, or those who succeed in making themselves accepted as the majority; the people, consequently may desire to oppress a part of their number; and precautions are as much needed against this as against any other abuse of power.*”<sup>231</sup> Mill is more concerned with the social masses, than a sovereign. Mills contemporary time period experienced tumultuous social unrest. In Europe revolutions were still lighting a blaze, especially the year of revolutions in 1848. That same year the *Communist*

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<sup>227</sup> Ibid. p. 264

<sup>228</sup> Mill 2001, p. 13

<sup>229</sup> Heydt 2019

<sup>230</sup> Mill 2001, p. 9

<sup>231</sup> Ibid. p. 8

*Manifesto* was released in London by Karl Marx and Friedrich Engels.<sup>232</sup> Mills fear of a large social mass joining together under banners of some conformed notion, they wish to impose upon the rest, should obviously be seen in the context of revolutions but equally in the emerging mobilization of workers parties at the time.

For Mill, the only way to determine if an individual's liberty ought to be imposed is through the *harm-principle*. This principle has been the subject of philosophical debate ever since Mill used it, and it's been central to modern legislation, such a public smoking bans.<sup>233</sup> It is also the key principle which drives the research and arguments of LFB and LBN, in the harmfulness of speech. In Mills philosophy, it is incumbent on the current adult generation to teach the new generation through education, and make them rational people who can conduct themselves.<sup>234</sup> Mill argues that once a person reaches adulthood, society can no longer put restrictions or punish them. *"The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign."* A person's independence is absolute, and he may do whatever he please, as long as it doesn't bring harm to others. Mill does however restrict a person's liberty in concern of responsibility. *"...a man who causes grief to his family by addiction to bad habits, he deserves reproach for his unkindness or ingratitude; but so he may for cultivating habits not in themselves vicious, if they are painful to those with whom he passes his life, who from personal ties are dependent on him for their comfort."*<sup>235</sup> If a father drinks and neglects his responsibility, he should be punished, not for drinking but the neglect of his duty. Mill also makes this case for anyone with an obligation to the public: *"No person ought to be punished simply for being drunk; but a soldier or a policeman should be punished for being drunk on duty."*<sup>236</sup> This means there are two exceptions for society to limit a person's liberty, in Mill's philosophy; if they do harm to others or neglect their responsibilities. *"Whenever, in short, there is a definite damage, or a definite risk of damage,*

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<sup>232</sup> Britannica Academic 2019e

<sup>233</sup> Reeves 2008, p. 264

<sup>234</sup> Mill 2001, p. 76

<sup>235</sup> Ibid. p. 75

<sup>236</sup> Ibid. p. 75

*either to an individual or to the public, the case is taken out of the province of liberty, and placed in that of morality or law.*"<sup>237</sup>

Aside from these exceptions, Mill generally believed people should be left to their own devices, even if they were in nature self-destructive.<sup>238</sup> "...injury which a person causes to society, by conduct which neither violates any specific duty to the public, nor occasions perceptible hurt to any assignable individual except himself; the inconvenience is one which society can afford to bear, for the sake of the greater good of human freedom."<sup>239</sup> Destructive behavior like drinking excessively, gambling, idleness, drugs, etc. should not be banned for three reasons. Firstly; their destructive behavior would visibly discourage others. Secondly; it's more effective to raise people with good habits rather than ban them. Thirdly; legal actions against bad habits and destructiveness is likely to backfire, because according to Mill, independent and vigorous people will resist such bans and "...it easily comes to be considered a mark of spirit and courage to fly in the face of such usurped authority, and do (...) the exact opposite of what it enjoins."<sup>240</sup> This is almost the same argument put forward by Spinoza, if someone is censored for their beliefs, or in Mills case, is banned from doing certain actions – they will rebel and do it simply because they aren't allowed to. This is a condition of 'human nature.

According to RR, the fundamental principle to Mills liberalism was not the harm-principle, but the importance for man and society to have a large variety of character, to give human nature full freedom so it can expand itself in all possible ways. Mill sets the tone early on, that in order to achieve self-development, unrestricted freedom of opinion and expression is necessary.<sup>241</sup> Mill's underlying understanding of freedom of opinion and speech is rooted in a Victorian conception of knowledge as a requisite to human advancement. Mill begins to lay down arguments for freedom of expression, which he states have so thoroughly been argued in favor of for the last two hundred years.<sup>242</sup> "*If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than*

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<sup>237</sup> Ibid. p. 75

<sup>238</sup> Reeves 2008, p. 267

<sup>239</sup> Mill 2001, p. 76

<sup>240</sup> Reeves 2008, p. 267-268

<sup>241</sup> Ibid. p. 268

<sup>242</sup> Mill 2001, p 18

he, if he had the power, would be justified in silencing mankind.”<sup>243</sup> Mill outlines that there can be no reason to silence any opinion. At first glance it would appear to be formulated on the basis of deontological ethics, with freedom of expression as a sacred principle. But upon further explanation, Mill goes on to state the utilitarian upsides of freedom of expression, even when a person is wrong or lying. “*First: the opinion which it is attempted to suppress by authority may possibly be true.*”<sup>244</sup> Like the case with Tanderup and the Katyn massacre conspiracy. For anyone to say that something is false and should not be heard is based on infallibility and no one should be able to judge for all man. “*Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied.*”<sup>245</sup> Mill believes truth is revealed through collision of opinions, which spark debate, which in turn creates new ideas and perspectives. This is similar to what JBP articulates; that in order to find truth you must have freedom of expression in order to immerse yourself in debate and through the collision of conflicting arguments, new perspectives are revealed to you. Mill knew that this would only be possible through freedom of expression. This requires more than freedom of expression but also a culture of positive and lively debate of opposing opinions.<sup>246</sup>

Mill is strongly opposed to someone taking offense as a reason to repress an opinion. “*...offence to those whose opinions are attacked, I think experience testifies that this offence is given whenever the attack is telling and powerful, and that every opponent who pushes them hard, and whom they find it difficult to answer, appears to them, if he shows any strong feeling on the subject, an intemperate opponent.*”<sup>247</sup> In Mill's own experience, when someone takes offense it is because they know they've been outmatched or proven wrong. Offense is never a reason for repression according to Mill. The only legitimate reason to regulate speech is to prevent incitement to illegal action. Mill outlines an example: it is fine to go around and say corn-dealers are intentionally starving people or to print it in the newspaper – but it is not acceptable to say it

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<sup>243</sup> Ibid. p. 18

<sup>244</sup> Ibid. p. 19

<sup>245</sup> Ibid. p. 50

<sup>246</sup> Reeves 2008, p. 269-270

<sup>247</sup> Mill 2001, p. 50

in the presence of an angry mob outside a corn-dealers house.<sup>248</sup> Much like the Supreme Court ruled in *Brandenburg v. Ohio* in 1969. It is the principle of imminent danger that is the determining factor if speech is allowed.

Mill's philosophy is that openness to other people's views is the path to wisdom and individual progress. The only person's judgement worth listening to, Mill argues, is the one who has kept his mind open to criticism, taken in what was just and ignored what was fallacious. By collating all aspects of a subject is the only way to wisdom.<sup>249</sup> According to RR, Mill admits this to be difficult because of "...our own lazy yearning for reassurance."<sup>250</sup>

Mill's *On Liberty* is not an essay arguing against censorship of the state. It addresses tyranny of the majority, the social tyranny of conformity and an *ideological monotheism*. Mill fears two aspects of this; their means of social unrest and social tyranny. The latter Mill argues penetrates deep into our everyday life, and enslaves the soul itself. Social intolerance, Mill argues, forces men to hide their opinions. This creates the problem of intellectual pacification, and as a consequence the world loses out on many promising intellectuals who hide their opinions in fear.<sup>251</sup> RR argues Mill heavily refers to social tyranny in the form of religious intolerance, and he may have known that Charles Darwin was delaying the release of his book because he was afraid of "coming out" as an atheist.<sup>252</sup>

### **Second Partial Conclusion**

Part 2 of this paper's analysis examined the works of Spinoza and Mill. The arguments laid forth by Spinoza are that the nature of mankind makes it impossible for anyone to control the judgement of any individual. Compelling intellectual conformity cannot be done without disastrous results. It is also in mankind's nature to go against the stream, and fight oppression if he believes it right.

Therefore: freedom of expression should be absolute, except when used to break the social contract.

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<sup>248</sup> Ibid. p 52

<sup>249</sup> Ibid. p. 22

<sup>250</sup> Reeves 2008, p. 271

<sup>251</sup> Ibid. p. 294-295

<sup>252</sup> Ibid. p. 295

Spinoza also adds, disorder and chaos only comes when freedom and tolerance is not respected. Too often opposing viewpoints seek supremacy through the means of legislation. Spinoza writes this in the context of 17th century Holland, which has recently undergone wars and religious persecutions, intolerance leads to bondage Spinoza add, whilst philosophy and tolerance of diverse judgements leads to liberation.

Mill argues for the sovereignty of the individual, over coercion by a tyranny of the majority through conformity and intolerance. An individual should be fully free to do, think and speak as he pleases. The only limit is if he does harm, or neglects responsibilities. Speech is only dangerous if it poses imminent danger.

Mill also states, that even false opinions are allowed, because they create collision, and through collision the truth is revealed, also, someone wrong may be right. Moreover, offense as a result of an opinion is usually because the argument is telling and powerful.

## **Discussion**

The paper has now analyzed the two questions of the problem statement; is freedom of expression either endangered or fortified in a new digital and political age? What are the classical liberal arguments for freedom of expression, as investigated in the works of Baruch Spinoza and John Stuart Mill? The papers findings up till this point will now be discussed in this chapter, to the purpose of answering the final question of the problem statement: are the past and present arguments applicable today? In the end, it will be possible to set a diagnosis, on how this might affect freedom of expression in the future.

For the paper to answer this question, we will discuss and evaluate corresponding arguments from part 1 and 2. It will be imperative to evaluate the vast differences of context, from past societies and to present.

## **Political Correctness**

The primary source of stricter rules around freedom of expression today originates from the leftwing.<sup>253</sup> In colleges and universities, liberal professors outnumber conservative professors

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<sup>253</sup> It's important to note, that restricting freedom of expression does not exclusively come from the left, but can just as frequently occur on the right, but the issues relevant today and examined in the paper identify in broad terms "the left" as the origin of these restrictions.

11.5:1. This discrepancy could be one of the reasons there is now a lack of conservative ideas and values presented in academia, and subsequently why these ideas, when they come into contact with leftwing liberal ideas, in many cases seem to create mayhem. This development might also correlate with the ideological polarization which has asymmetrically affected the liberal wing more than the conservative.<sup>254</sup> The overall argument for liberal ideas to reject and isolate conservative ideas is that the intersectionality theory suggests that these ideas are harmful. Not only that, they are reinforcing systemic oppression of marginalized and disempowered social groups. The academic research of LFB and LBN proves the correlation of certain speech to equate as violence. This has instigated the development of terms such as trigger warning, micro-aggression and safe space, which are meant to conceptualize a political correct language, and “keep people safe” from certain speech.

This entire argument is built around the provability of tangible *harm*. The harm-principle, articulated by Mill, is central in modern jurisprudence. Smoking only harms oneself, so albeit a bad habit, it only harms you. Invoking the harm-principle, legislators have extended this interpretation to apply further, and evaluating that smoking in close proximity, like in public utilities, is inflicting involuntary harm on others. Ergo, it is not allowed. LFB have demonstrated biological proof of harm from certain abusive speech. LBN have linked offensive public speech as a root cause of misery among certain social groups. Thus one can seemingly in accordance with the harm-principle, argue that certain speech should be restricted.

It is however not that simple; what constitutes harmful speech, some might deem controversial or incorrect? An example of such could be: should we censor climate change deniers, because they are harming decade’s worth of work to inform the public? What has been created is the demand for the *right* not to be offended. Meaning freedom ends where someone else’s feelings begin. On this, Mill is pretty clear: All mankind is no more justified in silencing one person with a contrary opinion, than the one person, if he had the power. The one person may be right, and in most cases, truth can be found on both sides. It is the collision of two ideas that more often than not yield truth. Mills argument is applicable, because it evolves around the discovery of truth as a universal principle. Spinoza argues no person can yield their judgement, so no matter what restrictions were put in place on certain speech, no matter the utilitarian upsides, the results of

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<sup>254</sup>Pew Research 2019

silencing a person's indefeasible judgment would be disastrous. This argument is applicable without context, because human nature is the same then as now. Mill makes the distinction that a person should only be held accountable by the morality of law if their speech poses imminent danger, while Spinoza says, that anything which breaks the social contract is subject to restriction. Debate, in public, in academia, online - does not pose imminent danger or break the social contract unless it incites to violence.

The theory of intersectionality is based around different social groups living together. It would not apply, in a completely homogenous ethno national state. It applies in a multicultural society. USA, the UK and Canada have all become vastly more multicultural in the last decades. The more multicultural a society, the more different opinions people will harbor, and express them in all kinds of multitudes. According to FR, that leaves society with two approaches to freedom of expression: One way is for all to agree, that no one offends each other. Everyone respects all cultures, customs and traditions. This would need to be applied equally in a consistent and democratic way. This would however, undoubtedly lead to a tyranny of silence.<sup>255</sup> Spinoza says it is a natural condition of mankind to have different opinions and if we consider the argument of Mill; truth is only found through collision of arguments in debate.

A second way would be for everyone in society to understand that the price of democracy, and the right to freedom, is to accept that no one has a right not to be offended. If a multicultural society wishes to remain an open society, it requires more freedom of expression, not less.<sup>256</sup>

### **Political Violence and Hate Speech**

In the analysis, this paper has also identified political violence and hate speech laws as a curtailment of freedom of expression. Activists like Antifa praise the use of violence against political opponents they deem dangerous. Liberal democracies across the west now praise hate speech legislation, as a means of avoiding the cataclysmic horrors of the 20<sup>th</sup> century. Violence is condemned by both Mill and Spinoza. Spinoza talks of religious intolerance as an instigator of violence, but presumably political intolerance would merit equal condemnation. Mill talks of a tyranny of the majority, of the ones loudest and most ready to action. This is equally applicable to Antifa but also to the use of political violence as a whole. The fallacy of Antifa is that their

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<sup>255</sup> Mankoff 2019

<sup>256</sup> Ibid.

vague definitions of fascism and dubious understanding of history, means many opponents of far left ideology becomes categorized as fascists and are thus subjected to political violence.

The analysis also refuted the claim, that in the instances of the pre-war Britain, anti-fascists violence did not succeed in suppressing fascism, quite the contrary. Similarly the analysis refuted the myth that sowed the seeds of hate speech laws. The Weimar republic did in fact use hate speech-like laws to clamp down on Nazi figures, but the Nazis played it to their advantage; making themselves out as the underdog and enabling a public platform. Spinoza argues that in the schism of the Remonstrants in the Dutch Republic, the schism only truly began when the state got involved and tried to settle religious controversies, which never originate in a love of truth he says, but rather in an inordinate desire for supremacy. The context is vastly different from 17<sup>th</sup> century Netherlands, the Weimar Republic and today. But the applicable elements in Spinoza are that in the midst of a cultural contest within society, one side will attempt to beget the authority of the state on their side. These are the true schismatics Spinoza argues, those who condemn the writings of others and stir up trouble. The only thing that such actions can result in is making their victims into martyrs. Spinoza's solution is that no one should get the state authority on their side, and everyone will have to accept everyone's differences. In the case of hate speech laws, Mills argument is partly applicable as well; human nature will make people resist legislative bans, such as speech, and will do so vigorously simply because it isn't allowed.

Political violence restricts society's ability to debate amongst itself, and if the collisions of ideas are hindered then progress will be slowed. Moreover, it's counterproductive in the instances examined. The same goes for hate speech laws - Spinoza's argument is that such laws come in love of tyranny not truth, and will only lead to martyrdoms and vengeance. And according to Mill, resistance to such laws are human nature, and thus impossible to prevent.

### **The Proverbial 'Town Square'**

The internet was built on the American tradition of freedom of expression for all, where one can say anything and everyone can tune in. The immediate problem is that not everyone is comfortable with this design. Many totalitarian governments like China actively blocks certain search engine query. Germany's new Facebook law requires social media platforms to remove hate speech within 24 hours or be fined € 500.000, which forces platforms to remove content immediately without investigation.

The analysis has up to this point; on the basis of its findings concluded that freedom of expression, as defined in the context of the American tradition is endangered. Within the European tradition of civility and safety over freedom, tech-companies are now conforming to match a more global standard of discourse, one in which the window of acceptable discourse is limited. The theory of intersectionality is also grounded in the new terms of service, as is the utilitarian logic; wherein censoring some will enable all to speak.

Once again Spinoza argues no one can cede their indefeasible judgment, and thus everything should be allowed, because it is human nature to persist. Mill also argues that humans are variably different, and the development of these different progressions requires free speech. Much like JBP say we need to stumble before we can fully formulate truth. But this is altogether a different matter on the internet, because the private company that hosts the platform you are using has decided to shut down your account. Spinoza and Mill didn't argue that someone had the right to speak their mind in the private home of somebody else but in the town square, which is a *public* platform. The only problem is, that the emergence of this technology has made public speaking almost superfluous and ineffectual compared to the possibility of outreach from a social media platform. They are effectually the *new town square* and they are entirely private.

Hypothetically; if president Trump wished to secure online freedom of expression in the future, he could issue an executive order dis-incentivizing tech-companies from censorship. Like the executive order securing freedom of expression on colleges, the US government could issue fines, open anti-trust investigations or require social media to define themselves as publishers under section 230 of the communications decency act and remove their legal immunity.

Online expression is altogether a new realm of communications and the repercussions are different. Offline, we self-censor in order to avoid confrontation but online there are usually no consequences to our actions which mean we are far more likely to act on impulses.

If one considers the findings of this paper in a larger historical context: beginning from the rule of monarchs where there was little to no freedom of expression at all, to the emergence of democratic western nations in the midst of the 19<sup>th</sup> century. Freedom of expression then became constitutionally guaranteed, but was still very limited by culture and religion, which in turn was legislated by the antecedent culture. Then the 1960's come around with the free speech

movement as well as the sexual liberation and begins a culture of unencumbered freedom of expression. Old norms are thrown away. Society acquires almost full freedom of expression. The last 400 years has been the story of more freedom and more expression being tolerated in society. So it would seem logical, that the vast extend of freedom of expression created in the previous decades are now being challenged. In this perspective, we might consider Hegel's *pendulum theory* wherein each result of an historical event leads to a reactionary event, which is later remedied by a resolution of the two leading to a middle ground.<sup>257</sup> It is very likely that the encroachment of freedom of expression we are witnessing is the pendulum swinging the other way.

## **Conclusion**

The issue of freedom of expression has in the last years, increasingly been an issue of controversy. This paper has sought to analyze freedom of expression in the US and adjacent countries, as the center of gravity. Historically it has been true, that what happens in the US and other large western nations, will ultimately happen not long after in the rest of the west and the world. Therefore we can expect to see the same issues examined in this paper, play out in Denmark as well.

This paper has examined the western liberal powers, primarily the US but also adjacent Anglo-countries like the UK and Canada. Although the US's staunch protection of its first amendment rights has proven steadfast, the ongoing political battles which value wellbeing and safety over freedom of expression are worrisome. Political correctness, political violence and hate speech laws are not the tools of truth, but of control. The paper has proven these can validly be deemed as an encroachment on freedom of expression. There is a cultural contest of colliding ideas currently battling amidst society, and the outcome will decide whether society will have more or less freedom of expression. The same holds true in the new frontier of the internet. The American tradition has become unsustainable for global tech-companies, who are now opting for the European tradition with less freedom.

The classical arguments articulated by Baruch Spinoza and John Stuart Mill are still highly applicable today. Although the context differs vastly in some instances, most of their arguments

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<sup>257</sup> Maybee 2019

pertain to basic human nature, such as a person's indefeasible judgment and persistence to fight for what they believe to be true. The philosophical arguments lean on a utilitarian side, because both writers argue freedom of expression to be beneficial for society rather than harmful. The limits they articulated still apply today, but have only further been expanded upon like the harm-principle.

The most important argument, very much applicable today, is that schisms in the form of cultural contest do not come from a love of truth but from a want of control. Freedom is a requirement of truth, and truth is a requirement of societal progress. Progress requires the development of difference and diversity which means the best approach for society, locally as well as globally is to accept that our differences do not require less freedom, but more.

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