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Who Is the Devil and What Is He Due?

“Fire. Fire. Fire! Now you’ve heard it,” Christopher Hitchens declared in an auditorium that bore some resemblance to a theater, the type specimen on offer by the United States Supreme Court Justice Oliver Wendell Holmes of where and when speech should be restricted.¹ To wit, Justice Holmes’ unanimous opinion in the 1919 case of Schenck v. United States included these now famous and oft-quoted lines:

The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic . . . The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.²

What were the falsely shouted utterances that Justice Holmes feared constituted a clear and present danger? They were 15,000 fliers distributed to draft-age men during the First World War that encouraged them to “Assert your rights,” “Do not submit to intimidation,” and “If you do not assert and support your rights, you are helping to deny or disparage rights which it is the solemn duty of all citizens and residents of the United States to retain.” The right to what? Freedom. Freedom from what? Slavery.

Slavery? Yes. According to the distributors of the fliers – Charles Schenck and Elizabeth Baer, members of the Executive Committee of the Socialist Party in Philadelphia – military conscription constituted involuntary servitude, which is strictly prohibited by the Thirteenth
Amendment of the US Constitution. “When you conscript a man and compel him to go abroad to fight against his will, you violate the most sacred right of personal liberty, and substitute for it what Daniel Webster called ‘despotism in its worst form,’” they wrote in their broadside, elaborating:

A conscript is little better than a convict. He is deprived of his liberty and of his right to think and act as a free man. A conscripted citizen is forced to surrender his right as a citizen and become a subject. He is forced into involuntary servitude. He is deprived of the protection given him by the Constitution of the United States. He is deprived of all freedom of conscience in being forced to kill against his will.³

For this treasonous act of voicing their opposition to the draft (and US involvement in a largely European war), Schenck and Baer were convicted of violating Section 3 of the Espionage Act of 1917, passed shortly after US entry into the Great War in order to prohibit interference with government recruitment into the armed services, and to prevent insubordination in the military and/or support for enemies of the United States during wartime.⁴ It sounds like an antiquated law applicable to a darker time in American history, employed as it was to silence such socialists as the newspaper editor Victor Berger, the labor leader and Socialist Party of America Presidential candidate Eugene V. Debs, anarchists Emma Goldman and Alexander Berkman, communists Julius and Ethel Rosenberg, and Pentagon Papers revealer Daniel Ellsberg. But, in fact, the Act is still used today as a cudgel against such whistleblowers as diplomatic cable leaker Chelsea Manning and National Security Agency contractor Edward Snowden, still on the lam in Moscow for his Wikileaks revelations about spying (and other questionable activities) on both American citizens and foreign actors (including German Chancellor Angela Merkel) by the United States government.

Tellingly, as mission creep set in and “clear and present danger” expanded to include speech unrelated to military operations or combating foreign enemies, Holmes dissented in other cases, reverting to a position of absolute protection for nearly all speech short of that intended to cause criminal harm, concluding that the “marketplace of ideas” of open discussion, debate, and disputation was the best test of
their verisimilitude. Interestingly, in an earlier and similar case that came before the court involving anti-draft protesters convicted for obstructing recruitment and enlistment services that the Supreme Court of the United States (SCOTUS) voted to affirm, Holmes dissented thusly:

Real obstructions of the law, giving real aid and comfort to the enemy, I should have been glad to see punished more summarily and severely than they sometimes were. But I think that our intention to put out all our powers in aid of success in war should not hurry us into intolerance of opinions and speech that could not be imagined to do harm, although opposed to our own. It is better for those who have unquestioned and almost unlimited power in their hands to err on the side of freedom.5

Err on the side of freedom. Call it Holmes’ Axiom. Erring on the side of freedom is not just for champions of free speech but, instead, is intended to counter those who would censor speech in the name of some alleged threat.

After admonishing Holmes’ errant decision involving fires and theaters, Hitchens identified what he considers to be the three founding documents of free speech: John Milton’s 1644 Areopagitica, Thomas Paine’s introduction to his 1794 The Age of Reason, and John Stuart Mill’s 1859 On Liberty.6 Daring to “summarize all three of these great gentlemen of the great tradition of especially English liberty in one go,” Hitch affirmed:

It is not just the right of the person who speaks to be heard, it is the right of everyone in the audience to listen and to hear, and every time you silence somebody you make yourself a prisoner of your own action because you deny yourself the right to hear something. In other words, your own right to hear and be exposed is as much involved in all these cases as is the right of the other to voice his or her view.

These are such monumental works of freedom of thought and expression that select quotes are warranted. From John Milton’s Areopagitica (in seventeenth-century English not altogether familiar to twenty-first-century eyes):

Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.

I cannot praise a fugitive and cloister’d vertue, unexercis’d & unbreath’d, that never sallies out and sees her adversary, but slinks out
of the race, where that immortal garland is to be run for, not without dust and heat. Assuredly we bring not innocence into the world, we bring impurity much rather: that which purifies us is trial, and trial is by what is contrary.

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

*Let Truth and Falsehood grapple in a free and open encounter.* Wise words.

From Thomas Paine’s *The Age of Reason*, in his opening remarks addressed “to my fellow-citizens of the United States of America”:

You will do me the justice to remember, that I have always strenuously supported the Right of every Man to his own opinion, however different that opinion might be to mine. He who denies to another this right, makes a slave of himself to his present opinion, because he precludes himself the right of changing it. The most formidable weapon against errors of every kind is Reason. I have never used any other, and I trust I never shall.

*The most formidable weapon against errors of every kind is Reason.* And to reason with others we must be free to speak.

From John Stuart Mill’s 1859 essay *On Liberty*, arguably the most poignant and powerful articulation of why, precisely, we should protect thought and speech:

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 he, if he had the power, would be justified in silencing mankind … But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.

*Truth produced by its collision with error.* Call it Mill’s Maxim.
In his always learned but never too pedantic rhetorical style, Hitch offered his preferred representatives of the genre (paraphrasing their positions). From his “personal heroine” Rosa Luxemburg:

The freedom of speech is meaningless unless it means the freedom of the person who thinks differently.

From Hitch’s former National Review editor John O’Sullivan:

If you hear the Pope saying he believes in God you think, “well the Pope’s doing his job again today.” If you hear the Pope saying he’s really begun to doubt the existence of God, you begin to think “he might be on to something.”

Apropos to my own work, Hitch asserted that someone who denies the Holocaust

doesn’t just have a right to speak, that person’s right to speak must be given extra protection because what he has to say must have taken him some effort to come up with.

And

What would you do if you met a flat Earth society member? Come to think of it, how can I prove the Earth is round? Am I sure about the theory of evolution? I know it’s supposed to be true. Here’s someone who says no such thing, it’s all intelligent design. How sure am I in my own views?

Indeed, most people cannot articulate why the Earth is round and the theory of evolution true, so in responding to the claims of the flat-Earthers and creationists we are vouchsafed the opportunity to outline exactly how we know these things are true. As much as I am reticent to admit it, I have been forced by creationists and Holocaust deniers to improve my knowledge of and explanations for evolution and the Holocaust, and by so doing my confidence in their authenticity was elevated.

In summing together these observations, Hitch affirmed, in such poignant language we should give it the honorific of Hitchens’ Theorem:

Don’t take refuge in the false security of consensus.

Hitchens’ Theorem should not be confused with what I called (in my Scientific American column of November, 2010) Hitchens’ Dictum: “What
can be asserted without evidence can also be dismissed without evidence.” This is an important proviso in any discussion of freedom of speech: While we may grant others the right to speak their views – however unfounded or unjustified we may think them – we are not obliged to respond (much less help them publish or otherwise disperse their ideas). It is axiomatic in skeptical and scientific reasoning that the burden of proof is on the speaker, not the listener. You think Big Foot is real? Show me the body, otherwise I can dismiss your claim as presently unsupported (even while being open to the possibility new evidence will present itself). You believe aliens from other worlds have landed on Earth? Show me the spaceship (or alien bodies), otherwise there is nothing for me to explain (and blurry photographs, grainy videos, and blacked-out paragraphs in government documents do not count as proof, even though we should keep an open mind that more solid evidence might be forthcoming). You contend that God exists and that there is an afterlife to which we go after death? Show me the evidence for either or both that goes beyond faith and cultural conventions, otherwise I shall remain skeptical (even while willing to be pleasantly surprised if it turns out my current atheism was mistaken – although in this case I might query the divine One why He didn’t make His existence more obvious).

A qualification: In these claims, and many others I have investigated over the decades, I am not against their possible authenticity. Indeed, finding another bipedal primate that didn’t go extinct – like Neanderthals and other hominids did over the past several hundred thousand years – and is still living in the hinterlands of Canada or the Himalayas would be the most spectacular find in biology since the discovery of the mountain gorilla in 1902 by Captain Robert von Beringe in German East Africa (present-day Burundi, Rwanda, and part of Tanzania). The discovery of or contact with an extraterrestrial intelligence and/or the finding of their interstellar vehicle, would be the greatest scientific story since ... the New World? The Atom? Gravity? Evolution? Ever?

An encounter with the deity who created our universe and (presumably) the heavenly cloud where our connectome souls are uploaded after death would very probably top all of these encounters, given its implications for our future existence, not to mention the opportunity to answer science’s
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deepest questions from the ontological source itself: What is dark energy and dark matter? What was there before the Big Bang? Did you create our universe out of a singularity, and if so how did you do that . . . and why?

We only have our thoughts and the tools of communicating those thoughts through speech and writing. Thus, free thought and free speech are the epistemological primitive, the ground of all other rights. Human and moral progress can only come about when people are free to think and speak their minds and their conscience. Why? The aforementioned classics in liberty cited by Hitch make the case more elegantly than I, but over the years in speeches and writings, I have assembled lists of succinct arguments that audiences unfamiliar with the longer and more literary sources can digest in bullet-point (and PowerPoint) form. To that end, here are my Ten Commandments of Free Speech and Thought against censorship:

1. Who decides which speech and thought is acceptable and which is unacceptable? You? Me? The majority? A thought committee? The language police? The control of speech is how dictatorships and autocracies rule. We must resist the urge to control what other people say and think.

2. What criteria are used to censor certain speech? Ideas that I disagree with? Thoughts that differ from your thoughts? Anything that the majority determines is unacceptable? This is another form of tyranny, a tyranny of the majority.

3. It is not just the right of the speaker to speak but for listeners to listen. When colleges deplatform speakers or students succeed in silencing a speaker through the heckler’s veto, the right of the audience to hear the speaker’s ideas is violated.

4. We might be completely right but still learn something new in hearing what someone else has to say.

5. We might be partially right and partially wrong, and by listening to other viewpoints we might stand corrected and refine and improve our beliefs.

6. We might be completely wrong, so hearing criticism or counterpoint gives us the opportunity to change our minds and improve our thinking. No one is infallible. The only way to find out if you’ve gone off the rails is to get feedback on your beliefs, opinions, and
even your facts. Alternative facts are corrected by confirmed facts, but the confirmation bias means we are all subject to seeking only confirming evidence for our beliefs. To overcome it we must listen to our critics.

7. Whether right or wrong, by listening to the opinions of others, we have the opportunity to develop stronger arguments and build better facts for our positions. If you know only your own position, you do not know it as well as you would if you knew your opponent’s position.

8. Arguments made in favor of censorship and against free speech are automatically gainsaid the moment the speaker speaks – otherwise we would be unaware of their arguments if they were censored.

9. Freedom of inquiry – a form of free thought and speech – is the basis for all human progress because of human fallibility. We are all wrong some of the time (and many of us, most of the time) so the only way to know if you’ve gone off the rails is to tell others about your beliefs so that they may be tested in the marketplace of ideas. In science this is called conjecture and refutation, or hypothesis testing.

10. My freedom to speak and dissent is inextricably tied to your freedom to speak and dissent. If I censor you, why shouldn’t you censor me? If you silence me, why shouldn’t I silence you? Once customs and laws are in place to silence someone on one topic, what’s to stop people from silencing anyone on any topic that deviates from the accepted canon?

This final argument against censorship – and the source for the title of this book – was well articulated in Robert Bolt’s 1960 play, A Man for All Seasons, based on the true story of the sixteenth century Chancellor of England, Sir Thomas More, and his collision with King Henry VIII over the monarch’s divorce from Catherine of Aragon. In the play, a dialogue unfolds between More and his future son-in-law, Roper, over the changing of the law. Roper urges him to arrest a man whose testimony could condemn More to death, even though no laws were broken.

more: And go he should, if he were the Devil himself, until he broke the law!
roper: So now you’d give the Devil benefit of law!
more: Yes. What would you do? Cut a great road through the law to get after the Devil?
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ROPER: I’d cut down every law in England to do that.

MORE: Oh? And when the law was down, and the Devil turned round on you – where would you hide, Roper, the laws all being flat? This country is planted thick with laws from coast to coast . . . and if you cut them down . . . do you really think you could stand upright in the winds that would blow then? Yes, I’d give the Devil benefit of law, for my own safety’s sake.8

* * *

For our own safety’s sake, we must give the Devil his due.

But who is the devil, and what is he due? In short, the devil is anyone who disagrees with you or someone else, and what he is due is the right to speak his mind. In my case, my devils include creationists who reject the theory of evolution, Holocaust deniers who reject the theory that the Nazi regime intended to exterminate European Jewry, scientists who risk their reputations and careers to study such radioactive topics as racial group differences in IQ and gender differences in cognitive abilities or career preferences, and conservatives and centrists who challenge the far-left dogma on college campuses and find themselves deplatformed before speaking or vetoed by hecklers while speaking.

These are the devils of Part I of this book, The Advocatus Diaboli: Reflections on Free Thought and Free Speech, and I try to give them their due through a fair hearing of their opinions, even when I reject them. Even the Catholic Church employed an Advocatus Diaboli – a Devil’s Advocate – tasked with arguing “against the canonization (sainthood) of a candidate in order to uncover any character flaws or misrepresentation of the evidence favoring canonization.”9 The position was established in 1587 by Pope Sixtus V when it became apparent to the church that many claims of miracles – offered to elevate favored candidates to sainthood – were bogus, such as pieces of the true cross, saints’ relics, weeping statues, bleeding paintings, and especially miraculous healings that might have happened by chance or through the natural healing capacities of the body.

In acting as a modern-day Advocatus Diaboli, I have approached my would-be saints not just through books and articles, but through direct contact and interaction with adherents and skeptics of each such claim. It has been my good fortune, as the Editor-in-Chief of Skeptic magazine for
a quarter-century and a monthly columnist for *Scientific American* for nearly eighteen years, to have met and dialogued with a great many renowned and respected scientists and scholars, along with many famous – and, in some cases, infamous – claimants of pseudoscience, pseudohistory, and all manner of what most mainstream scientists and scholars consider to be bunkum. This collection of articles and essays from the past fifteen years takes its title from the first essay, “Giving the Devil His Due,” in which I make the case for why freedom of thought, conscience, inquiry, and speech is inviolable for science and politics and sacrosanct to civilization.

But this book is far more than just reflections on free speech. *Giving the Devil His Due* is much broader, being (as noted in the subtitle) *Reflections of a Scientific Humanist*. It is a collection of articles and essays classified by subject into five parts: Free Thought and Free Speech, God and Religion, Politics and Society, Scientific Humanism, and Controversial Intellectuals. At the beginning of each chapter, I explain why I wrote it, where it was originally published, any updates where appropriate, and why they’re included in the book. Thus each chapter reads as it did in its original form, with the exception of a few factual corrections and errata. Note on referencing: Some chapters in this volume are heavily referenced, others lightly referenced, and some contain no references at all. This reflects the varying type of publications in which they were originally published: some in scholarly or scientific journals, which require formal referencing, others in magazines or newspapers that require no references at all.

In Part II, *Reflections on God and Religion*, I explore the true meaning of the Latin phrase *E Pluribus Unum* for a modern pluralistic society like ours and why it must include not just all faiths but no faiths; why political freedom for people of all faiths somewhat ironically leads to religious skepticism and is, in part, the reason for the rise of the Nones – those who have no religious affiliation; why I believe Scientology is a cult, yet why I also defend their right to hold their beliefs but how the wide distribution via the Internet of their “secret” theological doctrines and the transparency of their practices will very likely result in either the end of the cult or the transformation of it into a mainstream religion, along the lines of what happened to the Mormon religion in the 1890s when they banned the practice of