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## A Reader's Guide to John Milton's *Areopagitica*, the Foundational Essay of the First Amendment Tradition

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VINCENT BLASI

A READER'S GUIDE TO JOHN MILTON'S  
*AREOPAGITICA*, THE FOUNDATIONAL  
ESSAY OF THE FIRST AMENDMENT  
TRADITION

Fittingly, the most imaginative and densely suggestive of the classic arguments for free speech was written by a poet. Had his career unfolded as he wished, John Milton would never have produced his renowned *Areopagitica* of 1644. It was only with great reluctance that he undertook to engage in prose polemics during the English Civil War, sacrificing his “calm and pleasing solitariness” to “embark in a troubled sea of noises and hoarse disputes.”<sup>1</sup> He described pamphleteering as something he did “with the left hand” all the while “knowing myself inferior to myself.”<sup>2</sup> Posterity, always a Miltonic concern, has begged to differ with this self-assessment. Wherever the *Areopagitica* ranks on Milton’s daunting list of enduring creations, it has proved to be the foundational essay of the Anglo-American free speech tradition.

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<sup>1</sup> John Milton, *The Reason of Church Government Against Prelaty* (1642), in Merritt Y. Hughes, ed, *John Milton, Complete Poems and Major Prose* 640, 671 (Macmillan, 1957).

<sup>2</sup> Id at 667.

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## I. THE SETTING

Born in 1608, John Milton grew up in a London that was experiencing rapid growth and transformation as a result of the increasing importance of international trade, a redirection of the nation's economy that produced a versatile and politically assertive urban middle class. He was the eldest son of a prosperous scrivener, a profession that entailed the preparation and notarization of financial documents, some money lending and investment counseling, and intermittent contact with legal solicitors. It was assumed that the scrivener's prodigiously talented first son would become a clergyman, the natural career for someone bookishly inclined. (His second son, Christopher, became a distinguished lawyer and judge.)

Events intervened, however. Shortly after Milton completed his studies at Cambridge, the Church of England experienced a theological purge imposed by William Laud, Archbishop of Canterbury in the service of King Charles I. Laud's version of church doctrine and discipline was viewed by Protestant reformers, and especially Puritans, as too devoted to ritual and ecclesiastical hierarchy and too neglectful of preaching, in those respects bearing a suspicious affinity to Catholicism. Milton, whose habit of intense scriptural study and personal interpretation was formed at an early age, realized that he could not serve such a church. The path of preaching thereby blocked, he decided upon a different way to serve his God: writing Christian poetry. To that end, he devoted the better part of the decade of his twenties (living at home at his parents' expense) to the study of ancient and medieval history and literature. He was particularly drawn to the epic poetry of Homer and Virgil. He dreamt of one day writing an English epic.

In 1640 Charles was forced to call the first Parliament in eleven years by his need for money to finance a war with Scottish Covenanters which erupted when he tried to impose the Anglican Prayer Book on a largely Presbyterian populace. The occasion of Parliament assembling brought forth a multitude of grievances against a decade's worth of assertions of royal prerogative that critics claimed were both a threat to the Reformation and a violation of the common law and the Ancient Constitution. Notably, these grievances were aired not only in the houses of Parliament but in the streets of London. Never before had England witnessed so much petitioning, pamphleteering, and mass demonstrating over matters of theology, war, politics, and

governance.<sup>3</sup> A gifted writer, in the estimation of others as well as himself, Milton felt a responsibility to do his part. He became a controversialist, a diversion from his poetic calling that would consume the bulk of his writing time for the next twenty years.

He entered the political fray in 1641 writing five pamphlets calling for the complete abolition of the Anglican office of bishop. Eventually, Parliament abolished episcopacy, but not until it had defeated the King after four years of civil war. In the meantime, Milton turned to other subjects: the legitimate grounds for divorce, the reform of education, and the liberty of the press. His polemical efforts during the civil war and its aftermath culminated in six pamphlets defending the Rump Parliament's execution in 1649 of King Charles I. In several, Milton served as the officially-designated spokesperson for his country. These erudite disquisitions, some written in Latin, were addressed not only to the English people but also the political leaders and intellectuals of Europe. He wrote them while going blind.

Despite the importance and ferocity of the continent-wide debate over the regicide, Milton's most stressful experience as a polemicist occurred six years earlier when he produced a bold pamphlet arguing that temperamental or spiritual incompatibility constitutes a legitimate ground for divorce. Torrents of abuse rained down on him for advancing this view. (The conventional understanding was that only infidelity, impotence, or cruelty justifies divorce.)<sup>4</sup> He published his tract in violation of a law that had been passed by Parliament two months before, the Licensing Order of 1643. Apparently, Milton sought to comply with that law's requirement that all publications be approved by a parliamentary committee before being circulated, but he was denied permission. Undeterred, Milton arranged for his pamphlet to be published nevertheless.

The licensing of books and pamphlets was nothing new in England. Immediately upon Gutenberg's new invention crossing the English Channel in 1476, the crown asserted monopoly control over the act of printing, originally restricting the privilege to official printers in London, Oxford, and Cambridge. With the outbreak of the Ref-

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<sup>3</sup> See David Cressy, *England on Edge: Crisis and Revolution 1640–1642* 290–302 (Oxford, 2007).

<sup>4</sup> See Annabel Patterson, *Milton, Marriage, and Divorce*, in Thomas N. Corns, ed, *A Companion to Milton* 279–80 (Blackwell, 2001).

ormation in the mid-sixteenth century and the growth in literacy that it encouraged and fed off of, administration of the system for licensing books and pamphlets became an important component of statecraft.<sup>5</sup> During Queen Elizabeth's long reign (1559–1603), the power to license religious and political publications was applied rather flexibly in the effort to head off fractious political controversy along religious lines. Although Puritan preachers were denied appointments to livings in the Church of England, they were for the most part permitted to preach freelance, often attracting large followings, and to publish their sermons, a source of income crucial to their support.<sup>6</sup>

Licensing moved to the center of the political stage only during the early seventeenth century, when the Stuart monarchs James I and Charles I, particularly the latter advised by Archbishop Laud, sought to tighten the licensing system in support of royal authority and established theology.<sup>7</sup> When Parliament set about in 1640–43 to challenge royal prerogative on a broad front, two of the casualties were the Court of High Commission and the Star Chamber, both of which had been deeply involved in administering the licensing system. Grievances of other kinds led to the abolition of those two much reviled royal institutions, but an important consequence of their demise was an unaccustomed hiatus in licensing.

Presses were suddenly free. The result was an unprecedented outpouring of unbounded, arguably blasphemous disputation in print that surprised and alarmed the Parliament and much of the nation. It was feared that the venting of political divisions and radical religious nostrums would weaken military resolve and provoke divine displeasure. Such concerns engendered the Licensing Order of 1643. Ironically, the only precedent available to Parliament for how to construct and administer a licensing regime was the old royal system. Enforcement was placed in the hands of parliamentary committees and their staffs rather than Church of England bureaucrats, but other than that the previous practices were more or less reinstated. Specialized licensers were appointed to examine writings in specified categories.

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<sup>5</sup> See Fredrick Seaton Siebert, *Freedom of the Press in England 1476–1776* 21–37, 64–87 (Illinois, 1952).

<sup>6</sup> On Elizabethan regulation of dissident writing, see generally Cyndia Susan Clegg, *Press Censorship in Elizabethan England* (Cambridge, 1997).

<sup>7</sup> See generally Cyndia Susan Clegg, *Press Censorship in Jacobean England* (Cambridge, 2001); Cyndia Susan Clegg, *Press Censorship in Caroline England* (Cambridge, 2008).

Four censors were named, for example, to scrutinize law books, three for books of philosophy and history, one for “mathematics, almanacks, and prognostications.” Not only miscreant authors and their printers but also licensers who had been too permissive were subject to imprisonment.<sup>8</sup>

Milton thought the Order was a dispiriting and disillusioning relapse by Parliament. He had imagined that free thought within the Protestant community in the service of completing the Reformation was part of what Parliament and its supporters were fighting for in risking their lives and fortunes to challenge the King. Friends and political allies importuned him to lend his polemical talents to their cause of persuading Parliament to repeal the Licensing Order. Milton obliged. On November 23, 1644, he published *Areopagitica; A Speech of Mr. John Milton for the Liberty of Unlicensed Printing, to the Parliament of England*. The pamphlet appeared on the streets of London without the required imprimatur but with the author’s name (though not his printer’s) in bold letters, as if in ostentatious defiance of the licensing requirement. So far as posterity is concerned, he needn’t have bothered. Nobody else, then or later, could possibly have written this pamphlet or anything like it.

## II. FRAMING

The title alludes to a written speech of the Greek orator Isocrates presented in 355 B.C. to the Athenian Ecclesia, which set a precedent of an ordinary citizen submitting a written petition to a lawmaker.<sup>9</sup> Such presumption we take for granted today, but it was not so in Milton’s day. Citizens petitioning Parliament, often in huge crowds, was both common in the 1640s and also widely condemned. It was a much-mooted question whether this is a legitimate form of political participation.<sup>10</sup>

The reference to the Areopagus, a knoll on the Acropolis, may also refer to a passage in the Book of Acts in which Saint Paul recounts the respectful hearing he received, the openness to new ideas he observed, and the converts he made on the Areopagus when he criticized the

<sup>8</sup> See Siebert, *Freedom of the Press* at 187–90 (cited in note 5).

<sup>9</sup> See Eric Nelson, “True Liberty”: *Isocrates and Milton’s Areopagitica*, 40 *Milton Studies* 201 (2001).

<sup>10</sup> See Cressy, *England on Edge* 5, 110–26 (cited in note 3).

Athenians for being too superstitious in their religion.<sup>11</sup> He compares Athens favorably to other locations where he was not so well received.

Finally, Milton's choice of title may have been meant to signal his belief that the issue of whether printing should be licensed must be examined by drawing upon a broad range of sources and reasons. In other words, Milton here might be broadcasting his intellectual debt to Renaissance humanism even as he explores how his country can best protect and complete the Protestant Reformation.

Superbly educated in classical rhetoric, Milton begins his "speech" by announcing the four divisions of his argument. First, he will identify the inventors of the practice of licensing writings, "those whom ye will be loath to own." Second, he will discuss "what is to be thought in general of reading, whatever sort the books be." Third, he will contend that "this Order avails nothing to the suppressing of scandalous, seditious, and libelous books, which were mainly intended to be suppressed." Fourth, he will argue that the principal effect of licensing books and pamphlets will be "the discouragement of all learning, and the stop of truth."<sup>12</sup> This phrase, "the *stop* of truth," is revealing. It captures one of the most important elements of his overall argument: his deep commitment to the notion that truth is in essence dynamic. Truth's dynamic essence operates "both in religious and civil wisdom." It is important to note how explicit he is at the outset that he is addressing civil concerns such as sedition, libel, and military effectiveness no less than religious concerns such as blasphemy, idolatry, heresy, and Christian charity.

### III. THE ARGUMENT FROM ASSOCIATION

The first part of Milton's argument consists of a quick tour across the centuries "to show what hath been done by ancient and famous commonwealths against this disorder" of free writing.<sup>13</sup>

Milton reports that in Athens, "where books and wits were ever busier than in any other part of Greece," the magistrate "cared to take notice" only of writings that were blasphemous and atheistical or else

<sup>11</sup> Acts 17:16–18.

<sup>12</sup> John Milton, *Areopagitica* (1644), in Hughes, ed, *John Milton* at 720 (cited in note 1).

<sup>13</sup> Id. Calling free writing a "disorder" is Milton's characteristically sardonic way of introducing a pamphlet designed to prove precisely the opposite.

libelous. Works “tending to voluptuousness,” “denying of divine Providence,” or expressing “Cynic impudence” were left alone.<sup>14</sup>

Like the Athenians, the Romans of the republican period punished libel and blasphemy of their gods but left unregulated Lucretius’s Epicurean philosophy regarding the mortality of the soul and much “satirical sharpness.” Octavius Caesar failed to suppress a history that extolled the part played by his rival Pompey.

During the middle ages, although “the Popes of Rome, engrossing what they pleased of political rule into their own hands, extended their dominion over men’s eyes,” they were “sparing in their censures.”<sup>15</sup> Only with the fear engendered in the late fourteenth and early fifteenth centuries by the writings of John Wyckliffe and Jan Huss, precursors of Luther, were individual readers excommunicated for violating the Church’s injunctions. When the Reformation broke out in the sixteenth century, prohibitions and punishments became widespread, “until the Council of Trent and the Spanish Inquisition engendering together brought forth, or perfected, those Catalogues and expurging Indexes, that rake through the entrails of many a good old author, with a violation worse than any could be offered to his tomb.” Wielders of the power to censor grew increasingly arbitrary: “Nor did they stay in matters heretical, but any subject that was not to their palate, they either condemned in a Prohibition, or had it straight into the new purgatory of an index.”<sup>16</sup>

At every turn, Milton emphasizes the Roman Catholic pedigree of the practice of licensing. His characterization of Catholic censors is indelible:

To fill up the measure of encroachment, their last invention was to ordain that no book, pamphlet, or paper should be printed (as if St. Peter had bequeathed them the keys of the press also out of Paradise) unless it were approved and licensed under the hands of two or three glutton friars. . . . Sometimes five Imprimaturs are seen together dialoguewise in the piazza of one titlepage, complimenting and ducking each to other with their shaven reverences, whether the author, who stands by in perplexity at the foot of his epistle, shall to the press or to the sponge.<sup>17</sup>

<sup>14</sup> Id at 720–21.

<sup>15</sup> Id at 723–24.

<sup>16</sup> Milton, *Areopagitica* at 724 (cited in note 12).

<sup>17</sup> Id.

Milton describes the Licensing Order's requirement of an imprimatur authorizing publication as "apishly Romanizing."

Milton ends his first part by specifying the point of his selective history lesson. He concedes that "though the inventors were bad, the thing for all that may be good." He counters that "if that thing be no such deep invention, but obvious, and easy for any man to light on, and yet best and wisest commonwealths through all ages and occasions have forborne to use it, and falsest seducers and oppressors of men were first who took it up, and to no other purpose but to obstruct and hinder the first approach of Reformation," it would take an act of alchemy "to sublimate any good use out of such an invention."

#### IV. THE ARGUMENT FROM INSEPARABILITY

The second part of Milton's four-part argument he vaguely labels "what is to be thought in general of reading books, whatever sort they may be, and whether be more the benefit or the harm that thence proceeds."<sup>18</sup> He tries to demonstrate that the vices and dangers that would-be regulators fear from unlicensed printing are inseparable from qualities of persons and effects of their activities that no member of his audience can possibly wish to sacrifice or discourage, in no small part due to shared religious understandings.

Milton builds his argument around a passage from Paul's Epistle to Titus: "To the pure, all things are pure."<sup>19</sup> Knowledge, he says, whether of good or evil, "cannot defile, nor consequently the books, if the will and conscience be not defiled."<sup>20</sup> He notes how the Bible preaches the virtue of temperance. "Yet God commits the managing of so great a trust, without particular law or prescription, wholly to the demeanor of every grown man."<sup>21</sup> Likewise for ideas. Rather than relegating man "under a perpetual childhood of prescription," God "trusts him with the gift of reason to be his own chooser." Indeed, "there were but little work left for preaching, if law and compulsion should grow so fast upon those things which heretofore were governed only by exhortation."<sup>22</sup>

<sup>18</sup> Id.

<sup>19</sup> Titus 1:15.

<sup>20</sup> Milton, *Arcopagitica* at 727 (cited in note 12).

<sup>21</sup> Id.

<sup>22</sup> Id.

This argument is rhetorically ingenious in several respects. It responds to several of the chief concerns of those who might be tempted to support the Licensing Order. The fear that all the free thinking in the pamphlet literature was risking God's wrath is answered by scriptural evidence of the value of free reading, even of bad theology, as a preparation for choosing, if only "to discover, confute, forewarn, or illustrate."<sup>23</sup> The worry about backsliding in the project of advancing the Reformation is assuaged by an argument that ascribes a crucial role to preachers. The perception that the proliferation of sectarian theologies that ensued after the royal licensing system was abolished represents a form of disorder is addressed by Milton's description of a supervening divine order. A few pages later he returns to this point, commenting on "the high providence of God, who, though he command us temperance, justice, continence, yet pours out before us, even to a profuseness, all desirable things, and gives us minds that can wander beyond all limit and satiety."<sup>24</sup> Why, asks Milton, "should we then affect a rigor contrary to the manner of God and of nature, by abridging or scanting those means, which books freely permitted are, both to the trial of virtue and the exercise of truth."<sup>25</sup>

Next Milton turns to his argument from inseparability, introducing a theme he was to explore years later to great effect in *Paradise Lost*:

Good and evil we know in the field of this world grow up together almost inseparably. . . . It was from out the rind of one apple tasted, that the knowledge of good and evil, as two twins cleaving together, leaped forth into the world. And perhaps this is that doom which Adam fell into of knowing good and evil, that is to say of knowing good by evil.<sup>26</sup>

Free reading, even of false and dangerous ideas, indeed especially of false and dangerous ideas, is integral to the experience of purification by means of resisting the pervasive temptations of a fallen world: "He that can apprehend and consider vice with all her baits and seeming

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<sup>23</sup> Id.

<sup>24</sup> Milton, *Areopagitica* at 727 (cited in note 12).

<sup>25</sup> Id.

<sup>26</sup> Id at 728. For an argument that this passage represents an important moment in the evolution of Milton's "muscular postlapsarianism" that would eventuate in *Paradise Lost*, see William Poole, *Milton and the Idea of the Fall* 138–40 (Cambridge, 2005).

pleasures, and yet abstain, and yet distinguish, and yet prefer what is truly better, he is the true warfaring Christian.”<sup>27</sup>

Recall that one of the main arguments against leaving unregulated the recent explosion of sectarian speculation was the fear that it was weakening antiroyalist military prospects both by risking divine displeasure and stirring up theological divisiveness within the parliamentary coalition. Milton calls free reading a “warfaring” activity, then develops an extended military metaphor in the effort to turn the argument around:

I cannot praise a fugitive and cloistered virtue, unexercised and unbreathed, 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. . . . Since therefore the knowledge and survey of vice is in this world so necessary to the constituting of human virtue, and the scanning of error to the confirmation of truth, how can we more safely, and with less danger, scout into the regions of sin and falsity than by reading all manner of tractates and hearing all manner of reason? And this is the benefit which may be had of books promiscuously read.<sup>28</sup>

Having asserted the inseparability of good and evil in the postlapsarian world and having explained the consequent duty of fallen man to scout into the regions of sin and falsity, Milton identifies three types of harm that his adversaries assert might follow from such free inquiry. The first is “infection that may spread.”<sup>29</sup> He responds to this danger by suggesting it proves too much: “the Bible itself” he notes “oftimes relates blasphemy not nicely, it describes the carnal sense of wicked men not unelegantly, it brings in holiest men passionately murmuring against Providence through all the arguments of Epicurus; in other great disputes it answers dubiously and darkly to the common reader.”<sup>30</sup> Not only the Bible but “all the heathen writers of greatest infection,” thinkers “with whom is bound up with the life of human learning,” would be at risk if this concern were to justify the licensing of books.

The second and third feared harms from evil books and pamphlets get short shrift. One such harm is distraction, the worry that readers might “employ our time in vain things.” The other is temptation.

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<sup>27</sup> Milton, *Areopagitica* at 728 (cited in note 12).

<sup>28</sup> *Id.* at 728–29.

<sup>29</sup> *Id.* at 729.

<sup>30</sup> *Id.*

Both harms Milton dismisses on the ground of inseparability: “to all men such books are not temptations, nor vanities, but useful drugs and materials wherewith to temper and compose effective and strong medicines.”<sup>31</sup>

#### V. THE ARGUMENT FROM FUTILITY

Milton’s third part is the most practical, and in that way perhaps the most applicable to modern controversies about the freedom of speech. He stresses the need for realism and common sense. He asserts that in practice regulatory reach will far exceed the bounds of any acknowledged justification due to factors such as frustration, incompetence, personal antipathy, inertia, and delay. Despite such arbitrary overreach, he maintains that licensing will be “easily eluded.”<sup>32</sup>

The reason that licensing cannot tame intellectual and theological disorder, Milton argues citing Plato as authority, is that the true sources of order are the “unwritten, or at least unconstraining, laws of virtuous education, religious and civil nurture.”<sup>33</sup> Voluntary constraints that flow from commitment, responsibility, self-discipline, and loyalty are the “bonds and ligaments of the commonwealth, the pillars and sustainers of every written statute.” He concedes that disorder is disastrous: “Impunity and remissness, for certain, are the bane of a commonwealth.” That is not in dispute. But practically speaking, “here the great art lies, to discern in what the law is to bid restraint and punishment, and in what things persuasion only is to work.”<sup>34</sup>

“Persuasion only” has a large role in creating and preserving order, according to Milton, because to a great degree order stems from virtue, both civic and religious. And virtue is best nurtured by trust: “If every action, which is good or evil in man at ripe years, were to be under pittance and prescription and compulsion, what were virtue but a name, what praise could then be due to well-doing, what grammarcy to be sober, just, or continent.”<sup>35</sup> Order must penetrate to the inner person. Persuasion does that better than law.

<sup>31</sup> Milton, *Areopagitica* at 731 (cited in note 12).

<sup>32</sup> *Id.* at 733.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Milton, *Areopagitica* at 733 (cited in note 12).

Milton returns repeatedly to his futility argument, likening licensing to “the exploit of that gallant man who thought to pound up the crows by shutting his park gate”<sup>36</sup> and commenting on how the inevitable evasions “will make us all both ridiculous and weary, and yet frustrate.”<sup>37</sup> He notes how porous any licensing scheme is bound to be, given that it cannot practically call in writings already in circulation and cannot prevent the initial production and distribution of works of foreign origin.

He asks the reader to “consider the quality which ought to be in every licenser,” and compares that to the drudgery of being “made the perpetual reader of unchosen books and pamphlets, oftimes huge volumes.” “[W]e can easily foresee,” Milton says, “what kind of licensors we are to expect hereafter, either ignorant, imperious, and remiss, or basely pecuniary.”<sup>38</sup>

In sum, a host of practical considerations suggests that any attempt to bring order to the thought of a nation by means of the exercise of bureaucratic authority is destined to be futile. The objective is absurdly ambitious, the opportunities for both evasion and regulatory abuse are ever present, and the human resources available to execute the project are unimpressive.

## VI. THE ARGUMENT FROM DESIGN

The fourth and final part of *Areopagitica* takes up nearly half the tract. It is more passionate, peripatetic, eloquent, and aspirational than the preceding parts—and that is no mean trick. Milton really lets loose. Several of his figures of speech are unforgettable. It is also true that this is the part in which he does the most to establish his case, but only by means of assertions and proofs that are out of the ordinary and difficult to evaluate by conventional standards.

The first several pages of Part Four are devoted to a series of characterizations that illustrate how much the licensing of books and pamphlets reflects distrust of authors, readers, the preachers who guide them, in effect all persons and institutions that make up the social and religious order. Milton describes this distrust as “an undervaluing and vilifying of the whole nation.”<sup>39</sup> But his frame of reference is not ex-

<sup>36</sup> Id at 730.

<sup>37</sup> Id at 733.

<sup>38</sup> Id at 734.

<sup>39</sup> Milton, *Areopagitica* at 736 (cited in note 12).

clusively the collective. At the personal level, licensing is an undervaluing that cuts deeply: “so far to distrust the judgment and the honesty of one who hath but a common repute in learning, and never yet offended, as to not count him fit to print his mind without a tutor and examiner, lest he should drop a schism, or something of a corruption, is the greatest displeasure and indignity to a free and knowing spirit that can be put upon him.”<sup>40</sup>

One of the first questions to ask about any justification for the freedom of speech is whether at bottom the argument rests on a claim about collective consequences or individual entitlement. Not every argument is easily classified in these terms; many can be read either way. Moreover, an argument can be “individual-centered” in the sense that it rests on a notion of how persons deserve respect or develop qua individuals, and still maintain that such respect or development is important mainly for the collective benefits that members of the community generate by virtue of their individuality. In my view, the *Areopagitica* is best understood as making a hybrid argument of this sort. Milton speaks often of the Reformation, posterity, collective energy, the divine order, and the unique place in history of the English people. He also discusses dignity, charity, the inner person, and the centrality of choice. His repeated invocation of the religious and civic benefits of trust is an example of his integration of individual and collective units of reference.

Milton is scathing in the way he describes the inherent paternalism of licensing. “What advantage,” he asks, “is it to be a man, over it is to be a boy at school . . . if serious and elaborate writings, as if they were no more than the theme of a grammar-lad under his pedagogue, must not be uttered without the cursory eyes of a temporizing and extemporizing licenser?”<sup>41</sup> Moreover, if revisions occur to the author while the licensed book is in production, he must “trudge to his leave-giver”<sup>42</sup> to get them validated. The cost is not only in personal respect but also authorial authority, and hence impact:

And how can a man teach with authority, which is the life of teaching; how can he be a doctor in his book as he ought to be, or else had better be silent, whenas all he teaches, all he delivers, is but under the tuition, under

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<sup>40</sup> Id at 735.

<sup>41</sup> Id.

<sup>42</sup> Id.

the correction of his patriarchal licenser to blot or alter what precisely accords not with the hidebound humour which he calls his judgment.<sup>43</sup>

This is no way to persuade. “[E]very acute reader,” Milton complains, will think “I hate a pupil teacher. I endure not an instructor that comes to me under the wardship of an overseeing fist.”<sup>44</sup>

An “acute reader” may distrust authors under a licensing regime, but the regime itself distrusts the bulk of readers, whom it assumes to be anything but acute:

Nor is it to the common people less than a reproach; for if we be so jealous over them, as that we dare not trust them with an English pamphlet, what do we but censure them for a giddy, vicious and ungrounded people; in such sick and weak state of faith and discretion, as to be able to take nothing down but through the pipe of a licenser?<sup>45</sup>

The corrosive distrust is not even confined to authors and readers:

[I]t reflects to the disrepute of our ministers also, of whose labors we should hope better . . . than that after all this . . . continual preaching, they should still be frequented with such an unprincipled, unedified and laic rabble, as that the whiff of every new pamphlet should stagger them out of their catechism and Christian walking.<sup>46</sup>

Such an assumption of the weakness of the English people contrasts mightily with Milton’s admiring account of fortified London during the Civil War:

Behold now this vast city: a city of refuge, the mansion house of liberty, encompassed and surrounded with his protection; the shop of war hath not more anvils and hammers waking, to fashion out the plates and instruments of armed justice in defense of beleaguered truth, than there be pens and heads there, sitting by their studious lamps, musing, searching, revolving new notions and ideas wherewith to present, as with their homage and their fealty, the approaching Reformation: others as fast reading, trying all things, assenting to the force of reason and convincement. What could a man require more from a nation so pliant and so prone to seek after knowledge?

Where there is much desire to learn, there of necessity will be much arguing, much writing, many opinions, for opinion in good men is but knowledge in the making.<sup>47</sup>

<sup>43</sup> Milton, *Areopagitica* at 735–36 (cited in note 12).

<sup>44</sup> *Id.* at 736.

<sup>45</sup> *Id.* at 737.

<sup>46</sup> *Id.*

<sup>47</sup> Milton, *Areopagitica* at 743–44 (cited in note 12).

This pivotal passage captures not only Milton's shameless appeal to national pride, but also three of the most striking ideas in the *Areopagitica*: (1) the importance of an energizing environment to the quest for knowledge, (2) the dynamic character of truth and understanding, and (3) the order that can subsist in the collective project of persons trying to think independently about "the solidest and sublimest points of controversy and new invention."<sup>48</sup>

In intellectual and spiritual matters, for all his years of solitary study, for all the focus on individual choice and responsibility in his various prose works and later epic poetry, Milton is an environmentalist in the sense that he thinks the surrounding atmosphere, the collective energy of an age and place, really matters. This is one reason why he was less troubled by radical sectarian thinking about matters divine than were most of his compatriots. Ideas beyond the pale, emanating from strange creatures, contribute to the collective quest, even if only by functioning as "dust and cinders" which "serve to polish and brighten the armory of Truth."<sup>49</sup> In that way, even the wild nostrums of the sectaries can be part of "knowledge in the making."<sup>50</sup>

"Knowledge in the making" is a double entendre. It refers both to a quest destined never to be completed till "the end of mortal things,"<sup>51</sup> and to the fact that understanding and believing are as much a function of *how* as of *what*. Both meanings speak of dynamism. Regarding the first, Milton says: "The light which we have gained was given us, not to be ever staring on, but by it to discover onward things more remote from our knowledge."<sup>52</sup> Milton would be nobody's favorite in a humility contest. That said, it is notable how much his argument depends on his view of the limits of human understanding: "he who thinks we are to pitch our tent here, and have attained the utmost prospect of reformation that the mortal glass wherein we contemplate can show us, till we come to beatific vision, that man by this very opinion declares that he is yet far short of truth."<sup>53</sup>

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<sup>48</sup> Id at 745.

<sup>49</sup> Id at 748.

<sup>50</sup> Id at 743.

<sup>51</sup> Milton, *Areopagitica* at 747 (cited in note 12).

<sup>52</sup> Id at 742.

<sup>53</sup> Id at 741.

The perpetual dynamism of truth suggests the difficulty of domesticating it for the purpose of regulation: “Truth and understanding are not such wares as to be monopolized and traded in by tickets and statutes and standards. We must not think to make a staple commodity of all the knowledge in the land, to mark and license it like our broadcloth and our woolpacks.”<sup>54</sup> Precisely because truth is “our richest merchandise,”<sup>55</sup> it would be self-defeating to “set an oligarchy of twenty engrossers over it, to bring a famine upon our minds again, when we shall know nothing but what is measured to us by their bushel.”<sup>56</sup>

A reader of Milton might wonder how his economic metaphor here compares to a later economic metaphor introduced by Justice Holmes, the “marketplace of ideas,” which has come to play a large and persistent role in modern First Amendment analysis.<sup>57</sup> Blair Hoxby, an important Milton scholar, has shown how the struggle for liberty of the press in the seventeenth century was part of a larger controversy over free trade, and that Milton wrote *Areopagitica* in part at the behest of journeymen printers aggrieved by crown, and later parliamentary, patents restricting profitable printing to a privileged few master printers.<sup>58</sup> Recall also that Milton’s father, with whom he was close, was an enterprising businessman who raised his son in the heart of the City of London, then and now the concentrated financial district of the greater metropolis. So is Milton contending for the freedom to print on the analogy to the freedom to buy and sell?

Some of his arguments relating to inevitable regulatory inefficiency, incompetence, corruption, and perverse consequences might suggest as much, but there is a big difference between how Milton and Holmes deploy their economic metaphors. Holmes’s point arguably, and the point of later exponents of the marketplace metaphor

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<sup>54</sup> Id at 736–37.

<sup>55</sup> Milton, *Areopagitica* at 741 (cited in note 12).

<sup>56</sup> Id at 745.

<sup>57</sup> See *Abrams v United States*, 250 US 616, 630 (1919) (Holmes, J, dissenting); Vincent Blasi, *Holmes and the Marketplace of Ideas*, 2004 Supreme Court Review 1 (2004).

<sup>58</sup> See Blair Hoxby, *The Trade of Truth Advanced: Areopagitica, Economic Discourse and Libertarian Reform*, 36 *Milton Studies* 177 (1998).

more explicitly, is that speech should be left free to be governed by market forces because ideas do not warrant special treatment: they embody arbitrary preferences derived from adventitious experiences and thus can be likened to commodities.<sup>59</sup> Persons aggrieved by what they take to be excessive regulation of transactions regarding commodities therefore should be concerned also about excessive regulation of speakers. Milton's point is the opposite: because speech is uniquely important ("our richest merchandise"), it should *not* be subject to the same types of regulation, including licensing, that in his day (more than a century before Adam Smith) comprehensively governed the production and sale of commodities.

The second meaning of the double entendre "knowledge in the making" is that truth is only valuable if it is earned and held in the right way:

[O]ur faith and knowledge thrives by exercise, as well as our limbs and complexion. Truth is compared in Scripture to a streaming fountain; if her waters flow not in a perpetual progression, they sicken into a muddy pool of conformity and tradition. A man may be a heretic in the truth; and if he believe things only because his pastor says so, or the Assembly so determines, without knowing other reason, though his belief be true, yet the very truth he holds becomes his heresy.<sup>60</sup>

The concept of "perpetual progression" is central to Milton's argument. Not only in the nation as a whole but within each individual must there be a perpetual progression of inquiry. Milton makes that clear with his concept of a "heretic in the truth."

With the assistance of licensing, heresy in the truth can occur "among the clergy themselves." An "easily inclinable" cleric ensconced in "a warm benefice" may be able to fulfill his "weekly charge of sermoning" with small effort, "forming and transforming, joining and disjoining" the "gatherings and savings of a sober graduateship" supplemented by additional cribs such as published breviaries and synopses.<sup>61</sup> However, "if his back door be not secured by the rigid licenser, but that a bold book may now and then issue forth and give the assault to some of his old collections in their trenches, it will

<sup>59</sup> See Oliver Wendell Holmes Jr., *Natural Law*, 32 Harv L Rev 40, 41 (1918).

<sup>60</sup> Milton, *Areopagitica* at 739 (cited in note 12).

<sup>61</sup> *Id.* at 740.

concern him then to set good guards and sentinels about his received opinions."<sup>62</sup> Our comfortable clergyman may not be frightened into a perpetual progression of ceaseless inquiry, but at least he will need to make a start in the direction of active understanding in order to pass muster with his flock.

The third of Milton's key claims that are embedded in his extended image of embattled, energetic, inquisitive London relates to the concern about order that contributed to Parliament's decision to reinstitute licensing. To turn free thinkers into soldiers of the Reformation manning the city's defenses with their pens and lamps is to transmute perceived anarchy into order and perceived military weakness into strength. Later he turns the argument of his adversaries around a second time, upping the religious stakes to assert a divine order that is being served by the wide-ranging theological speculation:

Under these fantastic terrors of sect and schism, we wrong the earnest and zealous thirst after knowledge and understanding which God hath stirred up in this city. What some lament of, we rather should rejoice of, should rather praise this pious forwardness among men, to reassume the ill-deputed care of their religion into their own hands again.<sup>63</sup>

Defenders of licensing make too much of the proliferation of new ideas and distinctive sects, he argues: "They fret, and out of their own weakness are in agony, lest these divisions and subdivisions will undo us. . . . Fool! He sees not the firm root, out of which we all grow, though into branches."<sup>64</sup>

Probably Milton's most effective response to the fear of disorder is his recounting an Egyptian myth regarding Isis and Osiris, derived from Plutarch's *Lives* and adapted to appeal to the religious sensibilities of his audience:

Truth indeed came once into the world with her divine Master, and was a perfect shape most glorious to look on: but when he ascended, and his Apostles after him were laid asleep, then straight arose a wicked race of deceivers, who . . . took the virgin Truth, hewed her lovely form into a thousand pieces, and scattered them to the four winds. From that time ever since, the sad friends of Truth, such as durst appear, imitating the careful search that Isis made for the mangled body of Osiris, went up and down

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<sup>62</sup> Id at 741.

<sup>63</sup> Id at 743–44.

<sup>64</sup> Milton, *Arcopagitica* at 744 (cited in note 12).

gathering up limb by limb, still as they could find them. We have not yet found them all, Lords and Commons, nor ever shall do, till her Master's second coming; he shall bring together every joint and member, and shall mould them into an immortal feature of loveliness and perfection.<sup>65</sup>

The brilliance of this move lies not so much in its religious resonance generally but in its description of fallen men, in the form of bold inquirers like the sectaries, laboriously and perpetually doing God's work by piecing together the scattered fragments of a once perfect truth that cannot be fully reassembled "in mortal time" but which needs to be sought as a precondition for the Second Coming.<sup>66</sup> In other words, free thinking is not a destructive activity that breaks apart the understandings that hold a community together but rather a constructive activity that paves the way for the true order of redemption through divine grace. Those threatening radicals are actually builders.

Never one to let pass the opportunity to turn an adversary's argument around, Milton accuses the licensers themselves of sowing the seeds of disorder: "They are the troublers, they are the dividers of unity, who neglect and permit not others to unite those dissevered pieces which are yet wanting to the body of truth." Failing to "recover any enthralled piece of truth out of the grip of custom" retards the project of reassembly. It keeps "truth separated from truth, which is the fiercest rent and disunion of all."<sup>67</sup> In contrast, Milton's unity consists of "still searching what we know not by what we know, still closing up truth to truth as we find it. . . . not the forced and outward union of cold, and neutral, and inwardly divided minds."<sup>68</sup>

This terse description of what true order is *not*, contained in less than a sentence, might be the most pregnant passage in the entire *Areopagitica*. In it Milton weaves together no fewer than five of the figurative dichotomies that drive his overall argument: (1) forced vs. free (law vs. persuasion, authority vs. reason); (2) outward vs. inward

<sup>65</sup> Id at 741–42.

<sup>66</sup> For an account of Milton's millenarianism, including its role in *Areopagitica*, see Barbara K. Lewalski, *Milton and the Millennium*, in Juliet Cummins, ed, *Milton and the Ends of Time* 13, 18 (Cambridge, 2003). ("His core belief, sometimes intimated, sometimes stated explicitly, is that the millennium will come when the English and presumably others have become virtuous and free, rejecting all the forces that promote servility, be they popes or bishops or kings or any other such idols.")

<sup>67</sup> Milton, *Areopagitica* at 747 (cited in note 12).

<sup>68</sup> Id at 742.

(Catholic vs. Protestant, ritual vs. conscience); (3) cold vs. warm (frozen vs. fluid, inert vs. energetic, static vs. dynamic); (4) neutral vs. committed (passive vs. active, obedient vs. independent); and (5) divided vs. united (partial vs. whole).

Milton cares as much about order as he does about virtue, indeed he finds each integral to the other, as can be seen by tracing how these five dichotomies serve his argument in tandem. More remains to be said to capture the full measure of his understanding of virtue and order, but a key point to make at this stage is that Milton's argument for free printing has little in common with later arguments that treat the freedoms of thought and speech as instances of a general right to be free of unnecessary restraint or tutelage or a general right to express or exercise one's individuality. Milton is no libertarian, and only in the broadest sense of the term verging on the meaningless can he be labeled a liberal. Neither is he a pluralist. And he certainly is not a moral skeptic, nor much of an epistemic one. Regarding the latter, his belief that God's method is to "deal out by degrees his beam, so as our earthly eyes may best sustain it"<sup>69</sup> and his admonition not to "pitch our tent here"<sup>70</sup> marry the limits of human understanding to the possibility of epistemic progress. The *Areopagitica* is an argument from design for free printing as a means to the end of serving a demanding God, albeit a God whose demands center on individual choice, effort, curiosity, and discipline.

An argument from design is bounded in its coverage by its rationale, as are arguments of other sorts such as those from necessity, experience, commitment, or predicted consequences. If certain activities do not perform a function in the design, they are not covered by the argument, unless there exists a strategic reason to cover them in order to protect other activities that do serve such a function. Milton announces at the end of the tract that his thirty-plus pages of riveting, imaginative, overflowing, visionary argumentation apply only to differences within bounds, not disagreement over basics. His adversaries "stumble and are impatient at the least dividing of one visible congregation from another, though it be not in fundamentals." In calling for free printing, Milton reassures his reader that "neighboring differences, or rather indifferences, are what I speak of,

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<sup>69</sup> Id at 748.

<sup>70</sup> Id at 741.

whether in some point of doctrine or of discipline, which though they be many, yet need not interrupt the unity of spirit.”<sup>71</sup>

To the chagrin of his modern admirers, Milton gives examples of ways of thinking that lie beyond the bounds of his unity of spirit, and thus do not serve the theological/moral/political order his proposed regime is meant to enable. “I mean not tolerated popery,” he says, “and open superstition, which as it extirpates all religions and civil supremacies, so itself should be extirpate.” He goes on to exclude “that also which is impious or evil absolutely either against faith or manners.” “[N]o law can possibly permit” such writings, Milton says, “that intends not to unlaw itself.”<sup>72</sup> His argument, he makes clear, is not about toleration as a first principle or free-standing individual right. Rather, it is about the understanding that can result from vigorous contestation among members of a faith community who “all cannot be of one mind—as who looks they should be?”<sup>73</sup> and who are regrettably prone to generate “subdichotomies of petty schisms,”<sup>74</sup> but who nonetheless share sufficient common ground as to be eligible to experience the Pauline “unity of spirit”<sup>75</sup> that is the essence of Christian Liberty.

In short, Milton’s theology, and the political theory he derives therefrom, is informed by how much he and his compatriots need continually to learn—and also how much they stand to gain by trying to learn—even as ultimate knowledge is beyond the reach of fallen man. Inquiry, he maintains, is the key to God’s order. Such inquiry requires “the liberty to know, to utter, and to argue freely according to conscience.”<sup>76</sup> It also requires spiritual qualities that some would-be speakers and writers do not possess.

## VII. IMPLICATIONS BEYOND LICENSING

Perhaps the most basic interpretative question presented by the *Areopagitica* is whether the tract has anything to say about efforts to regulate speech by means other than licensing. When Milton

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<sup>71</sup> Milton, *Areopagitica* at 747 (cited in note 12).

<sup>72</sup> Id at 747.

<sup>73</sup> Id at 735.

<sup>74</sup> Id.

<sup>75</sup> Milton, *Areopagitica* at 735 (cited in note 12).

<sup>76</sup> Id at 746.

specifies the targets of his criticism, usually he chooses terms that suggest he is talking only about a comprehensive requirement that all writings be submitted to an administrative censor before publication. For example, the paternalism he objects to consists of distrust, supplication, certification, and loss of control over timing that characterizes administrative censorship to a much greater degree than other forms of regulation. An author who is prosecuted after publication, or enjoined, or made to pay civil damages for causing personal injury with his words, does not suffer the indignity of being made to “trudge to his leave-giver.”<sup>77</sup> Such an author does not have his serious work, the product of “the hardest labor in the deep mines of knowledge,”<sup>78</sup> judged by “the cursory eyes of temporizing or extemporizing licenser.”<sup>79</sup> His regulators do not “keep a narrow bridge of licensing where the challenger should pass.”<sup>80</sup> His audiences are not considered to be “in such a sick and weak state of faith and discretion, as to be able to take nothing down but through the pipe of a licenser.”<sup>81</sup>

Moreover, Milton’s repeated arguments from futility, among his most powerful to a modern reader, have greater purchase as applied to licensing compared to other forms of regulation. Regulation by means of criminal punishment, tort damages, or injunction is designed to be selective. The initiative lies with the regulators. The need for prioritization lowers the bar for measuring efficacy. The comprehensiveness of a licensing regime makes it not only intrusive, expensive, and unwieldy, but also destined to suffer endemic evasions.

Still another reason to read *Areopagitica* as tailored to the specific characteristics of licensing is the emphasis Milton places on the disputational environment. Like most early proponents of free speech, he operates at the level of the society as a whole. He seeks a highly energized, dynamic, fearless collective quest for understanding. Think of the perpetually flowing fountain,<sup>82</sup> the army of “true warfaring” Christians scouting “into the regions of sin and falsity” by means of “books promiscuously read,”<sup>83</sup> the “much writing, much arguing,

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<sup>77</sup> Id at 735.

<sup>78</sup> Id at 746.

<sup>79</sup> Milton, *Areopagitica* at 735 (cited in note 12).

<sup>80</sup> Id at 747.

<sup>81</sup> Id at 737.

<sup>82</sup> Id at 739.

<sup>83</sup> Milton, *Areopagitica* at 728–29 (cited in note 12).

many opinions” of “knowledge in the making.”<sup>84</sup> All regulation of speech threatens to slow down and take the edge off of these energizing activities, but especially licensing with its comprehensive reach, placement of the burden of inertia, built-in delays, distrust, predictable administrative rigidity and mediocrity, and escalating severity born of futility.

On the other hand, there are some important specific features of Milton’s argument, features he emphasizes, that surely carry over to the regulation of speech by means other than licensing. Among the most important is the positive value he sees in confronting evil and dangerous ideas. By the logic of his argument, the search for understanding would be much worse off were those ideas not to be available as foils and provocations and were authors and readers not seasoned by the experience of engaging them. It is true that licensing more than other means of regulation threatens to suppress ideas to the point of making them unavailable, but the difference is only in degree. One objective of criminal sanctions is to deter future transgressions. There is every reason to believe that a regime that eschews licensing but systematically punishes authors after publication for lines crossed or harms done will on that account lose much of the writing that Milton values, both because some authors will steer far wide of the danger zone of prosecution and many who don’t and are prosecuted will alter their ways going forward. Although his concern for the discursive environment might suggest that Milton should be especially hostile to licensing, his emphasis on the disputational energy level of the society should also make him more sensitive than most advocates of free speech to the chilling effects of criminal and civil liability postpublication.

Furthermore, Milton claims that “the best and surest suppressing” is not subsequent punishment but rather the confuting of falsehood.<sup>85</sup> He says there “would be little work left for preaching if law and compulsion should grow so fast upon those things which heretofore were governed only by exhortation.”<sup>86</sup> These arguments from divine design apply to any form of legal regulation of printing.

Milton’s arguments from the value of confronting falsehood, from the dynamic nature of truth and the consequent value of an ener-

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<sup>84</sup> Id at 743.

<sup>85</sup> Id at 746.

<sup>86</sup> Id at 727.

gizing environment of collective inquiry, from the comparative efficacy of controlling evil ideas by means of refutation, and from the role in the divine plan of free choosing by fallen man all have application not only to licensing but also to other means of regulating writing. In that respect, his arguments cannot be cabined in the narrow (in modern times) domain of comprehensive administrative licensing, even as, like a good lawyer, Milton in *Areopagitica* takes care to shape his presentation to the case at hand, leaving more wide-ranging implications to be teased out by his readers.

### VIII. ASYMMETRIC TREATMENT OF CONSEQUENCES

Milton makes a variety of strong claims regarding how unlicensed printing can advance both English republicanism and the “reforming of Reformation itself”<sup>87</sup> by virtue of how readers are enlightened, challenged, tempted, corrected, energized, and inspired by the bold, conscientious writing that is the subject of the tract. His argument depends on the proposition that ideas can be powerful, capable of penetrating to the inner person and altering the reader’s understanding, character, and motivation to act. However, the causal link that Milton perceives between writer and reader seems to be stronger when he is waxing eloquent about the potential good effects of his proposed regime for republicanism and religion than when he is minimizing the harms of infection, temptation, and distraction that can follow from free printing. In this regard, is the argument of *Areopagitica* internally inconsistent? If ideas have the power to “spring up armed men,”<sup>88</sup> why should we assume that those men will be disproportionately soldiers of an enlightened rather than misguided religious or political order—or no order at all?

There can be no need to demonstrate how numerous, various, profound, and enduring are the salutary effects upon readers that Milton believes will ensue from trusting authors with “the liberty to know, to utter, and to argue freely according to conscience.”<sup>89</sup> The fourth and final part of the *Areopagitica*—the longest and most eloquent part—is a veritable catalog of such posited good effects. The key question, so far as Milton’s consistency is concerned, is why he

<sup>87</sup> Milton, *Areopagitica* at 743 (cited in note 12).

<sup>88</sup> *Id.* at 720.

<sup>89</sup> *Id.* at 746.

does not deploy his extraordinary gift for imaginative description to impress upon the reader the multifarious ways that false teachers, left unregulated, can harm gullible readers and vulnerable third parties. His discussion of “infection” does not deny or minimize the phenomenon but neither does he elaborate upon the scope or severity of the danger. Rather, Milton argues that any attempt to root out infection will threaten “the fall of learning and of all ability in disputation.”<sup>90</sup> The harms of temptation and distraction (“vain things”) are double-edged, he asserts, in that they present opportunities for self-control. These are clever responses, not without some validity, but they lead one to wonder whether Milton doubts the power of bad ideas, at least those generated by persons arguing freely according to conscience, to spread and thereby cause serious harm.

His belief in divine providence might suggest as much. Shortly after he observes that Truth “needs no policies, nor stratagems, nor licensings to make her victorious,”<sup>91</sup> Milton explains that when false teachers are “busiest in seducing” God then “raises to his own work men of rare abilities” to set things right. However, what is most notable about this passage is that under the providential dispensation that Milton embraces, human agency plays an important role, hence the saving work of the “men of rare abilities” and the danger posed by ill-conceived laws like the Licensing Order of 1643.<sup>92</sup> Even if the ultimate triumph of good over evil is preordained under “the Angels’ ministry at the end of mortal things,”<sup>93</sup> it is imperative that fallen man “ordain wisely as in this world of evil, in the midst whereof God hath placed us unavoidably.”<sup>94</sup> In this respect, the potency and resilience of bad ideas, as well as their susceptibility to human containment by noncoercive means, is something that Milton needs to consider. Faith in divine providence does not free him from this obligation. But his belief in the intervention of divine providence in the present, as “the state of man now is,”<sup>95</sup> informs his assessment of the net damage that evil ideas can cause. And that intervention, as he understands it, is to

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<sup>90</sup> Id at 730.

<sup>91</sup> Milton, *Areopagitica* at 747 (cited in note 12).

<sup>92</sup> See Lewalski, *Milton and the Millennium* at 18 (cited in note 66).

<sup>93</sup> Milton, *Areopagitica* at 747 (cited in note 12).

<sup>94</sup> Id at 733.

<sup>95</sup> Id at 728.

make divine Truth “strong, next to the Almighty” when apprehended by fallen mortals reading and arguing with the requisite “unity of spirit.”<sup>96</sup> So strong, it seems, that false teachings, even when widely disseminated in the absence of licensing, are no match.

The point is that Milton’s unbalanced treatment of the consequences of free printing, his disproportionate attention to the good effects, derives from his transcendent faith in the power of good ideas, a faith which is the product of his particular theological commitments. *Areopagitica* disappoints the modern reader with its inattention to the risks and costs of unlicensed printing, but that is no mark against Milton because the logic of his argument does not depend on the claim that evil ideas will not achieve wide dissemination and considerable impact in the absence of regulation. Even if many bad consequences were to occur as a result of unlicensed printing, he would consider the cost to be acceptable. His twin causes of republicanism and Reformation, both of which he views as dependent in an elemental way on free inquiry and communication, would take priority.

In this view, his case for free inquiry and critical argumentation “according to conscience,”<sup>97</sup> if not necessarily for all manner of free expression, does not turn on how much harm it causes. However much that harm is, it is dwarfed by the fundamental, generative, perpetually-renewing good of “knowledge in the making.”<sup>98</sup>

## IX. ENDURING IDEAS

One way to read Milton is with an eye to his possible impact on subsequent thought about the freedom of speech. His argument in *Areopagitica* is notable for its reliance on the high value of free writing rather than doubt about the capacity of ideas to cause harm; its recognition that not every form or act of writing embodies that high value; its thesis that exposure to bad ideas can lead to a deeper understanding of and stronger commitment to good ideas; its claim that “confuting is the best and surest suppressing”;<sup>99</sup> its derivation of freedoms from duties; its focus on audience interests rather than

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<sup>96</sup> Id at 747.

<sup>97</sup> Milton, *Areopagitica* at 746 (cited in note 12).

<sup>98</sup> Id at 743.

<sup>99</sup> Id at 746.

those of speakers; its synthesis of dynamic, contingent phenomena and perdurable, foundational commitments; its attention to individual character and communal spirit, and more generally its view of individual freedom as instrumental to collective achievement; and its premise that freedom of (disciplined) thought is the transcendent value. Each of these ideas has been appropriated and refined by one or another subsequent thinker of note. All figure prominently in the free speech tradition. That said, I consider the following four ideas to constitute the core of the *Areopagitica*'s accomplishment going forward.

#### A. THE DERACINATION OF HERESY

Milton's most important contribution to the modern understanding of the freedom of speech is the way his argument in *Areopagitica* lays the groundwork for the eventual discrediting of the concept of heresy, an idea that historically has played a prominent, mischievous role in both religious and civil discourse. Some persons are comfortable with belief systems that treat all propositions claiming truth value as contingent and perspectival, but many persons—probably most—are not. There is a powerful impulse to treat at least some ideas as constitutive of a regime or a faith, such that denials of their truth are seen as subversive and disqualifying for membership in the community. Milton demonstrates that one can hold certain ideas to be fundamental and essential yet still need to hear them challenged. He achieves this with four different but related arguments.

First, he asserts over and over again how important it is not simply to hold true ideas but to hold them in the correct way. Preserving a “fugitive and cloistered virtue” will not do.<sup>100</sup> To understand truth and virtue fully, one must “scout into the regions of sin and falsity.”<sup>101</sup> Doing so helps the holder of a truth “to discover, to confute, to forewarn, and to illustrate.”<sup>102</sup> A person who takes his beliefs on faith or authority can be “a heretic in the truth” says Milton, even when his received opinions are in fact true: “if he believes things only because his pastor says so, or the Assembly so determines, without knowing other reason, though his belief be true, yet the very truth he holds

<sup>100</sup> Id at 728.

<sup>101</sup> Milton, *Areopagitica* at 729 (cited in note 12).

<sup>102</sup> Id at 727.

becomes his heresy.”<sup>103</sup> Notice that in this key passage he does not renounce the concept of heresy but rather redefines it. In his view, the transgression that separates a person from the community is not believing a proposition that is forbidden but rather coming to and retaining a belief by means of a forbidden process of unthinking deference to authority or custom.<sup>104</sup>

Milton was by no means the first important thinker to emphasize the “how” over the “what” in matters of fundamental belief. The distinguished Milton scholar Nigel Smith traces this priority to the concept of *proairesis*—the practice of informed, reasoned choice—in ancient Greek philosophy. The contrary privileging of “what” over “how” derives, he explains, from the “Augustinian understanding of heresy as that which is forbidden and to be expunged from believers, making them if need be the object of persecution.” According to Smith, the *Areopagitica* makes “a forceful plea” for embracing the Greek rather than Augustinian ideal.<sup>105</sup> One might even speculate that Milton’s choice of title for his tract may have had something to do with his admiration for the Greek ideal of *proairesis*.<sup>106</sup>

Second, “in the field of this world” good and evil are not as easily separated as the traditional conception of heresy assumes. They “grow up together almost inseparably.” The knowledge of good is “involved and interwoven with the knowledge of evil, and in so many cunning resemblances is hardly to be discerned.”<sup>107</sup> Attempting to purge books of their heretical ideas would result in “the fall of learning.” False appearances and precipitant judgment compound the cost of trying to eradicate ideas that are considered to be heretical in themselves.

Third, his critique of excessive attention to form at the expense of spirit and character, manifested throughout *Areopagitica* in imagery

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<sup>103</sup> Id at 739.

<sup>104</sup> See Tobias Gregory, *How Milton Defined Heresy and Why*, 45 *Religion & Literature* 148, 151 (2013).

<sup>105</sup> See Nigel Smith, *Paradise Lost and Heresy*, in Nicholas McDowell and Nigel Smith, eds, *The Oxford Handbook of Milton* 508 (2009). For a detailed argument that *Areopagitica*’s notion of “knowing good by evil” represents a pronounced rejection of Augustine’s restrictive conception of human agency in the postlapsarian condition, see Dennis Richard Danielson, *Milton’s Good God* 164–77 (Cambridge, 1982).

<sup>106</sup> Regarding Milton’s affinity for the notion of *proairesis*, see Janel Mueller, *Milton on Heresy*, in Stephen B. Dobranski and John P. Rumrich, eds, *Milton and Heresy* (Cambridge, 1998).

<sup>107</sup> Milton, *Areopagitica* at 728 (cited in note 12).

exalting the inner over the outer, the essential over the superficial, helps to explain why the conventional understanding of heresy is a regulatory concept that cannot serve a worthy end. Punishment for heresy in the traditional sense seeks only a false order—"the forced and outward union of cold and neutral and inwardly divided minds"<sup>108</sup>—and thereby thwarts the construction of a true kind of order based on trust, commitment, and mutual responsibility. Because the regulation of printing typically is imbued with imprecision and futility, the act of licensing has the character of a formal gesture, a regulatory show. Central to Milton's thought in several domains—religion, poetry, politics, education, marriage—is his objection to reliance on forms as a substitute for having to choose wisely. Those who would regulate writings judge them superficially for several reasons, but important among them is the fact that most of the time the censorship of ideas is not really meant to be a discriminating gesture. It is intended rather to be a formal discharge of regulatory responsibility or a public affirmation of conventional forms of authority and thought. No justification for regulating speech embodies this formalism so much as the claim that certain beliefs as such may not be entertained no matter how worthy is the process by which the believer has come to hold them.

Fourth, Milton is able to discredit the conventional understanding of heresy even while basing his argument on the need to facilitate a supremely important and ambitious truth-seeking process that assumes the existence of genuine moral and religious knowledge. He does this by embracing one kind of skepticism but not another. He is not the least bit skeptical about the existence of enduring truths, political as well as divine, that are accessible to human inquiry. But he is impressed by how difficult and error-ridden is the process by which fallible human beings in a fallen world go about trying to discover and live those truths. In such a world of partial understanding, the attempt to classify beliefs in themselves as grounds for punishment is misconceived. Persons who err while undertaking a sincere effort to understand in the light of scripture, reason, and spirit working together deserve both charity and membership in the community of inquirers.

Milton makes strong, controversial claims about the nature of truth and the best way to attain meaningful understanding. Many of his

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<sup>108</sup> *Id* at 742.

particular prescriptions are a product of his unique situation and do not translate well to other times and places. But in demonstrating how one can believe in genuine community-defining truths and still have no use for the traditional conception of heresy, Milton advances the case for toleration immeasurably.<sup>109</sup> As his treatment of Catholic idolatry and unspecified non-Catholic practices that are “evil absolutely” indicates, in theory Milton’s analysis could justify punishment for excessive passivity and conformity in the realm of belief or, at the other end of the spectrum, impulsive, fanciful, provocative religious assertion that flouts the Protestant duty of earnest, informed, patient, disciplined, independent spiritual inquiry. But given the Pauline imperative of charity that he invokes (“provided first that all charitable and compassionate means be used to regain the weak and the misled”)<sup>110</sup> and the practical difficulty of judging transgressions of method and spirit rather than content, Milton’s redefinition of heresy implies its demise as an operational matter, his stated exclusions for popery and impiety notwithstanding.

Many of the arguments that he advances to undercut the claim that the traditional conception of heresy is a defining feature of a faith community also have purchase in pluralistic regimes, such as modern Western democracies. For his insistence that there are better and worse ways of holding beliefs and positive value to confronting suspect, even offensive and dangerous, ideas—“knowing good by evil”<sup>111</sup>—does much to justify what may be the essential commitment in any broad-based ethic of toleration: the assumption that the benefits of free inquiry and respect for sincere belief are such important goods that the harms they can cause must be endured, except in rare, narrowly defined circumstances. Milton demonstrates how even persons who are committed to certain beliefs, whether on grounds of knowledge or experience or faith or attachment or identity, have good reasons to learn, consider, and respond to what others are thinking. Even if there are severe limits to human understanding and (contrary to Milton’s view) no transcendent sources of value and duty, what he observes about the individual and collective processes of inquiry and judgment provides reasons to attend to the thought of others, if only

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<sup>109</sup> See Benjamin Myers, “Following the Way Which Is Called Heresy”: Milton and the Heretical Imperative, 69 *J History of Ideas* 375, 392–93 (2008).

<sup>110</sup> Milton, *Areopagitica* at 747 (cited in note 12).

<sup>111</sup> *Id.*

for purposes of scavenging and testing. One need not exalt truth-seeking in the way that Milton does to acknowledge that in a pluralistic regime designed to govern a theologically and philosophically diverse population, the ways that persons and groups develop and defend their conflicting understandings can matter. Milton's memorable accounts of deceiving appearances, incremental enlightenment, energizing effects, layers of understanding, overreaction to small differences, and the dynamic character of belief can be appropriated in service of the proposition that free speech is an activity of particular importance in such regimes.

The greatest achievement of modern First Amendment law is its hard-won abolition of the concepts of heresy and its cousin sedition. Today, would-be regulators of speech have to demonstrate the risk of material harm. As a matter of principle, proving error or incompatibility with fundamental tenets is never enough. From a historical perspective, that is a remarkable development, and Milton deserves some of the credit.

#### B. FREE SPEECH ENVIRONMENTALISM

Milton's argument for free printing is distinctive even among audience-centered arguments in the degree to which it emphasizes the impact of regulation on the overall environment of public disputation. He cares fervently that what he takes to be the relevant community maintain a vibrant discursive spirit bursting with inquisitive energy. He argues that licensing saps that spirit by virtue of the disrespect to authors and audiences it embodies, the delays and opportunities for corruption and incompetent exercise of authority it creates, and the false order it imposes. One might say that he cares about what modern doctrine labels the "chilling effect." This is true and important, and something contemporary First Amendment thinkers can build on without having to share his religious premises. Many of Milton's multifarious, imaginative arguments relating to intellectual independence pitted against conventional understanding have a general thrust. They address ways that unsettling ideas of *various* sorts can germinate, penetrate defenses, sustain themselves, and proliferate, as well as how such salutary ferment can be threatened by predictable dynamics of regulatory rigidity and abuse.

One might even think that Milton's emphasis in this respect is a precursor of the modern Court's reigning doctrinal shibboleth, first

articulated in *New York Times v Sullivan*, “that debate on public issues should be uninhibited, robust, and wide-open.”<sup>112</sup> The Justices have invoked this ideal in a range of cases, both to expand the scope of activities considered to be within the domain of First Amendment coverage and to disallow various forms of regulation designed to make public debate more balanced, civil, transparent, or factually accurate. Across a broad spectrum of problems, “more speech is always better” has become the clinching argument in First Amendment adjudication.<sup>113</sup>

Milton, however, issues no such call for unbounded verbal insouciance. He has nothing to say about the value of speech for its own sake or as a means of letting off steam or being provocative in order to irritate, intimidate, or fuel resentment. He does not address the role that speech plays in the competition for power and influence. Learning, not self-expression, is what he takes to be the benefit of free printing. Milton is all about discipline and duty. He does not claim about all speech that “more is always better,” rather that more informed, pious, even if bold and unsettling *inquiry* is always better. Harms caused by “uninhibited” speakers not engaged in such inquiry are beyond the scope of his argument.

Although Milton does not believe that more speech is always better among ill-motivated or impious speakers, he does claim that more exposure to sin and falsehood can be highly beneficial to the serious thinkers he is most concerned about, and not only because such exposure requires them as individuals to exercise the discipline and commitment to resist temptation and refute specious arguments. He regards the vanquishing of sin and falsity as a collective project, symbolized by his vision of England as the “mansion house of liberty”<sup>114</sup> inhabited by armies of energetic, bold thinkers with their pens and lamps continually engaged in “the reforming of Reformation itself.”<sup>115</sup> He maintains that the acquisition and active maintenance of knowledge depends on both courageous individuals and a supportive environment, and he argues that licensing not only thwarts the former but enervates the latter.

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<sup>112</sup> 376 US 254, 270 (1964).

<sup>113</sup> See, e.g., *United States v Alvarez*, 132 S Ct 2537, 2550 (2012); *Sorrell v IMS Health, Inc.*, 131 S Ct 2653, 2675 (2011); *Citizens United v FEC*, 558 US 310, 355, 361 (2010).

<sup>114</sup> Milton, *Areopagitica* at 743 (cited in note 12).

<sup>115</sup> *Id.*

Milton's "free speech environmentalism" can be seen as a contribution that is not confined to the way it serves his own uncommonly ambitious argument. A regime that understands the principle of freedom of speech to have a different rationale, a wider scope, and less exalted objectives than what he urges nevertheless can draw on his environmentalism. The discursive environment can be important in a speaker-centered view of the freedom of speech as well as in Milton's duty-driven, audience-centered understanding. Even autonomy-based accounts of the freedom of speech sometimes stress the central role of the surrounding environment in facilitating the speaker's development, dignity, and choice.<sup>116</sup> Regarding the indiscriminate "more is always better" presumption, a supportive environment, especially one that energizes its participants, can be a significant factor in stimulating speech designed to advance the narrow objectives of the speaker no less than the speech of disciplined inquiry in the service of the common good or the divine plan.

His claim that true freedom requires a spirit of boldness in the air that can be dissipated by distrustful, prescriptive regulatory ordering might be considered to apply across a wide range of activities. Even though different arguments from those that Milton offers are needed to establish that communicative self-assertion as such is an activity worthy of special regard in its own right,<sup>117</sup> such self-assertion could have instrumental value by virtue of its contribution to the overall energy level that he prizes. In this way, his insights regarding what is needed for valuable freedoms to flourish might help to justify a far broader understanding of the freedom of speech than Milton himself ever would have embraced.

Actually, he was relatively capacious among the free speech advocates of his day in the breadth of the principle he defended. Although he did not extend his principle of protection to "popery," "open superstition," or that which is "evil absolutely,"<sup>118</sup> neither did most of his peers.<sup>119</sup> Where Milton's notion of coverage was broad for

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<sup>116</sup> See Joseph Raz, *Free Expression and Personal Identification*, 11 *Oxford J Legal Studies* 303 (1991); Seana Valentine Shiffrin, *A Thinker-Based Approach to Freedom of Speech*, 27 *Const Comm* 283 (2011).

<sup>117</sup> Dean Post is critical of modern doctrine for treating as self-evident the proposition that the First Amendment protects "speech as such" independent of the function served. See Robert Post, *Recuperating First Amendment Doctrine*, 47 *Stan L Rev* 1249, 1279 (1995).

<sup>118</sup> Milton, *Areopagitica* at 747 (cited in note 12).

<sup>119</sup> See Arthur Barker, *Milton and the Puritan Dilemma* 93–94 (Toronto, 1942). The most notable exception was Milton's friend, Roger Williams. See Thomas N. Corns, *John Milton*,

its time was in the instrumental value he found in the speech of the radical sectaries, whose ideas were viewed by most observers as blasphemous and irresponsible. He respected the sectaries not out of compassion or because their humanity required it. Rather, he thought their strange ideas might have something to contribute to his own understanding and that of others, and not only by serving as a foil. For “if it comes to prohibiting, there is not aught more likely to be prohibited than truth itself, whose first appearances to our eyes, bleared and dimmed with prejudice and custom, is more unsightly and implausible than many errors, even as the person is of many a great man slight and contemptuous to see to.”<sup>120</sup> Furthermore, apart from the possibility that genuine truths might be lurking in their provocative ideas, Milton valued the radical sectaries for their example of intellectual independence and courage, as well as their contribution to collective energy.

So why didn't he apply such reasoning to the speech of Catholics? This question is worth an article in its own right, but one might begin by noting that he denied even the possibility that genuine truths might be lurking in Catholic theology. God might “deal out by degrees his beam”<sup>121</sup> but the falsity of Catholicism was, to Milton's mind, a divine judgment already dealt out. Even if true, however, there remains the objection that an argument urging readers to “scout into the regions of sin and falsity”<sup>122</sup> so as to facilitate “knowing good by evil”<sup>123</sup> would seem to be served by the availability of Catholic writings.<sup>124</sup> If Milton's exclusion of Catholicism can be defended at all within the terms of his overall argument, his concern for free speech environmentalism offers the best prospect. Catholic ecclesiastic hierarchy, seductive ritual, and systematic persecution of heretics constituted, in his view, the supreme threat to sustaining an environment of intellectual independence and inquisitive energy. In no way did he consider Catholic theology and practice to be a possible source of

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*Roger Williams, and the Limits of Toleration*, in Sharon Achinstein and Elizabeth Sauer, eds, *Milton and Toleration* 72–85 (Oxford, 2007). See generally Norah Carlin, *Toleration for Catholics in the Puritan Revolution*, in Ole Peter Grell and Bob Scribner, eds, *Tolerance and Intolerance in the European Reformation* 216 (Cambridge, 1996).

<sup>120</sup> Milton, *Areopagitica* at 748 (cited in note 12).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 729.

<sup>123</sup> *Id.* at 728.

<sup>124</sup> See Thomas N. Corns, *John Milton: The Prose Works* 59 (Twayne, 1998).

those invaluable public goods.<sup>125</sup> In that regard, the speech of the sectaries was very different.

### C. THE CENTRE CANNOT HOLD

Milton's consistent attention to the practical realities of speech regulation is one of his important legacies. In his case, astonishing creativity was not a substitute for, but rather a product of, shrewd observation and demanding appraisal. He was a close student and admirer of Machiavelli, hence his emphasis on political energy. The *Areopagitica* is couched in the argot of political realism: "to sequester out of the world in Atlantic and Utopian polities which can never be drawn into use will not mend our condition," Milton states. Instead, he urges his readers to "ordain wisely . . . in this world of evil."<sup>126</sup> In Book VIII of *Paradise Lost*, the angel Raphael counsels Adam: "be lowly wise. . . . Dream not of other worlds."<sup>127</sup>

The lowly wisdom of *Areopagitica* is considerable. Milton insists, for example, that the policy of licensing cannot be assessed without taking into account the capacities, working conditions, loyalties, and temperaments of the persons who will serve as licensers. In a way, he anticipates the modern attention to institutional incentives as a key factor in First Amendment analysis. Still another practical feature of licensing he identifies is how responsibility for the censorial decision is often divided and accountability thereby evaded. His image of "five Imprimaturs . . . seen together dialoguewise in the piazza of one titlepage, complimenting and ducking each to other"<sup>128</sup> captures this phenomenon—a problem, we might believe, that also plagues the modern administrative state.

In recounting the history of licensing, he observes that the authority to regulate speech was routinely abused. Licensers did not "stay in matters heretical" but rather asserted control over "any subject that was not to their palate."<sup>129</sup> Much of modern free speech doctrine is

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<sup>125</sup> For a comprehensive account of Milton's treatment of Catholics in his polemics, see Andrew Hadfield, *Milton and Catholicism*, in Achinstein and Sauer, *Milton and Toleration* 186 (cited in note 119).

<sup>126</sup> *Id.* at 732–33.

<sup>127</sup> John Milton, *Paradise Lost*, Book VIII, lines 173–75 (1674), in *John Milton, Complete Poems and Major Prose* 211, 367 (cited in note 1).

<sup>128</sup> Milton, *Areopagitica* at 724 (cited in note 12).

<sup>129</sup> *Id.*

founded upon generalized distrust of regulatory motives, even as adjudication of such motives in individual cases is deemed impractical for the most part. In the *Areopagitica* Milton mercilessly harnesses his formidable satiric talent to urge such distrust.

Milton's most interesting practical argument is an observation about the cumulative effect of several of his discrete points regarding corruption, futility, unintended consequences, mediocrity, frustration, and the true sources of order. In essence, he argues that, as a practical matter, there can be no such thing as a measured, disciplined, rational censorship. Inevitably, licensing "will prove the most unlicensed book itself."<sup>130</sup> The choice, he maintains, is between the regime of free printing that he advocates and the severe Counter-Reformation "model of Trent and Seville."<sup>131</sup> There is no middle ground.

Even if in modern times the choice is not so stark, Milton makes a lasting contribution by deploying piercing ridicule to discredit the notion of speech regulation ever being conducted with a light touch. His compelling images of administrative arrogance, corruption, and mindless rigidity should always be part of the equation as each new threat or outrage generates well-meaning proposals for limited, carefully confined restrictions on speech.

#### D. THE CLAIMS OF POSTERITY

Another enduring contribution of Milton's is his insistence that the value of free thinking and writing be assessed with due regard for its possible long-range benefits. In discussing the suppression of ideas, he laments that "revolutions of ages do not oft recover the loss of a rejected truth, for the want of which whole nations fare the worse."<sup>132</sup> Necessarily, the net effects of free thinking over time must be highly speculative. Because truth is dynamic and experiential, something to be lived rather than possessed, its long-term benefits cannot be computed objectively or precisely. For Milton, that is not a sufficient reason to ignore or discount them. Despite his keen interest in the burgeoning scientific discoveries of his age,<sup>133</sup> Milton never succumbed to the scientific fallacy of wanting to accord significance in his quest

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<sup>130</sup> Id at 749.

<sup>131</sup> Id at 734.

<sup>132</sup> Milton, *Areopagitica* at 720 (cited in note 12).

<sup>133</sup> See John Rogers, *The Matter of Revolution: Science, Poetry, and Politics in the Age of Milton* 146–47 (Cornell, 1996). During his only visit to the European continent, Milton secured an

for understanding only to matters that can be rigorously observed and measured.<sup>134</sup> The long term is what mattered most in his mature intellectual universe, notwithstanding the need to rely heavily on unprovable teachings of history and suppositions about character, behavior, and tendency that such a priority entails.

In taking the long view, and refusing to be paralyzed by the obvious difficulty of predicting future consequences, Milton addresses a structural difficulty of the case for protecting free speech. The harms that unpopular speech—the kind that generates regulatory responses—can cause are often salient in the short run, the benefits less so. That is especially true of the benefits from speech that relate to character development, necessarily a slow process. Similarly, giving due regard to benefits that take the form of providing ideas or observations that future inquirers can put to better use than can their originators requires both a long-term perspective and an appreciation of how this dynamic has virtually defined the course of learning throughout history. Even the more specific benefit of correcting error by means of refutation is seldom realized directly, expeditiously, and without relapse. One-on-one persuasion usually is a matter of creating doubt that leads over time to a change of mind. Moving the needle of public opinion by means of reasoned argument or empirical demonstration rather than demagoguery typically is an even more drawn-out phenomenon.

Milton was well equipped to focus on the future and the arc of history. Almost every day of his life was devoted to scriptural study (in the original languages of Hebrew, Greek, and Aramaic), including of course the prophecies that dominate the Old Testament. We think of Milton primarily as a poet but he was also a historian, having written a lengthy history of England and even a short history of Russia.<sup>135</sup> His considerable interest in Machiavelli was mainly in the Florentine's historiographic theories. It is no accident that the form of poetry that from an early age Milton aspired to write was epic poetry, modeled on his hero Virgil. Characteristically, Milton begins his multifaceted

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introduction to Galileo, a meeting he mentions in *Areopagitica*. Milton, *Areopagitica* at 737–38 (cited in note 12).

<sup>134</sup> Apart from disdain for simple-minded scientism, Milton experienced “ambivalence about the new science” on account of what he took to be its adverse impact on sophisticated metaphysical inquiry, whether due to the exaltation of the mechanistic in the manner of Hobbes or the categorical separation of the material and the spiritual in the manner of Descartes. See Stephen M. Fallon, *Milton Among the Philosophers* 135 (Cornell, 1991).

<sup>135</sup> See Barbara K. Lewalski, *The Life of John Milton* 198 (Blackwell, 2000).

argument in *Areopagitica* with an effort to distill the lessons of history regarding the regulation of speech. He ends *Paradise Lost* with an extended conversation in which the angel Michael narrates to Adam two thousand years of the history to come in order that the progenitor of the human race, about to be expelled from Eden, may “[g]ood with bad expect to hear, supernal grace contending with the sinfulness of man, thereby to learn true patience. . . .”<sup>136</sup>

The *Areopagitica* is vulnerable to modern criticism in that it does not say much about the immediate and short-run harms that speech can cause. This omission, if such it be, may well be due to Milton’s assumption that what matters most is the long-term ledger. On the subject of the supposed long-term costs of free printing, no less than the long-term benefits, he has a great deal to say. The most feared long-term cost in his day—and quite possibly even in ours—was the specter of incremental anarchy, the gradual unraveling of the achievements of civilization. It is no exaggeration to say that Milton’s addressing of that concern takes up fully half of his tract. The *Areopagitica* is at pains on almost every page to prove that the “bonds and ligaments”<sup>137</sup> that hold a political community together consist much more of mutual trust and education in history and duty than in coercive measures. His many paeans to dynamism are about how order depends on continual adaptation, renewal, and active “closing up truth to truth.” The regulators who seek to stamp out the “much arguing, much writing, many opinions” that grow out of those endeavors are the real “dividers of unity,” he maintains.<sup>138</sup>

Besides disorder, the long-term cost that most concerned supporters of the Licensing Order was error. Here I mean something different from heresy, which has connotations of separation and disobedience. Quite apart from those perceived moral and membership failings, error was seen as a serious matter on account of its practical consequences. Clearly Milton believed, and argued fervently in *Areopagitica*, that error is more likely to follow from the silencing of independent thinkers and the entrenchment of received wisdom than from any misleading that bold, subversive ideas might accomplish. His reasons for holding that view are many, but most have in com-

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<sup>136</sup> John Milton, *Paradise Lost*, Book XI, lines 358–61, in *John Milton, Complete Poems and Major Prose* 441 (cited in note 1).

<sup>137</sup> Milton, *Areopagitica* at 733 (cited in note 12).

<sup>138</sup> *Id.* at 742–43.

mon the quality of taking into account phenomena such as character effects and corrective responses that play out over time. For example, he says:

And though all the winds of doctrine were let loose to play upon the earth, so truth be in the field, we do injuriously by licensing and prohibiting, to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter.<sup>139</sup>

Many commentators, Alexander Meiklejohn among them,<sup>140</sup> have cited this passage to discredit Milton, accusing him of ungrounded optimism or reliance on a divine providence that many modern readers do not believe in. Both charges are plausible, the second in fact irrefutable. But Milton's claim about the strength of truth is more defensible regarding long-term patterns of understanding than it is for short-run effects. Admittedly, over time error can be entrenched by "the grip of custom"<sup>141</sup> or compounded by misbegotten extrapolation. Nevertheless, in an energetic, inquisitive society of the sort Milton envisioned, were licensing to be lifted much weeding out of false beliefs would very likely occur by means of both critical challenge and experiences of inefficacy. Both correctives, however, take time.

My point here is not that Milton is necessarily right in his optimism about the strength of truth, rather that his taking the long view is a distinctive contribution to the case for the freedom of speech because it makes available a more defensible argument grounded in the self-correcting dynamic of speech answering speech. Notice that the plausibility of effective if delayed correction is much greater when the harm that needs countering is the *persuasive* effect of false *ideas*. Not all error resulting from speech is caused by ideas. Not all speech harms derive from persuasion. Demagogic triggering of primordial, correction-proof anxieties and prejudices, intrusive or disruptive acts of communication, and costly methods of generating speech (such as child pornography, political fundraising, and animal torture) cause much of the harm that is traceable to speech. Milton's long view does not improve the assessment of communications that cause harm in these ways. Accordingly, *Areopagitica* tells us little about whether and how his understanding of the freedom of speech extends to disputes

<sup>139</sup> Id at 746.

<sup>140</sup> See Alexander Meiklejohn, *The First Amendment Is an Absolute*, 1961 Supreme Court Review 245, 263 (1961).

<sup>141</sup> Milton, *Areopagitica* at 747 (cited in note 12).

over such matters. His argument is about ideas and his claim is that truth has an advantage over the long haul in the wars of persuasion.

#### X. EXPIRING AND REVIVING LIBERTY

In none of his writings does Milton better express his belief in the power of persuasion over time than in the closing words of *The Ready and Easy Way to Establish a Free Commonwealth*, a pamphlet written in anguish in 1660 to protest the headlong rush of the strife-weary English people to restore the Stuart monarchy. Blind, betrayed by his countrymen and even by his erstwhile hero Cromwell,<sup>142</sup> eligible for execution on account of his polemics in defense of the regicide, he remained unbowed. Risking his freedom and possibly his life, he challenged the ascendant royalists by issuing an uncompromising indictment of monarchical government. As other republicans were busy trimming to protect their positions against the impending Restoration, he defiantly reaffirmed his commitment to the Good Old Cause, finding succor in the prospect of eventual political renewal:

Thus much I should perhaps have said though I were sure I should have spoken only to trees and stones, and had none to cry to, but with the prophet, “O earth, earth, earth!” to tell the very soil itself what her perverse inhabitants are deaf to. Nay, though what I have spoke should happen . . . to be the last words of our expiring liberty. But I trust I shall have spoken persuasion to abundance of sensible and ingenuous men, to some perhaps, whom God may raise of these stones to become children of reviving liberty.<sup>143</sup>

Probably due to the intervention of friends in high places, when the Stuart monarchy returned to rule England three months later, Milton somehow escaped the executioner’s axe.<sup>144</sup> Then he resumed work on his half-completed, most ambitious project of persuasion ever: an epic poem, addressed to his disillusioned, vanquished compatriots but also to posterity, designed amid defeat “to assert eternal providence and justify the ways of God to men.”<sup>145</sup>

<sup>142</sup> See Blair Worden, *Literature and Politics in Cromwellian England: John Milton, Andrew Marvell, Marchamont Nedham* 245–46, 258–61 (Oxford, 2007).

<sup>143</sup> John Milton, *The Ready and Easy Way to Establish a Free Commonwealth* (1660), in *John Milton, Complete Poems and Major Prose* 880, 898 (cited in note 1).

<sup>144</sup> See Anna Beer, *Milton: Poet, Pamphleteer, and Patriot* 286–87 (Bloomsbury, 2008).

<sup>145</sup> John Milton, *Paradise Lost*, Book I, lines 25–26, in *John Milton, Complete Poems and Major Prose* 212 (cited in note 1).