

FREE EXPRESSION OR EQUAL SPEECH?*

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Abstract: The classical liberal doctrine of free expression asserts the priority of speech as an extension of the freedom of thought. Yet its critics argue that freedom of expression, itself, demands the suppression of the so-called “silencing speech” of racists, sexists, and so on, as a threat to the equal expressive rights of others. This essay argues that the claim to free expression must be distinguished from claims to equal speech. The former asserts an equal right to express one’s thoughts without interference; the latter the right to address others, and to receive a hearing and consideration from them, in turn. I explore the theory of equal speech in light of the ancient Athenian practice of isegoria and argue that the equality demanded is not distributive but relational: an equal speaker’s voice should be counted as “on a par” with others. This ideal better captures critics’ concerns about silencing speech than do their appeals to free expression. Insofar as epistemic and status-harms provide grounds for the suppression and exclusion of some speech and speakers, the ideal of equal speech is more closely connected with the freedom of association than of thought. Noticing this draws attention to the continuing—and potentially problematic—importance of exclusion in constituting effective sites of equal speech today.

KEY WORDS: free expression, freedom of speech, equality, Athens, democracy

I. FUNDAMENTAL FREEDOMS

For citizens of modern liberal democracies, few freedoms seem more fundamental than the “freedom of speech” or “expression.”¹ The canonical human rights documents of the twentieth century enshrined it as second only to the freedom of conscience.² Likewise, the classical liberal doctrine, which asserts the priority of the right to free expression as a necessary extension of the freedom of thought, has been widely embraced by political philosophers.³

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¹ Terms used interchangeably by specialists and laypeople alike. I discuss the historical reasons for, and the conceptual costs of, this conflation in Section II.

² See, for example, the United Nations’ Universal Declaration of Human Rights (1948), Articles 18 and 19; the European Human Rights Convention (1953), Articles 9 and 10; and the Canadian Charter of Rights and Freedoms (1982), Article 2a-b. In this, they follow the First Amendment (1791) to the U.S. Constitution, in which the freedom of speech comes second to free exercise.

³ For example, John Rawls, *A Theory of Justice: Revised Edition* (Cambridge, MA: Harvard University Press, 1999); T. M. Scanlon, “A Theory of Freedom of Expression,” *Philosophy and Public Affairs* 1, no. 2 (1972): 204–226; and Ronald Dworkin, “Is There a Right to Pornography?” *Oxford Journal of Legal Studies* 1, no. 2 (1981): 177–212.

Accordingly, the increasingly controversial status of this formerly fundamental certainty can be disorienting. In the United States, public debate on matters ranging from hate speech and no platforming, to pornography and gender-neutral pronouns have been framed as conflicts between those who are for “free speech” and those who are against it.⁴ Yet many critics of the classical liberal doctrine reject this framing. They position themselves instead as *defenders* of freedom of expression against those who would misconstrue it as a license to offend, intimidate, or harm others. To paraphrase Catharine MacKinnon: “Any system of freedom of expression that does not address a problem where the free speech of some *silences* the free speech of others, is not serious about securing freedom of expression.”⁵ On this view, the “silencing speech” of racists, sexists, or (increasingly) “trans-exclusionary” feminists, for example, should therefore be suppressed, or they themselves excluded from debate in order to secure the equal right to free expression for members of vulnerable groups.⁶

For defenders of the classical liberal doctrine, any argument that justifies censorship in the name of free expression must appear confused, at best. Still, with both sides laying claim to the same principle, the disagreement would seem to reduce to a question of distributive justice, and whether—or which—restrictions on some people’s speech are necessary to render freedom of expression equally effective for all.⁷ In this essay, however, I argue that the reduction of the multiple values at stake in current controversies to a single value has obscured significant theoretical and practical tensions between two distinct claims: to *free expression*, on the one hand, and to *equal speech*, on the other.⁸

Far from being synonyms, the former describes a principle of frankness grounded in the freedom of thought, and thus claims a right to speak or otherwise manifest the inward contents of one’s mind outwardly, whatever they may be, without interference. The latter, by contrast, asserts a claim to

⁴ See Nadine Strossen, *Hate: Why We Should Resist It with Free Speech Not Censorship* (Oxford: Oxford University Press, 2018); Erwin Chemerinsky and Howard Gillman, *Free Speech on Campus* (New Haven, CT: Yale University Press, 2017); and Jonathan Haidt and Greg Lukianoff, *The Coddling of the American Mind* (London: Penguin UK, 2018).

⁵ Catharine MacKinnon, “Frances Biddle’s Little Sister,” in *Feminism Unmodified* (Cambridge, MA: Harvard University Press, 1987), 163–97 (my emphasis). For criticism of the idea of “silencing” speech, see Ronald Dworkin, “Women and Pornography,” *The New York Review of Books* (October 21, 1993): 36–42. For a defense, see Rae Langton, “Dangerous Confusion? Response to Ronald Dworkin,” in *Sexual Solipsism: Philosophical Essays on Pornography and Objectification* (Oxford: Oxford University Press, 2009), 65–74, and Ishani Maitra, “Silencing Speech,” *Canadian Journal of Philosophy* 39 (2009): 309–338.

⁶ MacKinnon focused on pornography. Catharine MacKinnon, *Only Words* (Cambridge, MA: Harvard University Press, 1993). For the analogy with racial hate speech, see Ishani Maitra and Mary Kate McGowan, “Introduction and Overview,” in *Speech and Harm* (Oxford: Oxford University Press, 2012) and Jeremy Waldron, *The Harm in Hate Speech* (Cambridge, MA: Harvard University Press), 89–92.

⁷ Joshua Cohen, “Freedom of Expression,” *Philosophy and Public Affairs* 22, no. 3 (1993), 207–263.

⁸ Teresa M. Bejan, “Two Concepts of Freedom (of Speech),” *Proceedings of the American Philosophical Society* 163 (2019): 95–107.

address others publicly and discursively, and thus in turn involves a further claim to their attention and consideration. Accordingly, the equality demanded by “equal speech” is not that of the equal distribution of expressive opportunities, but rather a relational demand for recognition as an *equal speaker*, one whose voice should be heard and counted “on a par” with others.⁹ This latter ideal, I believe, better explains the concerns raised by critics of the classical liberal doctrine than do their own appeals to freedom of expression.

In what follows, I explore the theory of equal speech with reference to the ancient Athenian practice of *isegoria*, the equal right of all male citizens in good standing to address the democratic assembly. I suggest that contemporary debates have been hampered, on the one hand, by the overextension of the phrase “freedom of expression,” and by the limitations of treating problems of free speech as primarily issues of distributive justice, on the other. I begin, in Section II, by tracing the conceptual collapse of “free speech” into the undifferentiated category of “free expression” in the nineteenth century, before charting how the latter category continues to frame the arguments put forward even by those most critical of the classical liberal doctrine. In Sections III and IV, I describe Athenian *isegoria* before theorizing equal speech as a relational ideal concerned not with what rights and opportunities are to be distributed equally to speakers, but with the prior question of *who* should count as an “equal speaker” in the first place, and on what basis.¹⁰ “Equal speech” thus asserts the parity of potential speakers, which is then recognized and reaffirmed through their equal claim to a public hearing and others’ consideration of what they say.

Next, in Section V, I show how concerns about the epistemic and status harms of “silencing” speech raised by critics of the classical liberal doctrine are better grounded in this relational ideal of equal speech than in an individual’s right to express her thoughts freely to others. Moreover, insofar as these harms are taken to provide grounds for suppression and exclusion, the ideal of equal speech appears to be more closely connected with the *freedom of association* than freedom of thought. This, I argue, explains the further rights to negative discrimination claimed by critics of the classical doctrine when it comes to speech or speakers they deem to undermine the parity of voices in a society of equal speakers.

⁹ Ruth Chang uses the phrase “on a par” to describe cases wherein two things are evaluatively comparable with respect to some covering consideration, yet there exists no determinate answer to whether one is better or worse, or both are equally good. Chang, “The Possibility of Parity,” *Ethics* 112, no. 4 (2002): 659–88. In what follows, I build on Chang’s conception of parity to describe an evaluative relation in which different persons are viewed as “peers” of comparable, but not identical, worth or weight in the eyes of others. While I use both terms, “peer” and “equal,” to refer to those who share a rank or status, the former implies high or dignified status while the latter can be high or low. Chang denies that these terms can be used synonymously because, in her technical account, parity excludes equality.

¹⁰ For a similar treatment of Athens as a case study for normative theorists, see Josiah Ober, “Democracy’s Dignity,” *The American Political Science Review* 106, no. 4 (2012): 827–46.

To understand the critics' view, however, is not to endorse it. By way of conclusion, I highlight the difficulties facing efforts to realize the ideal of equal speech today, given the size and diversity of the modern public sphere, as well as the increasingly scant resource of audience attention. The arguments I present here help us to see why recent technological advances that offer ever more equal access to opportunities for expressive freedom (for example, social media platforms) put pressure on the presumption of parity between potential speakers. Noticing this draws our attention to the continuing—and potentially problematic—importance of exclusion in constituting effective sites of equal speech today.

II. FREE YOUR MIND (AND THE REST WILL FOLLOW)

The classical liberal doctrine of free expression, which grounds the right to free speech in freedom of thought, has deep historical roots. In the seventeenth century, many of the Protestant dissenters fleeing England for America argued that the liberty of conscience demanded a further “evangelical liberty” to proselytize.¹¹ This religious argument would later be rendered secular and respectable by John Stuart Mill.¹² *On Liberty* (1859) made clear that “the liberty of expressing and publishing opinions” should be entitled to “absolute freedom” and therefore *exempted* from the harm principle “being almost of as much importance as the liberty of thought itself” and “practically inseparable from it.”¹³ Mill did not (as is sometimes assumed) think that speech was “harmless”; rather, the importance he ascribed to personal autonomy as a presumptively progressive principle led him to believe that, except in cases of direct incitement, the long-term benefits would outweigh the harms.

Mill would thus likely reject contemporary efforts to justify restrictions on speech by emphasizing the harms it can inflict on others.¹⁴ Still, such arguments are a logical consequence of a process of conceptual innovation and collapse in which Mill and other nineteenth-century speech radicals were complicit.¹⁵ While eighteenth-century texts like the First Amendment distinguished “freedom of speech” from that of “the press” as involving distinct communicative modes and media,¹⁶ the catch-all phrase “freedom of

¹¹ For “evangelical liberty,” see Teresa M. Bejan, *Mere Civility: Disagreement and the Limits of Tolerance* (Cambridge, MA: Harvard University Press, 2017), chap. 2 and epilogue.

¹² John Stuart Mill, “On Liberty” in J. S. Mill: *“On Liberty” and Other Writings*, ed. S. Collini (Cambridge: Cambridge University Press, 1989).

¹³ Mill, “On Liberty,” 15.

¹⁴ See the examples discussed by Robert Simpson and Amia Srinivasan, “No Platforming,” in J. Lackey, ed., *Academic Freedom* (Oxford: Oxford University Press, 2018). Cf. Mari J. Matsuda, *Words That Wound: Critical Race Theory, Assaultive Speech, And The First Amendment* (Boulder, CO: Westview Press, 1993) and Waldron, *The Harm in Hate Speech*.

¹⁵ David Rabban, *Free Speech in Its Forgotten Years: 1870–1920* (Cambridge: Cambridge University Press, 1997).

¹⁶ The text of the First Amendment itself (which was a grab bag product of revision by committee) makes an important distinction between “speech” and the “press.” Ashutosh

expression" rose to prominence in the following centuries for largely pragmatic reasons. In this period, rapid innovation in communications technologies collapsed the distinction between the traditional methods for amplifying the spoken and written word—namely, "the platform" and "the press." With the arrival of photography (1826), the telegraph (1844), the telephone (1849), the phonograph (1877), and radio transmission (1895), activists and jurists in Britain and America needed a concept that could accommodate verbal and written forms of communication, as well as non-verbal acts of protest and works of art.

These developments set the stage in the twentieth century for symbolic activities like pornography (1988) and flag burning (1989) to provide fodder for landmark First Amendment cases under the unifying rubric of "free speech." Given that all of these media could be used to externalize or "express" an individual's internal states—her thoughts, feelings, ideas, and so on—why should "speech," construed narrowly as the spoken or written word, be special? It was in this context that feminists like Catharine MacKinnon and critical race theorists like Mari Matsuda began to argue that pornographic and racist "speech," whether expressed through words, images, or symbolic gestures, could also cause real people very real harms.¹⁷ In doing so, they embraced the conceptual collapse between the "freedom of speech" and "freedom of expression" begun by nineteenth-century liberals like Mill, while placing far greater weight on the *effects* that these various forms of expression might have on their recipients.

More recent critics of the classical liberal doctrine have extended this focus. Following MacKinnon, Rae Langton, Jennifer Hornsby, Jeremy Waldron, and Mary-Kate McGowan, among others, have drawn on J. L. Austin's theory of speech-acts to theorize the "illocutionary" or "performative" dimension of hateful expression as *constituting* a kind of harm in and of itself, in this case, to others' "basic social standing" and "recognition as social equals."¹⁸ According to this theory, sexist and racist speech-acts are objectionable because they constitute acts of "ranking" others as inferior and so "fix facts" about the "positions of groups ... within the social hierarchy."¹⁹ Because the recipients of sexist and racist speech are themselves potential speakers, as well as potential auditors for future speech by members of stigmatized groups, these

Bhagwat, "Posner, Blackstone, and Prior Restraints on Speech," *Brigham Young University Law Review* (2015): 1151–82.

¹⁷ Cf. MacKinnon, *Only Words*; Mari Matsuda, "Public Response to Racist Speech: Considering the Victim's Story," *Michigan Law Review* 87, no. 8 (1989): 2320–81, and Matsuda, ed., *Words that Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* (Boulder, CO: Westview Press, 1993). Cf. Bernard Williams, ed., *Obscenity and Film Censorship* (Cambridge: Cambridge University Press, 1981), §6.64.

¹⁸ J. L. Austin, *How to Do Things with Words* (Oxford: Clarendon Press, 1962); Rae Langton, "Beyond Belief: Pragmatics in Hate Speech and Pornography," in *Speech and Harm*, ed. Ishani Maitra and Mary Kate McGowan (Oxford: Oxford University Press, 2012), 72–93; Waldron, *The Harm in Hate Speech*, 59, and Mary-Kate McGowan, *Just Words*, 12–18.

¹⁹ See Maitra and McGowan, *Speech and Harm*, 7. Cf. MacKinnon, *Only Words*, 31.

critics argue that such speech creates a class of underprivileged speakers whose voices are effectively silenced when their utterances are unable to receive “uptake” from their audiences.²⁰

For these critics, then, one’s freedom of expression hinges in an important way on how—or that—one’s expression is received by one’s audience. In order to be effective on this account, the right to free expression would seem to imply a further *right to be heard*, and thus a corresponding *duty to attend or listen* on the part of one’s audience. This is in stark contrast with the classical liberal view, which insists only on the duty of noninterference. For Mill and his inheritors, audience members are at liberty to “correct” the wayward and explain the offensiveness of their thoughts and actions, but this is an exercise of their own expressive freedom.²¹ Mill’s listeners have no duties to *listen* to anyone at all, let alone to accept what has been said, but only to refrain from restraining or punishing the speaker.

For critics of the classical doctrine, noninterference is clearly not enough—indeed, when it comes to “silencing speech,” interference in the form of suppression and exclusion would seem to be required. It is striking, then, that instead of rejecting free expression, critics like Langton still follow MacKinnon in insisting that unregulated speech is objectionable on the grounds of free expression itself, thus suggesting that this principle permits—or even mandates—the silencing of certain speakers. From the perspective of defenders of the liberal conception, such arguments appear hypocritical, if not oxymoronic: “Freedom for me, but not for thee—and in the name of equality!” If the equal right of all to express oneself is understood as the right of individuals to externalize their thoughts, then suppressing or excluding any speaker on the basis of what they might say would seem clearly to violate that right. Racists and sexists, after all, are people, too—with an equal right to express the inward contents of their minds outwardly without interference.

III. ISEGORIA IN PRACTICE

There are, of course, other ways of justifying free *speech*, in particular, without resorting to the liberal doctrine of free expression. Democratic defenses of free speech have long emphasized its role in public legitimation

²⁰ Langton describes this as “illocutionary disablement.” Langton, “Speech Acts and Unspeakable Acts”; Jennifer Hornsby and Rae Langton, “Free Speech and Illocution,” *Legal Theory* 4 (1998): 21–37; and Mary-Kate McGowan, *Just Words*, 61–73. Cf. Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford: Clarendon, 2007) and Kristie Dotson, “Tracking Epistemic Violence, Tracking Practices of Silencing,” *Hypatia* 26 (2011): 236–57. For an alternative account, see Maitra, “Silencing Speech.”

²¹ Cf. Richard C. Sinopoli, “Thick-Skinned Liberalism: Redefining Civility,” *American Political Science Review* 89, no. 3 (1995): 612–20. In recent years, theorists otherwise committed to the classical doctrine have drawn attention to the importance of the recipients of speech beyond noninterference, as equal participants in “the communicative relation.” Cf. Seana V. Shiffrin, *Speech Matters: On Lying, Morality, and the Law* (Princeton, NJ: Princeton University Press, 2014).

and will-formation. For many political theorists, freedom of speech is essential in making a society *democratic* by giving people “a voice” or “say” in how they are governed.²² As Elizabeth Anderson has pointed out, this “say” is a matter of “talk” (that is, of deliberation and discussion in the public sphere), as well as votes.²³ The democratic case for free speech thus introduces an importantly *relational* aspect in the demand that people be free not only to speak, but also to be heard by their fellow citizens. On this view, it matters less that every individual be able to express her thoughts, than that society as a whole has a democratic character in virtue of each member having a say, and thus a voice that counts.

The connection between free speech and democracy can be glimpsed in the ancient Athenian ideal of *isegoria*.²⁴ Unlike the alternative notion of *parrhesia* (from the Greek *pan* + *rhesis*, meaning literally “all saying”),²⁵ *isegoria* emphasized the public and relational character of speech as the exchange of *logoi*—that is, of words or arguments. Although both *parrhesia* and *isegoria* are routinely translated into modern English as “freedom of speech,” the latter means something more like “equal public address.” The verb *agoreuiein*, from which *isegoria* derives, shares a root with the word *agora* or marketplace—that is, a public place where people, including philosophers like Socrates, would gather together and talk.²⁶

Unlike *parrhesia*, Athenian *isegoria* was associated with one political institution in particular, the democratic assembly or *ekklesia*.²⁷ This assembly convened regularly on the top of a hill in Athens called the Pnyx. The herald would ask, “Who wants to address the assemblymen (*boulemenoi*)?” and the selected volunteer would ascend the *bema* or speaker’s platform. In theory, *isegoria* meant that any adult male citizen in good standing had the right to address his fellow citizens. In practice, time pressures (all debates had to be concluded within a single day) and convention meant that access to the *bema* was limited, dominated by the practiced rhetoricians and elder statesmen seated near the front.

²² Thomas Christiano, “Democracy as Equality,” in David Estlund, ed., *Democracy* (London: Wiley, 2002), 31–50.

²³ Elizabeth Anderson, “The Epistemology of Democracy,” *Episteme* 3, no. 1 (2006): 8–22. Compare Anderson’s decision to label her initial formulation of relational egalitarianism as “democratic equality.” Elizabeth Anderson, “What Is the Point of Equality?” *Ethics* 109, no. 2 (1999): 287–337.

²⁴ The democratic case for free speech was influential among the early twentieth-century jurists responsible for modern First Amendment jurisprudence. See Keith Werhan, “The Classical Athenian Ancestry of American Freedom of Speech,” *The Supreme Court Review* 1 (2008): 293–347.

²⁵ Michel Foucault, *Fearless Speech* (Cambridge, MA: MIT Press, 2001).

²⁶ See “*ἰσηγορία*,” *The Online Liddell-Scott-Jones Greek-English Lexicon*, <http://stephanus.tlg.uci.edu/lsj/#eid=52418> (accessed July 30, 2018).

²⁷ For a good overview of the distinction, see Arnaldo Momigliano, “Freedom of Speech in Antiquity,” in P. Wiener, ed., *Dictionary of the History of Ideas*, 5 vols. (New York: Charles Scribner’s Sons, 1974), 2.252–263, Saxonhouse, *Free Speech and Democracy in Ancient Athens*, and the collected essays in I. Sluiter and R. Rosen, eds., *Free Speech in Classical Antiquity* (London: Brill, 2004).

One might thus be tempted to dismiss *isegoria* as yet another democratic institution dressed up in the language of equality, but steeped in aristocratic privilege. That would be too quick. Consider the treatment of Thersites, the plebeian in Homer's *Iliad* who memorably practices *parrhesia* in speaking out publicly against King Agamemnon.²⁸ While modern audiences tend to root for Thersites, the verdict of the poem is clear. "Brilliant Odysseus" tells him off and soundly beats Thersites across the back (to the delight of the poor man's fellow soldiers) for forgetting his place and claiming an equal right to address those who were not his peers.

Compare this with the following incident in democratic Athens reported by Xenophon. When a young Athenian aristocrat by the name of Glaucon (brother of Plato and erstwhile interlocutor of Socrates in the *Republic*) addressed the *ekklesia* because he "was attempting to become an orator and striving for headship in the state, though he was less than twenty years old," he was pulled off the platform by his fellow citizens, who found him ridiculous.²⁹ Consider this the first recorded incident of "de-platforming" in history. Despite his aristocratic birth, wealth, beauty, and education, Glaucon's practice of *isegoria* was still subject to the judgment of his fellow assemblymen, who—although the majority were of a much lower social status—considered him and what he had to say unworthy. As in the case of Thersites, the "unworthy" speaker was suppressed and excluded, only in this case he was an aristocrat silenced by commoners.³⁰

Athens was far from the only democracy in the ancient world.³¹ Still, contemporaries understood the Athenian principle of *isegoria* as something special. Indeed, the historian Herodotus described the form of government at Athens as *isegoria*, rather than *demokratia*.³² As its etymology suggests, *isegoria* was fundamentally about equality. As such, it distinguished Athens from all other Greek *poleis* or city-states, *not* because it excluded women or held slaves (so did every society in the history of humankind until very recently), but because it *included* the poor and gave them a voice on a par with the rich or well-born. *Isegoria* meant that even the *thetes*—working Athenians who could not afford armor and rowed in the fleet—were counted as political equals with an equal right to address the *ekklesia* and be heard. Athens even took positive steps to render this equality of public speech effective by introducing pay for the poorest citizens to attend the assembly and serve as jurors in the courts. While *isegoria* did not demand that all exercise their right to speak (most did not), it was truly radical in allowing every Tom, Dick, and Iorgos—regardless of wealth or social

²⁸ Homer, *Iliad*, Bk. II.

²⁹ Xenophon, *Memorabilia*, III 6.1, in *Xenophon IV*, ed. E. C. Marchant (Cambridge, MA: Loeb Classical Library/Harvard University Press, 2013).

³⁰ See n. 9 above.

³¹ Paul Cartledge, *Democracy: A Life* (Oxford: Oxford University Press, 2016).

³² Herodotus, *The History*, trans. D. Grene (Chicago: University of Chicago Press, 1987), v. 78.

background—not only to vote, but to *speak publicly* and receive the attentive consideration of his fellow citizens in turn.

IV. THEORIZING EQUAL SPEECH

Taking a step back, what can the practice of *isegoria* at Athens tell us about claims to equal speech today, in contrast with modern theories of free expression?

At first glance, *isegoria* would seem to be continuous with a distributive justice approach to freedom of expression.³³ “Equal speech,” on this view, would be a principle dictating that societies ensure that those who are equal have an equal opportunity to express their thoughts and be heard—through equal shares of speaking rights, turns, time, audience attention, and so forth. Where access to these conditions of expression is limited (due to time, space, acoustics, or the human condition), that access should be distributed according to some justifiable principle of priority, as it was at Athens according to seniority and rhetorical skill. Seen this way, one might view the Athenian decision to incentivize participation by the poor in the *ekklesia* through pay—and the permission of de-platforming and shouting over unready aristocrats like Glaucon—as an early example of affirmative action aimed to make the equal right to expressive opportunity *effective* for all.

But this reading misses where the real action lies in the ideal of equal speech. Rather than concerning the equal distribution of rights among equals, by ensuring equal opportunity for speech by providing incentives, removing obstacles, and so forth, *isegoria* addresses the prior question: namely, who counts as an “equal speaker” in the first place, and on what basis?³⁴

Intuitively, one might understand the equality of speakers underlying equal speech as a kind of qualitative identity or sameness. Different persons are considered “equals” of equal status insofar as they are equally human beings, citizens, and so on.³⁵ Indeed, in discussions of Athenian democracy and its associated privileges, commentators ever since Aristotle have treated the egalitarian premise as one of *sameness* in this sense. Adult Athenians were said to be “equal” in virtue of being equally free by birth; therefore, as equal citizens, they were entitled to equal rights, including the right to *isegoria*.³⁶

³³ Cf. Cohen, “Freedom of Expression.”

³⁴ Nancy Fraser describes this as the “third-dimension” of justice, whereby we establish “criteria of social belonging, and thus determin[e] who counts as a member ... [of] the circle of those entitled to a just distribution and reciprocal recognition.” Fraser, *Scales of Justice*, 16–17.

³⁵ Jeremy Waldron, *One Another's Equals: The Basis of Human Equality* (Cambridge, MA: Harvard University Press, 2017). Christiano, “Democracy as Equality.” Cf. Niko Kolodny, “Rule Over None: Part 1,” *Philosophy and Public Affairs* 42, no. 3 (2014): 195–229, and “Rule Over None: Part 2,” *Philosophy and Public Affairs* 42, no. 4 (2014): 287–336.

³⁶ Aristotle, *Politics*, trans. C. D. C. Reeve (Indianapolis, IN: Hackett, 1998), III.9.

But as Aristotle himself pointed out, plenty of Athenian citizens were, in fact, excluded from the *ekklesia*, and hence from the practice of *isegoria*—not only women (whom Aristotle acknowledged as making up half of the citizen-body³⁷), but also male citizens convicted of certain crimes. The crimes in question—prostitution and bribe-taking—were significant as “degrading” abdications of independence. Prostitution, in particular, was a problem because male prostitutes made themselves *like women* in allowing themselves to be penetrated sexually. Thus, even if all adult Athenians were equally citizens of Athens, some were thus viewed as justifiably excluded from *isegoria* as inferiors whose voices should no longer count.

Of course, we might understand the status of “equal speaker” in several ways. For example, we might consider different individuals as being “equal” in virtue of their equal participation in some greater whole or *unity*—namely, the People. Democratic theorists today are often drawn to Athenian institutions like the *ekklesia* and the jury courts as the purest practical expression of popular self-government. It may thus be tempting to think of *isegoria* as a further expression of the same principle. If the *demos* rules in democracy by allowing its representative members to have an equal say, the voices of individual assemblymen should “count” as parts of that larger whole.³⁸ Here, one might recall Aristotle’s description of the *demos* as a giant man with many ears, eyes, hands, and so on, with the addition of one, big mouth.³⁹

While tempting, such an interpretation of *isegoria* risks conflating the distinction between democratic “talk” and “votes” highlighted by Anderson.⁴⁰ As Melissa Schwartzberg has shown, there was an important difference between the original and fairly ubiquitous democratic practice of voice-voting to be found throughout the Hellenic world, and the peculiarly Athenian system of counted ballots, on the one hand, and *isegoria*, on the other.⁴¹ Schwartzberg argues that while “clumping” mechanisms like acclamatory voice-voting “effectively captur[e] the notion of a community speaking univocally,”⁴² “to count votes ... is to affirm the *weight* of each individual’s judgment.”⁴³ Indeed the “counting” measures that came to define Athenian democracy developed in the first place as aristocratic principles in elite councils like the Spartan Senate (*Gerousia*) and Athenian *Areopagus*. Schwartzberg concludes that these measures developed as a way to acknowledge the “epistemic dignity” of those rendering decisions by emphasizing “the importance of the members’ individual and independent judgment.”⁴⁴

³⁷ *Ibid.*, I.13.

³⁸ On representation in Athens, see Ober, *Demopolis*, 19.

³⁹ Aristotle, *Politics*, III.11.

⁴⁰ Anderson, “The Epistemology of Democracy.”

⁴¹ Melissa Schwartzberg, *Counting the Many: The Origins and Limits of Supermajority Rules* (New York: Cambridge University Press, 2014).

⁴² *Ibid.*, 39.

⁴³ *Ibid.*, 27.

⁴⁴ *Ibid.*, 19–20. Compare this with Ober, “Democracy’s Dignity.”

Schwartzberg's evaluative insight applies to *isegoria* as well. This institution also acknowledged and maintained the "epistemic dignity" of each assemblyman, by insisting that his voice *counted* as deserving of a public hearing and consideration by his fellows. Again, Athens was radical because it allowed poor male citizens not only to vote *en masse*, but to speak publicly—and to hear and judge their fellow speakers, in turn. In doing so, it effectively elevated the poor to the status of peers. Their voices thus had worth and weight on a par with, if not exactly equal to, that of the expert and well-heeled orators sitting in the front.

The concept of parity revived recently by Ruth Chang as a relation not of quantity or quality, but comparative value,⁴⁵ seems to be implicit in many contemporary theories of dignity and basic equality.⁴⁶ From the Latin *par*, the concept seems to have originated in accounting to describe two different things that are nonetheless deemed similar enough to be matching (think a "pair" of shoes).⁴⁷ Crucially, when applied to persons, parity connotes a sense of "worthiness" and a high status worth having. One can see this relational ideal underlying Waldron's account of human dignity as a universalization of aristocratic rank,⁴⁸ as well as Nancy Fraser's definition of justice as "participatory parity" in which injustice is thus that which "prevent[s] some people from participating on a par with others ... [and] as peers in social life."⁴⁹ Unlike mere equals, peers have social worth and weight, and this worth and weight must be acknowledged in their social and political relations.⁵⁰ They *count*.

On this view, what distinguished the practice of *isegoria* in Athens, then, was an underlying theory of the parity of equal speakers. Every assemblyman, regardless of wealth or education, could claim the same right—not only to speak, but to address his colleagues, and have the weight of his words considered in turn. This public hearing was not afforded to members of the *ekklesia* as representative parts of the Demos or as equal citizens by birth, but as *pares* or peers in virtue of their epistemic dignity and independence. This did not mean, of course, that all of those peers' voices were considered to be *equally valuable*; deference might still be given to those with greater experience or knowledge. But crucially, those who were epistemically privileged did not have any authority over their peers in virtue of that superiority. All remained "equal speakers" in this sense.⁵¹

⁴⁵ Chang, "The Possibility of Parity."

⁴⁶ See Waldron, *One Another's Equals*, and the essays collected in Uwe Steinhoff, ed., *Do All Persons Have Equal Moral Worth? On "Basic Equality" and Equal Respect and Concern* (Oxford: Oxford University Press, 2015).

⁴⁷ "Parity, n. 1." *OED Online*. Oxford University Press, September 2019. Web. September 30, 2019.

⁴⁸ Jeremy Waldron, *Dignity, Rank, and Rights* (Oxford: Oxford University Press, 2012).

⁴⁹ Nancy Fraser, *Scales of Justice* (Cambridge: Polity Press, 2008), 16–17.

⁵⁰ Cf. Waldron, *One Another's Equals*, 117–20.

⁵¹ This is the sense of equality expressed by John Locke in his *Two Treatises of Government* (II.2.11). I am grateful to Bas van der Vossen for highlighting this connection.

V. FREE EXPRESSION VERSUS EQUAL SPEECH

The theory of “equal speech” informing Athenian *isegoria* can therefore be distinguished from the modern understanding of free expression in several important respects. Grounded in freedom of thought or conscience, the principle of free expression is a universalizing principle of equality-as-sameness: those who *equally have minds* should have an equal right to express the inner contents of their minds (“thoughts”) outwardly. By contrast, *isegoria* was a demand for recognition as *an equal*—or, more precisely, as a *peer* with epistemic dignity—and so for the privilege of addressing and being heard by one’s peers, too. One’s value as a speaker must be acknowledged by one’s audience, who will regard one’s contribution as presumptively valuable and consider its content, in turn.

While speech can be valued as the expression of one’s innermost thoughts, as in the classical liberal doctrine, the ideal of equal speech grounds its value instead in the claims, judgments, and arguments of those with epistemic dignity—just as reasoned speeches (*logoi*) were valued in the Athenian *ekklesia*, but the presumptuous preening of ignorant aristocrats like Glaucon was not. In this way, speech is distinguished from other forms of expression while emphasizing its close connection with social relations. One’s peers can be called upon to respond in ways unique to speech—with agreement or disagreement, questioning, rebuttal or refutation—in each case attending carefully to its content. Even when equal speakers are not treated respectfully—as when Glaucon was pulled from the *bema*—this is not because they have been prejudged as someone unworthy to be heard. Instead, it is an expression of the audience’s disdain or contempt for speakers who *reveal themselves* to be undeserving of attention by what they say.⁵²

As such, this ideal of equal speech directly addresses the concerns about the epistemic and status harms implicit in “silencing” speech voiced by critics of the classical liberal doctrine. While Langton and others insist that they, too, are committed to free expression, their emphasis on audience attention and “uptake” as essential to expressive equality is much closer to the parity of speakers in Athens, recognized and reaffirmed through the practice of equal speech. Likewise, their concern seems to be less with an individual right to expression, and more with the egalitarian character and quality of social relations, which leads them in turn to insist on the importance of evaluating the content of what is said.

This analysis brings us to the flipside—or dark side—of the ideal of equal speech based on the parity of speakers. Unlike free expression, this ideal is

⁵² The charge of *graphe paranomon*, which operated as a form of judicial review as well as a way of prosecuting one’s political opponents for introducing legislation contrary to existing law, similarly relied on attending to and judging a citizen’s speech *post facto*. For an overview, see Mogens Herman Hansen, *The Athenian Democracy in the Age of Demosthenes* (Oxford: Blackwell, 1991), 205–210.

necessarily *evaluative*, as well as discursive; hence it involves both positive and negative discrimination (in the form of suppression or exclusion) in favor of those who are deemed to be equals in good standing over those who are not. In the case of *isegoria*, this exclusion was essential, not incidental. The status of assemblymen in Athens as peers, and the weight their voices consequently carried, was pegged directly to the comparative *weightlessness* of the voices that were excluded from that forum: slaves, resident foreigners, convicts, and women above all.

There is a tendency among scholars partial to Athenian democracy to treat these exclusions as “historical baggage” or “blind spots”—unfortunate oversights produced by prejudice that nonetheless do not materially impact the theory.⁵³ But this neglects the fact that the value of *isegoria* for those who possessed it was predicated on the distinction, if not necessarily the superiority, of those whose voices enjoyed a presumptive claim to others’ attention and consideration over those whose voices did not. The exigencies of parity meant that the *weight* of men’s public speech depended practically and theoretically, on the weightlessness of women’s speech.

This is not to say that it was impossible for a woman to pipe up from the margins. In order to do so, however, she needed somehow to claim an epistemic privilege (or better yet, authority) that might give her voice *more than equal weight*. Consider the female priestesses who served as oracles, most famously the Pythia at Delphi. This suggests that the practice of *isegoria* in Athens *could* accommodate marginal voices from those who were not peers because they were epistemic superiors—so long as they were kept safely away from the *ekklesia* themselves, as a threat to the equal speech of others. The presence of such vast differences of status or epistemic authority in the association of hitherto equal speakers would necessarily undermine the claims of ordinary male citizens to have voices worth considering. Why should one listen to Tom, Dick or Iorgos when he could receive wisdom directly from the gods?

To note that the parity of speakers depends on exclusion is not, of course, to say that these constitutive exclusions must always be hierarchically ordered, let alone based on ascriptive identities and invidious distinctions, as they were in Athens. But it does help explain why the claim to equal speech cannot be reduced simply to equal freedom or equal expressive opportunity. Rather, equal speech is about reliably recognizing and reinforcing who is “on a par” as a speaker, whose voice should count in a given context, and whose should not. It is thus intimately bound up with the freedom of association, and the ability to include and exclude members in accordance with the ends of the association in question (in the case of the Athenian *ekklesia*, democratic self-government). If everyone counts, and

⁵³ Ober, *Demopolis*, 33. Compare with Pierre Rosenvallon on the “blind spot” of French Republicans’ commitment to a “society of equals” when it came to women. Pierre Rosenvallon, *The Society of Equals* (Cambridge, MA: Harvard University Press, 2013), 71.

counts equally, the only solution may be to “level-down,” in which case nobody’s voice need matter very much at all.⁵⁴

The ideal of equal speech thus captures the normative vision of today’s critics of the liberal doctrine much better than do their own appeals to freedom of expression. Rather than starting from an individual right to express one’s thoughts, equal speech mirrors the concerns of Langton and others in affirming the weight of socially underprivileged or marginalized voices and asserting their right to be included and heard, rather than prejudicially dismissed. Moreover, it makes better sense of proposals to censor, no-platform, or otherwise exclude certain speakers on the basis of what they (might) say: rather than being hypocritical claims to freedom of expression “for me, not thee,” these proposals follow from the perceived need to protect the peer status of vulnerable voices within the association of equal speakers. Finally, this ideal of equal speech is not vulnerable to the leveling-down objection, as the marginalized are not treated as mere equals, but rather as peers entitled to high status and worthy of a public hearing.

VI. CONCLUSION

This essay has sought to show that equal speech is a coherent ideal distinct from that of free expression, with its own long and storied history. Nevertheless, there are serious challenges to putting the theory of equal speech into practice today. The Athenian *ekklesia* may have been a large deliberative body for its time, but certainly not by modern standards. Moreover, it was located in a small political community that could gather together physically on the Pnyx and hear the unamplified voice of whom-ever ascended the *bema*.

Given this, one might wonder whether the historical theory and practice of *isegoria* can teach us anything about the prospects of equal speech today. The scarcity of attention in an increasingly large, inclusive, and transnational public sphere in a diverse society like the United States would seem to present an insuperable obstacle to the universal demand for a public hearing. Under such conditions, the key distinctions that critics of the classical liberal doctrine draw between the “marginalized” and the “privileged”—and on the basis of which they propose to employ coercive sanctions to prioritize the former and restrain the latter—are indeterminate at best, and overlapping and contradictory at worst. Moreover, the power to disenfranchise some individuals in favor of others must be given to *someone*—some person or body who will decide. Not only will that person or body be necessarily socially “privileged”; the exercise of such an arbitrary power is open to obvious challenge and abuse, especially when exercised on the scale of society at large.

⁵⁴ Harry Frankfurt, *On Inequality* (Princeton, NJ: Princeton University Press, 2015). Cf. Kolodny, “Rule Over None II.”

Despite its obvious unworkability in the public sphere as a whole, I shall conclude by arguing that distinguishing the ideal of equal speech from free expression nevertheless brings some much needed light to the heated debates about free speech with which we began. First, understanding this ideal helps us to understand why simply equalizing opportunities for expression will not satisfy the critics of the classical liberal doctrine. Consider social media technologies like Twitter and Facebook that we refer to (quaintly) as “platforms.”⁵⁵ From the perspective of equal expressive opportunity, technologies like Twitter are a godsend. All members (in good standing) have an equal right and opportunity to ascend the platform and address the public.

But this is also the problem. Although we can all speak our minds at the same time and as much as we like, for that reason few of us get a hearing. The principles on which the scarce resource of audience attention is allocated end up being the old standards (wealth, virtue, and beauty) and some new ones too (celebrity, outrage, humor). Only now, no one is forced by the limits of time, space, and the human condition to listen to any speaker they don’t want to hear. Today, our judgment of speakers effectively and consistently *precedes* any consideration of what they have to say. Not only has the capacity to speak become increasingly divorced from whether anyone else is listening; the connection between the claim to speak and the claim to a hearing characteristic of the Athenian *bema* or speaker’s platform (which by its very nature had limited access) has been severed once and for all.

Second, recovering the ideal of equal speech can help proponents of the classical doctrine of free expression to understand better what is at stake for their critics. Much like in fourth-century Athens, those calling for equal speech today are concerned primarily with questions of status. One of the problems with a platform like Twitter is the feeling that, even though we have formally equal access to expressive opportunity, our voices do not *count*, especially for those of us who belong to members of historically disadvantaged groups. Part of this, again, is due to the curious weightlessness of these technologies, through which we speak lightly and listen less. For critics of the classical liberal doctrine, equal speech matters because they want people’s voices to be *weighty*, not weightless. The clearest path to this on offer today is that of unity—to join ourselves to some greater whole, or to present oneself as representative of some collective, by virtue of which one can claim epistemic privilege or authority, much like ancient prophetesses. (Consider the dictum central to the #MeToo movement: “Believe Women.”)

The issue for modern day proponents of equal speech seems to me to be to *avoid* the unity trap—and instead to figure out how to establish the parity of equal speakers under modern political and technological conditions.

⁵⁵ Twitter and Facebook are called “platforms” in a call-back to ancient technology, but they operate like presses—reproducing and disseminating the written word with inscrutable algorithmic editorial oversight.

Although a claim to epistemic privilege can often be a handy—and perhaps, the only—way to get a hearing, it is at odds with the plurality of parity, and the claim that the voice of every member of the public should count on a par with every other one.

Here, I believe that recovering the connection between equal speech and the freedom of association is essential. Although many critics of the classical doctrine insist on the importance of excluding certain speakers (for instance, through “no-platforming”), the right to exclude is rarely defended with reference to a theory of free association. Yet relying exclusively on freedom of expression as the relevant normative principle muddies the waters and misses the point, while opening up those who would rely on it to charges of philosophical confusion or bad faith.

Given the apparent necessity of exclusion to equal speech, it seems to me that before one can put equal speech into practice publicly, one has got to practice it privately—to protect and cultivate institutional spaces or “private publics” wherein people can experiment with equal speech on the condition of parity and cultivate its necessary virtues. Examples might include civic associations, unions, churches, activist circles, reading groups, student clubs, and seminars.

These spaces are necessarily small and exclusionary, and yet they exclude differently. Take the example of a college seminar, in which those with differential expertise and ability nevertheless participate as equal speakers. Rather than being a problem, however, the seminar’s exclusionary nature permits the kind of time- and resource-intensive discussion that can—through skilled moderation—cultivate a student’s sense of the worth and value of her own voice in comparison with her peers. She may, thereafter, then bring these sensibilities to the public sphere. But college seminars themselves remain inapt models for the public sphere, and it would be unjust to impose the norms appropriate to one on the other.⁵⁶

This example suggests that decentralization and associational diversity should be crucial for those concerned to put equal speech into practice today. Unlike the one-size-fits-all regulatory approach sometimes suggested by critics of the classical liberal doctrine, this would allow individuals to practice parity of participation in multiple institutional contexts. History cannot tell us how, exactly, to institute spaces so that *isegoria* can be revived in the modern world. But it can help us to understand which questions to ask, and teach us how to listen for the answers.

It also suggests that the critics of the classical liberal doctrine are right that free expression alone—construed simply as an extension of freedom of

⁵⁶ It makes sense that so much controversy in the United States should focus on private universities as sites of speech that sit somewhere between the public and private sphere (public universities are covered straightforwardly by the First Amendment). Tellingly, debates about free speech on campus often rest on disagreements about the point and purpose of universities as free associations. Are they “safe spaces”? Or fora for “uncomfortable learning”? Cf. Haidt and Lukianoff, *The Coddling of the American Mind*.

thought—is not enough. For those committed to the continued ethical and political importance of speaking up and out, equal speech represents a valuable and distinctive ideal, albeit one more intimately connected with the freedom of association than with the freedom of thought.

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