



# NOT WITH A BANG BUT A SIMPER

**Fear, resentment and complacency have undone English liberty, says Michael Neumann**

**AROUND 1965**, political philosopher Herbert Marcuse developed a theory of “repressive tolerance”: where every sort of speech is tolerated, none has any impact. Right or wrong, today the theory is pointless. To write on controversial subjects is to realise how much you have to mind what you say, and how many things cannot be said. When Marcuse wrote, “free speech” meant what John Stuart Mill meant by it: legal protection even for the most extreme utterances. People lionised airplane hijackers, rejoiced in the deaths of their country’s troops, hoped out loud for the violent destruction of their societies. You could advocate shooting police or starting a race war. No longer.

Perhaps Mill and Marcuse are neck-and-neck in an irrelevancy race. Mill might seem more important than ever, given the latest news: now the UK has its internet service providers logging every email for the police to wallow in. Oh no, that was yesterday, today they’re fighting the good fight against the crime of news photography, with new powers to prevent inconvenient snaps of serving officers. Oh, wait, now there’s a story about how the police are involved in the death of an innocent man and lying about it, revealed by precisely the kind of citizen photography they seek to prevent. This is out of Mill’s league. If he didn’t despair at a “left-wing” government hell-bent on finding a DNA match for every human secretion in the

country, he would throw up his hands at the reaction. With a uselessly few honourable exceptions, these assaults on basic freedoms are met with a loud simper. Perhaps it's illegal to advocate anything stronger.

Though Americans certainly feel the chill, the law affords them some shelter. Looking abroad, they might marvel at such offences as "glorifying terrorism", "denying, minimising or justifying the Holocaust" and "hate speech". If your writing hints at forbidden thoughts, American reaction should be the least of your worries. For example: unlike its French counterparts, America's ever-wrathful Anti-Defamation League could never have got a court to slap the French Jewish philosopher Edgar Morin with a verdict of "racial defamation". Morin, in the course of objecting to Israeli activities, had all too casually referred to them as the work of "the Jews". And? Racial defamation is constitutionally protected in the US, where Morin would have been quite within his rights to write a full-length anti-Semitic tract. Many German free-speech cases could prompt similar comparisons.

Given the obsequious passion with which British politicians embrace American policy, the divergence between US and British constraints on freedom comes as quite a surprise. At least in Canada and continental Europe, assaults on free speech are still worthy of notice. In Britain, their mention can only trivialise the swift and spectacular extermination of English liberty, a quaint "value" looming large enough even in the digital age to draw 94,500 results on Google. Never, perhaps, has a nation so thoroughly debunked its own enormous pretensions to treasure freedom.

England's repudiation of liberty is no mere artefact of the post-9/11 war on terror. Already in 1994, John Major got the ball rolling when he destroyed the right (which lawyers call a "privilege") of protection against self-incrimination. That right, like others Britain has eviscerated, is too deeply entrenched in America's constitution to overthrow. The UK's spy cameras and ASBO laws bring Orwellianism to Orwell's land – perhaps he endorsed this future when he became a government snitch.

Is America, then, the last best hope for freedom? That would be an epitaph for hope itself. What about – to take one Englishman's effortless list – "the massacre of the Indians, Jim Crow, McCarthyism, the assassination of Allende, Watergate and Rodney King"? These examples mark the strict and peculiar boundaries of American liberty.

For one thing, American liberty has always



**Guantanamo: America's offences against freedom tend to happen offshore**

been reserved for Americans, not outsiders like the Indians of the Old West, or people overseas. Now that the frontier is gone, when Americans want to do something really disgusting, they tend to do it offshore, in places like Bagram or Guantanamo.

For another, American state governments know how to make bad use of their considerable independence. They often nurture or condone localised thuggery. State and local governments were largely responsible for Jim Crow; local police for Rodney King.

In short: Europeans repress freedom mainly within the law; Americans mainly outside it. Watergate was deemed a crime. Even McCarthyism found its home in Congressional committees, which proved to be its fatal weakness. Certainly America has tried its hand at enacting repressive federal laws – the Smith and McCarran anti-communist legislation are good examples – but these were emasculated by the Supreme Court.

Despite this, the US is no beacon of hope. America's laws, though beacon-worthy, defy rather than express America's national character. America is indeed the land of freedom and freedom-lovers, but not in the way Americans like to suppose. If they have more genuine freedom, it's because they can flout the law – for good reasons or bad – to a much greater extent.

The US ranks in the top ten for crime rates, but not even in the top 56 for conviction rates. Massive illegal immigration, not reflected in these rankings, buttresses America's status as a land of opportunity. But freedom as advertised – the civic freedom forged and protected in law – is hardly an American virtue or ideal. Voter participation is tepid. Outside mainstream politics, at street level, political power is vanishingly feeble. As for free speech, few public figures are as un-populist and unpopular as the head of the American Civil Liberties Union.

The sole sustainer of America's civic freedom is its constitution. This relic survives, not because of anything healthy about American society, but because America never found reason to repudiate the rather elitist, anti-democratic rights enshrined in its laws.

Freedom seldom finds true love. Historians of England and France sometimes observe that the passion for "liberty" usually bears a suspicious resemblance to hatred of government taxation, and the American Revolution fits this pattern. Even a less fiscal love for freedom usually confines itself to freedom for People Like Us. When America's "Founding Fathers" spoke of freedom of speech, they weren't thinking about downloads of *Teenage Anal Princess 7*. They most likely had in mind the politically dangerous speech, not of ordinary men, but of people like themselves.

Their kindred spirits were the *philosophes* of the French Enlightenment. For them, "the Enlightenment" was not shorthand for Voltaire and Diderot: like many in their day, they venerated Montesquieu. He was known for his advocacy of the separation of powers, but also, like the "Founding Fathers", for his mistrust of popular democracy, which gained a foothold in the United States only with the ascendancy of Andrew Jackson.

Montesquieu believed that a democracy guided by the raw wishes of the multitude was bound to fail. Undisciplined popular appetites could not generate wise policy or legislation. The implication was that popular will is not always to be respected, and that good laws will not always reflect either the character or the desires of the electorate. His intellectual descendants could only agree as they despaired of France's conservative peasantry, manipulated by religion and reaction. This is why, in 1814, the ultra-monarchists wanted a broader suffrage than the liberals, and why universal suffrage was one of Louis Napoleon's tools for legitimising his coup d'état of 1851.

The American constitution was formulated in this same Enlightenment spirit. It was designed to found a republic, but also to frustrate full popular democracy, to restrain the power of the American people. To some extent it still manages to do this, particularly through the Bill of Rights. America is somewhat freer, not because America values freedom, but because its founders felt that they could not trust in the tolerance and good judgement of the majority. Even today, attacks on freedom are successful to the extent that they escape the Constitution's reach.

But why this only in America? On the Continent, Romanticism displaced Enlightenment cosmopolitanism with a nationalism whose anti-Napoleonic slant held no resonance with American politicians. France's 19th-century anti-republicans recast these sentiments into a fanciful idealisation of France's clerical and

monarchical past. Under its auspices, laws were remade in a deliberate attempt to wipe out Enlightenment influence. Today, romanticised nationalism has left its mark throughout the West in such totems as “community standards” and ostentatious deference to the preferences of “The People”. It strives to replace Enlightenment notions of rule by law and reason with the rule of identities, sensibilities and largely fictitious “communities”. As a result our institutions codify repressive respect for cultures, religions and “core values”, all at the expense of civil liberty.

Americans are just as enamoured of these Romantic “values”, but never found motivation strong enough to gut the safeguards fashioned by its 18th-century revolutionary patricians. That would take a cataclysm on the scale of Europe’s revolutionary decades.

England needed no cataclysm. Nationalists before nationalism, the English political classes had a head-start in the anti-Enlightenment game. They thought to trump Enlightenment anti-traditionalism with their pride and joy, English liberty. Like the Romantics, they entrusted this liberty to the wisdom of the

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people. These sturdy Britons would never bow to tyranny. They never did, but, put to the test, they failed anyway. They bowed to their own fears and especially their resentments; it’s not clear they ever had much interest in their rights. They allowed governments to make government easy: addressing discontent is so much more bother than policing it! Contemporary England is testimony to the dangers of sentimental overconfidence and to how little, when the bluster deflates, freedom matters to a nation of self-proclaimed freedom-lovers.

The enemies of freedom turn out to be not funny-looking terrorists but pride in tradition, faith in culture, respect for community, and populist democracy. Britain so proudly embraced its accumulated-wisdom version of a constitution; this has been its undoing. America is just as freedom-hating, but history has not conspired to undo the laws that constrain its loves and hates.

If there’s a political lesson in all this, it’s “get it in writing”. Even in democracies, progress needs to be codified in explicit law, not entrusted to the hearts and minds of an electorate. These hearts and minds have proved wanting. Only the government knows whether it’s something in their DNA. ■



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