



## “Persecution for the expression of opinions seems to me perfectly logical”

By William Eaton

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“Persecution for the expression of opinions seems to me perfectly logical,” Oliver Wendell Holmes, Jr., wrote in a famous Supreme Court dissent. “If you have no doubt of your premises or your power, and want a certain result with all your heart, you naturally express your wishes in law, and sweep away all opposition.”

Holmes is getting to the heart of the problem of the persecution of people who speak out against prevailing opinion. But he seems to be underestimating what a problem it is. He goes on to say that time upsets “many fighting faiths.” In time we come to see even our strongest opinions in different lights and to change our minds, be this as individuals or as a society. But, I must note, when people are holding fast to their beliefs and fighting for them, they have more than a little difficulty recognizing this role of time’s. And if they do recognize the role in some general way, they do not believe that it applies to the particular faith for which they are ready to fight.

*William Eaton is the Editor of [Zeteo](#). A collection of his essays, [Surviving the Twenty-First Century](#), will be published by Serving House Books. For more, see [Surviving the website](#).*

Holmes's famous text (from *Abrams v. United States*, which was decided in 1919) has come to mind in this year when the news has carried story after story of prominent people being vilified and punished economically and socially, if not legally, for expressing extremely unwelcome views. The views that have been expressed have seemed quite wrong to many people, myself included. They have been racist, sexist, homophobic. And thus it has seemed to many people—and to many in the media most prominently—that persecution of the expressers of such opinions is perfectly logical. Persecution in the sense of seeking to vilify and humiliate the speakers; seeking to severely reduce the speakers' social status; seeking to make these people into pariahs; and seeking to remove them from their jobs, deny them employment.

For example, I read recently of a sports franchise that was concerned about how one of its star player's tweets might damage the franchise's or its league's image. An executive announced to the media that the franchise would “not condone or tolerate remarks of this nature.” An implication being that, if the player did not publicly apologize (as he soon did), and if he continued to express his opinions, he would be suspended or kicked off the team. He would lose his job. Mind you, the player had not done anything illegal; he had tweeted something unpopular, insensitive.

In some cases the speakers have been quite wealthy people, and so we may have little pity for them, and particularly given some of the things they have been caught saying or writing. We may feel that we should in these cases treat differently different types of people. A poor, friendless person ranting on a street corner, or on his readerless blog, may seem rather harmless, and thus can be allowed a good deal of freedom of speech. But a major employer in a prominent business, or a person with the financial means to disseminate her views widely—such a person must be stopped, stripped of power and influence? And why not?

And how about a celebrity, an athlete or some other kind of entertainer or “public intellectual”: some person who has, in a sense, volunteered to serve as a role model or spokesperson—should such a person's freedom of speech be constrained? Or is such a person's freedom in fact constrained and quite simply: If he doesn't say something that role models or spokespeople in our society are supposed to say, his celebrity will become notoriety, and he will lose much of if not all of his celebrity wages and his celebrity pulpit as well? (One might ask, then, why such people bother to say anything at all, and why we bother to listen to them? All they can do is repeat back to us our current views, or remind us of what we believe.)

In his dissent Holmes went on to propose:

the best test of truth is the power of [a] thought to get itself accepted in the competition of the market, . . . This at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not

every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe . . .

Time may come to upset our faith in “the market” as well. And, meanwhile, perhaps in the current instances the market is indeed having its say—by taking away or threatening the livelihoods of those who hold unpopular opinions.

I would not have people be racist, sexist, or homophobic, but I also dream of a world in which people, writers included, might be able to explore an extraordinary, even wild range of possibilities—most anything that comes into our heads. And might we, some day, do this exploring without fear of ridicule or shame, or of losing our jobs?

## Links

Photograph is of Russian emigres who dumped anarchist tracts from New York City buildings, leading to the convictions that the Supreme Court considered in *Abrams v. United States*. (In the photo, Jacob Abrams is at far right.) The leaflets attacked the United States government’s decision (during the First World War) to send troops to Europe to defend Czarist Russia against the Bolsheviks. According to the Federal judge in the original case, “Jurors looked back into my eyes with the savagery of wild animals, saying by their manner, ‘Away with the dithering, let us get at them.’” The defendants were sentenced to 10 and 20 years in prison, and the Supreme Court ruled, 7–2, that the defendants’ freedom of speech, ostensibly protected by the First Amendment, was not violated.

The photo and much of the material in this paragraph right above comes from a page of an “Exploring Constitutional Conflicts” website. It is the work of Doug Linder, a professor at the University of Missouri-Kansas City Law School. The page is subtitled, “[What approach did the Court use in analyzing World War I era First Amendment cases involving subversive advocacy?](#)”

Click to [read Holmes's dissent and more concerning \*Abrams v. United States\*](#). “I regret that I cannot put into more impressive words my belief that the defendants have been deprived rights under the Constitution of the United States,” Holmes remarked—not quite accurately, it may now seem.

Click to [read Wikipedia's summary of the case](#).