

Panel II: Free Speech as a Suicide Pact

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Holmes and the Free Speech Paradox

There is a paradox at the heart of free speech. If a government allows people to say anything they want, some people may use that freedom to say things that lead to the overthrow of the government – and to the destruction of the very freedom they used to achieve that result. Free speech, if not curtailed, thus contains the seeds of its own destruction. Or, to paraphrase a popular saying about pop music in the 1980s, free speech will eat itself.

Free speech advocates have long been aware of this paradox and for the most part have resolved it by narrowing their conception of free speech to exclude expression that threatens the foundation on which it rests. One notable exception is Justice Holmes, who in his *Gitlow* dissent suggests that free speech must tolerate even those ideas that, were they accepted, would do away with free speech itself. “If in the long run,” he writes, “the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way.”

In my contribution to this symposium, I will what explore what Holmes means by this statement. Borrowing a line from contemporary political discourse, I will argue that we should take Holmes seriously but not literally. Yes, Holmes was committed to a principle of free speech that allowed for the possibility of fundamental change – even change that, from our present vantage, might seem unimaginable. But he was not suggesting that we are powerless to take action to preserve ourselves from existential threats. He was instead making a point about the necessary implications of free speech, which, like any logical proposition, is never the entirety of legal analysis.