Taking Ends Seriously: Toward Better Deliberation on Rights

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American politics is characterized by an implicit rights-centrism, for example, when public discourse champions the freedom of speech in absolute terms. This article proposes instead an ends-centric mode of deliberation that underscores the myriad ends beyond rights that are also necessary to a polity's health. Grounded in republican theory, the ends-centric mode maintains space to (re)prioritize ends and to redraw the boundaries of rights as required by a given moment or issue. Rather than displace rights-centrism or the courts' role in enforcing rights, the ends-centric mode prompts other institutions also to engage in rights reasoning, thereby elevating the larger conversation and process of deliberation. It thus allows a separation-of-powers logic to operate more fully in the realm of rights by leveraging diverse institutional perspectives and capacities toward a multi-sided dialogue over rights questions. We draw from historical debates on speech and press freedom from the early republic and the twentieth century to find sight lines for an ends-centric approach in American politics. We further examine how ends-centric arguments would benefit deliberations over the regulation of social media today. Specifically, arguments that overemphasize speech in social media crowd out other desirable ends, such as protecting young people online and combating misinformation. Ultimately, we argue the benefits of rights-centric and ends-centric modes operating alongside each other across constitutional fora, as the polity deliberates rights in old and new forms.

Keywords: Rights, ends, republicanism, freedom of speech, freedom of the press, social media, separation of powers

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Between the "original Rough draught" of the Declaration of Independence and the final draft we all know, Thomas Jefferson changed a word in the iconic line proclaiming that governments are instituted to secure rights. He originally wrote "that to secure these *ends*, Governments are instituted among Men" (White 1978, 249; emphasis added). Although ostensibly small, this change suggests both the primacy of rights in the American imagination and the possibility that other concepts might also structure political discourse. Today, rights often serve as a starting point in American politics, as a normative foundation, and as a language of public discourse. The freedom of speech is a paradigmatic example of rights' stature in political life. Laws that restrict particular content or viewpoints in speech are subject to the highest level of scrutiny in constitutional law. Even in more popular discourse, Americans frequently understand their freedom of speech in absolute terms (Glendon 1993; Greene 2021).

Common to these trained and untrained understandings is the premise that the content of rights, such as speech, can be known by turning to the right itself. Perhaps the right may stand in competition with other interests or needs of the polity, but importantly, the right in question is the principal reference point of such inquiries. Balancing exercises may yield wider or narrower applications, but the right is deemed to be constant in

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the course of that balancing. Likewise, rights are often conceptualized as matters of law, in static terms, and are primarily upheld by courts.

Rights-centric understandings may be widespread in American politics.[1] However, they are but one mode by which to formulate such questions. Rapid developments in technology illustrate how other approaches to deliberation may suit such complex and elusive issues. In debates about freedom of speech and social media, the rights and interests of a wide range of actors are at stake, from the users posting content, to those people somehow implicated in or affected by their posts, and even the platforms themselves. Amid this nexus of potential rights-bearers in social media debates, nonstate actors emerge as potential duty-bearers as well (Bambrick 2025; Haupt 2025; Pollicino 2023). Simply put, an approach that proposes to understand the issues at stake primarily in terms of rights—that is, a rights-centric approach—is inadequate to the task of governing in this field. Prompted by the multifaceted nature of debates over social media, we argue for another mode, an ends-centric mode, in which to deliberate political questions, particularly rights questions.

As its name suggests, an ends-centric mode is characterized by locating ends, rather than rights, at the center of political inquiry. In this article, we argue that rights questions may be understood and deliberated through an ends-centric approach. Specifically, an ends-centric approach understands rights in terms of the ends that underlie them (For what reasons do we call something a right at all?), as well as the ends with which rights come into conflict (How do rights measure up against competing ends?). In posing these questions, an ends-centric conception of rights is more dialogic. Likewise, the ends-centric mode of inquiry requires different faculties than does a rights-centric mode. Specifically, it calls for deliberation in ways frequently associated with legislative institutions and, from a theoretical perspective, contestation associated with the republican political tradition.

Because competing ends actually bear on how rights are formulated, this mode of inquiry is also less susceptible to such pathologies as rights absolutism. Rather than beginning with the fact that the freedom of speech appears in the Bill of Rights or is prioritized in Supreme Court doctrine, an ends-centric approach to rights underscores a contingent element in rights—that rights may be shaped both by the issues in play in a given historical moment and by the enduring needs of the republic. Indeed, in the twenty-first century, new digital technologies such as social media change the conditions under which speech is exercised in the polity and the very boundary lines of the right. Thus, in constitutional cultures such as that in the United States that tend so strongly toward rights-centrism, this alternative mode of political deliberation may serve to carve out space for different kinds of actors and institutions to participate in rights reasoning.

In the next section, we explain our ends-centric approach, arguing that it opens channels of rights reasoning for other constitutional actors and serves as a corrective to such excesses as rights absolutism. It also explains how the ends-centric approach may be grounded in the republican political tradition. The following section, "Lessons in US History," recounts debates concerning freedom of speech and the press at two points in American history, the early republic and the mid-twentieth century. Reconstructing these historical discussions shows how the interlocutors deliberated the ends connected to and competing with rights in their respective moments. Consistent with an ends-centric approach, these debates illustrate how understandings of rights emerge from a consideration of other needs of the polity. Whereas rights-centric reasoning would look for a more ahistorical understanding with greater continuity of a right's content across eras, an ends-centric approach expects some change according to the exigencies of a particular moment in time.

Likewise, the section "Ends-Centrism in New Media" demonstrates the presence and value of the ends-centric approach in debates surrounding social media. Lawmakers and concerned citizens recognize a range of interests at stake in digital spaces today—from protecting user speech and the safety of children online to curbing misinformation and hate speech. Although we would not draw a false equivalence, old media is one of the closest analogs available to social media today; aspects of contemporary debates are even anticipated in debates over the press and free speech considered in the section "Lessons in US History." Yet, it is the discontinuities across eras (Koltay 2019) that underscore our fundamental point: an ends-centric approach allows for reassessing the same rights in light of changed circumstances, thus enabling fuller consideration of the needs involved in keeping a republic.

Through our analyses of both political history and contemporary issues, we implicitly argue for a shift in what many think it means to take rights seriously (Dworkin 1978), arguing that it also involves taking *ends* seriously. As another mode by which to engage in political reasoning, including reasoning about rights, the ends-centric approach need not and, given persisting forces of political culture and institutions, likely could not replace rights-centric understandings altogether. Ultimately, we argue the benefit of rights-centric and ends-centric modes operating alongside each other across constitutional fora as the polity continually deliberates rights questions in old and new forms. To this end, this article does the foundational work of showing the value and possibility of making discursive space for more actors to reason about rights in different ways.

Rights, Ends, and Republicanism

An Ends-Centric Approach to Rights

In *On Liberty*, John Stuart Mill (2015, 15) writes, "The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not

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attempt to deprive others of theirs." It is in this same work that Mill argues his maximal position on free expression. Although Mill's thinking is admittedly complex, his "free marketplace of ideas" concept has often been invoked in American political discourse and even treated as an absolute principle in debates over freedom of speech and of the press.[2] In *Abrams v. United States*, a crucial premise of Oliver Wendell Holmes's dissent draws from Mill's argument that truth would prevail in market competition, even as other potentially powerful actors became more involved in public debate alongside citizens.[3] This premise was contestable at the time and remains so, given the proliferation of information, to say nothing of misinformation, in the digital realm today (Hasen 2022; Hook and Verdeja 2022). Holmes's rationale nevertheless became crucial in expanding protections of speech and other rights, reifying understandings of liberty that many argue are core to American politics (Hartz 1991; Pangle 1990; Schmitt and Webking 1979; Storing 1995). US jurisprudence, particularly in the 1960s, continued to expand the bounds of rights, including free speech, under the Warren Court. The Supreme Court struck down various restrictions on speech, echoing the concept of a marketplace and Holmes's dissent in the process.[4] Today, the United States is regarded as having some of the most ambitious speech protections, even extending this right to protect expenditures of corporations in political campaigns as speech.[5] The techno-libertarian movement advocating an entirely free internet evinces a similar rights-centric instinct (Martin 2022).

Such developments demonstrate how rights claims can be expansive and tend toward absolutism. Indeed, writing nearly 30 years apart, Mary Ann Glendon (1993) and Jamal Greene (2021) both observed how an unchecked rights-centrism devolves into rights absolutism and becomes deleterious to the polity. What defines rights-centrism, in both its absolutist and more mundane forms, is the way rights are conceived as fixed and apolitical. Those partaking in what Glendon (1993) calls "rights talk," for example, often proceed as if the mere assertion of their rights is the end of the inquiry. Alasdair MacIntyre went so far as to argue that underlying rights is mere emotivism, rather than any coherent moral system. On this basis, MacIntyre (2007, 11–14, 68–74) concludes, one could employ the language of rights to support any moral claim one may choose.[6] In legal fora, rights-centrism may characterize various approaches to interpretation, from the textualism of Hugo Black to appeals to constitutional penumbras a la William O. Douglas.[7] In either case, rights are treated as a basic unit of political discourse, the moral weight of which is taken as granted: they inhere in the Constitution, one way or the other, and only require interpretation or implementation. Fallon (2001) demonstrates how this is true not simply of originalism but even in Dworkin's moral reading.[8] Recently, the Supreme Court has moved toward the adoption of bright-line rules related to text, history, and tradition, and away from means-ends scrutiny in adjudicating rights (Girgis 2025; Procaccini forthcoming). This instinct to "rule-ify" rights jurisprudence even more raises the question of what other modes of deliberation may be possible across governing institutions that would give rights questions a more complete treatment in constitutional politics.[9]

We argue that an alternative mode of reasoning, which would probe the empirical realities and philosophical motivations behind calling something a right, can improve deliberation on rights questions and mitigate the excesses of rights-centrism. Specifically, an ends-centric mode applied to rights questions considers additional elements, opening conversations about rights to other actors—that is, actors other than courts—that are equipped to consider and weigh those additional elements. When employed in rights questions, the ends-centric mode inquires into the rationales for calling something a right at all and weighs them against other ends.[10] By putting ends at the center in this way, this mode accounts for competing ends in the very formulation of rights. This attention to varied and competing ends allows the ends-centric approach to attend to the specific circumstances of a given moment and to better resist rights absolutism. It both depends on and fosters more deliberation when applied to rights questions, understanding rights in more political terms than is often the case in American constitutionalism. An ends-centric analysis of *Abrams v. United States*, for example, highlights how Holmes's understanding of speech hinges on empirical claims about the marketplace of ideas that may prove more or less accurate across time, place, and subject matter.

The aim of applying an ends-centric approach is not to demote rights always in favor of other exigencies. Rather, by acknowledging the complex fields within which rights claims are made and argued, this mode of discourse serves as a complement or a counterbalance to more typical rights-centric approaches. Some institutions may be better suited to such inquiries than others. Thus, we fully expect rights-centric arguments to persist, including in courts' enforcement of rights. Nevertheless, we maintain that rights debates often call for other kinds of arguments. An ends-centric approach to rights questions gives other actors, beyond the usual suspects, renewed capacity and reason to take up the mantle of rights reasoning and enforcement.

To this extent, our article builds on the long and still-growing literature that aims to decenter high courts in the constitutional enterprise, both in the American context (Finn 2014; Fisher 1988; Kramer 2004; Sager 2006; Thomas 2008; Tushnet 2000; Weiner 2019; Whittington 2001) and globally (Gardbaum 2013; Kavanagh 2023; Loughlin 2022; Waldron 2006; Webber et al. 2018). This extant literature makes compelling theoretical and institutional

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arguments that constitutional questions ought not to be monopolized by courts. We follow this prior work in the conviction that constitutional conversations are impoverished when discourses presuppose that, for example, rights questions are fundamentally legal in character or fully resolvable through doctrinal tests. We maintain that legal and juridical approaches to rights questions have their merits, which may indeed include an appreciation that rights questions are somehow different from other political issues. Nevertheless, to reduce rights questions solely to these approaches, as the public discourse is sometimes wont to do (Glendon 1993; Greene 2001), risks minimizing their important moral and policy dimensions. Perspectives that take rights as granted in these ways leave unplumbed the full extent of these other kinds of conversations that the polity ought to be having.

This article highlights a different language, a mode of inquiry, by which other actors and institutions may indeed enter the constitutional conversation and do so in ways that better match their distinct institutional capacities. Insofar as this ends-centric mode begins with questions different from those that inform rights-centric perspectives, it also engages different kinds of reasoning, related to morality and policy, for example, and thus yields different kinds of answers. With their distinct terminologies, frameworks, and limitations, the rights-centric and ends-centric modes each have their own integrity, but from a broader constitutional point of view, each are incomplete on their own. Rather than displace rights-centrism or the courts' role in rights enforcement, the ends-centric mode prompts other institutions to engage in rights reasoning on a more level playing field, elevating the larger conversation and process of deliberation.

One corollary of our argument, therefore, is to bring the Madisonian logic of the separation of powers (Bessette and Tulis 2010; Thomas 2008) more fully into the realm of rights—leveraging diverse institutional perspectives and capacities in a multi-sided dialogue over rights questions. This is in contrast both with understandings of courts as the primary "forum of principle" (Dworkin 1981) and with theories of political constitutionalism that would relegate the courts to the background. Indeed, our argument proposes a dialogic understanding in the double sense of calling for dialogue about the substance of rights, which in turn facilitates dialogue among institutions.[11]

Ends-Centrism in American Constitutionalism

Ultimately, this argument for ends-centrism amounts to a call to reinvigorate a vital constitutional practice that has a foundation in American political thought and history. To this extent, this mode is far from novel but has precedent in American politics, as evinced by the historical episodes we recount in the next section. In foregrounding ends, the very content or boundary lines of the right are shaped by competing ends. This may seem foreign, even dangerous, from the rights-centric perspectives that dominate in American politics. However, the spirit of this ends-centric approach finds support in *Federalist* 84, where Hamilton argues that the protection of rights may actually be stymied by writing and adhering to a written catalog (Hamilton, Madison and Jay 2003; see also Arkes 1992). In fact, important political actors and thinkers in the early republic took for granted that the Bill of Rights was merely the start of the inquiry at best and that constitutional actors would need to "determine" the content and limits of these rights, as well as other rights not codified (Campbell 2025). Moreover, the adoption of English common law meant that an immense body of case law already offered many presumptive determinations to shape the contours of the new rights. For example, as the next section discusses, the preexisting law of libel influenced how the framers would understand freedom of speech and its limits. Some scholars advocate approaches similar to this process of determination for understanding rights even today. Grégoire Webber (2017, 90) explains, "The subject matter and content of any one right's guarantee cannot responsibly be defined until one has taken into account the limitations justifiable in a free and democratic society, being a society that is free and democratic in part because everyone has rights" (see also Schmitt and Webking 1979; Webber et al. 2018).

Understanding rights in terms of ends admits more space for values such as responsibility, sociality, and compromise, which are often underemphasized in the American imagination but arguably are crucial to the health of the polity (Glendon 1993; Green 2021). One might identify various ends, beyond rights, in the principles to which a polity commits in constitutional texts; in addition to such principles as liberty and equality out of which rights tend to grow, a constitution may commit to solidarity, dignity, security, welfare, and still other principles.[12] In a lecture on social media regulation, Tarunabh Khaitan (2024) suggests adding verity to such lists of constitutional principles, a value that even Thomas Jefferson and James Madison discussed as imperative to constitutional vitality, as the next section recounts. Regardless of whether such articulations of ends in a constitution are deemed justiciable, they may bear on what political actors understand as corollary ends to pursue in legislation and policy.[13] When considering the regulation of media, for example, policy makers may view a variety of ends as important, including fostering accurate sources of knowledge and facts, quality venues for opinion formation and consensus building, and the presence of diverse outlets with tempered profit incentives.[14]

In foregrounding ends, including competing ends, rather than always prioritizing codified and doctrinal expressions of rights, this mode is sensitive to the fact that, in some instances, there may be no predetermined correct answer, no fixed content of a right to ascertain

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(Waldron 2006; Webber 2009; 2017; Webber, et al. 2018). Rights may be in play and may deserve protection, but how we formulate them and their boundary lines may be best understood as an open question. An inescapably political process of "determining" rights becomes necessary (Campbell 2025). An ends-centric approach to rights thus differs from rights-centrism in inviting politics, rather than relying on textualist or doctrinal formulations, for example.[15] By foregrounding the myriad relevant ends implicated in rights questions, the ends-centric mode admits conceptions of rights in which their boundary lines shift, creating more space for institutions with capacities different from those of courts to participate in rights reasoning. Arguably, it involves more moral reasoning than American courts often admit to and therefore does justice to the full moral claim that rights presume to make (Arkes 1992; Jacobsohn 1985). In a word, the nature of these questions may be such that they require more creative or "authorial" capacities than the courts alone may contribute to the constitutional discourse (Bellamy 2013, 1030; Pettit 2000).[16]

Leveraging a kind of Madisonian logic of interplay among different institutional perspectives, a la *Federalist* 51, may also be better from the perspective of protecting rights (see also Lincoln's First Inaugural Address). Turning to the anti-canon of constitutional law (Greene 2011), one finds that rights-centric approaches have resulted in injustice and the deprivation of rights. Consider how the judgments in *Dred Scott v. Sandford*, *Plessy v. Ferguson*, and *Lochner v. New York* all claimed to protect some right but today are recognized as egregious denials of rights and justice.[17] Some scholars attribute these kinds of episodes to the same rights-centric approaches we examine here (Storing 1995).

The ends-centric mode, in contrast, elevates a separation-of-powers logic in rights reasoning, opening rights questions to actors and institutions with different capacities that equip them to think about rights in different ways (Bessette and Tulis 2010; Thomas 2008). By thus empowering other actors and offering a language that suits different institutions' faculties, an ends-centric mode diversifies, so to speak, the sources that may protect rights and so redefines what it means to take rights seriously (Dworkin 1978). Again, the courts need not be the sole forum of principle, nor should legislatures be relegated to being merely fora of policy (Dworkin 1981; Fallon 2001). Rather, matters of principle, including the protection of rights, are often intertwined with policy considerations and, in such cases, should be treated accordingly (Sunstein 2004). The ends-centric approach supports exactly this kind of deliberation.

Of course, admitting an alternative ends-centric approach to rights reasoning does not *guarantee* against future abuses. However, it serves to (re)empower institutions such as legislatures to engage in these questions alongside courts. Put differently, it admits a more legislative, even "authorial" (Bellamy 2013, 1030; Pettit 2000) language into rights reasoning, so that other institutions may take ownership of protecting and determining rights. Indeed, Congress has not always waited for the courts to interpret rights before taking action. In passing the Civil Rights Act of 1875, for example, the Radical Republicans argued for a particular interpretation of the Fourteenth Amendment, specifically that Congress's power of enforcement under Section 5 allowed the legislature to extend the guarantee of equal protection against nonstate actors (see also Bambrick 2025, chap. 3; Baude, Campbell, and Sachs 2024, 1246). The Supreme Court proceeded to foreclose this interpretation, however, in the *Civil Rights Cases* (1883).[18] Eighty years later, members of Congress contemplated reviving the Section 5 argument as the basis for the Civil Rights Act of 1964 but famously chose to ground its authority in its commerce power to comply with the Supreme Court's doctrinal status quo. In other words, Congress actively chose to eschew the language of rights out of excessive deference to the Court. Ironically, memos between the justices from the time suggest that at least two of them would have accepted Congress's bid to reclaim broader Section 5 powers in the Civil Rights Act of 1964 had it only made the constitutional argument (Schmidt 2010, 805). An ends-centric mode is not mutually exclusive with courts continuing to decide rights questions, but it would give other actors more constitutional space to reenter the dialogue in such cases as this, staking ground also to determine and protect rights.

What capacities, then, are suited to an ends-centric mode of reasoning? We conceive of ends-centrism as following insights of republican theory. Historically, this political tradition admits of the community's needs, indeed a common good, that cannot be summed up in terms of rights or negative conceptions of liberty.[19] Moreover, although republican thinkers differ on what role courts may properly play in political life, they generally put a premium on representative institutions and deliberative processes.[20] Republicanism thus seems a plausible theoretical home for our ends-centrism: it is ultimately aimed at thawing rigid understandings of rights that neglect the variety of ends and duties that keep republics functioning vitally (Weiner 2019). Accountability to popular will, deliberation, and contestation in politics are all commitments associated with republicanism and features that facilitate the ends-centric mode we describe here. In much the same way that debate and contestation are crucial to republican politics (Shumer 1979, 14–15),[21] an ends-centric view likewise calls for full deliberation of the many, often changing, exigencies of the polity.

Republican political thought also attends to the fact that rights exist in (indeed, are protected in) particular communities, intentionally considering the community as an entity of its own that needs to be sustained.[22] Similarly,

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republican theory and politics are more comfortable with the idea that citizens and even corporations have duties and with the possibility that rights may sometimes run out where other ends of the community begin (Bambrick 2025). That private actors may bear some responsibilities for the ends of the community is important in digital politics, for example, given the central role of nonstate actors such as social media and tech companies (Bambrick 2025; Koltay 2019). Our ends-centric approach attempts to circumvent different possible absolutisms that may arise in such questions—from the more severe communal understandings associated with some versions of civic republicanism to those absolutist understandings of rights associated with some versions of liberalism. In this way, ends-centrism may be understood as taking a step back but, emphatically, not going all the way toward older understandings of republicanism that maintain some conception of community and a common good irreducible to individual rights.[23]

The ends-centric mode thus finds validation in republican theory, insofar as this tradition privileges faculties associated with actors other than courts and elevates goods other than rights as objects of politics. American political thought maintains much space for such principles of republican theory. Jefferson may have changed the wording of his famous line in the Declaration to "rights," but as the next section shows, even he understood rights as informed by the complexities and flux of the larger political environment. The critical point of an ends-centric approach and of the support it finds in republicanism is that rights are not the sole starting point or primary object of politics; rather, ends beyond rights ought to be articulated in the larger debate insofar as they are also fundamental to constitutional health.

Lessons from U.S. History: Rights and Duties of the Press

History offers both precedent and sight lines for mapping ends-centered, rather than rights-focused, discourses. Specifically, debates related to free speech and a free press offer preliminary insights on which to build. Although the Bill of Rights does not elaborate the meaning either of freedom of speech or of the press, constitutional interpretations have since distinguished them.[24] The former now connotes a right of individuals to express their thoughts, regardless of viewpoint. The latter has often referred to the protection of the press as the fourth estate, a public pillar of republican government with obligations that are as much expected as unwritten in law. Although as a matter of constitutional law, freedom of speech now subsumes the rights enjoyed by the press (Andersen Jones and West 2022; Levy 1963a), in past discussions, it was in freedom of the press, rather than individual freedom of speech, where duties and ends were most salient. Among the varying ends tied to securing freedom of the press, we emphasize arguments for the press as an outlet of political expression and a source of knowledge for an informed citizenry. These interrelated ends were contested and briefly settled in the founding period and later reevaluated by such figures as Walter Lippmann and John Dewey in the twentieth century amid the rise of monopolistic press industries, the growth of a complex society, and the threat of government censorship and propaganda. Despite the technological transformations of the twenty-first century and the marginalization of the traditional press, echoes of earlier concerns recur in present debates about social media and underscore the need to reassess prior settlements on freedom of speech and the press with changes in the technical and social landscape, as we discuss in the section, "Ends-Centrism in New Media."

The Founding Period

Although the Constitution offered a basis for free speech and a free press, its notions of them were surprisingly vague (Levy 1963a, 225): it left the particular forms that these rights would take to be determined through subsequent local debates. One of the first issues that would bring political observers and institutions to deliberate the contours of a free press was the Sedition Act in 1798. Seeking to curb threats originating from revolutionary France, a Federalist-controlled Congress passed this act prohibiting citizens from critiquing the federal government on penalty of imprisonment and a fine. In a word, it pitted the ends served by a free press against other competing ends, such as national security and veracity.

Political commentators did not presume that the First Amendment provided the answer to this question. Instead, major arguments cited particular ends served by this right, including the way a free press provided an outlet for political speech, thereby allowing citizens to critique the government, hold those in power accountable, and check government power over public opinion.[25] Moreover, the proliferation of presses across the country circulated ideas and connected fellow citizens across the vast territory.[26] Some articulated other ends, however, such as safeguarding the veracity of information and providing for national security. The Federalist Party voiced concerns about preventing intrigue and consequent divisions between the American people and their government (Halperin 2016, 50). To the extent that foreign misinformation might threaten the stability and survival of the nascent republic, such concerns were valid on their face.[27] Consistent with English common law, moreover, the right of the press to publish without prior restraint was not understood to protect the publishing of "false facts" and seditious libel (Levy 1963a, xiii). Thus, the general content of the Alien and Sedition Acts was not necessarily beyond the pale at the time. Still, under the Adams administration, these laws threatened to control public

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opinion and potentially consolidate one-party rule.[28] Amid this ambivalence surrounding the right to press freedom, none other than James Madison and Thomas Jefferson gave voice to the different sides, indeed the different ends, at stake.

Madison's report on the Virginia Resolutions paved the way for a new libertarian position in arguing that, particularly with respect to political expression, the press must be exempt from restraint by the executive and legislative branches, even after publishing pieces critical of the government and its officials. Madison acknowledged his opponents' legitimate fear of a licentious press, but he wrote, "Some degree of abuse is inseparable from the proper use of every thing" (Madison 2006c, 256). Behind Madison's acceptance of those unchecked dangers was a genuine belief that reason would ultimately triumph:

> And can the wisdom of this policy be doubted by any who reflect, that to the press alone, chequered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity, over error and oppression; who reflect that to the same beneficent source, the United States owe much of the lights which conducted them to the rank of a free and independent nation; and which have improved their political system, into a shape so auspicious to their happiness. (Madison 2006c, 256)

He did not coin the phrase "marketplace of ideas," but he anticipated it and how its exchanges would move society toward greater truth and enlightenment. The threat of government control over public opinion proved far more dangerous for Madison than the temporary spread of falsehood, misinformation, and slander. Therefore, in his understanding, a free press would, on balance, serve the ends of providing accurate information and promoting an informed citizenry. Moreover, it might counter political consolidation that undermined the power of the states[29] and muted the voice of the people (Madison 2006b, 210).[30] In a way similar to how proponents of open access to digital spaces argue today, Madison thought that easily accessible presses could serve as a medium for public opinion, bringing citizens closer and providing a forum over the country's vast distances.

Jefferson also opposed granting the federal government the power to punish false facts and seditious libel, but only because he thought these were prerogatives of the states (Levy 1963b, 46). Indeed, the First Amendment did not originally constrain state governments.[31] Jefferson's Kentucky Resolutions declare that the states or the people retain "the right of judging how far the licentiousness of speech and of the press may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use be tolerated rather than the use be destroyed" (Watkins 2004, 166). For a long time, Jefferson remained unconvinced that the harmful branches of the press would give way to greater truth. In 1807, he wrote,

> To your request of my opinion of the manner in which a newspaper should be conducted, so as to be most useful, I should answer, "by restraining it to true facts and sound principles only." Yet I fear such a paper would find few subscribers. It is a melancholy truth, that a suppression of the press could not more completely deprive the nation of its benefits, than is done by its abandoned prostitution to falsehood. Nothing can now be believed which is seen in a newspaper. Truth itself becomes suspicious by being put into that polluted vehicle. The real extent of this state of misinformation is known only to those who are in situations to confront facts within their knowledge with the lies of the day. (Jefferson 1907a, 224).

Jefferson thus weighed the benefits of a less-constrained press against the adverse effects of "misinformation" on the citizenry and republic, initially finding the latter more compelling than did Madison. Jefferson came closer to the Madisonian position over time, however, in favor of unfettering freedom of the press from even state-imposed restraint based on seditious libel and veracity. Nevertheless, he maintained a watchful eye on the dangers presented by misinformation and "false facts," viewing these ends as still relevant to the larger inquiry of press freedom (Jefferson 1907b, 489). For both Madison and Jefferson, the long-term salience of truth remained paramount.

Arguments surrounding press freedom were thus bound up with beliefs about what ends were ultimately served. Both Madison's and Jefferson's arguments were rooted in assessments (and assumptions) regarding the polity's needs in that historical moment. For his part, Madison's capacious understanding of the role of the press hinged on two premises. One involved the ease with which the press could spread across the country and operate unadulterated by other entrenched interests. What would happen, in contrast, if the press consolidated under monopolistic ownership? Would the government then have a duty to intervene to guarantee the proliferation of presses nationwide? A second assumption involved the belief that truth would triumph over falsity, deception, and self-interest or, assuming the absence of those obscurant factors, that the truth could be accurately distilled to explain complex issues. Clear and straightforward information regarding specialized topics would be needed to inform public opinion and a modern democratic citizenry, as would become even more salient in later periods of history. Different economic and technological realities would unveil both new limitations and possibilities for this right.

Twentieth-Century Debates

Debates over the contours of press freedom would continue and shift with the economic and technological transformations of the twentieth century. The press became a newspaper industry, its interests intertwined with a business elite controlling the flow of information. Rather than a marketplace of ideas, those newspapers with larger circulation and advertising revenues consolidated into monopolies. A monopolistic press, moreover, meant a

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decline in the diversity of the newspaper market and in the availability of political information. In addition, newspapers were prone to the standardization of opinions to guarantee a greater market share—it made little business sense to alienate half or more of your readers (Lebovic 2016, 20). Even information sourcing became standardized and homogeneous by relying on the reporting of the Associated Press. This tendency toward monopolistic practices presented a new conflict between the economic interests of the press industry and the ends that figures like Madison and Jefferson envisioned the press as serving in the polity, including providing accurate political information and informing public opinion. Under this new set of circumstances, the boundaries of press freedom again came under scrutiny amid a confluence of ends.

As in the debate over the Sedition Act, political observers recognized the role that a vibrant free press might play in republican government. The press provided the medium through which information circulated in society. Citizens needed access to an expansive and diverse press and required assurances of the veracity of information to make proper decisions. The question became how to conceive of press freedom in such a way that best served these ends in that particular moment. Madison and Jefferson may have identified government censorship and propaganda as threats to self-government in the polity and so articulated a conception of press freedom that emphasized the protection of political expression against government control. Decades later, Walter Lippmann (1920; 1925) and John Dewey (1954) identified unregulated private enterprises as the greater threat, insofar as news companies were manufacturing consent and thereby undermining government by consent (Lebovic 2016, 26).[32] The ends the press might serve were increasingly impeded by the industry's monopolistic tendencies and alignment with business elites. On this basis, they concluded that "protecting freedom of opinion was of less importance than protecting the flow of information upon which opinions were based" (26). Lippmann and Dewey thus understood the challenges of the moment as shaping the form of the right itself.

A further challenge to self-government derived from the sheer complexity of modern democratic governance in the twentieth century. Lippmann thought that contemporaneous social issues were beyond the grasp of most citizens and accessible only to specialists. This new sociopolitical environment posed a challenge to the goal of self-government, because the private citizen was tasked with realizing a basically unattainable ideal as the sovereign and omnicompetent citizen (Lippmann 1925, 21). Public opinion came to be shaped by special interest groups as a result, which conducted "a continual electioneering campaign upon the unformed, exploitable mass of public opinion" (Lippmann 1920, 28). Congress was sometimes moved by the appeal of such groups, rather than by the demands of citizens.

With these various sources of private power increasing, Lippmann (1920, 71) concluded that truth could only prevail over falsehood if individual citizens knew the facts: "If they are not known, false ideas are just as effective as true ones, if not a little more effective."[33] A marketplace of ideas was thus insufficient to achieving the same end of an informed citizenry articulated decades earlier. Lippmann thought it was impossible to meaningfully protect democratic public opinion by "imitating the early champions of liberty" (20).[34] Like Madison, he saw the importance of well-informed public opinion to democratic self-rule. However, Madison could not have foreseen the consolidation of newspapers across the country under large corporations nor the complexity of modern governance that would amplify special interest groups in politics. Likewise, in Lippmann's telling, the increasing judicial protection of classical formulations of such rights as the freedoms of speech and press ultimately failed to guarantee a free and democratic public opinion (Lebovic 2016, 32). These rights would need to take different form, Lippmann concluded, which encompassed the intervention necessary to protect diverse sources of opinion and information (27), ultimately in service to self-government.

John Dewey shared these concerns, arguing that modernity had "created vast, distended, and complicated chains of interconnection that outstripped political ideas and practices that were anachronistic holdovers from an earlier era of small-town democracy" (Lebovic 2016, 31). Corruption and elite business interests, as well as the distorting influence of advertising and propaganda, threatened the formation of public opinion. Moreover, he asserted that citizens could not be expected to master the specialized and technical information underlying the functioning of the modern state. In Dewey's understanding, however, the expectation that a citizen could have ever been omnicompetent was a relic of a misguided belief in individual autonomy that downplayed the importance of community and associations. Instead, knowledge was social, a function of association and communication (Dewey 1954, 158). For him, the public was like a social organism that could not think critically about complex subjects but could choose between the assessments of specialists if all the information was clear and readily available. He believed that the open results of free inquiry and transparency would allow for a greater transmission of knowledge, thereby informing public opinion on all matters needed for self-government (Lebovic 2016, 32). Dewey (1954, 167) maintained, "Whatever obstructs and restricts publicity, limits and distorts public opinion and checks and distorts thinking on social affairs. Without freedom of expression, not even methods of social inquiry can be developed."

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Although he did not provide practical proposals, Dewey intimated the need for government action to ensure this free flow of information and resulting public knowledge. Unlike Lippmann who believed in a permanent need for technocratic experts, Dewey remained optimistic that education and access to information would gradually prepare people for greater participation in self-governance. Ultimately, Dewey put his trust in government to foster this public enlightenment, whereas Lippmann relied on both government and private actors with expertise to provide accurate and reliable information for the public.

These ideas informed policy discussions about the vital functions of the press. While monied interests and the strength of advertising led many to accuse the press of serving undemocratic interests in the 1930s, a proactive New Deal administration recalled the old criticisms of excessive government interference in controlling public opinion. Rather than use prohibitions or censorship, the administration contributed to shaping public opinion by circulating information to promote its policies (Lebovic 2016, 56). However, these initiatives were still met with accusations of spreading government propaganda. The New Deal reformers also sought to regulate newspaper economics. These regulations, they argued, were appropriate for the press not only because they were an industry but also because state action might be necessary to preserve a diverse and vibrant press (Lebovic 2016, 65). Advertising was viewed as irrationally distorting the market, sapping consumer power, and misleading the public (72). Franklin D. Roosevelt even argued for a "freedom of the news," seeking an active role for the state in ensuring access to information from monopolistic media ownership, as opposed to a "freedom of the press," which involved a classic liberal approach of eliminating government censorship (1). In response, newspaper publishers made rights-centric arguments for libertarian formulations of press freedom to avert the government's proposed regulation: they argued that economic concentration was the necessary cost of a press free from state intervention (72).

Similar arguments anchored by rights-centrism continue to be deployed today, including by big tech and social media companies eager to avoid regulation.[35] At the same time, policy makers and concerned citizens seem conscious of the role of media, old and new, in the functioning of the polity. Thus, ends-centric arguments also appear in contemporary debates, as we discuss in the next section.

Ends-Centrism in New Media

The previous section demonstrated how various political actors and commentators debated press freedom in a way that acknowledged the relationship of this right to other interrelated ends, such as securing an outlet for political expression and providing access to sources of knowledge and facts for an informed citizenry. The point of reconstructing these historical discussions is to show how interlocutors deliberated various ends connected to and competing with rights in their respective moments. These histories further demonstrate how the ends-centric mode tends toward an openness to reassessing rights and ends across time and issues.

These historical debates and the ends they discuss resonate with the current digital era in many ways. Old media is as close to a predecessor as we might find for new media. Far from predefining the path forward in contemporary times and circumstances, however, the debates over press freedom recounted in the previous section underscore the need for periodic reassessment of rights, such as free speech and press freedom, given social, economic, technological, and other transformations. Although some of the same factors identified by previous thinkers may persist in the realm of new media, they likely occur in altered form and alongside new considerations. Thus, ends-centric discussions of speech and competing ends in the contemporary digital landscape hinge on the particulars of the issue at hand in this political moment. This section presents preliminary applications of an ends-centric approach in digital politics, animated by the understanding that rights may need to be reassessed in the light of full deliberation of pertinent ends.

A wide range of political considerations figure into debates over new media that did not necessarily characterize prior debates over old media. For one thing, many entities maintain interests in the outcome of these debates —from government, citizens, and corporations to the press, organizations, noncitizens, and foreign governments. The actions taken by any one of these parties often bear on the interests of others in complex ways. For instance, even though US lawmakers have been stymied in many of their regulatory efforts, active foreign powers like the European Union have managed to pass legislation regulating digital contexts, thus, stamping their standards on online and social media practices more broadly (Bradford 2020).[36] Intense political polarization does not make deliberation any easier in the United States, with parties viewing each other in terms of friends and enemies (Greene 2021, xvii) as they compete to set the rules of engagement in new media. Absolutist positions on free speech rights that persist in some of the discourse obscure the recognition of other ends. The result is that even natural occasions for bipartisanism, such as pursuing child safety online, have been threatened by rights-centric invocations of speech.

Beyond these larger political forces, additional factors arise from characteristics particular to new media. Digital spaces integrate not only traditional media outlets but also user-generated content from within and outside the country's borders. Conglomerate press industries have given way to big tech. Although both achieved monopolistic control in their respective heydays, the strategies for ensuring high profits have changed. Rather than homogenize

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opinions, some big tech companies have kept blinders on users by tailoring algorithms to their tastes and creating ready-made echo chambers. Directing users to familiar content may provide steady revenue streams, but it prevents the free flow of diverse views. Even specific features of platform design have been shown to influence the behavior of users and, by extension, the health of the polity (Schirch 2023). Insofar as both these platforms and their users claim rights of their own, questions similar to those examined in the previous section about the extent and contours of free speech or a free press recur in this new context. However, although those historical debates focused on examining the interrelated ends of securing political expression and providing access to information, the particulars of this moment and of digital spaces introduce other objectives as well, including curbing hate speech, exposing false information, and diminishing the malign influence of foreign actors (Bond 2022; Department of Homeland Security 2022). The ability of misinformation and disinformation to spread so quickly and even "shapeshift" in digital fora renders this threat uniquely destructive (Hook and Verdeja 2022).

Amid the competing ends in play, a techno-libertarian streak persists, at least rhetorically, in figures like Elon Musk, a self-proclaimed free speech absolutist (Martin 2022; see also Thai 2018). Techno-libertarian arguments, in favor of wide latitude for online speech and minimal regulation, arguably echo similar rights absolutist discourse in other corners of American politics, as discussed earlier (Glendon 1993; Greene 2021). This political discourse dovetails with a juristic understanding, prioritizing and absolutizing rights in a way that crowds out space necessary for deliberating other ends (Finn 2014). Techno-libertarian arguments do not necessarily invoke John Stuart Mill by name but adapt the same kind of Mill-inspired arguments so influential in American politics and law.[37]

Specific debates, such as related to child safety online, bring into sharp relief the difficulties of securing other ends in a generally rights-centric political environment. In particular, the health of children and adolescents is an end that has come to the forefront of public concern. Vivek Murthy, the US Surgeon General, released an advisory on social media's effects on youth mental health and how it exacerbates anxiety and depression. Murthy even recommended placing a warning label on social media platforms, similar to those on tobacco products, to better inform the public of the risks. Despite political polarization, these and other serious concerns led 91 senators to pass bipartisan legislation to promote safety and privacy requirements for children and teens online (Miller 2024). The Kids Online Safety Act (KOSA) required social media platforms to follow a "duty of care" to prevent harm to minors.[38] Tech firms would need to mitigate or prevent cyber "bullying and violence, the promotion of suicide, eating disorders, substance abuse, sexual exploitation and advertisements for illegal products such as narcotics, tobacco or alcohol." In addition, the platforms would need to provide options for minors to "protect their information, disable addictive product features, and opt out of personalized algorithmic recommendations" (Ortutay 2024).

Before being reintroduced in May 2025, the bill met growing opposition from both the left and the right, each side articulating its objections in rights-centric terms. Opponents to this proposed legislation fear curtailing rights to free speech, with the ACLU noting that marginalized LGBTQ communities would not have access to important conversations and online communities. Patriot Voices, a conservative group founded by former Republican senator Rick Santorum, views the bill as threatening to undermine the online privacy of children, as well as institutionalizing federal censorship standards related to medical information (Kang 2024). Such rights-centric objections thus emerge from diverse corners of the polity and touch on the myriad subjects on which social media may bear. In a similar vein, Kang (2024) explains, "Liberals worry about censorship of transgender care, while conservatives are concerned about the same with anti-abortion efforts."

For their part, big tech and social media companies are divided on the issue. Microsoft, X, and Snapchat support the measure, whereas TikTok and Meta call it unconstitutional (Johnston 2024). Meta and Alphabet, Google's parent company, have both engaged in a lobbying campaign to dilute the "duty of care" provisions, with their lobbyists encouraging skepticism of the act as a potential vehicle for government censorship of both liberal and conservative causes (Wells, Peterson, and Andrews 2024). These companies have sought to address child safety recently but primarily on their own terms, without government regulation.[39] Much like the press industry in the early twentieth century, tech and social media companies extol free speech rights to avoid increased regulatory scrutiny that would lower their profit margins. In short, rights-centric arguments are continually invoked to stall legislation on a matter of public health by stoking the fears of culture-war censorship of both parties.

Although the Supreme Court has yet to rule definitively on matters related to social media, its judgments seem to conceptualize social media companies as private actors with constitutional rights but not necessarily corresponding duties (Bambrick 2025; Koltay 2019, chap. 2).[40] This may foreshadow a continuation of rights-centric understandings, at least for now. However, most of the Court's judgments on social media to date have been relatively circumscribed, perhaps signaling some appreciation for the fact that other kinds of arguments on this issue may be made, and made better, by other actors.[41] Indeed, both political parties have shown some motivation to secure other ends alongside free speech rights, even despite extreme political polarization. Some scholars perceive an

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emerging consensus around curbing hate speech online, for example (Solomon et al. 2024). Likewise, members from both major parties have voiced concern surrounding the Chinese-owned platform TikTok. Congress[42] and the Supreme Court[43] have underscored how TikTok makes available broad swaths of information to foreign actors, thus implicating competing ends related to national security. Nonetheless, large sectors of the public and even Donald Trump reiterate rights-centric positions, arguing that Congress's "TikTok ban" entails inroads on freedom of expression not to be tolerated even amid national security risks.

Ultimately, a survey of global politics reveals myriad possibilities for deliberating and legislating on speech and competing ends in digital spaces (DeGregorio 2022; Haupt 2025; Koltay 2019; Tourkochoriti 2023). Efforts to reform Section 230 of the Communication Decency Act have occupied many lawmakers in the United States at both the state (most notably in Florida and Texas) and national levels.[44] In Europe, the supranational Digital Services Act has capped several earlier national initiatives, such as Germany's NetzDG.[45] Of course, US and EU lawmakers do not face identical challenges on the subject of social media, clearly evinced by the fact that European law does not have an equivalent of the US's Section 230. Beyond these different political-legal realities (Koltay 2019, chap. 2), divergent conceptions of rights on foundational and discursive levels are manifested in their different attempts to regulate social media. Absolutist understandings of speech associated with the United States are often premised on the suspicion of state power. Nevertheless, what Tourkochoriti (2021) identifies as an alternative French understanding depends on the state to realize the protection of speech and other rights.[46]

In sum, an array of conceptions of rights, and specifically speech rights, remain possible in this field—some may be more susceptible to neglecting competing ends and others to different failings. Given American political culture, the more likely error in the United States remains the former, hence, the need for mitigating effects of something like ends-centric deliberation over rights. Debates over social media offer policy makers a distinct opportunity to instead deliberate in an ends-centric mode. The foregoing discussion shows a mixed record thus far, with actors deploying both rights-centric and ends-centric arguments in contemporary debates; these debates would be well served if constitutional actors recognized ends-centric arguments as equally valid contributions to debates over rights. Ultimately, they may well choose to privilege rights and even prior formulations of speech in this novel digital space. However, an ends-centric approach would ensure that this is actually recognized as a choice to be made amid the confluence of other ends implicated in new media.

Conclusion

Deliberations over new media are occurring in diverse constitutional contexts, including some, such as the United States, where freedom of speech tends to hold pride of place. Nevertheless, there is good reason to approach these rights anew, bearing in mind that certain ends and exigencies are not best articulated in terms of rights (see also White 1978, 249; Wood 1998). The questions that social media raises are apt for demonstrating this larger argument, insofar as these platforms repeatedly prove their ability to influence our political life. For one thing, social media's algorithms curate and shape debate in profound ways, so that only select positions may be heard by a given user as opposed to a multiplicity of views (or ends, as the case may be). In this respect, one might say that social media exemplifies the larger concern motivating this article—that rights-centric political discourse does not by itself accommodate a full and complete debate. The fuller consideration of ends, in social media and more generally, requires a paradigm shift from dominant rights-centric conceptions to make space for other modes of argument across different institutions in dialogue.

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Notes

1 Jamal Greene's 2021 book, *How Rights Went Wrong: Why Our Obsession with Rights Is Tearing America Apart*, demonstrates this phenomenon of "rightsism."
2 Elsewhere, Mill justifies limitations on speech instigating an act of treason or unlawful act, private libel outside "the public character" of a person, and speech that threatens public peace and public decency (Turner 2021, 126).
3 *Abrams v. United States*, 250 U.S. 616 (1919), at 630.
4 Crucial decisions include *New York Times v. Sullivan*, 376 U.S. 254 (1964), *Brandenburg v. Ohio*, 395 U.S. 444 (1969), and *Cohen v. California*, 403 U.S. 15 (1971).
5 *Buckley v. Valeo*, 424 U.S. 1 (1976); *Citizens United v. FEC*, 558 U.S. 310 (2010).
6 One need not go so far as MacIntyre to accept the proposition that arguments founded in rights claims often leave something wanting (Glendon 1993; Greene 2021). An ends-centric approach to rights questions fills this space to the extent that it goes beyond matters of law to include a broad range of

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other considerations in defining the boundary lines of rights, from philosophical rationales and questions of obligation to changing empirical realities. Ends-centrism thus has the capacity to sidestep MacIntyre's critique to the extent that it conceives of rights in more political terms and actually invites moral inquiry. Put differently, by definition, this approach goes beyond emotivism to assess the reasons why we call anything a right and, likewise, the reasons for rights' limits.

7 *Griswold v. Connecticut*, 381 U.S. 479 (1965).

8 Fallon (2001) argues that much work that courts do goes beyond mere interpretation of the Constitution. For example, judges develop doctrine, the particulars of which have no explicit basis in the text but are ultimately necessary to "implement" the Constitution. Relative to our own ends-centric approach, even doctrinal developments constitute an effort to ascertain rights such that they may be upheld in a formulaic way. In other words, even doctrine and accompanying balancing exercises do not presume to reassess rights, their content, and limits in the same way that our ends-centric approach proposes. The means-ends scrutiny that courts have historically employed in reviewing legislation may certainly suggest some appreciation for ends. A court applying rational basis review, intermediate scrutiny, or strict scrutiny concedes that rights must be balanced against "legitimate," "important," or "compelling" government interests, respectively. Nevertheless, these tiers of scrutiny do not comprehend the same kinds of arguments that the ends-centric mode encompasses. They still take rights as the starting point, a given, as judges determine what level of scrutiny to employ based on how legislation implicates fundamental rights. Moreover, judges employing means-end scrutiny do not typically presume to amend the status or content of rights as an ends-centric approach might. Nevertheless, means-end scrutiny may well serve as a mechanism for permitting space in which other actors can inquire into the more foundational questions that an ends-centric approach prompts; for example, what ends justify calling something a right at all, how to draw the boundaries of rights, and so on.

9 Interestingly, the Supreme Court has continued to employ tiers of scrutiny in some areas, including cases on internet speech. In *Free Speech Coalition v. Paxton* (606 U.S.__ (2025)), the Court upheld a Texas law requiring pornography websites to verify viewers' age. Perhaps this suggests awareness on the part of the Court that at least some questions still call for balancing rather than bright-line rules (Girgis 2025).

10 See also Hadley Arkes's *Beyond the Constitution* (1992). This account bears interesting parallels with Jamal Greene's 2021 book. A major difference between these is Arkes's endorsement of natural law theory and Greene's Thayer-esque appeal to democratic solutions.

11 Our argument is similar to Aileen Kavanagh's in *The Collaborative Constitution* (2023) to the extent that we also see the value of different voices contributing to working out constitutional questions. However, whereas Kavanagh advances the virtues of comity and collaboration among institutions, with the United Kingdom as a primary point of reference, our account of an ends-centric approach is comfortable with more adversarial institutional exchanges, as one might expect from a Madisonian conception of separation of powers or contestation as associated with republican theory.

12 In contrast with perspectives that prioritize negative liberty, "positive constitutionalist" accounts emphasize that governments are established to accomplish certain positive ends. Different versions of positive constitutionalism emerge, tracking a wide range of ends that may be pursued. For one variant, often described as neo-integralist, see Vermeule (2022). For a more progressive variant, see Barber (1986), suggesting that the Constitution enshrines particular ends that must be at the center of any faithful interpretation; see also Barber, Macedo, and Fleming (2021). Our argument dovetails with positive constitutionalism's understanding that rights-centric postures are inadequate, but it does not aim to settle the particular ends that should be foregrounded in constitutional politics. Rather, we argue the need to weigh the various ends that may be at stake, instead of reflexively asserting rights as a starting point.

13 Insofar as an important function of political parties is to articulate the polity's problems and corresponding solutions, parties may serve the purpose of identifying and arguing the relevant ends at stake for any given issue (Khaitan 2020; Muirhead and Rosenblum 2022). The third and fourth section demonstrate how diverse perspectives, partisan or otherwise, have facilitated robust contestation over ends in actual moments where rights have been in question.

14 Claudia Haupt's (2025) analysis similarly argues that US legislative proposals to regulate social media would do well to integrate better the full range of relevant concerns. For example, legislation from California and New York has focused on combating hate speech, whereas Florida and Texas have passed laws prioritizing users' expression. Haupt argues that these regulatory dispositions are "two sides of the same coin" of the debate, and each is inadequate on its own.

15 Richard Bellamy (2013, 1021) cites the vast disagreement surrounding the "sources and substance" and the "subjects and scope" of rights. From a republican perspective, the continuing disagreement on these questions makes their resolution, in his terms,

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a matter for "real democracy" and not for courts (1030–36). Tom Hickey (2019, 3–9), in contrast, argues that courts may exercise an "editorial" role in adjudicating tough questions, such as concern rights, without necessarily speaking for the people.

16 Of course, some jurists and legal scholars are less hesitant to have courts engage rights questions more creatively, indeed as moral questions. See, for example, Aharon Barak, *The Judge in a Democracy* (2006, chap. 8). More recently, Sherif Girgis (2025, 531) has argued that certain "general liberties are irreducibly open-ended," thus requiring judicial balancing or, if not, enforcement by other actors.

17 *Dred Scott v. Sandford*, 60 U.S. 393 (1857); *Plessy v. Ferguson*, 163 U.S. 537 (1896); *Lochner v. New York*, 198 U.S. 45 (1905).

18 *The Civil Rights Cases*, 109 U.S. 3 (1883).

19 Republicanism is a broad tent, raising questions of how our ends-centric approach fits alongside particular theories in this larger tradition. For example, some scholars suggest that the neo-republican theories that dominate republican scholarship today—e.g. by Phillip Pettit (1997; 2012) and Quentin Skinner (1984; 1987; 1998)—sometimes keep the individual at the center of politics, simply redefining individual liberty in terms of nondomination, rather than the noninterference associated with liberalism (Larmore 2001, 235; Tulis 2023). Although debating the particulars of neo-republicanism is beyond the scope of the present article, our conception of ends-centrism would challenge any political vision, republican or otherwise, that does not carve out adequate space to deliberate a broader range of ends, including goods of the community.

20 Scholars who participated in the "republican revival" generally favored legislative institutions (for example, see Michelman 1988; Tushnet 2000).

21 Deliberative democratic theories offer another useful reference point (Bächtiger et al. 2018).

22 Pettit (1997, 125–26) explains, "There can be no hope of advancing the cause of freedom as non-domination among individuals who do not readily embrace both the prospect of substantial equality and the condition of communal solidarity. To want republican liberty, you have to want republican equality; to realize republican liberty, you have to realize republican community."

23 Although they may be characterized as "older," such understandings occur in modern histories, such as in Gordon Wood's (1998) classic account of American revolutionary thought and other contributions to American political history and thought from the latter half of the twentieth century.

24 On June 8, 1789, Madison distinguished between freedom of speech and that of press by saying that "the people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable" (Gales 1834, 451; Rudanko 2004, 35–36).

25 In *Notes on Government*, Madison suggested that rather than control the press, the government should engage in a public interplay with the people to both shape and benefit the formation of public opinion. Sheehan sees this interaction between the people, intellectuals, statesmen and the press as a complex process of deliberation and communication. In her reading, the government could in turn inform the public, leading to an interplay with the people's views and consequently the refinement of public opinion (Sheehan 1992, 620).

26 Madison referred to another purpose for the press as an outlet for generating consensus and opinion formation. He wanted the press to disseminate, articulate, and develop our understanding of constitutional principles, an important consideration for cultivating citizen attachment to their government. Madison advanced the importance of public opinion, arguing that "all power has been traced up to opinion. The stability of all governments and security of all rights may be traced to the same source. The most arbitrary government is controuled [*sic*] where the public opinion is fixed." In this Montesquieuian reading, public opinion held a mixture of belief and social mores, serving as a restraint on government abuse and an affirmation of its just principles. Although Montesquieu looked to religion as a restraint for despotic government, Madison wanted American public opinion to be enlightened and infused by the principles of the Constitution (Madison 2006a, 214).

27 These fears of foreign subversion are not altogether different from present-day concerns with Russian or Chinese subterfuge in social media.

28 For prior policies seeking to censor opinion and Madison's views against it, see Gales (1849, 934); Rudanko (2004, 66–67).

29 For how Madison's ideas on public opinion evolved and referred to classical republicanism, see Gibson (2005, 9); Sheehan (1992).

30 Madison (2006c, 210) wrote, "Whatever facilitates a general intercourse of sentiments, as good roads, domestic commerce, a free press, and particularly a circulation of newspapers through the entire body of the people, and Representatives going from, and returning among every part of them, is equivalent to a contraction of territorial limits, and is favorable to liberty, where these may be too extensive."

31 Madison proposed an amendment that "no State shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal

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cases," but it failed to pass in the Senate (Levy 1963a, 221–22).

32 In his theory of republicanism, Philip Pettit (1997, 36) explains how domination is conceivable in both public and private life, known as imperium and dominium, respectively.

33 Lippmann shared Jefferson's misgivings about the spread of false information by a propagandistic and corporate press, but he also suggested remedies. First, he argued in favor of courts of honor where publishers would be compelled to meet their accusers. Second, he wanted to turn journalism into a professional trade that would exercise the "highest of scientific virtues." Third, he sought the establishment of "more or less semi-official institutes of government research" and the growth of specialized private agencies to give technical summaries of the works of various branches of the government (Lippmann 1920, 74–91). Lippmann saw a need for a positive guarantee to protect and increase the veracity of the information that the public depended on for self-government (Lebovic 2016, 27).

34 Lippmann thought that modern bureaucratic government and technical complexity required a reimagined role for the citizenry and public opinion in a representative government. "Thus we strip public opinion of any implied duty to deal with the substance of a problem, to make technical decisions, to attempt to justice or impose a moral precept. And instead we say that the ideal of public opinion is to align men during the crisis of a problem in such a way as to favor the action of those individuals who may be able to compose the crisis" (Lebovic 2016, 8; Lippmann 1925, 67–68).

35 Social media and tech companies have been labeled in various ways as editors, publishers, corporations, common carriers, and the like. These monikers come with varied degrees of legal ramifications and are often self-chosen to maximize profitability and avoid liability.

36 Germany's paradigmatic Network Enforcement Act (NetzDG) and, later, the EU's Digital Services Act are cases in point. These legislative initiatives have faced criticism, often for going too far to limit online speech, perhaps increasing the urgency for US lawmakers to deliberate well and address these issues as social media companies observe and plan accordingly (DeGregorio 2022; Koltay 2019; Tourkochoriti 2023).

37 Political observers might have disregarded this position as exceptional or marginal even a few months before the time of this writing, but they would do well to take it seriously, given such developments as Musk's rapid rise in influence over the executive branch (however short-lived), Mark Zuckerberg's abandoning Facebook's content moderation protocols, and the like.

38 Congress.gov. "Text - S.1409 - 118th Congress (2023–2024): Kids Online Safety Act." December 13, 2023. https://www.congress.gov/bill/118th-congress/senate-bill/1409/text.

39 For example, Instagram has introduced teen accounts with built-in protections that will do the following: (1) limit who can contact teens and the content they see and (2) require teens under 16 to need parent's permission to change the built-in protections. "Introducing Instagram Teen Accounts: Built-in Protections for Teens, Peace of Mind for Parents," *Meta* (blog), September 17, 2024, https://about.fb.com/news/2024/09/instagram-teen-accounts/.

40 See, for example, *NetChoice, LLC v. Paxton* and *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024).

41 See the cases *Gonzalez v. Google LLC*, 598 U.S. 617 (2023); *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023); *NetChoice, LLC v. Paxton* and *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024); *Murthy v. Missouri* 603 U.S. ___ (2024); *Lindke v. Freed*, 601 U.S. 87 (2024); and *TikTok, Inc. v. Garland*, 604 U.S. ___ (2025).

42 The Protecting Americans from Foreign Adversary Controlled Applications Act (PAFACA) garnered bipartisan support and was enacted in 2024.

43 See the Supreme Court's per curium decision in *TikTok, Inc. v. Garland*, 604 U.S. ___ (2025).

44 Section 230 of the Communication Decency Act (1996) exempts tech platforms from liability for actionable speech by their users. Magazines and television networks, for example, can be sued for publishing defamatory information they know to be false; social media platforms cannot be found similarly liable for content they host. In the 2024 cases *Moody v. NetChoice, LLC* and *NetChoice, LLC v. Paxton*, the Supreme Court considered whether state laws encroach on the First Amendment rights of social media platforms or whether these companies approximated something like common carriers that may not discriminate against the speech of their users. The Court vacated and remanded both cases for further consideration on First Amendment grounds (see also Haupt 2025).

45 The Network Enforcement Act (NetzDG) in Germany and the Digital Services Act of the European Union are sweeping in their respective attempts to regulate social media. These initiatives include elements of limitations analysis and the horizontal effect of rights but have been criticized for being too restrictive of free expression (DeGregorio 2022; Tourkochoriti 2023).

46 One might also contrast German and American jurisprudence in this area. See *Holocaust Denial Case* BVerfGE 90, 241 (1994) and *RAV v. City of St. Paul* 505 U.S. 377 (1992).

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