

24.150 Liberalism, Toleration, and Freedom of Speech, Fall 2023

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today

Joshi wrap-up, and then Wax



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The thesis of “Open Borders”: If someone is free to move within a country (eg, not justly imprisoned), then it is wrong to prevent them from moving between countries.



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A simple argument for open borders

Mex, living in Mexico, announces: “I’d like a job and a place to live in San Diego.” Sandy and Dennis, in San Diego, reply: “We’d like you to work for us, and rent one of our apartments.” Wage and rent agreements are reached. As Sandy and Dennis get in their car to pick up Mex, Fred appears with a gun, and threatens to shoot them if they don’t call off the deal.

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P1. It is wrong for Fred to forcibly prevent the deal.

P2. If it is wrong for Fred to forcibly prevent the deal, then it is wrong for the government to forcibly prevent the deal.

C. It is wrong for the government to forcibly prevent the deal.

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Against Open Borders: negative externalities

Joshi:

states may legitimately use coercion to prevent negative externalities...Consider the case of a cheap battery manufacturer. The manufacturer and consumers both benefit from his being able to use cheap toxic chemicals in the process and dumping them in the nearby river. But the state may legitimately prevent this mutually beneficial transaction, because the costs involved are not entirely internalized by the parties.

Joshi, Hrishikesh. From "For (Some) Immigration Restrictions." In *Ethics, Left and Right: The Moral Issues That Divide Us*. Edited by Bob Fischer. Oxford University Press, 2019. © Oxford University Press. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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Joshi:

...while foreign-born people compose 17% of the Swedish population, they receive 60% of the welfare expenditures. 76% of members of criminal gangs have immigrant backgrounds.

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Against Open Borders: low SES citizens

Joshi:

Coercion is also often used for the purpose of protecting the interests of the domestic population with low socioeconomic status. Consider for example, minimum wage regulations. Such regulations are coercive – if A is willing to pay B \$X/hour and no more, and B desires to accept this offer, the state forbids this transaction with threat of force if X is lower than the minimum wage set by law.

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Joshi:

One foreseeable impact of having fully open borders is that it will drive wages down for less skilled workers. This is just a function of supply and demand – a large influx of less skilled workers from poor but populous countries will increase the number of people willing and able to do retail, agricultural, and fast food jobs, for example. This will push the wages down for this type of work, thus adversely affecting the well being of less skilled workers already in the country.

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Against Open Borders: protecting valuable things

Joshi:

Coercive laws are also employed to protect things we deem valuable in and of themselves. States seem to be within their rights to prohibit certain activities with respect to national parks containing valuable ecosystems – most people think it's fine for the state to forbid logging or hunting within such parks, for example.

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1. What thing of 'intrinsic value' does Joshi think can be protected by immigration restrictions?

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Joshi:

liberal, high-trust societies are intrinsically valuable. Such societies embody valuable relationships among their residents, which are valuable in a way akin to the way that friendships are valuable. Liberal societies are also uniquely suited to human flourishing, for individuals there have the relatively robust ability to speak their minds, explore new ideas, create challenging writing and art, and so on.

If liberal societies are valuable in roughly these ways, and if having a regime of open borders would put the existence of such societies at risk, then there may be a further justification for border coercion. It is not unreasonable to think such a risk is substantial.

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Joshi:

the majority of people in the [Pakistan] believed that women should not have the choice as to whether to veil, that wives should always obey their husbands, that the death penalty is appropriate for apostasy, and that adulterers ought to be stoned. Now, Pakistan has a population in excess of 200 million. Suppose Denmark, a broadly liberal society with a population of less than 6 million, is deciding whether to have an open borders regime or not. It seems reasonable for one to worry whether Denmark's liberal norms can survive a large enough movement of the representative citizen of Pakistan into its territory.

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A 'consequentialist' argument for open borders

Joshi:

economist Michael Clemens argues that allowing for free migration would likely double world GDP. Doubling world GDP would mean lifting hundreds of millions of people out of poverty, particularly since those who would benefit most would be the global poor who would be able to move in search of better economic opportunities.

Joshi, Hrishikesh. From "For (Some) Immigration Restrictions." In *Ethics, Left and Right: The Moral Issues That Divide Us*. Edited by Bob Fischer. Oxford University Press, 2019. © Oxford University Press. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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Joshi:

The core proposal behind consequentialist open border thinking can be summed up thus: let's move people from places with bad institutions to places with good institutions. In so doing, we'll be helping the global poor help themselves, as well as most of the rest of us, given increases in worldwide productivity. Hence, the average person will be much better off with open-borders.

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2. What does Joshi think is the flaw in the consequentialist argument for open borders?

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Joshi:

The problem with this reasoning is that it makes a crucial unfounded assumption: that the different sorts of institutions we see in different countries are fixed. But what if, as a result of large migrations, the institutions of the receiving countries themselves change? And what if they change for the worse in the long run?

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Menu

The Daily Pennsylvanian

Penn Law to begin sanctions process against Amy Wax, citing 'increasing' promotion of white supremacy

By Jared Mitovich 01/18/22 5:04pm



Penn Law School Dean Ted Ruger has initiated the University sanctions process against Amy Wax, according to a [statement released Jan. 18](#).

In the statement, Ruger wrote that complaints from Penn community members about Wax — a tenured University professor — motivated his decision to initiate the sanctions process. According to the complaints, Wax's "cumulative and increasing" promotion of white supremacy and discriminatory beliefs made it difficult to take classes from her.

Ruger's statement noted that these complaints call for a process that will be able to evaluate claims that Wax's behavior is having "an adverse and discernable" impact on her teaching.

"Taking her public behavior, prior complaints, and more recent complaints together, I have decided it is my responsibility as Dean to initiate the University procedure governing sanctions taken against a faculty member," Ruger wrote. "As I have already discussed with Faculty Senate leadership, I am aggregating the complaints received to date, together with other information available to me, and will serve as the named complainant for these matters."

Mitovich, Jared. From "Penn Law to Begin Sanctions Process Against Amy Wax, Citing 'Increasing' Promotion of White Supremacy," *Daily Pennsylvanian*, January 18, 2022. © The Daily Pennsylvanian, Inc. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

Penn law students protest outside white nationalist's guest lecture at class taught by Amy Wax

By Lara Cota and Nicole Muravsky | 12/01/23 12:45am



Around 80 University of Pennsylvania Carey Law School students protested outside of Professor Amy Wax's classroom on Nov. 28, opposing her invitation of white nationalist Jared Taylor as a guest speaker.

The students engaged in a protest in the Penn Carey Law courtyard outside of the classroom hosting Taylor. The protest contained mostly law students unaffiliated with any specific affinity group, with some **Black Law Students Association** and **Penn Law National Lawyers Guild** members present. Taylor's appearance prompted a school-wide email from Dean and Bernard G. Segal Professor of Law of Penn Carey Law Sophia Lee on Nov. 21, in what appeared to be Lee's first public comments on Wax as dean.

Cota, Lara, and Nicole Muravsky. From "Penn Law Students Protest Outside White Nationalist's Guest Lecture at Class Taught by Amy Wax," *Daily Pennsylvanian*, December 1, 2023. © The Daily Pennsylvanian, Inc. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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Jack Baker and Michael McConnell (r), the first same-sex couple ever legally married in the United States (in 1971), at their Minneapolis home, 1970.



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The availability of legally recognized **same-sex marriage in the United States** expanded from one state ([Massachusetts](#)) in 2004 to all [fifty states](#) in 2015 through various court rulings, state legislation, and direct popular votes. States each have separate [marriage laws](#), which must adhere to rulings by the [Supreme Court of the United States](#) that recognize [marriage](#) as a [fundamental right](#) guaranteed by both the [Due Process Clause](#) and the [Equal Protection Clause](#) of the [Fourteenth Amendment to the United States Constitution](#), as first established in the 1967 [landmark civil rights case of *Loving v. Virginia*](#).

In June 2013, the [Supreme Court of the United States](#) struck down [DOMA](#) for violating the [Fifth Amendment to the United States Constitution](#) in the landmark civil rights case of [United States v. Windsor](#), leading to federal recognition of same-sex marriage, with federal benefits for married couples connected to either the state of residence or the state in which the marriage was solemnized. In June 2015, the Supreme Court ruled in the landmark civil rights case of [Obergefell v. Hodges](#) that the [fundamental right](#) of same-sex couples to marry on the same terms and conditions as opposite-sex couples, with all the accompanying rights and responsibilities, is guaranteed by both the [Due Process Clause](#) and the [Equal Protection Clause](#) of the [Fourteenth Amendment to the United States Constitution](#). On December 13, 2022, DOMA was repealed and replaced by the [Respect for Marriage Act](#), which recognizes and protects same-sex and interracial marriages under federal law and in interstate relations.

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By late 2014, same-sex marriage had become legal in states that contained more than 70% of the [United States](#) population. In some jurisdictions, legalization came through the action of state courts or the enactment of state legislation. More frequently, it came as the result of the decisions of federal courts. On November 6, 2012, [Maine](#), [Maryland](#), and [Washington](#) became the first states to legalize same-sex marriage through popular vote. Same-sex marriage had been legalized in the [District of Columbia](#) and 21 [Native American tribal nations](#) as well.

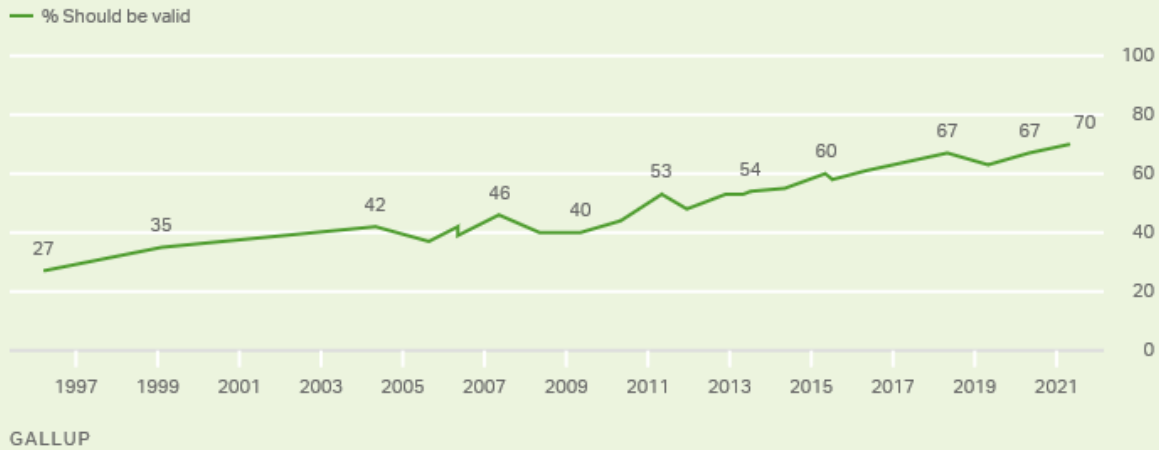
Gallup found that [nationwide public support for same-sex marriage](#) reached 50% in 2011,^[6] 60% in 2015,^[7] and 70% in 2021.^[8] In the [2020 United States census](#), same-sex married couples accounted for 0.5% of all U.S. households while unmarried same-sex couples accounted for 0.4% of all U.S. households.^[9]

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U.S. Support for Same-Sex Marriage, 1996-2021

Do you think marriages between same-sex couples should or should not be recognized by the law as valid, with the same rights as traditional marriages?

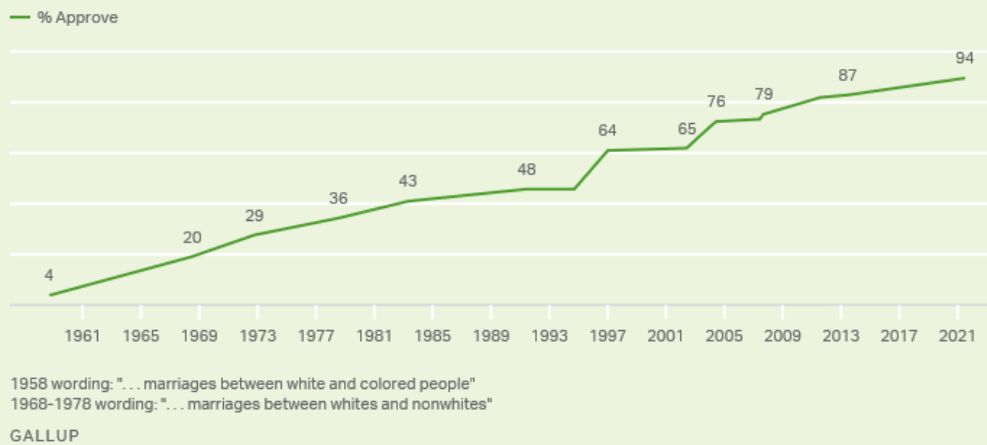


McCarthy, Justin. From "Record-High 70% in U.S. Support Same-Sex Marriage." Gallup. June 8, 2021. © Gallup, Inc. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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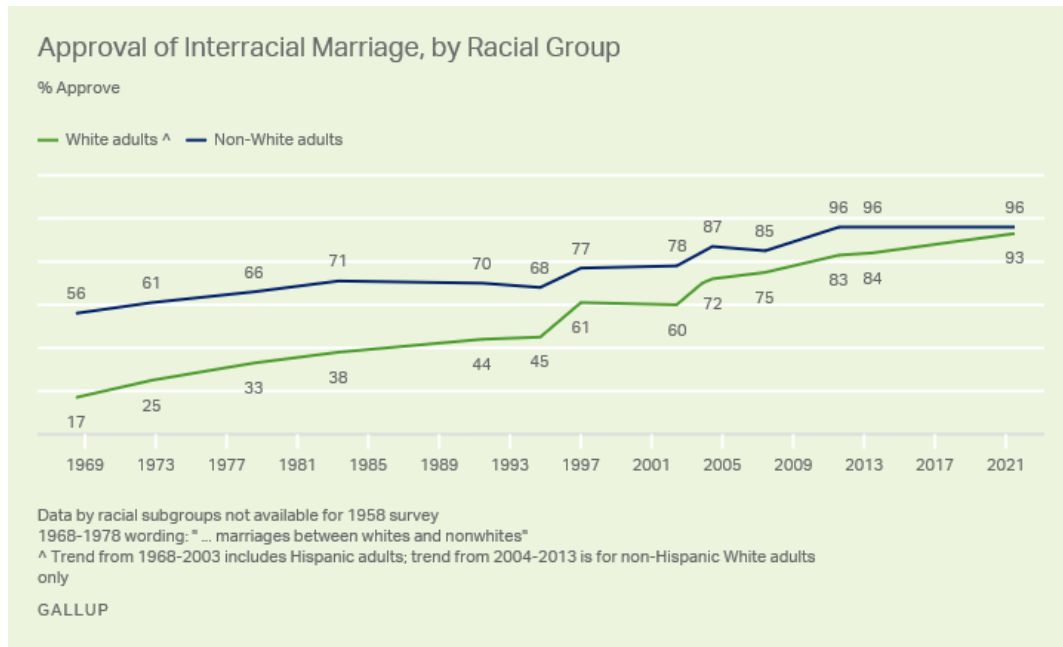
U.S. Approval of Marriage Between Black People and White People, 1958-2021

Do you approve or disapprove of marriage between Black people and White people?



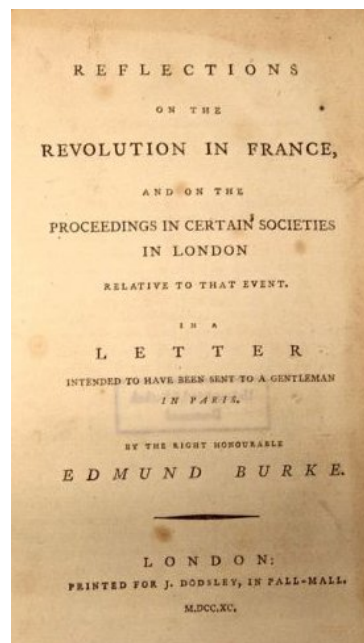
McCarthy, Justin. From "U.S. Approval of Interracial Marriage at New High of 94%." Gallup. September 10, 2021. © Gallup, Inc. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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Edmund Burke, 1729-1797

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In Burke's view, "[p]rovidence, acting through the medium of human trial and error, has developed every hoary habit for some important purpose." A corollary is that human reason and its creations are infirm and inadequate substitutes for the traditional forms that have evolved collectively over time. Burke insists that if we ignore tradition, or "tinker impudently with it ... man is left awfully afloat in a sea of emotions and ambitions, with only the scanty stock of formal learning and the puny resources of individual reason to sustain him."*

Kirk, Russell. From *The Conservative Mind: From Burke to Eliot*. Gateway Editions, 2001. © Russell Kirk. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

* <https://mostly.substack.com/p/conservatism-as-skeptical-solution>

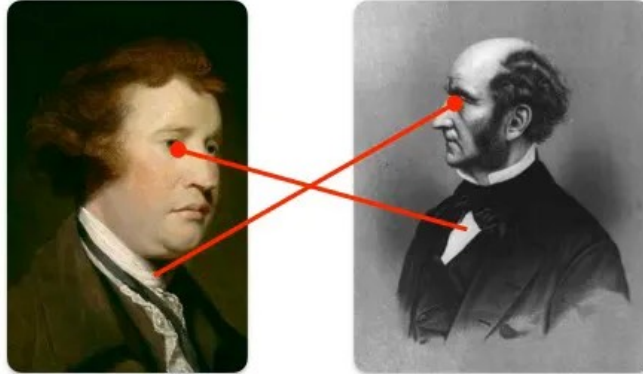
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We are afraid to put men to live and trade each on his own private stock of reason; because we suspect that the stock in each man is small, and that the individuals would do better to avail themselves of the general bank and capital of nations and of ages. Many of our men of speculation, instead of exploding general prejudices, employ their sagacity to discover the latent wisdom which prevails in them.*

*Burke, *Reflections on the Revolution in France*

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Burke vs Mill



Skow, Brad. From "Conservatism as Skeptical Solution to Life." Substack. December 1, 2023. © Bradford Skow. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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He who lets the world, or his own portion of it, choose his plan of life for him, has no need of any other faculty than the ape-like one of imitation. He who chooses his plan for himself, employs all his faculties. He must use observation to see, reasoning and judgment to foresee, activity to gather materials for decision, discrimination to decide, and when he has decided, firmness and self-control to hold to his deliberate decision. And these qualities he requires and exercises exactly in proportion as the part of his conduct which he determines according to his own judgment and feelings is a large one. It is possible that he might be guided in some good path, and kept out of harm's way, without any of these things. But what will be his comparative worth as a human being?*

*Mill, *On Liberty*

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Henrich, Joseph. *The Secret of Our Success: How Culture Is Driving Human Evolution, Domesticating Our Species, and Making Us Smarter*. Princeton University Press, 2015. © Princeton University Press. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.



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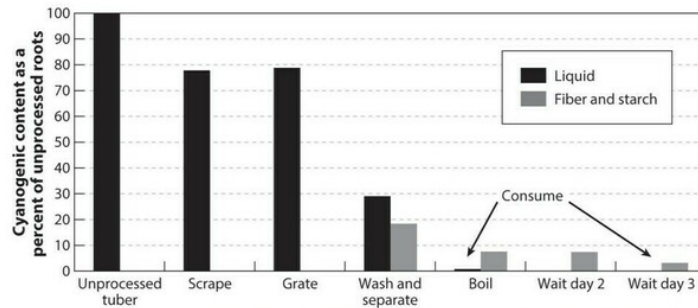


Figure 7.1. Effects of each major step in the Tukanoan manioc processing technique. Percentages are relative to the raw tuber.

Henrich, Joseph. Figure 7.1 from *The Secret of Our Success: How Culture Is Driving Human Evolution, Domesticating Our Species, and Making Us Smarter*. Princeton University Press, 2015. © Princeton University Press. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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despite [the process's] utility, one person would have a difficult time figuring out the detoxification technique. Consider the situation from the point of view of the children and adolescents who are learning the techniques. They would have rarely, if ever, seen anyone get cyanide poisoning, because the techniques work.... Most people would have eaten manioc for years with no apparent effects. Low cyanogenic varieties [of manioc] are typically boiled, but boiling alone is insufficient to prevent the chronic conditions for bitter varieties. Boiling does, however, remove or reduce the bitter taste and prevent the acute symptoms (e.g., diarrhea, stomach troubles, and vomiting). So, if one did the common-sense thing and just boiled the high-cyanogenic manioc, everything would seem fine. Since the multistep task of processing manioc is long, arduous, and boring, sticking with it is certainly nonintuitive. ...*

Henrich, Joseph. From "On the Origin of Faith," Chapter 7 in *The Secret of Our Success: How Culture Is Driving Human Evolution, Domesticating Our Species, and Making Us Smarter*. Princeton University Press, 2015. © Princeton University Press. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

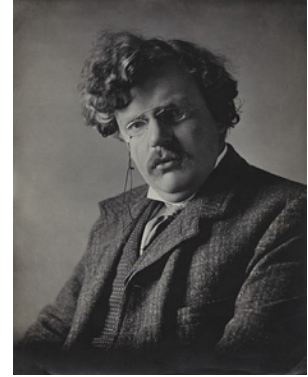
*Henrich, *The Secret of Our Success*

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Chesterton's fence

In the matter of reforming things, as distinct from deforming them, there is one plain and simple principle; a principle which will probably be called a paradox. There exists in such a case a certain institution or law; let us say, for the sake of simplicity, a fence or gate erected across a road. The more modern type of reformer goes gaily up to it and says, 'I don't see the use of this; let us clear it away.' To which the more intelligent type of reformer will do well to answer: 'If you don't see the use of it, I certainly won't let you clear it away. Go away and think. Then, when you can come back and tell me that you do see the use of it, I may allow you to destroy it.'

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G. K. Chesterton, 1874-1936

Chesterton, G.K. From *The Thing, Why I Am a Catholic*. Dodd, Mead & Company, 1930. © Dodd, Mead & Company. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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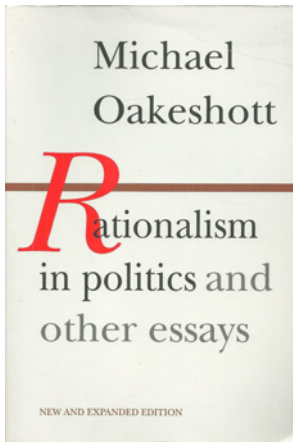
*Chesterton, *The Thing: Why I Am a Catholic*

Chesterton was a large man, standing 6 feet 4 inches (1.93 m) tall and weighing around 20 stone 6 pounds (130 kg; 286 lb). His girth gave rise to an anecdote during the First World War, when a lady in London asked why he was not "out at the [Front](#)"; he replied, "If you go round to the side, you will see that I am."^[25] On another occasion he remarked to his friend George Bernard Shaw, "To look at you, anyone would think a famine had struck England." Shaw retorted, "To look at you, anyone would think you had caused it."^[26] [P. G. Wodehouse](#) once described a very loud crash as "a sound like G. K. Chesterton falling onto a sheet of tin."^[27] Chesterton usually wore a cape and a crumpled hat, with a [swordstick](#) in hand, and a cigar hanging out of his mouth. He had a tendency to forget where he was supposed to be going and miss the train that was supposed to take him there. It is reported that on several occasions he sent a telegram to his wife Frances from an incorrect location, writing such things as "Am in [Market Harborough](#). Where ought I to be?" to which she would reply, "Home".^[28] Chesterton himself told this story, omitting, however, his wife's alleged reply, in his autobiography.^[29]

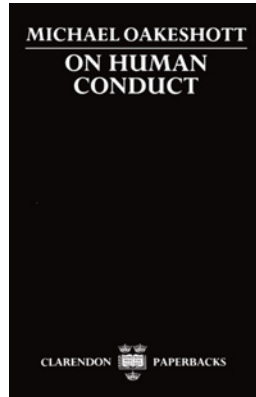
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This image is in the public domain. Source: [Wikimedia Commons](https://commons.wikimedia.org/wiki/File:Michael_Oakeshott.jpg).



Oakeshott, Michael. *Rationalism in Politics and Other Essays*. Liberty Fund, 1991. © Liberty Fund. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.



Oakeshott, Michael. *On Human Conduct*. Clarendon Press, 1991. © Clarendon Press. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.



Michael Oakeshott, 1901-1990

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[Oakeshott] criticizes the modern rationalist conviction that institutions are best designed from first principles. Rather, the rationalist project founders on the fundamentally fallacious assumption that "what is made is better than what merely grows". For Oakeshott, abstract principles cannot possibly substitute for the complexity, suppleness, and flexibility of traditions of behavior. For this reason, Oakeshott opposes the modernist tendency to bring "the political, legal, and institutional inheritance" before "the tribunal of intellect," and to make reason the ultimate arbiter of policy and practice.*

Wax, Amy L. From "The Conservative's Dilemma: Traditional Institutions, Social Change, and Same-Sex Marriage." *San Diego Law Review* 42 (2005): 1059-1104. © University of San Diego. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

For Burke and Oakeshott, conceptual relationships have little to do with how customs and traditions function in the real world. Because the powers of human reason are severely limited, all but the most intellectually gifted are incapable of engaging in sustained, rigorous analysis or of thinking through problems without falling into error. The dilemmas of human existence are particularly resistant to rational analysis because social practices and traditions are not derived from first principles, but evolve over time by trial and error. Human action in society and politics operates not primarily through reasoning, but through adherence to prescriptive roles, customs, and habits continuously adjusted to the messy demands of day-to-day living. The test of behavioral rules is thus whether they work well in the real world as guides for human interaction rather than whether they conform precisely to syllogistic demands.

Wax, Amy L. From "The Conservative's Dilemma: Traditional Institutions, Social Change, and Same-Sex Marriage." *San Diego Law Review* 42 (2005): 1059–1104. © University of San Diego. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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1.

P1. Same-sex marriage is a social arrangement forbidden by God.

P2. The state should not legalize social arrangements forbidden by God.

C. The state should not legalize same-sex marriage.

How would Burke or Oakeshott assess this argument?

Burke thought religion was vital to civil society; Oakeshott was some kind of Christian

Wax: 'Burke's and Oakeshott's traditionalism is primarily secular and does not depend directly on religious belief of any kind. But some portion of political opposition to same-sex marriage is motivated by religious conviction...'

Wax, Amy L. From "The Conservative's Dilemma: Traditional Institutions, Social Change, and Same-Sex Marriage." *San Diego Law Review* 42 (2005): 1059–1104. © University of San Diego. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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