

The New Speech Politics

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Abstract

In engaging the popularity of “free speech” as a conservative battle cry in recent years, this article poses two questions: What particular conception of that demand does the right defend, and how should the left respond? Finding that conservatives have moved from a “negative” to a “positive” understanding of this freedom selectively applied, this article presents the consistent application of that positive understanding of free speech as a challenge to concentrations of power that conspire to privilege some speech over others. Turning to recent attempts by graduate students on North American campuses to unionize, the article attempts to ground a reading of union rights as free speech rights. Free speech is presented as a useful frame through which to think about political struggles more generally, though the article cautions against treating free speech as an invariably desirable principle.

In London’s East End, a plaque and a large mural mark an occasion everyone celebrates: The “Battle of Cable Street” was a war fought on urban streets with barricades in 1936, three years before Hitler invaded Poland. The British Union of Fascists had called a march through an immigrant, largely Jewish, neighborhood and most of the fighting that day pitted residents against the police, who were eager to clear a path for Hitler’s admirers. The barricades won out and the fascists were turned back. The events on that day were the culmination of a strategy that first achieved national prominence two years earlier when communists violently disrupted a BUF mass meeting: If forcing fascists to brawl washed away their veneer of respectability, then expelling them from neighborhoods undercut their claims to strength and power. From Spain, British workers took the slogan *No Pasaran* and scrawled it across city walls. In London they won, and none of us regrets it.

But what of free speech? The liberal ideal purports to operate above the realm of political contestation, working not by taking sides but by championing the ability of all to state their case. That is not the usual idiom through which we think about fascism; there we imagine ourselves as militants, not disinterested spectators, where our assumed good is the defeat of a political project we oppose and not the free contest of all. The demand for universal free speech, in other words, imagines speech as *expression* alone and not also as a political *weapon*, and it incorporates an imagined subject-position for the person making the demand. That subject-position is not always the intuitive persona to adopt when thinking about politics. It is counter-intuitive in those cases where we are most confident that the effects of suppressing speech will be dramatically less injurious than the effects of permitting it; these are the cases where

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it seems most costly and so least sensible to set aside our values and enter the neutral terrain of free expression, where we forbid ourselves from choosing between rival political projects. Once we treat society as a construction whose bounds of acceptable discourse are routinely reshaped, the intuition that some speech is beyond the pale might be presented not as the arrival of repression in a previously free natural order but as a refusal to abdicate from this reshaping work that occurs all around us. Uninhibited “free speech” is chimerical. In their political participation and in their everyday lives, even free speech fundamentalists really possess a sense of what one ought to say – and avoid saying – in particular contexts. Speech politics is partly about interrogating assumptions in this area, recognizing that sometimes pointed activism is required to remold them.

Note that this is only to challenge the advocacy of free speech as a universal *principle*. It is not at all to prescribe particular cases where free speech should be superseded by other concerns, but rather to say that these questions of confidence and effects should be posed carefully in each case. Note also that this is not, as in one contemporary trend, to fold into subjectivism by making anyone’s sense of their “safety” an abiding norm. It is to proclaim an investment in particular struggles—investments potentially grounded in any number of commitments besides personal comfort—which are *on occasion* sufficiently confident and forceful to seek victory over an antagonist by means including blocking a march or disrupting a meeting. The same structure of argument is used to justify incarceration, where the slippery slope is more nightmarish than in this case (it can end in imprisoning the innocent) but the effects of never using the tool are also thought too grave to risk.¹

These issues now make headlines, and historians ought to think about why. As “free speech” is increasingly deployed by far-right speakers seeking audiences on college campuses, two conceptual shifts in the meaning of the phrase help in explaining the current popularity of the term on the right—which has not always championed the concept. First, “free speech” is now widely conflated with “a platform to speak.” Traditionally, the former was theorized as a citizen’s right to unimpeded expression and the latter was imagined as a privilege afforded to select speakers deemed worthy of elevated attention. That conflation might at first seem oddly timed. In an internet age where most views are instantly accessible, fears that denying platforms to speakers amounts, in practice, to a narrow elite cutting off access to controversial speech from would-be listeners are less well-grounded than ever before. Richard Spencer’s views are easily discovered online, so refusing to invite him to a lecture hall does not amount to hiding his existence from students. Why the insistence on access to platforms, then? In the second shift, “free speech” is increasingly taken to demand a kind of *balance*, such that Fox News correspondents bemoan purported left-wing dominance in universities *as a problem of free speech*. In both of these moves, the freedom to speak is treated *positively* rather than *negatively*: That is, it is transformed from a demand that state power should remove itself from the regulation of speech-acts into a demand for active political

intervention to ensure the adequate representation of different views. Historically this shift develops at the moment when the right fears it is losing control of a given space (now: campuses) and so the argument is applied selectively, not to maximize opportunities for debate but to rebalance those exceptional spaces where dissident views flourish. That is the paradox of the current, ultimately repressive and homogenizing conservative conception of free speech.

Nonetheless, there is a desperately important recognition here that free speech conceived negatively is obfuscating, illusory. The negative conception takes speech to be free only when no effort is made to alter existing balances of power that largely shut the left out of Fox News and CNN. If freedom is (to borrow G. A. Cohen's terms) to be *effective* and not merely *formal*, if the freedom to speak is to translate into the ability to be heard in the debates one wishes to engage, conservatives now recognize that the achievement of free speech must incorporate an assault on existing fortresses of speech control. They extend that recognition only when they find it convenient, of course, but their doing so discloses the very range of possibilities they seek to avoid. At work, at home, in school, watching TV, and reading newspapers, most of our lives are lived in various nominally private spheres, where owners and bosses can police speech and where the standards of robust dialogue that mark the ideal public sphere are all too absent. Class power is inimical to free speech. With the aforementioned caveats about confidence and effects keeping us from free speech fundamentalism, the demand for effective freedom, attained in part by extending liberal norms for the public sphere into nominally private spheres, might now provide an excellent prospectus for talking about free speech on the left.

Consider another campus fight. At Columbia University President Lee Bollinger is a First Amendment scholar who ordinarily suspends his insistence that the university is a business when treating cases of controversial speech. He insists that bigots must be permitted onto campus and talks easily of their free speech rights, apparently acknowledging that the university is really an integral part of the *public* sphere. Like other Ivy League institutions, though, Columbia is a private business when its workers seek a union. Its graduate and undergraduate workers are paid salaries for work as teaching and research assistants, but when they voted to join a union and elected a bargaining committee to negotiate on their behalf, Bollinger's university refused point blank to come to the negotiating table. For a year now he has ignored the vote to unionize, and of course his ignoring it makes the decision redundant; when management turns its back, unions cannot do their jobs, as employers have long known.

We might productively discuss this case and others like it as *free speech issues*. That possibility is occluded so long as the freedom to speak is conceived negatively and formally, rather than positively and effectively. Bollinger has not muzzled any students—all of whom were free to vote for a union, are free now to attend weekly union meetings on campus, and so on—but he has covered his ears when they attempt to address him. It is as if the Spanish state had not

confiscated ballot boxes and beaten back Catalans attempting to vote, but had instead permitted an independence referendum to take place in Catalonia only to refuse to withdraw Spanish sovereignty after seventy-two percent of voters opted for independence. That was the proportion who demanded a union at Columbia. My contention is that the two cases, one of which looks like an active suppression and the other like a passive route to the same end, are not substantively different here.

In most cases, it might seem that the call for free speech is not the same as the right to compel listeners' attention. The distinct feature of this case is that the attempt at collective speech involved in unionization is directed at one person or institution alone. Columbia ignoring the vote to unionize is not equivalent to my walking past a street preacher without paying him any attention, which would not be a violation of his free speech. It is more closely equivalent to my moving that preacher to a soundproof basement and then telling him he has the freedom to shout as often and as loudly as he likes, though nobody will hear him. He thus retains the formal freedom to express himself, and the emptiness of a merely formal conception of free speech is confirmed. His demand to speak is implicitly always a demand to be permitted the opportunity to engage with a world full of listeners.

Where speech is aimed at a single listener, that person or institution can choose to turn away from the speaker but they cannot in doing so legitimately claim that they respect the speaker's free speech, that their turning away does not have an effect akin to silencing that speech. An employer's refusal to sit across a table and hear the complaints of his workers amounts to the further marginalizing of speech already disempowered by the capital-labor relation. It functions to muzzle that speech, even if no clubs or bats are anywhere in sight. It is not a surprising course of action for capitalists to take if left to their own devices, but it jars with any noble claims they issue to champion free speech. For conservatives and liberals alike, this hypocrisy is imperceptible. Our challenge is to show how mystifying, how impossibly naïve and worse are those who plead for speech but will not talk of power.

NOTE

1. This is not, of course, to imply that opponents of free speech fundamentalism must support the prisons system, or vice versa; the structure of argument is the same in each of these cases, but that does not confirm that the argument is *true* in both cases, that the harms done by prison abolition really would outweigh the harms done by prisons in the contemporary United States. The questions that matter are *empirical*, then, once we have agreed about the theoretical point that ends can sometimes justify means—or else noble means end up justifying dreadful ends.