

Democracy in the Ivory Tower:
Notes on Speech from a College Campus

*There is no such thing as the State
And no one exists alone;
Hunger allows no choice
To the citizen or the police;
We must love one another or die.*

—W.H. Auden, “September 1, 1939”

I am enchanted by the many fathoms of the word “silence.” Never more so than when wielded as a verb: “to silence,” that is, to make silent. A person is, of course, “silenced” when she cannot speak, as when gagged; but also “silenced” when she is spoken over, “silenced” when she is shouted down; “silenced” when she is criticized; “silenced” when she is excluded; “silenced” when the conversation is happening in another room. Two syllables give you a protagonist, an antagonist, and a conflict. The verb “silence” tells a story with two sides.

In February 2022, the Stanford College Republicans (SCR) invited former Vice President Michael Pence to speak at Stanford. To host the event, they applied for funding from the Undergraduate Senate, which denied their request. SCR appealed the verdict to the Constitutional Council of the ASSU — the judicial body of student government — which struck down the Senate’s decision¹ and effectively restored funding. Objections abounded. When the event came around, large crowds of protestors mobilized outside the venue, chanting “Shame on you!” and “Black Lives Matter.” The protests were peaceful but spirited. Students queuing for entry to the auditorium were occasionally greeted with heckling. One protestor with a microphone called out the identity and dorm of an RA they recognized entering the building; later, when they returned to their room, the same RA found a protest sign propped against their door.

Inside, Sarah Olmstead, co-President of SCR, introduced the former Vice President. In her introduction, she denounced the protestors for suggesting that “conservatives shouldn’t be free to have a voice here” and argued that such rhetoric was “why this exact event needs to happen.”² Pence echoed her sentiment. He told the audience that “the stand you took for freedom of speech on the campus of Stanford inspired people around the country.” He continued, “I hardly have to tell conservatives, or Stanford College Republicans, or any conservatives on campuses in America [sic] about the assault on free speech... Patriotic

education has been replaced with political indoctrination.” By that point in the evening, most of the hecklers who made it indoors (there were a few) had departed. The remaining audience was a mixture of disaffected but curious liberals, disaffected but curious conservatives, and of course, the bastions of free speech themselves, the Stanford College Republicans.

In 1964, over one thousand students at UC Berkeley conducted a full-scale occupation of a lecture hall in defense of the self-titled Free Speech Movement. The Movement had organized several demonstrations in response to, among several other grievances, a total ban on student political activity. Police arrested several demonstrators and the school expelled one of the leaders, a graduate student named Jack Weinberg, whose fate catalyzed the occupation of Sproul Hall. Photographs of this demonstration exist, and they are moving. In one shot, the crowd has surrounded and piled atop the police car holding Weinberg. A sea — there is no other word — of bodies encloses the vehicle on all sides. Two officers lean against the hood and squint in bleak frustration at the horde ensconcing them. A trio of students are perched atop the car’s roof, planting their flagpole on its back like triumphant astronauts. Fifty-eight years later, across the Bay, the former Vice President would take up the mantle of free speech from behind a police perimeter.

Conservatives on college campuses claim they are being silenced. The left-leaning atmosphere of most campuses (the argument follows) predisposes students and administrators alike to ignore conservative ideas and flee conservative spheres of influence. Republican campus activism receives voluminous and hostile critique. Republicanism itself is treated as coincident with bigotry. These claims are not fatuous. One imagines it terribly frustrating, to say nothing of isolating, to be part of Republican communities under such circumstances. To whom does one talk? How does one connect with her peers when the price of honesty may be a flurry of bad-faith critique, or, worse, public shunning? She is one of a dwindling number — a constituency

whom, it has become increasingly clear, cannot entirely feel at home in campus spaces. Fidelity to her ideology comes at a cost. One does not have to find speech valuable to empathize with the speaker.

But what kind of “silencing” is this? When the Vice President complained of free speech being assaulted, he did so from the podium of one of Stanford’s largest auditoriums. Jack Weinberg did it standing on a cop car under threat of detainment. One of these men spoke at the invitation of an energetic and active campus political organization funded by the Undergraduate Senate; the other did so to a mass of hundreds who, at any moment, might be expelled or put under arrest. Both felt silenced. Both observed the levers of power turning against them and their cause, and denounced it as injustice. Both invoked the shield of “free speech” as defense against this slippage of power. But it was not the same power in both cases. Stanford University did not block the Vice President from speaking, nor did it call the police to remove him (or SCR) from campus. The crowds amassed outside the event were students, not officers of the law. Nobody except the students attempted to prevent the Vice President from speaking, though they certainly did not welcome him. Meanwhile, Jack Weinberg spoke with the full weight of the Berkeley undergraduate corpus at his back. The two speakers had very different things to fear.

Popular ideas do not require the First Amendment for protection. The preference of the (lower-D) democratic majority insulates them from institutional opposition. When the Framers of the Constitution wrote the First Amendment, they fretted that the government would use its power to punish criticism of the state. They designed it to safeguard the levers of democracy against such an attempt.³ Accordingly, the right to speak is not the right to a warm reception. When the Vice President identified an “assault” on free speech, he did not mean the state had infringed on his First Amendment right to political expression; he referred to an increasing hostility on college campuses, set upon the expression of his party’s ideas. He referred to the fear that conservatives

have of free discourse at universities converging into a liberal monolith. He worried, in other words, that people were being silenced.

The university has long been a locus of First Amendment concerns. For one thing, institutions of higher education exist in part or in full through funding from state legislatures and federal grants, which confers certain obligations. In 1943, Justice Robert Jackson wrote “If there is any fixed star in our Constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”⁴ With respect to schools, he wrote that overzealous restrictions on speech in the classroom would “strangle the free mind at its source.” The special attention given to the university, taken alongside the nature of the campus space — being, after all, a community oriented around the pursuit of truth — gives weight to the idea that speech *here* matters more than it does in other places. It very well may. Nevertheless, neither its nature as a discursive institution nor its close relationship to the state oblige the university to intervene to guard unpopular views against popular criticism.

And yet if not the university, then who? What do we owe the Stanford College Republicans, if anything? The answer cannot be “nothing.” De Tocqueville told us that “If ever the free institutions of America are destroyed, that event may be attributed to the unlimited authority of the majority, which may at some future time urge the minorities to desperation.”⁵ Each to each, across the country, conservatives speak with desperation in their voices. The antagonist in De Tocqueville was not the government; it was the majority. He prophesied the fall of American democracy would take place not as a consequence of state tyranny, but in the failure of the empowered and vocal to take seriously their obligations to the underrepresented. He told us that to abdicate the sphere of civil discourse is to abandon our most powerful tool for quelling unrest. A group which feels it cannot be heard will not bother to speak. It will try to take what it wants.

Here is my thesis, belated though it is: The First Amendment is not a panacea for the creation of free and fair discourse. The Framers of the Constitution understood, as we must come to understand, that the health of a liberal democracy requires more than is provided for in the text of the Constitution. It requires quantities of civility, reason, and mutual toleration which the government cannot lawfully demand from its citizens.

The engine of democracy rests outside the state. It runs on the nation's natural desires, interests, passions, ideas, and the indelible will of its members. We refer to this sphere of competing interests when we speak of the will of "the People." It is not a unitary form of intention, but instead what Rousseau called the "general will,"⁶ a long process through which every idea slouches towards Washington to be born. Free speech is not a feature of democracy. It is not a boon the government grants. It is not a laurel rested on the heads of the deserving. It is the flesh and bone of deliberative power. True democracy is the highest kind of free speech.

Problematically, this high-minded conception of public deliberation requires more than a modicum of goodwill for one's ideological opponents. Today, that goodwill is in short supply. In 2020, a study by Finkel et al. found that citizens' antipathy for their political opponents actually exceeded their warm feelings for copartisans.⁷ "Out-party hate," they write, "has emerged as a stronger force than in-party love." The data indicate this marks the endpoint of a remarkable decline in bipartisan relations since the 1970s. Blaming this shift on "political sectarianism," which the authors define as "the tendency to adopt a moralized identification with one political group and against another," they connect this decline of out-party civility with the polarization of American politics. Our inability to work together is a consequence of our inability to talk to one another. In this way, the college campus has become a kind of synecdoche for America.

But what if they are wrong? This is the boilerplate answer to many conservatives' free-speech complaints, and it has a certain allure. *What if what they say is wrong? Or hateful? What if it is*

intolerant, or exclusionary? What if they are trying to silence someone else? Philosopher Karl Popper tells us “in order to maintain a tolerant society, the society must be intolerant of intolerance.”⁸ John Rawls comes to a similar conclusion in *A Theory of Justice*, where he finds that a liberal society’s right to self-preservation may take priority over values of tolerance; that is, intolerance of intolerance *itself*, insofar as it guards the freedoms and welfare of others, may be permissible.⁹ Liberals like this line because it provides a kind of hall pass for censorship. “The conservative camp is intolerant,” one might say, “because it disrespects important voices that we seek to include. Therefore, we should not tolerate their arguments in our discursive spaces.”

I see two problems with this idea as applied to the campus free-speech debate. First, describing most conservatives as “intolerant” in the way that Popper and Rawls meant would be a category error. “Intolerance,” in their view, described a violent and anarchic opposition to the norms of social discourse which make liberal democracy possible. They were afraid of fascists. True, there are members of the conservative movement who do espouse fascism, ethno-nationalism, or other explicitly violent ideologies.¹⁰ I also do not suggest that the conservative movement has always been a proponent of free speech and civil discourse in all realms.¹¹ However, it would be a mistake to imagine the violent intolerance of conservative fascists as endemic to conservatism itself. The mistake lies not only in associating two movements with different convictions, constituencies, and political goals. The mistake in treating the two synonymously comes from depriving tolerant conservatives of access to the spheres of politics which might allow them to help oppose the intolerant members of their own party. We must ask ourselves who we really want to fight.

Second, and at the risk of flippancy: so what if they are wrong? So what? College students have been known before to err in their command of the finer points of statecraft. So have presidents. I

cannot, without hypocrisy, hold any student on my campus to a higher standard than I hold myself, and I certainly did not spring like Athena from my father's head, fully-formed and politically sapient. I have been wrong, often, and stubbornly so. All I know, I have learned through the grace of my peers and the forgiveness of my betters. If citizenship means anything, it means a responsibility to offer both in return. I cannot imagine a democracy where we do not forgive each other for being wrong.

It is often the case that those who speak loudest forget to listen. The history of free speech in America has seen power shift across the political axis, from the hands of one group to another, but the quintessential fights over exclusion and silencing — over who, in short, gets to speak — persist. In the midst of these fights, it is difficult to imagine a world where these problems do not follow us. That utopianism, when it does emerge, is often criticized for turning a blind eye to the political problems of the status quo. But democracy needs idealists. It needs people who can conceive of something better than winning. It is those people upon whom the future of the republic rests, and without whom we lie at the mercy of our own intransigence. *Sic transit gloria Americana.*

¹ A case decided, it should be noted, not on the merits of the Republicans' free speech claims but on a technical argument about the definition of quorum and whether abstentions count as votes in the negative. Since they (the Council has informed us) do not, the funding resolution technically passed on a vote of 1-0. *Lex rex*.

² Ehsan, 2022.

³ *Bridges v. California*, 314 U.S. 252 (1941).

⁴ *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

⁵ De Tocqueville, 1838.

⁶ Rousseau & Frankel, 1947.

⁷ Finkel et al. 2020

⁸ Popper, 1945.

⁹ Rawls, 2005.

¹⁰ Daniels, 2018.

¹¹ The Berkeley administrators that expelled Jack Weinberg, for example.

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