

Noah Sveiven | nsveiven@avc.edu

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No One May Censor Anyone: The Absolute Freedom of Expression

The freedoms of speech and of assembly, which constitute the freedom of expression, are under siege whenever their nonviolent use is retorted with any kind of force—whether that force is made manifest in the black lines of censorship or the termination of a microphone’s broadcast.

The freedom of speech is the right of every person, regardless of their perspective, to speak for the sake of persuasion, to speak in the hopes of convincing others that one’s view is better than the alternatives. According to the First Amendment, this right may not be infringed by any act of Congress or the officers of the national government, and through the doctrine of incorporation found in the Fourteenth Amendment, no state may abridge this inviolable right either. The freedom of assembly is the right of persons to gather without fear and collectively advocate for whatever belief they wish to advance so long as no person is quantitatively¹ harmed. These rights are fundamental, because they are the foundation of other rights, such as suffrage, religious independence, and property ownership, for the freedoms of speech and of assembly enable the full and uninhibited exercise of all constitutional entitlements.

This piece observes two major phenomena: the false cry of the abuse of these inalienable rights and their actual violation. False examples of free speech violations include any disinvitation of a previously invited speaker whose presence was peacefully protested or any denial of a

¹ If the penal system, which enforces the freedom of expression, is to be objective then it must only concern itself with measurable damages such as loss of life, limb, property, or time. Once subjective harms are considered (e.g. emotional distress and personal offence), avoidable bias enters the realm of law, and offenders are convicted of unprovable wrongs. Thus, the justice system, and therefore the entire legal apparatus, must only deal with provable wrongs, for these are objective—which is to say that the wrongs are impersonally true.

platform that might have been offered to someone. Legitimate examples of free speech violations include any scenario in which the physical wellbeing of a speaker was threatened or harmed or any occasion in which potential violence caused officials to cancel an upcoming event. This distinction is vital and must be made if truth is one's objective.

According to current constitutional scholarship and judicial precedent, every person is entitled to say and write whatever they please, provided the reasonable exceptions of libel, consequential incitements of imminent lawless action, and similarly unprotected forms of speech. Furthermore, publishers have the right to publish or to not publish anyone, and venues have the right to invite or disinvite whatever speakers they wish to offer a podium or deny a platform. Someone's freedom of speech is not violated when they are disinvited from a college campus or rejected by a publishing house. However, the opportunity cost is this: you or I could very well not hear a new and unfamiliar idea that, if we heard, we might understand, appreciate, and even adopt as our own.

Consider the recent events which have unfolded in Cambridge, Massachusetts. Harvard University's Kennedy School of Government named Chelsea Manning a Visiting Fellow of the Institute of Politics, which meant that she would have "lead a not-for-credit study group, [participated] in Institute activities, and [engaged] in informal interchange with students and faculty" during the 2017-2018 academic year (Harvard). The statement that announced her fellowship focused on her expertise in "the social, technological and economic ramifications of Artificial Intelligence" and on "queer and transgender rights" in the U.S. military, along with her status as a "whistleblower" who served "seven years in prison" for "releasing confidential military and State Department documents." Upon widespread negative feedback from leaders in the intelligence community, including the resignation of a former deputy director of the C.I.A. from

his position at Harvard and the decision of the current director not to speak at an event at which he had been scheduled to speak, Manning's fellowship was rescinded, and that decision was clearly within the authority of Harvard University's Kennedy School. However, criticism can and has been made regarding the motives of this decision. Harvard had decided to honor her with a fellowship, but once political pressure increased from outside forces, the administrators adjusted their calculus and decided to revoke the formerly promised fellowship. Indeed, distinguished officials have called her a "traitor," but others have called her a "hero" also. Regardless of what any reader or the author of this piece believes, the opportunity cost is clear: the lost exposure to a marginalized voice. That opportunity cost will be incurred by the students of an institution which aims to foster conversations among variant perspectives despite thorough disagreements. Still, the freedoms of speech are not under siege in this case, but people may very well be failing to fulfill the responsibility of intellectual engagement and sustained listening—or not.

The freedom of speech does not require that citizens listen to people with whom they disagree; the freedom of assembly does not require that people observe the peaceful protests of persons whose perspectives they reject. But the precious fabric that constitutes democratic republicanism implores everyone to engage with others, to listen to voices that offer anti-establishment possibilities, and to undergo the time-intensive activity of removing dogma from and adding nuance to one's own personal political philosophy.

The Constitution requires that the rights of speech and of assembly are not inhibited by censorship, but it does not require that these rights are exercised. Their exercise is up to us—the persons who make up America, a nation that owes every one of its many improvements to dissent and the dissidents who exercised their freedom of expression.

The freedom of expression is absolute. Whenever someone seeks to impose silence on the grounds of an imagined right not to be offended, the freedoms of speech and of assembly are threatened, and when the voices of censorship successfully impose silence on voices with whom they disagree, the freedoms of speech and of assembly are violated. Thus, when a faculty member of an educational institution is dismissed for a published perspective that is unpopular or when a passionate libertarian college student is told that he will be dismissed from his university if he continues to petition against the National Security Agency, the rights of uninhibited expression are clearly and inexcusably under siege. But when a speaker is disinvited because of the protests of students against their presence, such as when Milo Yiannopoulos was told that he may not speak at a venue previously offered to him, the freedoms of speech and of assembly are not violated, because just as the students who wish to hear him may invite him, so too may the students who do not wish for his presence seek his event's cancellation. As Professor Launay of Northwestern University wrote in *The New York Times* about Ann Coulter's cancellation of a speech at U.C. Berkeley, "Free speech is meant to prevent censorship, to allow people to express any ideas in public, however unpopular or unsettling. It does not imply that these ideas must be expressed anywhere, anytime, under any conditions ... It would be perverse to portray [Coulter] as a victim of censorship simply because she cannot express her ideas on the Berkeley campus" (Launay).

However, when speakers are interpreted with violence, when punches are thrown and property is damaged, the constitutional rights of those who raise their voice and those who wish to hear them are being defied, and the Constitution weeps.

Speech may only be retorted with more speech—never force. Violent attacks against the freedom of expression have happened in our past and continue to occur in our present, and each

time they occur it is the responsibility of law enforcement to press charges and the responsibility of the victims to seek punishment proportional to the committed wrongs.

The absolute nature of the freedoms of speech and of assembly cannot be overstated. In a speech delivered at the University of Toronto, the late Christopher Hitchens asked the audience: “To whom do you award the right to decide which speech is harmful or who is the harmful speaker? Or determine in advance what are the harmful consequences going to be? ... To whom would you give this job? To whom are you going to award the job of being the censor?” (Hitchens). He believed that nobody has the intellectual capacity, the foresight, or the impartiality to act as a censor of thought. As an illustration of this point, consider one of the most popular quotes outlining circumstances in which speech may be limited, a sentence written by Justice Oliver Wendell Holmes: “The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic” (*Schenck v. United States*). Rather than being a beautiful and constitutionally upright sentence that correctly answered the question of free speech before the Supreme Court, this sentence was spuriously promulgated in a judgement that affirmed the legal conviction of Mr. Charles T. Schenck, who was the General Secretary of the Executive Committee of the Socialist Party in Philadelphia at the time. He had overseen the publication of several thousand pamphlets that argued conscription violated the Thirteenth Amendment—which bans “involuntary servitude, except as punishment for a crime”—and urged the recipients of the pamphlets to *peacefully* object to conscription. However, Mr. Schenck had been charged under the Espionage Act of 1917 “for causing and attempting to cause insubordination in the military and naval forces of the United States, and to obstruct the recruiting and enlistment service of the United States” (*Schenck v. United States*). The Court had affirmed *a clear and present danger*, and a man was imprisoned by the United States government for his unpopular dissent.

Holmes' analogy of the reckless knave who might yell "fire" in a crowded theatre has been cited as the basis for limitations on free speech; Holmes' sentence has become an important and popular component of free speech scholarship around the nation. Yet the application of that metaphor in the very case for which it was written meant that the conviction of a man for the crime of peaceful protest—which is allegedly constitutionally protected speech—was upheld. If the honorable and esteemed Justice Holmes was unable to act as a fair censor, there is not a single college administrator, government official, member of the electorate, or any person whatsoever who can legitimately censor any person's right to speak or write or read or listen within the arena of constitutionally protected speech. To further evidence this point, Holmes' opinion was unanimously supported by the other justices and not narrowed in its scope until the Warren Court limited the ruling in the case of *Brandenburg v. Ohio* in 1969—fifty years after *Schenck*.

The freedoms of speech and of assembly are absolute constitutional entitlements that may not be curtailed, except in extraordinary cases of objective libel and genuine national security threats, for these freedoms are the foundation of this union of the people, by the people, and for the people. Since the only genuine liberty is indiscriminate, everyone is the possessor of the right to express themselves without censorship. Therefore, no person subject to the jurisdiction of the United States can deny another person's right to raise their own uninhibited voice in the acoustic cathedral of freedom.

Works Cited

- Harvard. "Fellows of the Institute of Politics." Fellows, The Kennedy School of Government at Harvard University, www.iop.harvard.edu/fellows. 17 Sept. 2017. Web.
- Hitchens, Christopher. "Transcript of Christopher Hitchens Speech at the University of Toronto." The Skeptical Libertarian, The Skeptical Libertarian, 30 Sept. 2014. Web.
- Launay, Robert. "Ann Coulter's 'Free Speech.'" The New York Times, The New York Times, 27 Apr. 2017, www.nytimes.com/2017/04/27/opinion/ann-coulter-free-speech.html. Web.
- Schenck v. United States*, 249 U.S. 47, 39. Supreme Court of the United States. 247, 63 L. Ed. 470 (1919). Web.