

THE NEW SCHOOL

VERA LIST CENTER FOR ART AND POLITICS

Freedom of Speech: A Curriculum for Studies into Darkness

Seminar 1: Mapping the Territory

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INTRODUCTION

The subject of free speech today is suffering from blinding overexposure. The territories are staked, the camps are formed, positions are confirmed and reinforced. To make any progress, we need to look at the concept of free speech afresh and thus perhaps obliquely, to create a new imaginative mapping of this complex territory while taking into account its history and entanglements with our political present.

My organization, the National Coalition Against Censorship, was founded in 1974. Many of its initial supporters were activists from the civil rights years. The still living – and relatively fresh – memory of the McCarthy era and the civil rights movement created an atmosphere where free speech was seen, on the liberal side, as a deeply cherished progressive value. I joined in 2000, at the tail end of the “culture war” over public funding for the arts, which had energized the art world to march together under the banner of artistic freedom. The new visibility of previously suppressed dissidents from the recently collapsed Soviet Bloc reinforced the sense that free speech was on the side of social progress.

Progressives who supported free speech were, of course, not blind to the lop-sided distribution of free speech rights in a society where social and economic power determines the ability to have one’s voice amplified and heard, where large classes of people do not have equal access to news sources or to publishers and cultural institutions in general. They saw the problem, however, not as a problem of free speech (to be resolved by limiting speech) but as a problem of unequal access (to be resolved by demanding better access for marginalized groups and by countering dominant economic disparities).

In the mid 2010s something changed: economic and political polarization reached levels unprecedented in a liberal democracy, the utopian promise of the internet to give everyone access to a platform crashed and morphed into a dystopian nightmare, and a new generation came of age with a laudable commitment to social justice but no personal memory of major government efforts to suppress speech. Support for free speech among liberals and progressives began to plummet. It was seen increasingly as a banner under which the far right could spew its messages of hate.

A friend recently said to me, “I admire your continued persistent defense of free speech,” in somewhat of a pitying manner, as if addressing someone who is well meaning but deluded, someone stubbornly defending a sinking ship.

And here I am, still believing that ship should be kept afloat. And that, for it to be kept afloat, we should defend the principle of free speech for all, not just “free speech for me but not for thee”.

This is what I want to propose as my contribution to the map of the territory:

Free speech is not an abstract category but a relationship between people. There is no such thing as literally “free” speech. There are always constraints on our speech: constraints of language, social codes, protocols of engagement, and so many others. Totally unconstrained speech may be something like a primal scream, perhaps, but is that even speech? When we talk about “free speech” as a liberal principle we are talking about something very specific: about a relationship between people within a particular structure of governance. Free speech in that sense is explicitly related to power and authority: free speech is a limitation on power rather than the positive fulfillment of some undefined freedom.

The First Amendment encodes this limitation by stating “Congress shall make no law ... abridging the freedom of speech”. It doesn’t say everyone should or could speak free of any constraint, ethical, personal, linguistic. The First Amendment is a *limit* set on government power.

The interpretation of this terse amendment and what exactly it protects has taken thousands of pages of legal opinion. It is a principle at the base of living and developing law. Thus calls to ban new categories of speech could well be successful. But do we want them to be?

As it is, First Amendment protections of speech are of limited value when power over information is de facto held by ever fewer and more consolidated private companies. The government may be barred from censoring speech based on its viewpoint, but private companies are not: and this includes print media, Internet platforms, publishers, film studios, private museums and universities. These are the institutions forming our increasingly privatized public sphere. There is no law that prevents these institutions from discriminating against whatever viewpoints they wish suppressed.

The goal of my advocacy work has been to have these institutions allow for more speech, for art, performance and literature expressing different perspectives, whether these are about sex, religion or politics.

When efforts to suppress work come from the religious right I find plenty of support and admiration among my friends. When, in 2010, the Smithsonian “de-platformed” David Wojnarowicz’ *Fire in my Belly*, the flashback to Giuliani’s efforts to “de-platform” Chris Ofili from the Brooklyn Museum mobilized the art world to rise up and protest. Recent demands to de-platform and blacklist art and artists at institutions such as the Whitney, the Walker Art Center, or New York’s Guggenheim, have, however, split traditional allies.

Those who advocate for the suppression of “bad” speech – speech that we “all” agree is noxious - should always be clear as to who shares the implied consensus of “we”, as well as who has the actual power to suppress and to define vague categories such as (for instance) hate speech. Do

we trust the country's leadership right now, in this society, to define hate speech and have the power to suppress that speech? Last week Paypal decided to deny services to both Neo Nazi organizations and Antifa as "extremist organizations". We have no way to control the decisions of PayPal as it is private company. But should we give government that power? Indeed, governments in less liberal regimes have used accusations of extremism to silence the opposition. On home territory, in the U.S., Catholic groups have called the use of religious imagery hate speech and police advocacy organizations have raised the same charge against Black Lives Matter...

Surely, speech can have effects and do things: it can hurt feelings, inspire hatred or revolutionary fervor, subvert support for law enforcement, remind of past traumas, question the status quo. If it didn't, it would not need protection. The fact that it is protected allows us to read books criticizing religious dogma, advocating armed revolution, or challenging property rights.

Over half a century ago, the US Supreme Court changed the test determining whether speech needs to be suppressed. In the early 20th century courts had to decide whether speech had the "bad tendency" to promote illegal activity. This test led to many successful prosecutions of war protestors and other critics of the political order. In the 1960s the criterion for suppressing speech became much more stringent: now courts have to ask whether speech presents incitement to "imminent lawless action." The concern that speech *can* affect people in "bad" ways is no longer a reason to suppress it.

Opposing the principle of free speech, which is a limitation on power, necessarily constitutes a demand for more authority, more control. But do we really want to give more control to those in power – be they the government, social media giants or even cultural institutions?

Pressure on cultural institutions to exclude certain voices often works today. But who profits from a polarized atmosphere where political disagreement is met with moral opprobrium and treated as a contaminant to be put under quarantine? Locking ourselves in echo chambers of consensus and outrage and denying there is anything to learn about the political other may be comforting but is it a strategy that could change the country as a whole for the better? Or is it a dangerous risk given that a common tool used to manipulate the population into accepting fascism is that of dividing society into ideologically polarized tribes?

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