

good things in the world besides productivity, that we must not, by over-emphasizing productivity, endanger those other good things, especially freedom, and that, when and if it comes to choosing between more productivity and less freedom, and less productivity and more freedom, the Conservative can give only one answer: let productivity suffer, and let freedom ring!

Freedom of Speech in Our Time



Let me begin by saying what I understand my role in this *disputatio* to be—lest you expect some things of me that I am unable, or unwilling, to attempt to do for you, or for my distinguished fellow-disputants (whose task, I take it, could be made easier, or more difficult, according as I do this or that). If, for example, my “billing” in your minds is that of—if I may put it so—a horrible example of someone who is just plain “against” freedom of speech, I can only disappoint you: temperamentally, I happen to be a man who in any given situation would always favor letting everybody have his “say”—temperamentally, I repeat, which is to say, not on principle but out of an essentially selfish wish to satisfy my curiosity about what there is *to* say on whatever question happens to be up, and also out of some terrible anarchic thing ’way down inside me that always puts me on the side of the pillow-throwers and against the umpire, on the side of the freedom-riders (even though I disagree with them) against the Mississippi sheriff, on the side of George Washington against George III—and so: on the side of the let-’em-speak contingent against the censors and silencers.

Secondly, I am not a very good horrible example for you where what is in question is freedom of speech in a certain kind of community, where people have in some sense *contracted* with one another to conduct their affairs on a freedom-of-speech basis, or to treat each other as equals: The United States or England, for instance, where *other things being equal—other things being equal*, I repeat—I should say (and no longer just temperamentally, but, to some extent, on principle) that the *presumption* is for me always in favor of the let-’em-speak contingent and against the shut-’em-up contingent. (Though I would hasten to add, so as not to disappoint you too much too soon: as regards communities-in-general, situations-in-general, there is and can be no such presumption; and to add too: there are other kinds of communities, the Dominican Republic, for instance, or contemporary Spain, for instance, where the presumption for me would be very distinctly against any attempt to conduct affairs on what I just called a freedom-of-speech basis.)



I strongly feel, in other words, that the classic attempt to defend freedom of speech as a compelling principle, applicable to all communities, that is, Mill's famous *Essay on Liberty*, is a piece of bad political philosophy, and one that has done great harm, so that the less heard of any general principle of freedom of speech the better. And the fact that most American intellectuals are under the contrary impression, so that even if they do not know Mill at first hand they yet feel sure that the day they need conclusive arguments for freedom of speech they will have only to go to Mill and look them up—the fact, I say, that most American intellectuals are under the impression that Mill settled *that* argument once and for all, is merely a sad commentary on most American intellectuals. And, having said that, I can go ahead and answer the first question on our little list, as follows: There is *no* reason, in theory, for saying that freedom of speech is a principle that should be defended; or, more cautiously, if it *is* a principle that should be defended someone whose heart goes pit-a-pat over it should get busy and find a better defense for it than Mill took the trouble to do.

Now: I have already suggested that in a certain kind of community where people have in some sense contracted with one another to conduct their affairs by freedom-of-speech procedures, I should to some extent on principle say there is a presumption, other things being equal, in favor of freedom of speech; and I have said that for *me* the United States is such a community. But you will notice that I have stashed into my aircraft a great many verbal parachutes that would enable me, if and when that seemed advisable, to bail out: I say, a certain kind of community: I speak of people in that kind of community having *in some sense* contracted to practice free speech; I speak even there merely of a presumption in favor of free speech, that is, a presumption other things being equal; and I speak finally of defending the presumption *to some extent* on principle. Let me clarify all that:

The sense in which the American people have contracted together to conduct their affairs by freedom of speech procedures is this, and only this: The First Amendment to our Constitution says that Congress shall make no law impairing freedom of speech and I do think that it can be argued that that Amendment in some sense constitutes a contract among Americans to conduct their affairs according to

freedom of speech procedures. But let us be quite clear here about several things:

a) The First Amendment, along with the rest of the so-called Bill of Rights, was not written by the Philadelphia Convention, but rather, as sort of an afterthought—like painting the front stoop after the house is built—by the First Session of the Congress, then ratified by the amendment process specified in the Philadelphia Constitution. Now: that does not make it any the less part of the law of our Constitution, or any the less, for me at least, a contract among Americans. But it does perhaps create as many difficulties about freedom of speech as it solves, and for this reason: the Philadelphia Constitution was not intended to have a Bill of Rights; the most brilliant statement we have against a Bill of Rights is Alexander Hamilton's statement about freedom of the press in the *Federalist Papers*, where he argues: What good will it do to write it into the Constitution? If Congress sees fit to violate freedom of the press it will certainly go ahead and do so; the Bill of Rights in fact changes the whole character of our constitutional system; and this is the point—the authors of the Bill of Rights were, for my money, extremely careless about tidying up after painting the front stoop. Concretely: while the First Amendment forbids Congress to impair freedom of speech, the body of the Constitution empowers Congress to do certain things that it may feel it cannot do without impairing freedom of speech; and most particularly it does that if, like me and unlike the Supreme Court, you regard the Preamble to the Constitution as the essence of the Contract among the American people. For the Preamble seems to announce an intention on the part of that people to do quite a number of quite sweeping things, *e.g.*, to secure the ends of justice, to promote the general welfare, and the First Amendment invites the question: Oh! What if Congress be strongly convinced that enactment X is needed in the interest of justice, or for the general welfare, and yet that same enactment X impairs freedom of speech? There is no simple answer, except to say: Under our Constitution it is always a fair argument to insist: This may seem to some people an impairment of freedom of speech, but it is *necessary* in order to accomplish the very purposes of the Constitution, and *therefore* we are going right ahead and do it. Most particularly it is not a simple answer to say: Let the Supreme Court decide. By the time *it* gets around to deciding,

free speech will already have *been* impaired and Congress, as Hamilton foresaw, will have had its way.

b) In any case, the First Amendment does not properly speaking establish what I have called freedom of speech procedures in the United States: still less, for all that we speak of a Bill of Rights, does it confer on anybody a "right" to freedom of speech. At most, it confers a right not to have your freedom of speech impaired by the

Congress, that is, by the Federal Government. In its original form, it did not even confer on anybody a right not to have his freedom of speech impaired by his state and county and municipal government. And it certainly did not confer upon anybody a right not to have his freedom of speech impaired by a whole series of non-governmental authorities—by, most especially, the persons most likely to impair it, who are one's neighbors.

c) The situation I have just described, where the First Amendment leaves our state and local governments at liberty to impair freedom of speech, has been greatly complicated up, if I may put it so, by a line of Supreme Court decisions which, in technical language, read the so-called Bill of Rights into the Fourteenth Amendment. These decisions, that is to say, seek to apply the limitations on the federal government involved in the first eight amendments to the states and localities, and they are so applied by the Supreme Court today. Now: by way of shoring up my image as a horrible example of an opponent of free speech, I'll confess I have never been much impressed by the constitutional logic by which that particular bit of juggling was accomplished, but that is not the main point I want to make about it. My main point is simply this: By the time we have moved away from the solid structure of the Constitution through some jerry-built lean-to of the Bill of Rights to the remote tool shed of a mere Supreme Court decision, we may have left far behind us the kind of freedom of speech that the American people may be said to have contracted with one another not to impair. I personally would still be willing to say that for me the presumption under the Constitution is against impairment, even when the latter is by a state legislature or a city council. But the presumption begins to wear a little thin; and I no longer feel sure of myself, when I defend it, as regards doing so on principle. That is why I speak, in my preliminary remarks, of defending the presumption *to some extent* on principle.

Academic Freedom



Let me leap right into the middle of things, as follows: Academic freedom—like its first cousin freedom of speech—has *become* in America, for good or ill, one of the battlegrounds in the ongoing struggle between Left and Right, between Liberals and Conservatives. It is not that, so far as I know, in other countries—not even in those countries, Germany for instance, or Spain, that still have a Right, still have some Conservatives in our sense of the word Conservative; and it has not always been that, a battleground between Left and Right, here in America. That is a quite important fact for us to bear in mind as we tease our way into the academic freedom controversy—or, more accurately, the academic freedom *controversies*, for, as we shall soon be noticing, set-to's between Left and Right over academic freedom are not always, *by no means* always, set-to's over one and the selfsame issue.

Now: it is an important fact for us to bear in mind for the following reason, very central to what I want to say tonight: Here in America, nowadays, the academic freedom issues have a way of getting themselves stated so as to make it *sound* like—*sound* like, I say, for I do not think it is or can be really true, or that the resulting discussion situation is one in which Conservatives can afford to acquiesce—the issues I say have a way of getting themselves stated so as to make it *sound* like the Liberals were in *favor* of freedom in the universities, and the Conservatives out to destroy it, out to replace academic freedom with something academic *other* than freedom. That, I repeat, cannot be true! Insofar as it sounds as if it were true it is merely because we have, as certainly we do have in America at the present time, a very confused, very messed-up discussion situation, where words like "freedom" have got torn loose from their proper meaning, or if you like where some people—the Liberals, of course—have *torn* words loose from their proper meaning and, like Humpty Dumpty, are making words mean whatever they choose to make them mean. For—let me get this said before the evening gets a moment older, lest I be struck dumb before I get it said—where words *are* being used with their proper meanings, academic freedom, I think, takes its