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Not Just Free Speech, but Freedom Itself

A Critique of Civil Liberties

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2010

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that speech is precisely that which is ineffectual: therefore anything effectual is not included among one's rights.

During World War I, the Espionage Act criminalized any attempt to "cause insubordination, disloyalty, mutiny, [or] refusal of duty" or to obstruct recruiting for the armed forces. President Woodrow Wilson urged the bill's passage because he believed antiwar activity could undermine the US war effort. Alexander Berkman and Emma Goldman were arrested under this law for printing anarchist literature that opposed the war. Likewise, the Anarchist Exclusion Act and the subsequent Immigration Act were used to deport or deny entry to any immigrant "who disbelieves in or who is opposed to all organized government." Berkman, Goldman, and hundreds of other anarchists were deported under these acts. There are countless other examples showing that when speech can threaten the foundation of state power, even the most democratic government doesn't hesitate to suppress it.

Thus, when the state presents itself as the defender of free speech, we can be sure that this is because our rulers believe that allowing criticism will strengthen their position more than suppressing it could. Liberal philosopher and ACLU member Thomas Emerson saw that freedom of speech "can act as a kind of 'safety valve' to let off steam when people might otherwise be bent on revolution." Therein lies the true purpose of the right to free speech in the US.

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axes of oppression. Against this configuration, it takes a lot more than speech alone to open the possibility of social change.

There can be no truly free speech except among equals—among parties who are not just equal before the law, but who have comparable access to resources and equal say in the world they share. Can an employee really be said to be as free to express herself as her boss, if the latter can take away her livelihood? Are two people equally free to express their views when one owns a news network and the other cannot even afford to photocopy fliers? In the US, where donations to political candidates legally constitute speech, the more money you have, the more “free speech” you can exercise. As the slogan goes, freedom isn’t free—and nowhere is that clearer than with speech.

Contrary to the propaganda of democracy, ideas alone have no intrinsic force. Our capacity to act on our beliefs, not just to express them, determines how much power we have. In this sense, the “marketplace of ideas” metaphor is strikingly apt: you need capital to participate, and the more you have, the greater your ability to enact the ideas you buy into. Just as the success of a few entrepreneurs and superstars is held up as proof that the free market rewards hard work and ingenuity, the myth of the marketplace of ideas suggests that the capitalist system persists because everyone—billionaire and bellboy alike—agrees it is the best idea.

...So Long as You Don't Do Anything

But what if, despite the skewed playing field, someone manages to say something that threatens to destabilize the power structure? If history is any indication, it swiftly turns out that freedom of expression is not such a sacrosanct right after all. In practice, we are permitted free speech only insofar as expressing our views changes nothing. The premise that speech alone cannot be harmful implies

defender of liberty. Laws do not tie the hands of the state nearly so much as public opposition can; given the choice between legal rights and popular support, radicals are much better off with the latter.

One dictionary defines civil liberty as “the state of being subject only to laws established for the good of the community.” This sounds ideal to those who believe that laws enforced by hierarchical power can serve the “good of the community”—but who defines “the community” and what is good for it, if not those in power? In practice, the discourse of civil liberties enables the state to marginalize its foes: if there is a legitimate channel for every kind of expression, then those who refuse to play by the rules are clearly illegitimate. Thus we may read this definition the other way around: under “civil liberty,” all laws are for the good of the community, and any who challenge them must be against it.

Focusing on the right to free speech, we see only two protagonists, the individual and the state. Rather than letting ourselves be drawn into the debate about what the state should allow, anarchists should focus on a third protagonist—the general public. We win or lose our struggle on the terrain of how much sovereignty the populace at large is willing to cede to the state, how much intrusion it is willing to put up with. If we must speak of rights at all, rather than argue that we have the right to free speech let us simply assert that the state has no right to suppress us. Better yet, let’s develop another language entirely.

Free Speech and Democracy...

The discourse of free speech in democracy presumes that no significant imbalances of power exist, and that the primary mechanism of change is rational discussion. In fact, a capitalist elite controls most resources, and power crystallizes upward along multiple

“Despite the radical roots of organizations such as the American Civil Liberties Union that advocate for state protection of free expression, this form of civil liberties empties the defense of free speech of any radical content, implying that only the state can properly guarantee our ability to express ourselves freely and thus reinforcing the power of the state above the right to free speech itself.”

Across the years, anarchists have defended freedom of speech. This is important in principle: in an anarchist vision of society, neither the state or any other entity should be able to determine what we can and cannot say. It’s also important in practice: as a revolutionary minority frequently targeted for repression, we’ve consistently had our speeches, newspapers, websites, and marches attacked.

Free speech fights have figured in anarchist campaigns for a long time. The Industrial Workers of the World fought restrictions on pro-union soapboxing by flooding jails until cities were forced to change their ordinances. Emma Goldman and Alexander Berkman passionately defended free speech in the US during World War I and in the Soviet Union after the Russian Revolution. During the Makhnovist resistance in the Ukraine and the Spanish Civil War in Catalonia, anarchist forces distinguished themselves from authoritarians both left and right by refusing to restrict the press. More recently the SHAC 7 case, in which animal rights activists were defined as terrorists simply for running a website advocating direct action, showed that speech can still bring us into conflict with the state.

But anti-authoritarians aren’t the only ones who have taken up the banner of free speech. More recently, the right wing in the US has begun to argue that the failure to give conservative views an equal footing with liberal views constitutes a suppression of their free speech. By accusing “liberal” universities and media of suppressing conservative views—a laughable assertion, given the massive structures of power and funding advancing these—they use First Amendment discourse to promote reactionary agendas.

Supposedly progressive campuses reveal their true colors as they mobilize institutional power to defend right-wing territory in the marketplace of ideas, going so far as to censor and intimidate opposition.

Extreme right and fascist organizations have jumped onto the free speech bandwagon as well. In the US, Anti-Racist Action and similar groups have been largely effective in disrupting their events and organizing efforts. Consequently, fascists now increasingly rely on the state to protect them, claiming that racist, anti-immigrant, and anti-gay organizing constitutes a form of legally protected speech—and within the framework of the ACLU, it does. Fascist groups that are prevented from publishing their material in most other industrialized democracies by laws restricting hate speech frequently publish it in the United States, where no such laws exist, and distribute it worldwide from here. So in practice, state protection of the right to free expression aids fascist organizing.

If defending free speech has come to mean sponsoring wealthy right-wing politicians and enabling fascist recruiting, perhaps it is time for anarchists to reassess this principle.

The Rhetoric of Free Expression

There appears to be a broad consensus in the US political spectrum in favor of the right to free speech. While opponents may quibble over the limits, such as what constitutes obscenity, pundits from left to right agree that free speech is essential to American democracy.

Appeals to this tradition of unrestricted expression confer legitimacy on groups with views outside the mainstream, and both fascists and radicals capitalize on this. Lawyers often defend anarchist activity by referencing the First Amendment's provision preventing legislation restricting the press or peaceable assembly. We can

find allies who will support us in free speech cases who would never support us out of a shared vision of taking direct action to create a world free of hierarchy. The rhetoric of free speech and First Amendment rights give us a common language with which to broaden our range of support and make our resistance more comprehensible to potential allies, with whom we may build deeper connections over time.

But at what cost? This discourse of rights seems to imply that the state is necessary to protect us against itself, as if it is a sort of Jekyll and Hyde split personality that simultaneously attacks us with laws and police and prosecutors while defending us with laws and attorneys and judges. If we accept this metaphor, it should not be surprising to find that the more we attempt to strengthen the arm that defends us, the stronger the arm that attacks us will become.

Once freedom is defined as an assortment of rights granted by the state, it is easy to lose sight of the actual freedom those rights are meant to protect and focus instead on the rights themselves—implicitly accepting the legitimacy of the state. Thus, when we build visibility and support by using the rhetoric of rights, we may undercut the possibility of struggle against the state itself. We also open the door for the state to impose others' "rights" upon us.

The Civil Liberties Defense

In the US, many take it for granted that it is easier for the state to silence and isolate radicals in countries in which free speech is not legally protected. If this is true, who wouldn't want to strengthen legal protections on free speech?

In fact, in nations in which free speech is not legally protected, radicals are not always more isolated—on the contrary, the average person is sometimes more sympathetic to those in conflict with the state, as it is more difficult for the state to legitimize itself as the