Universities and Democratic Legitimacy

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Abstract. This piece is a condensed restatement of some of the ideas defended in a more expansive way in my scholarly article on "The Relation Between Academic Freedom and Free Speech". Primarily, I challenge the claim that having a free speech culture on campus conduces to the realisation of the university's epistemic aims. I defend a conception of the university which is defined by its commitment to academic standards, and on which resistance to ideological conformity, groupthink etc. is understood as being grounded in the ideals of academic freedom specifically, in contrast to a more generic principle of free speech.

Freedom of speech is crucial for the health of democracy. In the English-speaking world, we have recognised this overtly political concern as being a central part of the case for free speech, at least since the immediate aftermath of World War Two, and Alexander Meiklejohn's classic work, *Free Speech and its Relationship to Self-government*. But free speech isn't merely vital to the *health* of a democracy. It is also a necessary condition for the democratic *legitimacy* which is sought and inevitably claimed by governments in democratic states. This powerful insight has been developed by Robert Post, among others, in the United States,[1] and by Eric Heinze, among others, further afield.[2] In a *bona fide* democracy there is a free press, an arts sector untouched by government censorship, a people unafraid to broadcast their ethical and religious convictions in public, and a cherished freedom for all to mock, criticise, and vilify our political leaders (as well as corporate and religious

leaders). The democratic government's authority to rule is legitimised in part by all of these freedoms.

My question today is: where do universities fit in? What is their role in realising the vitality and legitimacy of a democratic society? Is academic freedom – the distinctive freedom of academics to conduct their research, teaching, and extramural speech as they see fit, protected from the threat of punishment for saying things that others think false, unjust, or offensive – is this special sub-category of communicative liberty just an extension of free speech, when it comes to its democratic connections?

Robert Post, who I already mentioned, has done more than any scholar – since the German great Wilhelm von Humboldt, in the early 19th century, and the American great John Dewey, in the early 20th century – to develop our understanding of the philosophical foundations of academic freedom. And his answer to this question about the relation between academic freedom and democracy is a subtle and surprising one. The teaching and research work which define the scholarly vocation – the core activities that the institution of the modern university has been designed to facilitate – do not directly serve the ideal of democratic legitimacy. They serve a democratic ideal which complements democratic legitimacy, but which is importantly distinct from it. Academic teaching and research serve the ideal of democratic *competence*. They make an irreplicable contribution to our collective capacity to render intellectually adequate and empirically well-informed judgements about the matters of public concern which government must address.[3]

In a democracy the people rule themselves. This is a colossal idealisation of the facts on the ground, of course, but there is a crucial grain of truth in it all the same. And if the people are to rule themselves *capably*, then they need to not be ignoramuses, simpletons, and intellectual chauvinists. They need to remember their history. They need to understand science and technology, and continue the work of expanding its horizons. They need their judgement to be conditioned by a philosophical sense of the complexity in all things, and by a social scientific curiosity about how our lives and customs really work. And they need educators in the more academically-grounded professional vocations – medicine, law, engineering, and economics, among others – to have a scholarly sense of rigour concerning their spheres of expertise. Of course not every individual needs to realise all of these ideals. But if the people as a collective are to rule themselves well, then as a *collective* they do need to somehow realise all of these ideals. The job of universities, through the teaching and research work that is carried out by their academic appointees, is to see to it that this democratic competence is achieved in our society. And the principles of academic *freedom* specify the institutional protections and prerogatives that should be given to universities, and to individual academics, to help them achieve this.

Now, how do we square the insights of this theory ,with the view – which has been the mainstream opinion among educated progressives in Western countries,

since around the late 1960s – that universities should *also* be bastions of free speech; that universities aren't *merely* about scholarly research and higher education; that there is, in addition, a particular kind of democratic microcosm of vigorous debate, political rabble-rousing, and creative experimentation that university campuses are supposed to house? In the popular progressive imagination (and in the views of many classical liberals, who might part ways with progressives on economic issues) universities are *not just* the fine-tuned knowledge-generating engine-rooms that Humboldt envisioned. They are – and this is something that Dewey envisioned, more than Humboldt – the site for a set of practices whose generative powers are wilder and messier. They are the place where we stage an ongoing kind of *democratic happening*.

If that view is correct, then it would be a mistake to think of universities as merely serving the ideal of democratic competence. They also serve the idea of democratic legitimacy. We can distinguish, as Howard Gillman and Erwin Chemerinsky do, two different communicative zones in universities, which correspond to the service of these complementary ideals.[4] Teaching and research take place in *the academic zone*; they are protected by *academic* freedom, and they primarily serve the ideal of democratic *competence*. But then there is a free speech zone – where extra-curricular debates happen, where student societies run their events, where artists, street preachers, anarchist drop-outs, and militant activists congregate and argue – and the communication that takes place in the free speech zone serves the ideal of democratic *legitimation*. Whatever the role of universities might be in other kinds of societies, in a democratic society the university's mission is to play host to the vital communicative activities that transpire in these two complementary discursive zones.

This is how we could think of the university's role, and its relation to democratic ideals. But in fact I want to make some trouble for this picture, as appealing as it is. (If you find it perverse for me to cast aspersions on such an appealing picture, think of me as a kind of Millian gadfly, pestering the advocates of this picture to make sure that their allegiance to it isn't just a dead dogma.)

Here's the problem. The intellectual aims that the university is meant to serve, for the sake of our democratic competence, are undermined and jeopardised by the freewheeling free speech culture that has taken over universities. This is most starkly in evidence when it comes to the educative branch of the university's intellectual aims. Having transformed universities into places where the free speech of the campus-dweller is vaunted no less than the academic freedom of the scholar, we have made the typical student's experience of university – particularly in fields that immediately intersect with social politics: history, law, philosophy, economics, public policy, psychology, social science, education, and modern languages – something much more like a pseudo-educative pageant, than a rigorous, epistemically edifying, educational experience. If you think that I'm being hyperbolic, remember that pretty much every university (in the Anglosphere at least)

self-consciously markets itself to students as a place where they can come to experience not just an education, but a comprehensive socialisation experience. And the people who most give shape to that socialisation experience are not scholars and educators – people bound by a sense of accountability to the norms and purposes that govern their disciplines of expertise. Rather, it is administrators, student council leaders, activists, and speakers trying to make a buck.

For the avoidance of doubt: I am a liberal. I think that a formal and substantive commitment to free speech, as a fundamental civil liberty, is an indispensable requirement of justice. But I think the classical liberals who worry that there is not enough free speech on campus have it, in a certain sense, utterly back-to-front. Students are *overwhelmed* with free speech. The university – in the classical Humboldtian ideal – is meant to be a place where intellectual discipline reigns. The scholar is meant to be free from persecution, but what the scholar is expected to do, with that freedom, is oversee an intellectually disciplined process of education. To say, as Dewey did, that the university should be experiment station is not to say that it is or should be a marketplace of ideas.[5] To efface that distinction is to misunderstand the nature of both experiments, and markets. And the cost of that misunderstanding is a betrayal of the educative purpose that is one half of the university's very reason for being.

But what about research? Surely the activities of researchers are benefited by virtue of their academic departments being nested within a campus culture that embraces a free speech ethos? Well, maybe. In this case I think the issue is more complex. All I want to say, really, is that there are considerations that weigh on either side of the question. In societies where there is coercive, state-mandated ideological conformity, academic researchers are profoundly limited in their ability to do their work properly. To suggest otherwise would be a slap in the face to our colleagues trying to practice their scholarly vocation under such regimes.

But that by itself doesn't settle the question. In societies where there *isn't* coercive, state-mandated ideological conformity, of course it is much easier for academic researchers to ply their trade. But the question is whether the aims of academic research are *further expedited* by housing academic researchers within institutions and institutional cultures that embrace a free-wheeling marketplace of ideas ethos. Here is one reason to think that they aren't. In a marketplace of ideas, people don't buy the ideas that are true; they buy the ideas that they prefer. This is how markets function. They don't magically sift truths from falsehoods, any more than they magically ensure the popularity of quality products over crappy products. What markets do, when they're functioning, is facilitate an efficient allocation of goods in line with people's preferences. And that's just as true in the marketplace of ideas as in any other marketplace. This insight came twenty-odd years ago, from the economist James Cox and the epistemologist Alvin Goldman, and it has been alarmingly vindicated by the rise of social media and its remarkably resilient echo chambers.[6]

None of this is to deny that serious disciplinary research must be free from ideological constraints. That is a crucial part of what the principles of *academic* freedom are there to ensure. But a culture of *free speech* does more than just unbuckling the ideological constraints. It also, in an important sense, unbuckles the *intellectual* constraints that academic disciplines are supposed to impose – and which, in order for the university to achieve its constitutive purposes, they *must* impose.

The points I'm driving at, then, are – first – that academic freedom and free speech are not the same thing; they demand different things of us; and – second – that we can have real academic freedom, without having universities and research cultures that are governed by a free speech ethos. And indeed, that is exactly what we did have, from the interwar period – when the Humboldtian vision of the modern university became ascendant throughout Western countries – until the late 1960s – when that vision underwent a widespread modification, in the wake of the Berkeley Free Speech Movement. In a university sector that cherishes academic freedom, but which adopts a more cautious, qualified, and ambivalent stance on free speech, we still have an institution that serves a vital purpose in democratic society. The purpose of a university, thus conceived, is to strengthen our democratic competence, while delegating the task of democratic legitimation to other discursive arenas – to the press, the internet (perhaps), and – most importantly – to the streets. The profound level of democratic *incompetence* that we see, in this country and others, today, owes in part to the fact that universities have lost sight of the primacy of that responsibility – and to a well-meaning but ultimately misguided reluctance to delegate.

Notes

[1] Robert C. Post, "Racist speech, democracy, and the First Amendment", *William and Mary Law Review* 32/2 (1990): 267-328.

[2] Eric Heinze, *Hate Speech and Democratic Citizenship* (Oxford: Oxford University Press, 2016).

[3] Robert C. Post, *Democracy, Expertise, and Academic Freedom: A First Amendment Jurisprudence for the Modern State* (New Haven: Yale University Press, 2012); see also Matthew W. Finkin and Robert C. Post, *For the Common Good: Principles of American Academic Freedom* (New Haven: Yale University Press, 2009).

[4] Erwin Chemerinsky and Howard Gillman, *Free Speech on Campus* (New Haven: Yale University Press, 2017).

[5] American Association of University Professor, "Report of the Committee of the American Association of University Professors on Academic Freedom and Academic Tenure", *School and Society* 3 (1916).

[6] Alvin I. Goldman and James C. Cox, "Speech, truth, and the free market for ideas", *Legal Theory* 2/1 (1996): 1-32.