

"Free Speech!" Censorship or Folly?

When it comes to the topic of free speech, most of us will readily agree nothing is more important than upholding and observing the protections inherent in the first amendment. Where this agreement usually ends, however, is on the question of what is considered free or protected speech and what is not. In Stanley Fish's article "The Free Speech Follies" he expresses that many issues, especially

absolute, and what the categorical approach does is labeling what is and is not protected speech. Protected speech is religious, political, and symbolic (e.g., flag burning, cross-burning). What is not protected speech is defamation, fighting words, and commercial speech, which I believe is where most people make that error in judgment. Fish believed that many people who "cry free speech" do not have a clear understanding of what the first amendment describes. They make an error in judgment by assuming these cases involve free speech when they do not.

One example that Fish gives of an error in judgment involved the *Daily Illini*, a student newspaper that printed a letter from a non-student from Seattle. The letter was headlined as "*Jews Manipulate America*", and this sparked outrage. The editor to explain the printing of the letter stated 4 reasons why. "First, we are committed to giving all people a voice; second, that, given this commitment, we print the opinions of others with whom we do not agree; third, that to do otherwise would involve the newspaper in the dangerous acts of silencing and self-censorship; and fourth, that what is hate speech to one member of society is free speech to another" (Fish). Fish wrote that all 4 reasons that the editor gave were wrong. Firstly, *The Daily Illini* must surely have "principles of selection, asking questions like, Is it relevant, or Is it timely, or Does it get the facts right, or Does it present a coherent argument?" (Fish). The newspaper has the power to apply standards, and they would not be committed to giving all people a voice (e.g., the KKK, advocates of slavery, terrorists). Secondly, if they are not committed to "giving all people a voice" then printing those opinions with whom the student newspaper does not agree is solely their choice as the government cannot compel them to under the first amendment. As stated in *West Virginia v Barnette* if the government has little power in censoring expression, then it has even less power in compelling expression. This gives the editor the freedom to publish or not publish the letter. Thirdly, exercising judgment is different from

silencing or censorship. The protections of free speech are protections against government infringement, and as explained above, this means that this newspaper is not obligated to allow anyone to write anything. "No one is silenced because a single outlet declines to publish him" (Fish). Also, the government is not punishing the author of the letter or the editor for publishing it. That is what censorship would be. It is the prerogative of the editor whether to deny publishing the letter. There are many more newspapers that the author could have submitted his letter to, and each newspaper has the moral choice of whether to publish it. Lastly, Fish believed this was not a free speech issue. The government did not infringe in any way and to put it bluntly, "the First Amendment made us do it" is only an excuse that allowed the editors to wash their hands of the poor judgment they exhibited when people became outraged at the published letter (Fish).

In contrast to Fish's categorical approach, which "depend on a pre-established system of classifications or categories", we see Robbins' balancing approach to free speech (Ayers). "Balancing" refers to a method of adjudication used by judges to reach decisions through weighing the parties' competing interests or rights. In the context of legal disputes over free speech rights, "balancing" typically means judges weighing the government's interests in restricting speech against the speaker's First Amendment free speech rights" (Ayers). As opposed to Fish's literal take about government infringement, Robbins believed anyone, not just the government who discouraged and deterred free speech was acting unconstitutionally. This is what Robbins called the "chilling effect" or once again, "the concept of deterring free speech and association rights protected by the First Amendment" (Askin). In 2003 when Robbins spoke to the National Press Club, he explained how he and his family had experienced the chilling effect as they were discouraged from speaking out against the war and when they did not self-censor

they were met with animosity. After 9/11 it was not popular to have anti-war beliefs, and this was considered by many to be unpatriotic.

and knowing exactly what the first amendment entails. We do not want to be guilty of unnecessarily crying free speech as Fish stated, but we must also stand ready to speak on censorship as Robbins would. Whichever approach one can agree with, we can all agree nothing is more important than our free speech.

Work Cited

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