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The shifting politics of free speech in America

The general sense among conservatives – highlighted this week in speeches by both Attorney General Jeff Sessions and Milo Yiannopoulos – is that they’re the minority on campus, and that their right to speak is being shut down by a left-leaning majority.

By Jessica Mendoza, Staff writer SEPTEMBER 28, 2017



Conservative commentator Milo Yiannopoulos waves to a crowd after speaking at the University of California, Berkeley on Sept. 24. (Stephen Lam/Reuters)

Berkeley, Calif.

The First Amendment again drew national attention this week as two high-profile right-wing personalities appeared at prestigious universities on separate coasts to denounce what they say is an attack on free speech at college campuses across the country.

On Sunday, right-wing provocateur Milo Yiannopoulos addressed a crowd at the University of California, Berkeley’s historic Sproul Plaza. The 20-minute speech was a decidedly truncated version of the four-day “Free Speech Week” Mr. Yiannopoulos had been touting since his last scheduled appearance here was canceled in April. (According to reports, the necessary permits and fees were not filed this time.) Still, his presence drew dozens of counter-protesters who decried racism and white supremacy and whose shouts, Yiannopoulos later wrote on Facebook, “made it impossible for any of our speakers to be heard.”

Attorney General Jeff Sessions, at a talk on Tuesday at Georgetown University in Washington, told his audience, “Protesters are now routinely shutting down speeches and debates across the country in an effort to silence voices that insufficiently conform with their views.” As he spoke, about 100 students and faculty reportedly gathered outside the closed venue with signs reading, “Deport hate” and “Free speech is not hate speech.”

In choosing to speak about what they see as the growing limits on free expression, Mr. Sessions and Yiannopoulos continue to fortify a familiar right-wing refrain: that elite liberals and their insistence on political correctness are drowning out conservative voices, especially in the university setting.

The narrative, political analysts note, reflects a significant if gradual shift in the conservative position on the First Amendment. For most of the past century, conservatives aligned themselves with restrictions around speech; it was liberals who traditionally championed expansions to protected expression. (Student activists from the New Left, for instance, led the 1964 Free Speech Movement in Berkeley.)



Attorney General Jeff Sessions speaks about free speech at the Georgetown University Law Center in Washington on Sept. 26. MANUEL BALCE CENETA/AP

Today the general sense among conservatives is that they're the minority on college campuses – and that their right to speak is being shut down by a left-leaning majority.

“The university is more monolithically liberal and leftist today than it ever has been,” says Charles Kesler, a senior fellow at the Claremont Institute, a think tank in California, and editor of the Claremont Review of Books. Both are associated with the political right. “Even though there are students who are conservative or even moderately liberal and want to hear some conservative arguments, it’s very difficult to find the resources and space to invite them.”

That the idea of conservative silencing persists despite the fact that Republicans now control the White House, both houses of Congress, and more than two-thirds of statehouses only shows how the narrative continues to resonate with conservatives today – and how deep the shift now runs, says University of Delaware Prof. Wayne Batchis.

“I think it turned out to be a winning argument for the right. And it remains so,” he says.

'Card-carrying member of the ACLU'

Traditional conservatism, with its concern for morality and family values, would seem to align with a speech-restrictive attitude. And since about the end of World War I, that view was in general reflected in conservative actions and thought. Robert Bork, who served as solicitor general under President Nixon and later a circuit court judge, wrote famously in 1971 that the First Amendment should be applied only to “explicitly political” speech. Between 1955 and 1964, 73 percent of free-speech articles in *The National Review* – a bedrock of conservative commentary – focused on limiting expression.

Association with aggressive free-speech advocacy – such as that embodied by the American Civil Liberties Union (ACLU) – was, to conservatives, “a political attack of the first order,” Professor Batchis writes in his 2016 book, “*The Right’s First Amendment: The Politics of Free Speech & the Return of Conservative Libertarianism*.” In his 1988 presidential campaign, George H.W. Bush would regularly use the phrase “card-carrying member of the ACLU” to denounce Democrat Michael Dukakis.

Universities played a major role in the shift. Through the late 1960s onward liberals, especially in academia, sought to challenge what they saw as structural injustice by giving historically marginalized groups a voice long denied them. As it grew in momentum – and some say militancy – the leftist movement led to the evolution on the right of the term “politically correct,” which “reflected a perception that conservatives ... were being muzzled,” Batchis writes.



Counter protesters are held back by a line of Boston Police as attendees at the Free Speech rally on The Common leave the area Aug. 19 in Boston. The Boston Police kept rally attendees and counter protesters separated by barricades and police personnel. MELANIE STETSON FREEMAN/STAFF

Today that sense of being silenced has led to conflicts – sometimes bloody ones – from Berkeley to Boston, as counter-protesting liberals rush to shut down right-wing speakers. To liberals and those who side with them, such actions are necessary to defend marginalized communities whose hard-won rights are being trampled by the Trump administration. But to conservatives and their camp, the savagery with which some far-left groups have attacked their speakers is an affront to their right to make their voices heard.

“Say you disagree with Milo’s views on immigration. Terrific,” says Peter Berkowitz, a political scientist at Stanford University’s Hoover Institution in California and champion of a moderate version of constitutional conservatism. “You can ask a question, write an op-ed, or march with placards peacefully. That all seems entirely

appropriate. The violence, the shutting down, to me reflects serious unhealth in American universities."

Role of courts and universities

Many political analysts say there's nothing inherently wrong with the two parties reversing their positions on the matter of free expression. "Particular constitutional rights can be favored or disfavored by the right or left respectively at different periods in political history – and the First Amendment is no exception," Batchis writes.

The problem, they say, occurs when elements on both sides take their arguments too far.

On the left, that has manifested as the idea that offensive, hateful, and racist speech should not be spoken at all. "It's not a bad impulse to think that because we have a diverse student body we need to be more sensitive to other points of view," says Lata Nott, executive director of the First Amendment Center at the Newseum Institute in Washington. But "what started out as something that was supposed to keep things civil has led to this idea that even hearing ideas that you don't believe in is something that's harmful."

On the right, "You have some really extreme voices who are conflating their right to say something with the legitimacy of what they're saying," Batchis says. Just because it's legal to express white supremacist ideology doesn't mean the ideology itself is objectively good or morally defensible, he says.

With political polarization at an all-time high, such tensions are likely to keep sparking conflict. But, Batchis says, "Change happens slowly when it comes to interpretation of the Constitution. I feel cautiously optimistic about the ability of the courts to remain principled on free speech questions."

Some are calling on universities – likely to continue to be the setting for such skirmishes – to take a more neutral stance to ease partisan tensions. Administrations should examine more closely whether or not they are teaching "that the left-liberal progressive perspective is the one right perspective," Berkowitz says.

"A professor might have a preference," he says. "But the job is for students to know the strengths and weaknesses of various arguments and ideas, not to direct students to advance one political agenda or another. Diversity and inclusiveness are not tradeoffs with freedom of speech."