**What the Constitution says Berkeley can do**

**when controversial speakers come knocking**

**by Mark Tushnet**

*... when a raucous crowd shouts down the speaker. A report from the Brookings Institution last week describes as troubling the fact that a narrow majority of students think that’s okay.*

*As far as I’m concerned — and, I think, as far as the First Amendment is concerned — it is okay. The jeerers are simply people attending the rally, no different from the supporters who cheer the speaker.*

**Mark, so you don’t see any difference? Really?**

**Maybe this explanation will help make the difference clear:**

**When those who attend the rally “cheer,” it is not with the intention of preventing the speaker from exercising his freedom of speech. They stop cheering to let the speaker continue. Those who “jeer” usually continue their disruption with the intention of shutting down the speaker’s right to speak.**

**The proof that I am right and you are wrong is in the fact that the protesters are protesting the right of the speaker to even appear. So they have already exposed their true motive ... suppression of speech.**

**You forgot about that, didn’t you Mark?**

*It just so happens that the opponents vastly outnumber, or at least outshout, the supporters.*

**Mark, attendees of a speech are not there to outshout anyone. They are there to listen to the speaker. It is the protesters who are the ones shouting with the intention of denying the speaker his rights.**

*The opponents aren’t the government, so even if they prevent the speaker from getting his message across, that’s just too bad*

**Mark, I wonder how many of the readers would believe that if you gave a speech and a group of protesters shouted you down and your audience was forced to leave ... that you would say, “well that’s just too bad.”**

**Show of hands, readers ... how many of you believe that would be Mark’s reaction?**

*or it’s speech countering speech.*

**Mark, it isn’t speech countering speech – it’s thuggery countering speech.**

**I hope you are not going to try to defend the position that the protesters are exercising their rights to “peaceful” assembly. There is no way you will win that one, as you will discover when you review the definition of “peaceful.”**

*I suppose you could say that the First Amendment gives the government a duty to make sure that the speaker is able to get his message across.*

**Gee Mark, ya think?**

**No. You don’t think that. That would be correct and would ruin the streak of inanity you’ve got going.**

*But that’s implausible as a general principle. I have a lot of things I’d like to have lots of people hear, but I can’t dragoon the government into helping me get my message to them.*

**Mark, what evidence do you have that these speakers dragooned the government into helping them speak?**

**Take your time looking for it ... I’ll wait.**

*Maybe you can figure out why the government has a duty in the context of demonstrations but not in the context of my political views, but I haven’t yet seen anyone do so effectively.*

**Mark, why did you insert a non sequitur into this article?**

**The issue isn’t governmental involvement in your political views. You were discussing protesters trying to prevent unpopular speakers from appearing, and then when those speakers did appear, shouting them down.**

**Can you get back to the issue please?**

*That’s not to say that shouting down a speaker is a good idea.*

**Mark, it is a good idea from the perspective of the thugs. It often accomplishes their goal of suppressing speech that they don’t like.**

**It all depends on which side of the fence you are on.**

**The slippery slope that you are ignoring, is that someday, it will be your opinion that gets shouted down. Maybe that is what it will take for you to defend everyone’s right to free speech, and not just those with whom you agree.**

**Question Mark: Do you think the intent of The Founding Fathers was to give freedom of speech to everyone? Or just those with the largest and loudest crowds, like those you have been supporting in this article?**

*I think it’s sometimes worth doing, but not often,*

**Mark, if shouting down a speaker is worth doing, why not often?**

**How many times is it worth doing before it becomes not worth doing?**

**More importantly, *why* is shouting down a speaker to prevent them from expressing a belief you disagree with ... worth doing?**

*and maybe universities should have unenforceable “civility” guidelines counseling against it.*

**Mark, think about what you just wrote. “Unenforceable?”**

**Then why bother? What’s the point?**

*The First Amendment, though, doesn’t say anything either way about heckling.*

**Mark, while true, I’m trying to imagine your reaction, and what actions you would take, if I brought a group to shout you down every time you tried to give a public speech.**

**Actually, I don’t have to imagine. I would be willing to bet my grandma’s secret stash that the article you just wrote ... would look very, very different.**

[**https://www.vox.com/the-big-idea/2017/9/22/16346330/free-speech-week-first-amendment-constitution-bannon**](https://www.vox.com/the-big-idea/2017/9/22/16346330/free-speech-week-first-amendment-constitution-bannon)