

6 Free Press and Freedom of Assembly

The First Amendment sets forth not just one but five freedoms: the right to free expression, a free press, free exercise of religion, freedom of peaceful assembly, and the right to seek redress from the government. Two of these freedoms are rarely at issue in the present-day conversations related to diversity and free expression on campuses: the right to appeal to the government for redress of grievances is literally not relevant; the right to the free exercise of religion comes up from time to time, but is not a central matter in these discussions. (That is not to say that religious freedom is not essential, nor to say that it is not under threat in various ways; the point is simply that it is not customarily connected to this larger set of concerns.) Though not the main focus of this short book, two of the other freedoms enumerated in the First Amendment are deeply connected to the current debate over free expression and diversity: the right to a free press and the right to peaceful assembly.

At a systemic level, democracies rely on a free and independent press as an essential institution. A free press serves many purposes, chief among them providing a check on powerful state actors and ensuring the opportunity for citizens to become

informed and engaged in civic life. A free press means also that any individual or group can publish their views as openly as any other individual or group. That freedom does not guarantee that every press outlet will reach an equally large audience, nor does it mean that money, power, and legacy are irrelevant in terms of the reach of media outlets. Political candidates, for instance, commonly complain that the news media are “biased”—today, according to many U.S. citizens, the media are allegedly biased in terms of supporting candidates and causes on the left side of the political spectrum.¹ History is filled with such claims, favoring one group or another. What a constitutional right to a free press does mean is that the system, in theory, gives everyone an equal opportunity to participate in public discourse.

On campuses, the right to a free press plays an important role in conjunction with the right to free expression. There are two ways in which a free press relates directly to the debate on free expression and diversity. First, student publications play an important role in mediating discourse on campuses. Some campuses have free and independent news organizations; others allow for administrators to affect what runs in publications. Second, campuses often serve as the site of debates over whether the administrators ought to permit outside news media to cover events occurring on campus—itsself an important and contested matter.

Campus news organizations play an essential role in both agenda setting and discussion of the salient news in an academic community. Most commonly, these organizations take the form of student newspapers. They also include radio stations, weekly news magazines, and other types of publications. Virtually all campuses have one or more types of news organizations run by

students for the purpose of covering news in and relevant to the community.

Campus news organizations support democracy by providing an active, hands-on laboratory in which students engage in the craft of journalism. The more they can learn about and share in the true experience of journalism in the larger world, the better. Democracies need well-trained journalists to function properly and schools ought to provide these training grounds for interested students.

These news organizations also play an essential role in mediating the conversations that take place on campuses. A well-run campus news organization, led by responsible student journalists, helps to establish a fact base that can ground conversations in a constructive way. As in a city or town, a newspaper of record provides an outlet for multiple voices to reach an audience of interested fellow citizens. A campus news organization might also editorialize in ways that help to draw attention to key issues and, occasionally, to shape policy by decision makers such as administrators and trustees. The campus newspaper might also provide a constructive outlet for student opinion on the op-ed page.

As an academic administrator, I am well aware that an uncensored and independent campus news organization can drive adults on campus crazy, especially when students make mistakes in judgment or reporting (sometimes both at the same time). Despite this tendency, these organizations have a crucial function. The trade-off between a free and independent campus news organization, inevitably fallible, and a news organization that answers to campus administrators is often hotly debated on campuses. From a First Amendment and free expression

perspective, the choice in favor of a free and independent campus press is clear.

The case against a free, independent campus news organization can be made in several ways. The strongest case is that student journalists are not yet trained in their craft. When empowered to operate an uncensored news organization, students are granted awesome power before they have the skill to exercise it responsibly. When they make mistakes, whether of fact or judgment, there are real casualties—the pain suffered by an individual or family, or the distortion of the truth. Even the students themselves, years later, might wish that they had not been granted such power and latitude so early in their lives. The existence of the Internet exacerbates that concern: a student journalist's mistake in digital form could haunt them for the rest of their lives, whereas a print journalist's errors are more quickly forgotten. We used to wrap fish in yesterday's newspapers; no fish are wrapped in the digital versions of a reporter's stories.

The best answer to that critique is not censorship but rather teaching, support, training, and a sound editorial structure. The school has a responsibility to ensure that the student journalists have access to the guidance they need in order to be able to exercise the power they wield. That support can take the form of faculty and alumni with expertise in journalism passing down their knowledge to students, as well as funding for training in the craft of reporting. The school can also hold out the threat of revoking the institutional charter for the news organization to operate, to the extent that it violates the conventions of sound journalism.

The costs of a censored or administratively controlled campus news environment are very high. Consider the effects of a system in which the university president can tell student reporters

not to run a story critical of a particular presidential candidate. According to news reports, that is exactly what happened in 2016 at Liberty University, a private, Christian university based in Lynchburg, Virginia. Joel Schmieg, the sports editor of the *Liberty Champion*, the university's student newspaper, says that he was told by the university president, Jerry Falwell Jr., not to run a column critical of presidential candidate Donald Trump. The irony of the president of a school called "Liberty University" clamping down on the freedom of the press on his own campus was not lost on the news media. A second irony: the purportedly negative column about candidate Trump reached a much larger audience than it would ever have when the alleged censorship was publicized in national media outlets such as the *Daily Beast* and directly on the student's Facebook page.²

The right of the press to cover campus protests is likewise tied into the conversations about free expression and diversity. Here, one might sensibly distinguish between two types of press coverage: coverage by campus journalists, who are typically enrolled students, and coverage by the outside press, which may wish to report on campus events for an audience beyond the college or university. An example of the second scenario—in which the national press seeks to cover campus protests—has attracted national attention in recent years.

An altercation at a student protest on the University of Missouri campus in November 2015 brought the right to a free press into sharp relief. A group of students associated with the group Concerned Student 1950 sought to create a "safe space" on campus for their protest against racist incidents that had marred their campus for years—use of racist language against African-American students and faculty, the appearance of cotton

balls across public campus spaces to invoke plantation slavery, feces placed in the shape of a swastika, and other hateful speech directed toward minority groups. A press photographer, Tim Tai, sought access to the space occupied by the protestors in order to take pictures. A heated altercation between Tai and the protestors led to national discourse about the respective interests of the press to cover on-campus activities and the interests of the students not to be covered by outside press during a protest.³

Additional facts associated with this incident complicate the narrative. Tai was both a student on the campus—a senior student of photojournalism at the University of Missouri School of Journalism—and a freelancer taking pictures for ESPN. Tai was therefore both an “insider” and an “outsider.” In today’s media environment, a photograph taken on a campus, especially one published by a major national news outlet, would potentially be seen by millions of people and almost certainly would persist online for a very long time, if not for the life of the students involved. In a video published online, two adults affiliated with the university appear to side with the student activists in seeking to bar Tai from photographing the group. Both Tai and the students who were protesting had legitimate concerns that they sought to vindicate in the altercation.⁴

In the aggregate, U.S. college students support the notion of a free press, but they also see some of the complexities involved in cases such as Tai’s at the University of Missouri. In a recent Knight Foundation poll, 70 percent of college students believed that students should not be able to prevent the press from covering protests on college campuses (as compared to 76 percent of U.S. adults). This overall sentiment suggests that a strong majority of today’s college students, and adults, would favor Tai’s interests in the Missouri case.

At a more nuanced level, however, students were divided when prompted to evaluate certain potential reasons for curtailing press access. Nearly half of U.S. college students agreed that there are sometimes legitimate reasons to curtail outside press access to student protests on campus. When the reason was that people at the protest or public gathering believed reporters would be biased, 49 percent thought that curtailing press access would be appropriate. When the people at the protest said they have a right to be left alone, 48 percent said they believed that curtailing access would be appropriate. When presented with the reasons that the people at the protest want to tell their own story on the Internet and social media, 44 percent thought it would be appropriate to curtail press access.⁵ This deeper split in perceptions demonstrates that many students appreciated the concerns of the protesters in the case involving Tai on the University of Missouri campus.

A free press on campuses serves important functions, both locally within the community and in terms of training journalists for a life of important service in a democracy. There are costs associated with a free press on campuses, however. Students do make reporting mistakes, just as adult journalists do, and they can be painful, especially when amplified by social media. Student protestors have raised important points about the limits of press freedom in certain spaces and contexts. The debate as to what constitutes appropriate time, place, and manner restrictions on press freedom—as an analogy to its close cousin, the right to free expression—will continue to arise over time.

No one clear rule can govern well in all these instances. Rather, we will continue to balance a series of legitimate interests in search of a balance between liberty and equality. The case involving Tai on the Missouri campus helps to show the

complexity often involved in these competing claims. The right to press freedom serves society at large and ought to be protected. There are, however, times and places when people do have a right to be left alone; there must be limits to where the press can intrude in day-to-day life. These disputes can only be managed by a process approach over time in which we assess and balance the legitimate interests of all parties involved.

Since the ratification of the First Amendment, the right to peaceful assembly has worked in concert with the right to free expression and the right to a free press to ensure equitable ability to spread and to hear a message. Much like the right to free expression and a free press, the right to peaceful assembly is strong but not absolute. This right prohibits the federal government from passing a law that would block most forms of peaceful assembly. As in the case of free speech, the government can insist on time, place, and manner restrictions, with a comparable series of balancing tests to determine whether the restrictions are appropriate. The same set of protections for individuals have been extended to the states via the Fourteenth Amendment.⁶

The right to peaceful assembly has played an essential role throughout U.S. history to ensure that people can come together in public, regardless of their political viewpoints and without harassment from the state. Unlike the right to free expression or the right to a free press, the right to peaceful assembly has not given rise to high-profile disputes on campuses in recent years. However, the status of this right is on the minds of many students, probably because of other highly publicized public gatherings that have been curtailed by the police.

According to a recent Gallup survey commissioned by the Knight Foundation and the Newseum, race is a major factor in

the perception of First Amendment rights among college students. The difference is stark: non-Hispanic black college students are much less likely than non-Hispanic white college students to believe the right of people to assemble peacefully is secure, at 39 percent vs. 70 percent, respectively. To put it differently, fewer than half of non-Hispanic black college students believe the right to assemble peacefully is secure, whereas a significant majority of non-Hispanic white college students believe that right is secure.⁷

The timing of this survey in 2016, amid the many protests related to police violence against African Americans, offers a possible explanation for this large difference. During this period, many of the campus activists brought the national race discourse to campus. In doing so, many of these students were at least carefully tracking, if not directly involved in, off-campus protests around the United States, in Ferguson, Missouri, and Baltimore, Maryland, among other places. In many of these instances, students saw footage of violent confrontations with police officers charged with keeping the peace at the protests. Tensions were running high in many cities and on campuses as well.

Taken together, these recent survey findings demonstrate that most students do support First Amendment protections, but they also recognize some of the tensions involved. The survey findings also reveal that students' perception of how secure these rights are varies dramatically based on their racial background. This troubling divide points to the need for open dialogue about the importance of these rights, as well as about the reasons behind the students' widely held concerns.

The struggle for civil rights in the United States has long been integrally linked to the debate over civil liberties, such as free

expression, a free press, and the freedom of peaceful assembly. As members of academic communities and democracies, we must listen with care to one another's perspectives, recognizing in particular that there are racial, class, and other divides in how certain freedoms are perceived. We should strive to implement policies that accomplish all of these essential goals at once. Though frequently in tension, these goals have long proved compatible. On our campuses in particular, they can and ought to be.