A Left Defense of Pure Tolerance

by Chip Poirot

The assassination of Charlie Kirk (conservative activist and founder of Turning Point USA) and its aftermath has led to a surge in public discussion about the nature and limits of free speech. The Trump administration, citing threats from Anti-Fa, designated it as a terrorist organization and in the process, also took aim at speech that is constitutionally protected. One late night TV host, Jimmy Kimmel, was temporarily fired due to pressure from the FCC and then reinstated. Whether the Trump administration represents a singular threat to the First Amendment, or whether "the left" or "right" is the larger threat to free speech are arguable points, but not ones that I will attempt to settle in this essay. Instead, in this essay I aim to make a left-wing case for pure tolerance, or in other words, of the necessity and practicality of tolerating speech by those viewed as intolerant.

Though my argument is certainly in keeping with the spirit of John Stuart Mill's well known defense of free speech, I will not devote time herein to

rehashing the arguments of Mill as most readers will at least have a passing familiarity with Mill. Rather, I will examine two arguments for restricting speech beyond the parameters defined in the well known *Brandenburg* case of "incitement to imminent lawless action" one from the center right and one from the left: the former, that of Karl Popper's "Paradox of Tolerance" and the latter Herbert Marcuse's famous (or infamous) case for repressive tolerance. Finding their arguments wanting, I instead lay out a case for pure tolerance from two sources generally considered to be on the left, that of John Dewey and Jurgen Habermas. In setting forth my argument I will first provide a brief and perhaps biased history of efforts to suppress speech by the government as well as the thornier problem of public cancellation and then proceed to address the conceptual issues.

Though the US, at least on paper, grants the widest protection to speech as compared to many other countries, efforts to suppress speech by the government have a long history in the US, beginning with the passage of the Alien and Sedition Acts in 1798. During and after WWI, anti-German paranoia as well as hysteria over immigrants potentially falling under the sway of

anarchists and Bolsheviks, led to the passage of the Espionage Act and suppression of anti-war sentiment and mass expulsion of immigrants feared to be contaminated by such ideas. The Red Scare following WWI was succeeded by the Red Scare of the 1950s. It was not until the 1960s that the Supreme Court clearly articulated the *Brandenburg* standard for defining unprotected speech.

Yet the 1960s and 1970s were not particularly kind to the First Amendment. The FBI carried out its COINTELPRO program and the government prosecuted Daniel Ellsburg for leaking the Pentagon Papers. Ellsburg was acquitted on charges of espionage, but primarily owed to the discovery of the Watergate break in. Debates over the limits of free speech have continued. Laws that criminalize material support to terrorist organizations also target speech such as providing advice on non-violent protest to such organizations. Participants in the January 6, 2020 riots at the Capitol often received harsh prison sentences and efforts were made to use the Sarbanes-Oxley law, passed to address financial crimes, to augment the criminal charges. The Biden administration reportedly attempted to use political pressure to compel social media companies to suppress speech. The website of the Foundation for

Individual Rights and Expression contains a depressing litany of events at public and private universities in which the speech rights of students and faculty have been suppressed and a long list of public and private universities that censor student and faculty speech via overly broad speech codes. State legislatures in an effort to combat the over reach of DEI programs, have resorted to enacting anti DEI legislation that potentially suppresses constitutional speech. My own public university, which protects free speech both by the faculty union contract and university policy, has also banned "anti-Christian" and "Islamophobic" speech.

The above list for the most part addresses actual government efforts to suppress speech. Yet suppression of speech via measures that do economic and reputational harm to people engaging in constitutionally protected speech pose a particularly difficult problem as well. No one is obligated to provide people who express viewpoints with which they disagree with a platform. Nor is anyone obligated to express agreement. Free speech does not mean that the public does not have a right to censure speech and express outrage. With a few exceptions, private actors are not required to associate with others whose views they find

repugnant. Yet when social outrage impedes the ability of people to pursue employment, the chilling effect is as severe as when government engages in acts of suppression while at least in some instances, social outrage receives the backing of government. Whether or not "cancel culture" is a constitutional threat to free speech, its widespread presence on both the left and the right speaks to a cultural problem that undermines the ability of people to speak freely.

Yet whether the threat to speech comes directly from the government, or from an amorphous Twitter mob, there is a common thread. The thread that unites the two is that intolerance, whether from the government, an angry mob or both, consistently leads to a demand that some speech is intolerable, and thus not worthy of any tolerance at all. The use of the word tolerance itself creates some ambiguity. One might be tolerant of an opinion, a group or a person in a minimal sense of simply not interfering with another's rights while reserving the right to express disapproval. A devout Christian for example, might tolerate the right of an artist to display crosses in vats of urine, yet express profound offense. An atheist may find public displays of prayer to be distasteful yet recognize

that others have the right to do so and choose to simply ignore it. More often today however, the word tolerance has a broader meaning of requiring actual acceptance and affirmation of another's difference. Tolerance in the first sense is an indispensable requirement for democracy: Tolerance in the second sense is an impossibility. Yet intolerance, of the kind that demands suppression of "intolerable" beliefs is at times touted as a virtue. Closer examination of the arguments for suppression of intolerant beliefs, however, demonstrates significant weaknesses in their logic.

One common argument that is often cited in support of suppressing intolerance is Karl Popper's "Paradox of Tolerance." As initially articulated by Popper the concept was at best ambiguous. Popper addressed the issue in a footnote to his voluminous work *The Open Society and its Enemies.* In Popper's view, groups or individuals that espoused ideologies that would lead to an abolition of the principle of tolerance, could, under some circumstances, be legitimately silenced. Popper's political philosophy itself was amorphous and tied to his use of falsifiability as a demarcation criterion between science and pseudo-science. He opposed

all efforts to fix society in place. He had a close association with libertarian Friedrich Hayek but advocated for piecemeal reform of capitalism. He viewed both Marxism and racial theories of politics as pseudo-science. In fairness to Popper we should note that his argument for repressing intolerant views was somewhat limited and he was unclear whether his argument applied to groups engaging in violence and the right of society to limit violent groups, or aiming at the expression of what he viewed as totalitarian and authoritarian political viewpoints.

Oddly, Popper's single biggest proponent in American public life today is billionaire and hedge fund manager George Soros, who has supported multiple progressive causes. Despite the perception of Soros as a "leftist" in the US, Soros himself has a checkered political history. His Open Society Foundations provided substantive and financial support to opponents of Communist regimes in the 1980s and he supported various programs of "shock therapy" following their fall. At one point he refused to allow the teaching of Marxism in the educational projects he sponsored in former Socialist countries.

There is also an irony in left-wing groups touting Popper in support of generalized intolerance aimed at views deemed to be intolerant of marginalized groups. Popper was indeed a proponent of racial tolerance and individual freedom. Yet as suggested above, he was also fervently anti-Marxist. But it has become commonplace to cite Popper in support of hate speech laws, campus speech codes, cancel culture, and vaguely worded harassment policies on the grounds that such speech creates an intolerant environment for marginalized groups deserving of tolerance. But the very logic of the paradox of tolerance provides the rationale to attack those on the far left as promoting an intolerant view and presenting a threat to democracy. Notwithstanding the important distinctions to be made between the democratic and authoritarian Left, left-wing proponents of Popper's paradox of tolerance should be wary. And they need look no further than Trump's targeting of constitutionally-protected speech as responsible for the assassination of Charlie Kirk and for contributing to political violence as a prime example.

A more likely candidate to support suppression of speech from the left of course is Herbert Marcuse's advocacy for repressive tolerance. Marcuse, and the

entire Frankfurt School, has become a generalized bogeyman for the right, held to be responsible for just about every shortcoming, real or imagined, of "the left," though their influence is vastly exaggerated. Like Popper, it is difficult to separate Marcuse's arguments on speech from his political philosophy, despite the obvious differences between the two on other issues. At the risk of vastly oversimplifying complex issues, Marcuse and the Frankfurt School viewed the task of reason to be that of liberation. They did not, as is commonly believed by some, reject reason per se, but rather rejected what they viewed as the narrow application of instrumental reason applied to achieving irrational ends such as militarism, war, class oppression, racism, and other ills expressed in modern capitalism.

The point of tolerance for Marcuse was to achieve a tolerant society. Again, such a society, admitted by Marcuse to be utopian and immediately unachievable, would be an egalitarian society in which the above mentioned ills would be banished. Marcuse was of course a socialist, a critic of Stalinism, but also a critic of social democratic political parties and hesitant to criticize Stalinist parties in the West. What Marcuse envisioned as

socialism was a humanistic socialism, though in actuality, Marcuse was non-specific as to how his vision of socialism would differ from that of actually existing socialism. Like many on the left, he saw the US and capitalism as the greater threat to humanity than Stalinism. In Marcuse's view, liberal democracy, though tolerant of left-wing groups to some degree, perpetuated the status quo and put progressive and regressive views on the same footing. He saw this kind of generalized tolerance as irrational and contrary to the point of tolerance which was to promote progress against the forces of the status quo. His solution was to repress views which promoted anti-progressive views.

Marcuse recognized that his solution to the problem was largely unrealistic. What he was advocating in essence was that a capitalist government suppress speech that supported the existing social structure and protected speech that was critical of that structure. Such a state of affairs he argued could only come about in society due to a social upheaval. However, he also argued that it would be possible for students and faculty at universities to enact his vision of repressive tolerance. While it is easy to see echoes of Marcuse's arguments in sweeping campus speech codes, cancel culture and overly broad DEI

programs and policies, much of the restrictions on university campuses have come about due to misinterpretations and misapplications of US civil rights law. But if what one might call the "campus left" (for lack of an immediately better term) are not always consciously and directly influenced by Marcuse, many of the arguments for restricting speech do echo Marcuse's arguments.

Both Marcuse and Popper miss two critical points. The first is that in order to enact intolerance against the allegedly intolerant, we must first be clear about what views we will count as tolerant. In instances where individuals or groups resort to violent actions it is obvious, though it is important to apply such standards to all. Defining intolerance when addressing speech, however, is more difficult and fraught with ambiguities. Actual instances of harassment can be addressed. But when the problem is one of identifying speech in general as intolerant, the problem cannot be so easily resolved. As an example, consider which of the following might be defined as intolerant: A professor claims that black students are capable of achieving at the same level as white students and should be graded accordingly, or the claim that due to social background, black students should be held to a lower standard in

judging classroom work. Of course, the rights of students to practice their religion, or to choose not to, should always be defended. But is it more Progressive to encourage students from Islamic backgrounds to emancipate themselves from Patriarchal codes, more Progressive to advocate that promotion of such codes should be encouraged on grounds of cultural diversity, or more Progressive to simply recognize that the religious choices of my students are actually not my concern? If we choose the latter path, do we then encourage American Christian fundamentalists to promote similar codes?

The second problem follows from the first. Who will decide what we deem to be tolerant and what we deem to be intolerant? Campus activists have long argued that speech that is generally racist or sexist creates a hostile atmosphere that leads to an intolerant atmosphere for some. But, leaving aside disputes about the tactics of some pro-Palestinian protestors, we have recently seen how the same standard, in combination with vague definitions of anti-Semitism, can be easily turned against groups on the left. There is thus an obvious problem: once we accept the principle of suppressing the "intolerant" we have left ourselves open to the possibility that someone in power will define other

groups as intolerant. We have two possible solutions: we accept that we have to tolerate others we deem as intolerant, barring violence or actual harassment, or, we duke it out through violence and coercion with the goal of excluding the intolerant side from power. But no person can be guaranteed victory upon choosing the latter path.

If in the most recent decades, active intolerance, as opposed to criticism of intolerance, has come to be perceived as "left," it should be noted that there is a strong case for pure tolerance from left-wing sources. Writing in the context of revolutionary upheavals in Germany following WWI and the establishment of a one party dictatorship in Soviet Russia, revolutionary democratic socialist Rosa Luxembourg argued that "freedom is always freedom for the other." Luxembourg was later executed in an extra-judicial killing by a member of Germany's FreiKorps, for her role in fomenting an unsuccessful revolution in Germany, with the acquiescence of a Social Democratic government. Throughout the 1920s, violence by far right groups against democratic institutions, as well as against Communists and Social Democrats was tolerated, or in the case of Hitler's attempted coup, punished leniently. One can argue fairly, I believe, that the

Weimar Republic should have more forcefully acted against violence from the right, but it is difficult to believe that the problems of the Weimar Republic was that it had an overly broad view of free speech.

In the US, the relatively more moderate Progressive movement of the early 1920s found its expression in the political philosophy of Pragmatist philosopher John Dewey. Dewey, a great admirer and proponent of the experimental method in science, argued that open public debate was instrumental to the ability of democracy to solve pressing social problems. Science, in Dewey's view, was a method of continuous adjustment of beliefs to empirical evidence. Thus, warrant of belief was established not as Popper argued by falsification of hypotheses in critical experiments, but over the long haul by consideration of all the available evidence. Because democracy requires open public debate, reasoned discourse could lead to social experiments, which could in turn be rejected or furthered based on the evidence of its success or failure presented to the public. Education in Dewey's view, was therefore fundamental to the long term success of democracy.

Dewey's arguments have found more contemporary expression in Jurgen Habermas' theory of

communicative action. Notably, Habermas was directly influenced by the American Pragmatists, including Dewey. Yet he has also often been identified as a Critical Theorist and representative of the Frankfurt School. As I explain below, despite his association with the Frankfurt School, Habermas' views on tolerance are quite different from those of Marcuse. The difference lies in how they viewed the role of reason. Earlier Frankfurt School theorists had come to identify reason in public life with an overly instrumentalized understanding of reason, thus contradicting the original emancipatory hopes of the Enlightenment. But rather than rejecting the Enlightenment, Habermas is at least partially resurrecting the Enlightenment's views on the emancipatory potential of reason.

As with all the above discussed writers, Habermas' views on speech are connected to his overall social philosophy and epistemology. Notably, in his two volume work where he explains his theory of communicative action, Habermas takes aim at Popper's criterion of falsifiability. While its application to the natural sciences is at best simplistic, its application to public discourse is entirely unrealistic. Simply put, little, if any, of

public discourse is of the sort that is subject to decisive refutation on the basis of one single experiment. However, this does not mean that public discourse should take place absent criteria of rationality. Rather, public discourse should be based on criticizable verifiability claims. In other words, claims can be subjected to reasoned criticism based on reason and evidence with the arguments and evidence for and against opposing claims weighed and evaluated by the public.

The catch to all this however, is the same as it is in Dewey's case: in order for the best argument to carry the day, we must begin from an ideal discourse situation. This condition does of course leave Habermas and Dewey vulnerable to criticism. A public discourse characterized by sound bites, claims and counter claims that one's opponents are fascists, poor levels of education amongst the public, the ability of demagogues to manipulate discourse, and the lack of access by marginalized groups to public discourse all point to the lack of ideal discourse situations.

But if an ideal discourse situation does not exist, and is perhaps unattainable, this does not mean that the suppression of views deemed intolerant is

warranted. Such repression suffers from the same problems noted above. Moreover, in so far as one believes that an important goal of speech is to persuade others in society to engage in a course of action aimed at bringing about social improvement, it is imperative that we have warrant to believe that such a course of action will indeed bring about the desired improvement. To that end, speech that is "one dimensional" (to appropriate Marcuse's use of the term) has an increased likelihood of substantial error. At the same time, the goal itself must be one that can be weighed and evaluated against other goals. This is not to argue for relativism, but rather for the ability to adjust beliefs of all kinds to reason and experience, with the hope of attaining true beliefs. There is perhaps a case to be made for ensuring access to the mechanisms of public speech but such a policy must be carefully weighed. For those who argue that truth in the sense of agreement of propositions with reality is itself not attainable, and that all such claims are simply those of interests, I would respond by noting that argument is itself an argument for pluralism in discourse, not monism.

In the beginning of this essay I stated that I would lay out a case for pure tolerance and that I would do

so from a perspective that is considered within the context of our current politics, from the left, rather than the right. To this end I briefly reviewed a small sample of efforts to suppress speech sufficient to illustrate the nature of the problem. I then reviewed the arguments against pure tolerance, one from the center right, that of Karl Popper and one from the left, that of Marcuse, and found them lacking. In contrast I presented the arguments of Dewey and Habermas in support of the case for pure tolerance. I conclude this essay therefore with having stated my case and in the spirit of tolerance, invite critiques and responses.

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