

“Fire!” in Our Bill of Rights

When I was in Mrs. Kurkowski’s third-grade class, we studied a quaint subject that might now be called “Civics,” including the United States Constitution and the Bill of Rights. The concepts had to be simplified a bit for third-graders.

I was fascinated with the idea that in the United States, I was legally allowed to stand on any public street corner and denounce the sitting President of the United States. Insult him. Hand out written flyers ranting about his incompetence and cronyism. I could call him a Poopy-Head if I liked.

No, I wasn’t allowed to make threats against the President (this, the Secret Service tends to frown on). And, as a practical matter, my parents would have quickly put paid to any radical schemes I hatched that involved standing around on street corners, handing out firebrand leaflets.

All the same, this was my elementary-school understanding of the First Amendment of the United States Constitution. And that understanding has not changed to this day. I used to try to impress upon my middle- and high-school students the utter, astonishing *exceptionality* of our American right to Freedom of Speech in this way. “If you like,” I would say, “You can run down to Spring Street and scream outlandish insults about the President of the United States! Just think of that!” (They yawned.)

But I am worried, now, about our First Amendment. I am genuinely and deeply afraid for our cherished American right to Freedom of Speech.

Leftists aren’t willing to attack Freedom of Speech directly. That would be un-American and un-thinkable. So certain leftists have engaged in very clever guerilla language warfare.

Here's how it works: Speech is re-defined as Hate. "Hate Speech" becomes conflated with violence. Any Speech that a leftist doesn't like (disagrees with/is made uncomfortable by/strikes close to home and reveals unpleasant truths) is re-defined as VIOLENCE, rather than as SPEECH. The First Amendment protects Freedom of Speech, but it does *not* protect against Incitement to Violence or other dangerous acts.

In 1919, the U.S. Supreme Court unanimously ruled on limits to Freedom of Speech (in *Schenk v. United States*). In an analogy made prior to the Court's ruling, Justice Oliver Wendell Holmes said that "free speech would not protect a man in falsely shouting 'Fire!' in a theatre and causing a panic." (Note that *Brandenburg v. Ohio* effectively overturned *Schenck* in 1969. But that's for another day.) The Court holds that speech directed toward inciting or producing imminent lawless action is not protected. Fair enough.

But is speech that someone doesn't like, or that someone disagrees with or finds unpleasant, is *that* speech "inciting or producing imminent lawless action"?

Here's how the game works: Disapproved ideas are labeled as "Hate Speech," or as "Microaggressions." (Genuine example of a disallowed "Microaggression": "I believe the most qualified person should get the job.") Speech, mere words, has become "Hate" and "Aggression." We as a society have already accepted the concept of "Hate Crimes." Logical enough that "Hate Speech" and verbal "Aggressions" become defined as types of "Hate Crimes."

Are you following this? The left is re-defining Speech as "Hate" and as "Incitement to Violence." Once this re-definition has been accomplished, they are free to complete their end run around the First Amendment. *They aren't limiting Freedom of Speech. They are fighting against Violence!*

In the era of Trump, my Massachusetts-based students never

seemed to be surprised when I revealed to them that they were free to run to the nearest street corner and insult their President. (Probably there was an after-school club devoted to precisely such an activity.) However, it might come as a bit of a surprise to them to discover that other people are free to disagree with them and their like-minded classmates. What? Aren't they entitled to "Safe Spaces"?

It certainly might come as a surprise to some politicians and media professionals to discover that disagreement and political commentary are fair game. Because while it's just fine and dandy to vilify Donald Trump from any given crossroads or any given Congressional Committee, it seems to be un-thinkable to make any observation or comment at all on other, protected Persons.

Observation and comment that used to be simply the rough-and-tumble of political (and academic) life have become... Incitements to violence.

Viz...

Representative Ilhan Omar spoke to the Council on American-Islamic Relations and glossed over the attacks of September 11th by saying the Council was created [she meant the Council's size was increased] in response, "because they recognized that some people did something and that all of us were starting to lose access to our civil liberties." Many were outraged by the idea that September 11th (next up Pearl Harbor? or the Boston Marathon Bombings?) could be brushed aside as "some people [doing] something." Donald Trump sent out a tweet that interspersed Ilhan Omar's own words with graphic images of the violent "something" that terrorists actually did.

Did Representative Omar deliberately downplay the terrorist attacks of 9/11? Did she understand that her words would come off to many as dismissive of these evil acts, to the point of willful ignorance, and also make her appear aloof from the

death, pain, horror, and shock? We all choose words poorly at times, and it's possible that Ilhan Omar is simply too young and too prideful to find a good opportunity to apologize and re-phrase. All the same, her speech, however objectionable to some ears, is protected by our grand First Amendment.

Did Trump show marvelous judgement by tweeting as he did? Should his parents maybe even have pulled him away from that on-line street corner? I'm not making that call. But was his tweet protected speech? I'll make that call: Absolutely!

Leftist politicians and some media elite, however, are going nuts. This is not protected speech (they screech with a coordinated, chorused voice): Trump's tweet is an incitement to violence!

Reactions to Trump's tweet from the elite:

Presidential candidate Pete Buttigieg (a fellow Hoosier and an intellectual, who should know better): "Now, a president uses that dark day to incite his base against a member of Congress, as if for sport. As if we learned nothing that day about the workings of hate."

CNN's Brian Stelter: "Omar's comment was used as a weapon against her, including by President Trump."

Presidential candidate and Senator Elizabeth Warren: "The President is inciting violence against a sitting Congresswoman—and an entire group of Americans based on their religion." (Nice job to throw religion in there, Liz, even though the tweet utterly failed to touch on religion.)

Presidential candidate John Hickenlooper: "President Trump's personal attack against Representative Omar is vile and shameful. It's... dangerous and dishonest."

Presidential candidate and Senator Cory Booker: "This is a reprehensible attack on her. It's trying to incite anti-

Islamic feelings...” “[Omar] does not deserve [these] kind of vicious, hate filled attacks...” (Booker then goes on to explicitly link “our President’s language” to the recent New Zealand terrorist attacks.)

The Nation (Elie Mystal): “Donald Trump Isn’t Playing Games with Ilhan Omar—He’s Inciting Violence—And he’s going to keep inciting violence until someone gets killed.”

And these are only a few comments, and only regarding one recent controversy.

Be aware, when you hear that speech is “Hate” and an “Incitement.” This is very likely to be a sneak attack on the First Amendment.

Words themselves may be ill-chosen. Speech may be awkward. It may be ugly. Yes, speech may even be vitriolic and hateful – and that is to be despised. Despised, but almost never limited. (Well – maybe limited by your parents and teachers, but not limited by the government, nor by sanctimonious and moralizing media blatherers.)

On Monday, in Paris, Notre Dame Cathedral burned. This great monument of Western Civilization is being described as “the Heart of Paris.” At this very time, in the United States, I truly fear that another of the singular—and irreplaceable—achievements of Western Civilization is in imminent peril.

Let’s not allow the Heart of our Freedoms to burn.