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BOOK REVIEW

Sigal R. Ben-Porath. Cancel Wars: How Universities Can Foster Free Speech, Promote Inclusion, and Renew Democracy

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In *Whitney v. California* (1927), Justice Brandeis writes, "Only an emergency can justify repression," so the preferred remedy is "more speech, not enforced silence." As the law professor Vincent Blasi notes, Brandeis here champions "civic courage," as free speech requires and fosters the capacity to overcome fear—even of the witches that previous ages burned—and remain open to new customs and ideas.[1] In her fascinating and important *Cancel Wars*, Sigal R. Ben-Porath counsels a "modified version" (p. 2) of Brandeis to espouse both free speech and inclusion. The book does not discuss historical examples; readers of this journal may consider if history supports Ben-Porath's substitution of trust for "civic courage." In provoking those considerations, the book proves both generative and essential.

Ben-Porath supports legal and democratic protections for free speech but recognizes its burdens, as some speech preempts the civic participation of marginalized groups. Trust thus becomes necessary to prevent a zero-sum game between free speech and belonging that would render inclusive democracy unstable, if not self-contradictory. For Ben-Porath, we find trust in listening to one another. Higher education becomes necessary to establish the common epistemic foundation for such conversations to go on, even as facts have become hard to distinguish from opinion, and experts and gatekeepers less reliable. If we are often isolated amid epistemic ruins, "a Dewey-style democratic civic culture is the antidote we need for this condition" (p. 45), and colleges and universities nourish a "sense of shared civic fate" (p. 48) as students and professors pursue truth and diversity at once. Heterodox ideas can be exchanged in a self-consciously communal search for the truth; exclusionary ideas may be ruled out from the search if their speakers corrode trust.

Specifically, Ben-Porath worries about speech that promotes "negative ideas about people" or "[causes] them to feel they are not valued or not seen as equal" (p. 63).

[1]Vincent Blasi, "The First Amendment and the Ideal of Civic Courage: The Brandeis Option in Whitney v. California," *William & Mary Law Review* 29, no. 4 (May 1987-1988): 653–97.

Rather than immediately dismiss or credit claims of dignitary harm, she argues we should weigh them by asking who is speaking, who is their audience, and what their justification might be. Ben-Porath looks again for a "process of developing shared norms and developing trust" (p. 82) among students, professors, and administrators that is directed toward a common good and engenders still further trust. Ideally, college students already would have experience in conversing about difficult issues, but K-12 speech rights have been curtailed by courts and crowded out by standardized tests, and "the development of a sense of shared fate, which is at the core of democratic culture and at the heart of the educational process" (p. 107) is oft sadly delayed till the college years.

This raises the question of what college should actually look like. Once more, Ben-Porath emphasizes the "relational and institutional … the social aspects of the democratic civic infrastructure" rather than the "structural or legal" (p. 115). In response to exclusionary speech, for administrators, she prefers counteraction to suppression, patience rather than immediate action, and public statements that remain broadly supportive of free speech while acknowledging its harms. Instructors should carefully distinguish between open and closed topics—"vaccine hesitancy" is now open, but marriage equality "is now the law of the land in the United States" and thus "closed" (p.133). Instructors might open five-minute discussion periods specifically for underrepresented views, but they can always say, "You are pushing against our shared norms for this class," in response to hateful comments and those "denying scientific consensus about vaccines or climate change" (p. 134). Students should consider means of engagement that are constructive alternatives to de-platforming. University boards should carefully avoid politicization. The space and time for these preferred actions is opened up through the element of trust. The ideal is a "well-structured dialogue or forum" that leaves "all sides to find some shared values, views, or commitments" (p. 139).

While Ben-Porath provides examples, some drawn from her own experience, this is not a work of historical research. What constructive response might a historian of education give to Ben-Porath's "modified version" of Brandeis? First, I think there might be caution about the fragility of the concept of a community based on shared interests and shared fate, especially in times of political stress, as real and imagined witches abound. During World War I, the American Association of University Professors allowed, inter alia, that "teachers of German or Austro-Hungarian birth or parentage" must "refrain from public discussion of the war."[2] For Arthur O. Lovejoy, one of the AAUP's founders, wartime emergency justified restrictions, as the ordinary practice of academic freedom would also facilitate "the achievement of the Lenines and the Trotzkys in Russia"[3] in the US. Lovejoy grasped the importance of "the progressive discovery of truth" and "the development of diverse types of personality"; he simply believed that academic

[2] Arthur O. Lovejoy, Edward Capps, and Allyn A. Young, "Report of Committee on Academic Freedom in Wartime," *Bulletin of the American Association of University Professors (1915-1955)* 4, no. 2/3 (Feb. 1918): 29–47. The quote is on pp. 40–1.

[3] Arthur O. Lovejoy, "Academic Freedom in War Time," (letter to the editor) *The Nation* 106 no. 2753 (April 4, 1918): 401–402. The quote is on p. 402.

freedom became dispensable when the democratic state was threatened by "reaction."[4] This raises questions about whether a community rooted in the discovery of "a sense of shared fate" (p. 107) will value free speech when its security—its physical fate—is in danger.

Second, we can imagine viewpoints that, at the time, may not have seemed to contribute to a shared search for truth or to respect conversational norms that were nevertheless worth hearing. In 1960, Leo Koch was fired from the University of Illinois for writing a letter to the school newspaper suggesting that no reason existed not to condone "sexual intercourse … among those sufficiently mature to engage in it without social consequences and without violating their own codes of morality and ethics."[5] The president of the University of Illinois called Koch's views "offensive and repugnant, contrary to common accepted standards of morality."[6] After all, premarital sex in Illinois was a crime—the issue was "closed," as Ben-Porath might say. Furthermore, the Board of Trustees found that Koch's letter was not a "reasoned statement" because its tart language violated conversational norms (dignity, respect, etc.). We still need grounds to suggest that, despite the persuasiveness of these claims at the time, Leo Koch's academic career should not have been prematurely ended.

Third, if we look at an example that Ben-Porath twice draws upon, that of Derek Black, who was persuaded out of white nationalism while at New College, Florida, we notice important forms of sociability that go unmentioned in *Cancel Wars*. The journalist Eli Saslow's book about Derek Black notes that when their identity as a prominent white nationalist was unmasked, "nobody from the administration approached Derek to ask [them] about [their] beliefs, and no administrator spoke publicly about the issue to the student body."[7] This is not a story about workshops, seminars, or sponsored dialogues. What was important was an unlikely invitation to a Shabbat dinner, in part because of a religious call: "Reach out and extend the hand, no matter who's waiting on the other side,"[8] and then the steady devotion of a girlfriend with whom Black had "one glaring disagreement."[9]

To be sure, Derek Black had other conversations on campus, and the story depends on the New College administration's choice not to expel them, despite the dignitary harm that their activities undoubtedly had caused. But space for their conversion seems to have been opened up by religious and romantic forces. If one proposal for free speech is through the discovery of consensus in conversation by parties once indifferent to one another, another draws on pre-existing sources of friendship, which, if less manageable, may be more unconditional, and allow for an undergraduate's gradual and difficult

[4]Lovejoy, "Academic Freedom in War Time," 402.

[5]Leo Koch, "Advice on sex" (letter to the editor), *Daily Illini* (18 March 1960), 8.

[6]Letter from President Henry to Dean Lanier, reprinted in Thomas I. Emerson, Robert E. Butts, Harry J. Leon, and Warren Taylor, "Academic Freedom and Tenure: The University of Illinois." *AAUP Bulletin* 49, no. 1 (1963): 25–43. The quote is on p. 28.

[7]Eli Saslow, *Rising Out of Hatred: The Awakening of a Former White Nationalist* (New York: Anchor, 2019), 62.

[8]Saslow, *Rising Out of Hatred,* 78.

[9]Saslow, *Rising Out of Hatred,* 171.

admission of self-refutation. (Perhaps tellingly, Ben-Porath refers to Black's story in abstract terms of "communities" and "diverse friends" (pp. 56-7).)

In short, there exists historical evidence that suggests supporting free speech requires confronting existential and moral threats to the state and community against which censorship may appear prudent. Further, supporters of free speech may also need to draw on Shabbat dinners and relationships that a public school administration cannot create in order for free speech to work.

History may also warn us about administrative incapacity to do many of the things Ben-Porath wishes. First, she imagines that higher education can foster an epistemic basis for dialogue. To be sure, higher education includes administrators and professors with significant disciplinary expertise. But, as the sociologist of science Harry Collins has said, discerning scientific consensus requires no less than the panoramic vision of an "Owl," an individual or group that can disinterestedly acknowledge experience-based experts but also dismiss fringe and corrupt scientists and see through "fake sciences."

The difficulty of attaining this kind of vision—one not only disciplinary but also sociological and philosophical—suggests that college may be the place where students see not only consensus but also conflicts over epistemic authority. In education, as the education professor William Furey has pointed out, students in the field could recently encounter the specter of a prominent scholar's newsletter claiming, "There is no practical utility in knowing students' learning styles," while his textbook counseled, "Teacher certification tests may ask you to design a lesson that would accommodate students' various learning styles."[10] As the late psychologist Scott Lilienfeld and colleagues noted, even though "the consensus that [Facilitated Communication] is ineffective was essentially universal in the scientific community by the mid-to-late 1990s,"[11] several administrators of education schools remained visible supporters. (Harry Collins himself suggests mainstream economics is open to question.)

If history raises questions about higher education's capacity to establish a factual world, it may also do so about administrators' classifications of those marginalized groups that may require protection from dignitary harm. An example that post-dates Ben-Porath's book may suffice. An instructor at Hamline University showed a class a fourteenth-century painting that depicts the Prophet Muhammad. A student in the class, president of the Muslim Students Association, responded, "I don't feel like I belong."[12] An administrator then claimed the showing of the painting was "Islamophobic," and "it was decided it was best that this faculty member was no longer part of the Hamline community."[13] The faculty member was an adjunct professor

[10]William Furey. "The Stubborn Myth of 'Learning Styles': State teacher-license prep materials peddle a debunked theory," *Education Next* 20, no. 3 (April 7, 2020): 8–13. The quote is on p. 10.

[11]Scott O. Lilienfeld, Julia Marshall, James T. Todd, and Howard C. Shane, "The persistence of fad interventions in the face of negative scientific evidence: Facilitated communication for autism as a case example," *Evidence-Based Communication Assessment and Intervention* 8, no. 2 (Feb. 2014): 62–101. The quote is on p. 69.

[12]Quoted in Anna Khalid, "Most of All, I am Offended as a Muslim," *Chronicle of Higher Education*, Dec. 29, 2022, https://www.chronicle.com/article/most-of-all-i-am-offended-as-a-muslim.

[13]Khalid, "Most of All, I am Offended as a Muslim."

("one of higher education's underclass of teacher,"[14] in the *New York Times* account). A professor of history at a neighboring college subsequently argued the Hamline administration's action "flattened the rich history and diversity of Islamic thought" and constituted "arch-imperialism" that "offended" her as a Muslim.[15] Whether or not this was potentially resolvable through dialogue, the question is who here suffered dignitary harm—the Muslim student made complicit in idolatry, the Muslim history professor told to accept a narrowed view of Islam, or the adjunct professor denounced as Islamophobic—and whether the answer awkwardly requires something like a normative judgment.

The great merit of Ben-Porath's book is that I can also imagine historical examples that would be more supportive of the book. This book, concise and consistently readable, is worth assigning in class and worth considering to weigh the possibilities. This reviewer happens to think history suggests we must face down existential and moral risks that place survival over truth-seeking and draw on deeper roots for friendship than the shared interests that may be revealed in discussions, as well as realize that administrators often cannot do what we wish they could. In other words, it may require, at least at times, Brandeis's civic courage poured straight, no ice, and not the "modified version" of Brandeis that Ben-Porath ably gives us. Social and civic trust, alas, seems fleeting and elusive.

[14]Vimal Patel, "A Lecturer Showed a Picture of the Prophet Muhammad. She Lost Her Job," *New York Times*, Jan. 8, 2023, https://www.nytimes.com/2023/01/08/us/hamline-university-islam-prophet-muhammad.html.

[15]See Khalid, "Most of All, I am Offended as a Muslim."

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