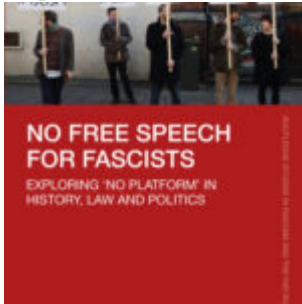


Socialists and Free Speech Revisited

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Review essay of David Renton's *No Free Speech for Fascists. Exploring "No Platform" in History, Law and Politics*, London and New York: Routledge Taylor and Francis Group, 2021.

How should socialists who support democratic rights approach current controversies regarding the practical application of the right to free speech? This review essay explores this question discussing David Renton's recent book focusing on how free speech is being legally regulated in Europe and in the United States, specifically regarding fascist and hate speech.

Few people on the left are as qualified to analyze free speech controversies as David Renton, a British barrister, historian and socialist activist of long standing. Indeed, this volume does not disappoint with its articulate, learned and wide sweeping historically grounded analysis primarily based on British politics and law, but also taking into account the United States and how it legally and politically treats free speech.

As we know, the right to free speech is not unlimited. The classic example of such limitation involves speech directly and imminently endangering the life of people, like shouting "fire!" when there isn't any in a crowded theatre. But legal limitations on free speech have extended beyond that circumstance as shown in the extensive jurisprudence on the matter in Europe and especially in the United States.

Besides those legal barriers on the exercise of free speech, there are major social and economic obstacles that prevent many people from disseminating their views to large audiences. Renton wants to protect the voices of those many people, especially those who, as he puts it, "have not been

heard” such as workers, minorities and the poor. For him this requires a thorough democratization of free speech. At the same time, however, he insists that such democratization has to be accompanied by the censoring of speech involving “destructive forms of politics,”—specifically involving fascist politics— in order to prevent the latter “from organizing without opposition.” Concerned with that, and at the same time with avoiding the extension of “the category of unwanted speech so widely that our opponents can claim a fake mantle of victimhood,” (7), Renton distinguishes between fascism, against which he unapologetically stands for denying it a platform, and non-Fascist racism, which in his view should and must be challenged but not banned.

Renton sees fascism as belonging to a wide family of reactionary politics, including racism. But from the perspective of denying it or allowing it a platform, he distinguishes fascism as occupying a special and separate place from the rest of the more traditionally reactionary ideology given its unique emphasis on violence and its systematic use aimed at physically suppressing its political opponents and minority groups. According to him, what differentiated, not only analytically but also in terms of concrete, practical consequences, the right-wing reactionary movements and regimes of the first half of 20th century Europe like Pilsudski’s in Poland, Primo de Rivera’s in Spain, and Horthy’s in Hungary, from their contemporary German and Italian fascism, is that the regimes in the first group were authoritarian dictatorships that practiced censorship and eliminated free elections, whereas German and Italian fascism, besides explicitly stating as its aim the establishment of a totalitarian, anti-democratic system upon their coming to power, systematically organized mass counter-revolutionary armies, before and after seizing power, that engaged in violent attacks against its opponents and against despised ethnic groups. Even before they took power, German Nazis regularly conducted physical attacks on unions, left-wing organizations and on Jews and other minority groups, endangering their very lives. The authoritarian dictatorships might have at times encouraged violent street actions, but not on an ongoing and systematic basis. This has also been the case with pro-Trump Fascist groups in the U.S. who have engaged in violent attacks, as in Virginia and at the Capitol in Washington, without yet transforming it into a systematic violent offensive against its opponents. Applied to current US politics, Renton’s differentiation would more accurately describe the nature and the dynamics of the politics of former President Donald J. Trump, typified by Renton as a radical conservative, as much closer to the non-fascist reactionary politics of the “illiberal democracy” that Viktor Orban is building and defending in Hungary and to the authoritarian regime of Jaroslaw Kaczynsky in Poland than to fascism. It is that systematic violent characteristic of fascism that for Renton justifies its exclusion from any speech platform. Fascists, argues Renton, do not rely on or seek rational discussion, persuasion, but the physical suppression of dissent. To allow them a platform to discuss political differences would mean allowing them to build a movement **to** physically wipe out those who dissent from their views.

So far, Renton’s argument for the exclusion of fascism based on its systematic reliance on physical violence does make sense. But he also adds as another exclusionary argument fascism’s stated aim to destroy democracy and its institutions upon taking over the state. That is a problematic proposition. One thing is to deny a platform of free speech to fascism based exclusively on its systematic use of violence practiced by its supporters while they are oppositionists. These systematic violent practices move the Fascists, as a result of their own choice, from the realm of ideological struggle and non-violent persuasion that would have justified their claim to free speech, to the realms of intimidation and coercion that by their very nature contradict and negate that claim.

But to additionally deny Fascists a platform because of their ideology and the political program they would like to implement in the future when they seize power opens a Pandora’s box of potential problems. For one thing, Fascists are by no means the only political group or tendency that promises to establish thoroughly antidemocratic political regimes when and if they win. That is also the case for a number of right-wing and left-wing sects as was also once the case of the Communist parties,

particularly in the Stalinist ultra-left and sectarian Third Period (1928-1935). Such an approach may even provide unwitting support **to** the eruption of McCarthyite ideological and political witch hunting against certain types of left-wing politics. The key issue in the free speech context should be not their ideology and politics in the abstract, but their violent, thuggish conduct - much of which is criminally punishable - towards a wide variety of groups defined by their politics, racial, gender, ethnic and religious membership. This is more than sufficient to justify the politics of No Platform.

Fact is, that Fascism has relied much more on intimidation than on persuasion. in order to advance their political cause. In 1936, the British Union of Fascists organized a march through the heavily Jewish East End of London. It was evident that Oswald Mosley, the Fascist leader and organizer of the demonstration, did not intend to persuade the Jews living in that neighborhood to join his group. If anything, his intention was to intimidate and terrify them—and to provoke them too. Nor did the American neo-Nazi group that applied for a march permit in the also heavily Jewish Chicago suburb of Skokie in 1978 set out to persuade Skokie's residents, many of who were Holocaust survivors, into becoming Nazis. Nor does the KKK attempt to persuade Black people when it burns crosses in front of their homes and in their neighborhoods.

In London, Mosley and his followers were successfully opposed by twenty thousand demonstrators, who clashed with the six thousand police trying to protect a couple of thousand fascists in the now famous battle of Cable Street. In Skokie, a Chicago suburb, the local authorities tried to prevent a Nazi march, but the American Civil Liberties Union (ACLU) sued to allow it, causing many of its members to resign. Despite the ACLU's legal victory, the neo-Nazis decided to stage a rally in downtown Chicago instead. While Nazism was rising in the London of the 1930s, it had become a minor, fringe group in Skokie, Illinois in 1978. Yet, both groups belonged to an organized political current with a history of physical intimidation and violence.

The ACLU's defense of the Nazi march in Skokie included two key arguments. One pointed at the dangers posed by allowing the state, local, or federal government to limit or regulate speech since it would set a precedent that could be turned against other social movements' democratic rights, including organized labor, minority groups, women and the left. On this issue, the ACLU was on very solid ground. Reston himself points at that same danger of having the state regulate speech and admonishes the left against its appealing to the state, whether in the form of legislation or police action, lest it strengthens the hand of that very state in suppressing the free speech of the left and protest movements.

The ACLU's second argument was that because the march did not pose an intended, likely, and imminent danger of violence, it counted as constitutionally protected speech. This argument brings up to the surface an important distinction between the antiracist left and the broadly liberal ACLU. For the latter, violent racist intimidators should enjoy the same free speech rights as racist persuaders such as, for example, the racist academics Jensen, Herrnstein, Murray (and Eysenck in Britain.) For the antiracist left, violent intimidators such as Nazis and Fascists should be considered as categorically different from the racist persuaders like the above-mentioned academics. (Samuel Farber, "A Socialist Approach to Free Speech," *Jacobin*, February 27, 2017.)

More generally, for the antiracist left, the relationship between groups like neo-Nazis or the KKK and democratic social movements has been defined as one of open belligerence rather than a primarily peaceful ideological struggle. Therefore, as far as the social movements are concerned, the otherwise reasonable rule that speech is protected until violence appears imminent should not apply to these violent intimidators. In fact, such rule gives the latter the choice to select the time, place, and manner most favorable for their violent actions, particularly at those times and places when there is no organized force to oppose them. Thus, whereas the left should have, like the ACLU, opposed the Skokie ordinance, it should have, unlike the ACLU, done everything in its power to stop

the Nazi march in Skokie in the streets.

Stated in a different way, for the left, the question of stopping the neo-Nazis from marching altogether should not have been—and should not be—regarded as a question of principle but rather as a tactical question. Tactically speaking, in Skokie, the antifascist forces had the upper hand thanks to the tremendous mobilization provoked by the announced march. With that in mind, there were other relevant tactical considerations including whether the majority of protesting groups would have supported physically preventing the march, and whether significant sections of the sympathetic public would have recognized the justness of forceful actions instead of perceiving the Nazi intimidators as victims.

From No-Platform to Hate Speech

For Renton, however, the issue of fascism and free speech in Europe and Britain has in recent years taken second seat to the growing problem of hate speech, which especially concerns him because of the damage it inflicts on its victims, the already oppressed racial, ethnic minorities and women. It is for that reason that he is attracted to the work of Jeremy Waldron, a major free speech theoretician seeking to establish an alternative to the American legal and constitutional model underlying free speech.

In the US, the approach to hate speech derives from the First Amendment in the Constitution, which provides that:

“Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

When applied to concrete cases, the US Supreme Court established, especially in its *Brandenburg v. Ohio* 1969 decision, that speech advocating illegal conduct is protected under the First Amendment unless “such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”

Thus, under the First Amendment and its judicial interpretations, hate speech is comparatively more protected than under the corresponding provision embodied in Article 10 of the European Convention on Human Rights, the maximum European source of authority on this matter, that makes free speech a qualified right and not only articulates the rights of the speakers but also emphasizes their duties and responsibilities as follows:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, prevention of territorial disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Waldron’s work is an attempt to move the US to the European more restrictive free speech model, which he regards as more responsive to the need for controlling hate speech and reduce the damage it inflicts on its victims, specifically racial, ethnic and religious minorities who, as he points out, internalize the offensive contents of hate speech leading them to a diminishing sense of self-worth.

Renton is particularly sympathetic to Waldron's focus on the victims of hate speech and quotes the latter's defining question of his work: "can their lives be led, can their children be brought up, can their hopes be maintained, and their worst fears dispelled, in a social environment polluted by these [hate speech] materials?" (82) (It should be noted, though, that some of the examples of hate speech in the US that he attributes to Waldron fail to support the latter's call for increased regulation and the punishment of that type of speech, for the simple reason that they involve conduct already declared illegal or unconstitutional in the United States, and therefore not protected by the First Amendment to the Constitution. One example is the placement of signs explicitly excluding non-Christians from buying or renting apartments and houses, a practice that was declared illegal in the United States under the federal Fair Housing Act approved in 1968. That this anti-discriminatory law might not have effectively diminished or eliminated discrimination in housing is a separate and distinct issue from the fact that the discriminatory exclusion itself was declared illegal. The same applies to cross burning, which the Supreme Court already declared unconstitutional when its purpose is to intimidate a person, family or group of people.)

What Waldron seems to assume, however, is that the only really meaningful remedy against hate speech is to go to court and invoke the penalties that British and European legislation establishes to ban it. Yet, he does not present any evidence showing that the European courts have been any more effective in restraining hate speech and racism than the U.S. To be sure, there are plenty of problems with the American institutional approach to free speech, such as its recurring tendency to sanction the state's persecution of left-wing minorities, or as the Supreme Court's sanctioning, in the name of free speech, the blatantly undemocratic financing of elections. Fact is, that more regulations limiting free speech based on allegedly benefitting groups such as Black people who have been discriminated for centuries, will likely backfire: whatever temporary benefits oppressed groups may obtain from Waldron's approach, may even in the short run result in the greater power of the state to legally clamp down and repress those very oppressed groups, especially when it comes to their being able to protest against racism, sexism or Islamophobia. As the free speech scholar Michel Rosenfeld has noted, the first person convicted under the United Kingdom's Race Relations Law criminalizing hate speech was a black man who uttered a racial epithet against a white policeman. (Michel Rosenfeld, "Hate Speech in Constitutional Jurisdiction: A Comparative Analysis," p. 1525.)

Waldron's reliance on the state as the only or main agent against hate speech has been belied by the Me Too and the Black Lives Matter movements and their substantial impact on the politics of the US. These movements have been primarily oriented to public agitation and action rather than to legal action in the courts. Looking farther back in U.S. history, there is nothing more dramatic than the drastic changes that the Civil Rights and Black Power Movements of the sixties achieved against hate speech, as for example radical changes in the way that American whites addressed Black women and men. This was not just a matter of the heavy and fully deserved blow that the public use of the derogatory "N" word suffered during those years. Much more remarkable was how in a very short time - approximately between 1966 to 1968 - even the usually non-derogatory but traditional term Negro practically disappeared from popular usage; all of that without the involvement of any state or federal level legislation.

Renton also parts ways with Waldron when he begins to look at the consequences that the implementation of this more restrictive model of free speech has had in Europe and Great Britain. He critically points out at the increased intervention of the state through legislation and the concomitant growth of what he calls "delegated politics," by which he means a shift from street and movement politics, like the *No Platform for Fascists* movement in the UK, to the almost exclusive reliance on legal appeals to the state and business elites to intervene in cases of hate speech (148).

In addition, Renton criticizes hate speech legislation in Britain and in Europe for having shifted its

focus away from oppressed groups and their anti-hate speech struggles to an all-inclusive legal provision that allows every group, including non-oppressed groups and even oppressor groups, to legally become a persecuted legal claimant. That is the case, for example, of Jewish Zionist individuals and groups who, based on the protected status afforded to Jews—fully justified in light of the recent growth of antisemitism in Europe and the United States—take advantage of current legislation to claim they are legal victims of hate speech. Renton cites the example of the complaint brought in 2012 by Ronnie Fraser, a member of *Academic Friends of Israel*, against the lecturers' University and College Union complaining of harassment on grounds of race because the union had approved motions criticizing the actions of the Israeli government and supporting the boycott of Israeli universities. Renton points out that essential to Fraser's case was the idea that he was a member of a disadvantaged group (Jews) and because, as Fraser argued, all Jews supported Israel, the union's policy criticizing Israel had infringed on his dignity as an equal member of the union. (99) Renton adds that Fraser lost his case because the tribunal found that he was in fact not complaining about harassment but about the antagonism that he would have encountered when he entered the terrain of political debate in defense of Israel. However, I would argue that although Fraser lost the legal case, he nevertheless won to the extent that cases such as his have contributed, in Great Britain, to cement the internal solidarity of groups—Zionist groups in this instance—who then go on to raise the lost legal case as further evidence of their victimization by supposedly antisemitic elements.

It is thus, Renton goes on, that the issue of free speech may have been ideologically captured by a right-wing that constantly claims its being victimized for supposedly being denied its free speech rights and paints itself as the defender of free speech against the attacks of the left. Free speech debates, he observes, get subsumed in a left-right ideological framework to such a degree that it becomes well-nigh impossible to keep in sight what the free speech issues are on their own right. (146) In the Fraser case, for example, that happened when the Zionists, unable to defend Israeli policies of occupation and oppression of the Palestinians, changed the subject away from those issues to the supposed anti-Semitism of the critics and opponents of Zionism. A similar example involves the old right-wing argument that changes the subject away from institutional racism by blaming the alleged cultural deficiencies of the poor as the cause of poverty rather than structural factors such as low wages, unemployment and racial discrimination.

Renton also criticizes Waldron's assumption that hate speakers necessarily belong to powerful groups. Hate speakers, Renton argues, may themselves be powerless, at least in some respects. This is certainly true, he points out, about the large numbers of white Americans who perhaps influenced by far-right propaganda, see themselves as victims of a system that cares more for racial and ethnic minorities and immigrants than for them. One may add, however, that those white American hate speakers—long-term unemployed white workers such as coal miners and industrial workers in states like West Virginia and Pennsylvania scapegoating liberal environmentalists, Blacks, and immigrants for their troubles—are in fact victims of capitalism and its systemic disregard for those who have unjustly paid the price of major structural economic change.

Yet, one cannot speak about opposing government and legal bans on hate speech without regard to context. For example, hate speech is unacceptable inside the classroom and the workplace because it would create a hostile learning or working environment for audiences that are essentially captive, that is, they involve people who are being victimized by that speech who are unable to go away or escape from the hate speakers without paying a heavy penalty. The same logic would apply to campus dormitories, army barracks and similar establishments.

Another example currently at the center of public controversy, is the issue of hate speech, and more broadly free speech, in social media. In that context, major social media such as Facebook and Twitter are controlled by huge private corporations that make a large number of daily decisions, at

best broadly reviewed only by the boards of distinguished people appointed by the owners, as to what should be censored. Those decisions are made without any democratic control by social media users and society at large. They should, at the very minimum, be regulated as public utilities (similar to, for example, gas and electricity). One possible model would be to run them in a manner similar to newspapers, radio and television stations where editors would be held politically and legally responsible for what appears in their respective platforms. The people banned from using social media would be able to appeal their exclusion to specialized independent judicial bodies that would be granted the authority to settle disputes.

Free Speech and the left

For Marx, free speech was an indispensable component of political democracy, itself the most favorable terrain for the struggle for socialism. For Marxists, free speech, free association and other democratic freedoms historically facilitated working class organizations such as unions and political parties. As Marx and Engels proclaimed in the *Communist Manifesto*, "The first step in the revolution by the working class is to raise the proletariat to the position of ruling class, to win the battle for democracy."

Upholders of authoritarian politics on the left insist that Marx was not interested in defending "bourgeois" individual rights and political democracy. In fact, however, Marx's politics were deeply rooted in his time's radical democratic movements. In the first article he ever published, he sharply criticized the government decree that established censorship, arguing:

The writer is thus subjected to the most frightful terrorism, the jurisdiction of suspicion. Laws about tendency, laws that do not provide objective norms, are laws of terrorism, which were conceived by the state's exigencies under Robespierre and the state's rottenness under Roman emperors.

Contrary to the received wisdom among many leftists, the revolutionary and reformist transitions to bourgeois democratic rule did not include many crucial democratic rights - such as free speech, the abolition of slavery, universal suffrage, workers and women's rights. These were generally democratic conquests won through popular struggle against bourgeois rule, for the most part long after the bourgeoisie had consolidated its power.

Is free speech an exception?

While hardly any leftists or socialists would argue in favor of curtailing the suffrage rights of its opponents (even Lenin made clear that the Bolshevik ban on post-revolutionary bourgeois voting rights and parties was a conjunctural measure rather than the implementation of a socialist goal) this has not been the case for banning right-wing speech besides the special case of Fascism.

One of these leftist and socialist currents comes from the tradition of socialism from below, which includes the tradition of the IWW who fought towns and cities to apply the right of free speech to local governments at a time when the first amendment was interpreted as only applying to restrictions of free speech adopted by the federal government; and the politics of Rosa Luxemburg based on her view that the right of free speech was designed not for those who agreed with the government or the prevailing public opinion, but for those who disagreed with them. Another more influential current, adheres to a vision of socialism from above. One of its strands posits long-standing notions explicitly or implicitly advocating an educational dictatorship of the enlightened intellectuals. Herbert Marcuse is a recent exponent of this tradition. In his *Critique of Pure Tolerance*, he argues for suppressing the right to free speech of the powerful because it is used to shape and control the minds of the people. His argument rests on the implicit notion that intellectuals like him should decide what ideas the people should be exposed to. This seems ironic

because since Marcuse and those who agreed with him were a small minority - their ideas were more likely to be suppressed than those of others.

It is revealing that Marcuse bases his analysis of free speech not on the idea of *rights* that every person is entitled to, but on the quite different idea of tolerance. Tolerance, fundamentally a disposition or state of mind, is a terrible guarantee for freedom. Tolerance does not translate into institutional arrangements that support free speech, and is a precarious substitute for a robust culture of *rights that are clearly spelled out in laws and constitutions, thus empowering people* regardless of the rulers' individual intentions. It is in this spirit that Thomas Paine praised the new French constitution because "it had abolished or renounced toleration, and intolerance also, and hath established Universal Right of Conscience." As he explained, "Toleration is not the opposite of intolerance [intolerance] but is the counterfeit of both. Both are despotisms. The one assumes the right of withholding liberty of conscience, the other of granting it." It is not surprising that there is an elective affinity between Marcuse's adoption of tolerance, which is by definition discretionary, as the basis of free speech, and his selective granting of free speech to some and not to others.

It is understandable that some people on the left may be attracted to Marcuse's version of elitist politics because they feel impotent in the face of the overwhelming power of the capitalist media. But the remedy is not to call for the state's suppression of the views of the capitalist media, in any case an extremely far-fetched possibility, but to build a real and mass radical opposition media. As shown by the history of many democratic capitalist countries such as France, Italy and pre-Nazi Germany this is not a utopian dream but a proposal with strong historical roots, which in turn is both cause and consequence of the development of a successful anti-capitalist movement.

Another elitist conception of free speech more immediately relevant to current controversies on the U.S. left is cited by Jeff Sparrow's book *Trigger Warnings. Political Correctness and the Rise of the Right*, which criticizes the turn of much of the left to what he calls "smug politics," referring to the "belief of left-wing people that they are better than those they disagree with" leading to the conclusion that "if progressives couldn't influence society that was the fault of society - or, more exactly, the people who were too stupid and too venal to appreciate the objective correctness of progressive ideas." (95-109).

Another left current maintains that whereas freedom of speech is necessary and should be defended under capitalism, it is no longer necessary under socialism as they conceive it. However, as Marxist scholar Hal Draper maintained in his seminal 1968 article "Free Speech and Political Struggle," there can be no contradiction, no gulf in principle between what is demanded of the existing state, and what we propose for the society we want to replace it with, a free society.

Consistent with this approach, free speech should be defended, not merely because it helps to organize and fight for a new society, but on its own right because it should also be a constitutive element of the new socialist society. In this, free speech does not differ from the economic advances the working class and other exploited and oppressed groups have won. They are valuable both in their own right and because they strengthen the working class and its allies in their struggle for emancipation.