



Book Review of *Silence and Freedom*

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Silence and Freedom by Louis Michael Seidman. Stanford, CA: Stanford University Press, 2007. 246 pp. Cloth \$27.95. ISBN-10: 0804756201 ISBN-13: 9780804756204

Because the United States government is currently re-examining its policies on coerced speech, the time is ripe for Louis Seidman's book, *Silence and Freedom*, an assessment of the right to silence written in a contemporary context with substance and style.

Seidman examines the concept of silence as an expression, or denial, of freedom. He defends, explains, and explores the limits of the right to silence. Drawing on case law (from *Miranda* to the latest Guantanamo case), constitutional doctrine, and conventional wisdom, Seidman examines the right to silence. Looking at the right to silence with fresh eyes, the work views the right as essential in preserving the distinction between mind and body. At its core, the work argues for the modification or overturning of the *Miranda* warnings and replacing them with open examinations in the presence of an accused's attorney. This new idea offers an unconventional, some call radical, analysis on the multiple issues clustered around the right to silence. From this point of view, Seidman's examination has two main points: first, that silence can be an expression of freedom; and second, that even when silence is the result of alienation, that silence must be protected in order to give speech meaning. Seidman's analysis is extremely timely with the national debate so focused on Guantanamo and Abu Ghraib.

Each chapter follows the common thread of silence in many conditions and situations. Seidman provides an analytic framework to aid the reader in his analysis of silence and freedom in different contexts. In Chapter 2, Seidman uses the opposing concepts of classical liberalism and classical republicanism to illustrate his view of legal silence. He defines classical republicanism as a tradition of collective deliberation. In this context, Republicans view speech as a way for communities to form their collective identities and sense of solidarity that allows them to transcend the petty and selfish interests that divide them. It is through speech that communities progress and silence amounts to a failure to perform one's civic duty (p. 6). Classical liberalism is used as a counterpoint to Republicanism. Here, Seidman defines liberalism as the right for a citizen to be left alone and not have the duty to speak foisted upon them as a civic duty tantamount to coerced cooperation. This conceptualizes freedom in terms of autonomy rather than collective identification (p. 7). Knowing that these two positions stalemate each other, Seidman deepens his analysis by considering the more extreme views of radical libertarianism and

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pervasive determinism. He defines radical libertarianism as having no constraints on human choice and pervasive determinism as the tyranny of large scale, impersonal forces determining human action (p. 3). These dichotomies serve as useful jumping off points highlighting the myriad of issues involved in silence as expression.

With this analytic framework in place, Seidman offers insight into specific contexts where the connection between silence and freedom is controversial and contentious. Chapter 3 concerns forced apologies. Here Seidman argues that while apologies play a critical role in human interaction, the right to withhold an apology is equally crucial. Chapter 8 considers the issue of suicide as silence, emphasizing the secular perspective of this philosophical issue.

Chapters 4 and 5 discuss the issues of self-incrimination and confession. These chapters emphasize the freedom to choose between public obligation and public commitment. These chapters guide the reader through the Fifth Amendment and the ramifications silence has on this constitutional right. Chapter 6 takes up the issue of torture and the perils of forcing individuals to break their silence. Chapter 7 concerns the right to silence as an addition to the First Amendment right to free speech. Seidman argues that protecting the right to silence makes speech truly free. His condemnation of the situations at Guantanamo and Abu Ghraib are eloquent. Seidman concludes the book with a chapter about the paradox of not being silent about silence itself.

Seidman recognizes that the vast scope of the issue of silence and freedom could not be conclusively covered in one book. Drawing upon his twenty-two years of legal academic scholarship at Georgetown University Law School (Carmack Waterhouse Professor of Constitutional Law), Seidman understands that he has penned a legal analysis and is very up front about the inevitable limitations of his work. Appreciating that his topic has many dimensions, Seidman points out that the theoretical material in this book is meant to frame more specific legal arguments and be analytic tools for organizing discussion rather than definitive descriptions. To definitely cover such a topic an author would have to thoroughly cover topics such as history, philosophy, policy, and religion. Seidman only covers such topics enough to give his legal analysis context and draw his conclusions. Bearing this in mind, Seidman has penned an intelligent and reflective book that shed light on a complex and important subject.

Seidman has penned an enjoyable, readable book. Researchers can use it to advance their study through his thought-provoking coverage of an often esoteric subject. Academics can use the book in the classroom as a whole text or through individual chapters that cover specific subjects in relation to silence and freedom. In each chapter there is plethora of “teachable moments.” The book has a flexibility that makes it very useful as a teaching tool.