

Rescuing Free Speech from the Dual Threats of “Absolute Free Speech” Advocates and Hate Speakers

Randy Kritkauskay, September 2017
Whiting, Vermont

The following essay reflects my effort to make sense of the discomfort and confusion I felt after “free speech” controversies at nearby Middlebury College and then in Charlottesville Virginia erupted into global news stories. I found myself unable to easily explain the significance of these events to foreign friends or to near neighbors, no less to myself. I was deeply distressed at my inability to give an ethically and intellectually grounded answer to the question: “so what is the right and strategic best thing to do in these situations?” I now recognize that we need to embrace the ambiguity surrounding free speech discussions and use it to open our minds and policy making processes to new possibilities. Current legal norms, social norms, and academic polices are failing. No final resolutions on these matters are within sight. The most we can hope for is a clearer starting point for moving forward.

Mute inanimate stone and bronze statues portraying leaders of the pro-slavery separatist Confederacy during our Civil War, and the silent flags of the Confederacy, are being removed from public spaces across the United States. They are considered just too repugnant to a considerable portion of the population, and there is an emerging recognition that they contribute to an atmosphere of intimidation and racism, which then leads to violence.¹

Vociferous marchers carrying the Confederate flag, bearing Nazi paraphernalia, wearing Ku Klux Klan robes and chanting threatening anti-Semitic slogans occupy the same public space and their right to do so is defended by the American Civil Liberties Union.² One of the far-right marchers points a pistol at a counter-demonstrator, then fires it into the ground in the direction of the counter-protestors, while police stand by and do nothing.³ Another far-right demonstrator drives his car into the crowd of largely peaceful counter-demonstrators, injures many, and kills one. We are told that this violence could not have been prevented because the First Amendment guarantee of free speech has been interpreted broadly, and only allows for denial of hateful or inciting speech and public meetings when there is “an

¹ In the aftermath of Dylann Roof’s attack on nine black worshippers attending a Bible study group in Charleston South Carolina in June of 2015, and the subsequent surfacing of Roof’s hate messages on a website featuring the Confederate flag, the state legislature acted to remove the Confederate flag from capitol grounds and the governor issued a statement proclaiming the action to be historic and positive. http://www.huffingtonpost.com/2015/07/10/confederate-flag-removal_n_7769300.html. The New York Times and other news sources have attempted to track the removal of many dozens of monuments commemorating the Confederacy that have been or are scheduled for removal, https://www.nytimes.com/interactive/2017/08/16/us/confederate-monuments-removed.html?_r=0.

² The event occurred in Charlottesville Virginia August 14, 2017. The American Civil Liberties Union intervened to support the far-right leaders’ right to march, and then in a historic partial about face announced that it will no longer support hate groups protesting with guns, <http://www.pbs.org/newshour/rundown/charlottesville-violence-prompts-aclu-change-policy-hate-groups-protesting-guns/>.

³ <https://www.nytimes.com/2017/08/25/us/charlottesville-protest-police.html>

imminent threat” of violence.⁴ Evidently a group of individuals directly referring to the extermination of millions, the lynching of countless thousands, carrying loaded weapons, and seeking to resurrect and enliven the stinking corpses of historic hate-movements that resulted in war does not constitute an imminent threat to Supreme Court Justices who can call on government security for personal protection at a moment’s notice.

Elsewhere, American college and university students prevent speeches avowing racist and sexist theories or doctrines, and they are punished by academic authorities and excoriated in the media.⁵

The President of the United States utters blatantly contradictory public statements on hate speech and the death and violence associated with it, and he is defended by broad segments of the media and by his loyal followers.

This situation is perplexing and frustrating to many along the broad political spectrum in America. Constitutional guarantees, legal statutes, social norms, and campus rules about “free speech” are a confusing muddle. All need to be revisited and adjusted. Our citizens need to feel that acceptable public behavior and common sense are aligned.

It would be wonderful if these contradictions within the law could be reconciled by learned legal scholars. So too, it would be calming if public officials could come to an agreement on what is acceptable within the realm of political discourse. Perhaps our academic institutions could develop common sense guidelines and practices about campus free speech. And just maybe the clouds will part, the sky will open, and some giant hand will deliver golden tablets defining what is morally correct free speech to the millions of us lost in the desert of unravelling liberal democracy.

Or, perhaps we will need to muddle through this and forge new legal and social norms as we collectively experience the pain of simultaneously being anvil, hammer, and red hot iron being pounded into new social forms. I wish this could all be resolved amicably, with love and understanding, and with perfect intellectual clarity. I strongly suspect that, instead, we will need to carefully employ a wide range of tools including civil disobedience in order to awaken our Republic to the crisis we face and to the comforting delusions that have led to the current dilemma.⁶

⁴ The US Supreme Court 1969 *Brandenburg v. Ohio* case has established the principle of near absolute free speech with an exception for that which poses an imminent threat of violence or lawlessness. By contrast, the Canadian Supreme Court has recently unanimously upheld provincial laws banning hateful speech that is likely to expose groups to hatred <http://nationalpost.com/news/canada/supreme-court-upholds-canadas-hate-speech-laws-in-case-involving-anti-gay-crusader> . A catalogue of anti-hate speech laws around the world can be found at https://en.wikipedia.org/wiki/Hate_speech .

⁵ *The Addison Independent*, a local newspaper of Middlebury Vermont, home to Middlebury College, summarizes disciplinary actions taken against 67 students by the college after students and non-students disrupted a planned speech by Charles Murray. The article contains information on local police findings concerning outside protestors and violence not found in national media. <https://addisonindependent.com/?q=node/46202>

⁶ This essay was originally titled “A 21st Century Primer on [un]Civil Disobedience”, in an attempt to suggest how Henry David Thoreau’s *On the Duty of Civil Disobedience*, could be applied by those who dare to be impolite enough to challenge existing stifling norms calling for passive audiences in the face of hate and insult speech. However a new chapter in violent hate speech and new ever lower standards, modeled by well-organized hate groups and public officials who have contributed to an atmosphere of extreme incivility, forced me to abandon my title. However, as the reader will soon note, I have not abandoned

How Did This Happen?

Prevailing wisdom is that the current social turmoil in the United States is a manifestation of polarization in western societies caused by the multiple dislocations of globalization and growing economic inequality. Undoubtedly these deep structural changes have played a significant role in ratcheting up tensions in social and political discourse.

It is helpful, both strategically and intellectually, to recognize that economic dislocation has hit lesser educated members of the middle class, particularly young and middle aged men, who perceive their jobs, cultural identity, and social status as being threatened by women, racial minorities, gay rights advocates, and immigrants. It is not surprising that *angry-white-male* is a portrait that captures the demographic of the new far right movement. Recognizing this, we can better understand how to respond to their hate “speech”.⁷

It is also important to understand the demographics and socio-cultural underpinnings of ‘free-speech’ disruptions on college campuses. The dynamics are similar, but crucially different. And this we must also understand if strategies are to be developed for coping with these unique challenges. As with the rising tide of fear and perceived threat in the broader society, academia has unwittingly become the battle ground between those who once laid nearly unchallenged claim to social hegemony, and those who are rising and claiming equal rights, recognition, respect, and access. This widening social rift on campus is between two emerging social sub-classes within what we once liked to think of as a homogenous broad middle class.

What is the real socio-economic and class structure at the more selective academic institutions? On the one hand there are those whose have socially and economically elite status which they claim is based on the idea that: 1) they are highly intelligent to a degree that distinguishes them from the rest of the population, 2) they are worthy victors in what they argue is an open and fair meritocracy competition, and 3) they are uniquely and critically valuable professionals and upper level managers on whom the functioning of society entirely depends. These are the *new meritocrats*⁸, upper middle class aristocrats.

These privileged members of the upper middle class with access to higher education feel threatened in ways similar to lower middle class men with inadequate job skills: they fear downward mobility. A major difference is that the more educated threatened class is far more adept at using mainstream rationalizations for their status. They are also more attuned to social demands to justify their elite status

my belief that an updated concept of civil disobedience may be one of the most effective tools for adjusting public consciousness and action on the matter of hate speech.

⁷ It is entirely problematic to categorize much of the behavior of extreme right wing groups as “speech”. This characterization is their fabrication and effort to wrap themselves in the Bill of Rights as well as the American and/or Confederate flags. In fact, their actions ought to be characterized for what they are: quasi-military take-overs and occupations of public space with the primary purpose of intimidation.

⁸ See Richard V.Reeves, *Dream Hoarders*, where the author documents that the new entitled American elite, upper quintile income bracket, has many of the same hereditary advantages as traditional elites in highly stratified societies where mobility is lacking.

with the trappings of science and the appearance of hyper-rationality.⁹ And, like right-wing extremists, they embrace an ill-defined and ambiguous notion of “free speech” to assert their dominance, and in so doing, they provide, unwittingly, cover for hate group speech.

Alongside the meritocrats, campuses also host those who are seeking upward mobility, and equally, lateral mobility¹⁰. These are: 1) racial and ethnic minorities who are often the first in their families to access higher education, 2) women who have not lost awareness of how difficult gaining equality in academia and the workplace has been and how easily it may disappear, 3) formerly marginalized and closeted groups whose identity has not, until very recently, fit into mainstream traditional values. These individuals are extremely sensitive to the nuances of intimidation¹¹ embedded in speech and non-verbal gestures. They feel the electricity of nearly invisible cattle prods used to drive them out of the way, or merely to deliver discomfort. They are the free speech canaries in what is sometimes a dark coal mine of hatred and poisoned air.

Ultimately, recognizing these underlying structural factors does not point to near-term solutions for rescuing the democratic pillar of “free speech” from being toppled and shattered, or being uprooted and turned sideways and made into a battering ram for use in breaking the legs upon which liberal democracy stands. We must address the “free speech” crisis on its own terms and begin to address these problems immediately.

Myths About Absolute Free Speech

A deeper understanding of the confusion surrounding absolute free speech begins by examining the nearly unchallenged assumptions which advocates of this doctrine invoke. We must compare free speech dogma with historical reality.

Let’s first examine the notion of a “marketplace of ideas”. This concept arises from an assumption of liberal economics, or more extreme forms of libertarianism where unfettered, or even totally unregulated, economic marketplaces are said to be self-correcting. Applied to the realm of speech, it is argued that repugnant ideas, threatening ideas, even dangerous ideas, will ultimately fail when they are forced to “compete” in the marketplace of public discourse with more reasoned and resilient speech or ideas. In this spirit, the American Civil Liberties Union, a highly respected defender of the absolute right of free speech, traditionally has claimed that there should be virtually no limits on speech.

The problem with this argument is obvious to anyone following contemporary research on economic inequality. Without some regulation in the economic marketplace, fraud and deceit can become

⁹ The appeal of theories such as the neo-eugenics of Charles Murray, as presented in *The Bell Curve*, is a good example. Mr. Murray has affiliated himself with a think tank, which in turn has spawned national campus based clubs as a vehicle for spreading the ideology of the entitled class.

¹⁰ By lateral mobility I refer to efforts at achieving social equality and dignity that allows one’s race, gender, or ethnicity to be displayed and respected. Lateral mobility is more about gaining respect than it is about gaining income.

¹¹ Hence the heated on-campus discussion of “micro-aggressions”, veiled insults or casual statements aimed at marginal and vulnerable groups. This discussion has contributed to a national debate about “political correctness” which many conservatives argue is a form of stealth censorship of free speech and an imposition of liberal values in academia. An example of this debate in its extreme form is presented in, “Blue on Blue”, an article in *The Economist*, September 9, 2017, where the magazine portrays the famously liberal Reed College campus as wracked by hyper-sensitivities over speech in public and the classroom. The situation at Reed College exemplifies the reactions, or over-reactions, of those who see themselves as marginalized by those who wittingly, or unwittingly use various forms of “speech” (communications) to maintain hegemony.

rampant, and undermine the very stability of markets and entire financial systems¹². Market manipulations run riot and monopolies take hold, concentrating power in the hands of a few so that markets actually cease to operate. This historical reality also describes the marketplace of ideas, where in the United States, a US Supreme Court decision, *Citizens United*,¹³ bestowed legal personhood on corporations who are buying extraordinary influence in public policy discussions, elections, and the deliberations of the US Congress, where ideas were once presumed to play out on something attempting to be a level playing field. Further, on every college campus, in every town hall, and in the media, wealth now buys a marketplace advantage in a Hobbesian struggle of ideas where the nastiest and meanest utterances more and more often triumph over ideas that are worthy, empirically grounded, and more noble.

Perhaps, in a more agrarian and small town society, the America that Alexis deTocqueville visited (or imagined), organic close-knit social relations operated like an invisible hand, to rein in morally unacceptable speech in the marketplace of public discourse. Ostracism in a small community is, after all, a high price to pay for repugnant hate speech. However, in an age of global social media it is possible to find a distant and widely scattered minority far from the sanctions of family, friends and neighbors; such networks can form a virtual community to support hate speech. Modern transport allows these same dispersed social outliers and outcasts to congregate briefly to assert their presence in, and to dominate, public space. If indeed the historical checks and balances on outrageous and dangerous speech have diminished, it may be time to develop new forms of social and legal restraint.

The second false core assumption of “absolute free speech” advocates is the concept that such an absolute freedom is desirable, or even attainable in reality. It is important to recognize that there is not now and never has been absolute free speech, absolute freedom of religion¹⁴, an absolute right to bear arms¹⁵, or any absolute unrestricted constitutional right in the United States.

In fact, we do not guarantee public platforms for some whole categories of speech. There are two reasons for such exclusions. First, moral repugnance for many topics is so nearly universal that we do not miss such speech and there are virtually no defenders of it. Secondly, in our heart of hearts we know that despite the nearly universal moral repugnance toward some speech, elements of the darker aspects of the human psyche will be drawn to certain topics and speakers if they are given wide exposure. The public’s interest might be passing and prurient, like looking at a car accident while driving by or by glimpsing sadistic pornography ‘out of curiosity’. Or worse, certain forms of speech and ideas just might awaken strains of cruelty deeply embedded in human nature or the psyches of masses of humanity downtrodden and made desperate and violently bitter by historical injustices, as was the case with the rise of Nazism. Post World War II Germany recognized this possibility, and reality, and responded by

¹² I refer the reader to the now massive body of evidence on the 2008-2009 economic crisis and its roots in lack of regulation of the finance industry.

¹³ In *Citizens United v. Federal Election Commission 2010*, the United States Supreme Court extended personhood to corporations and various forms of non-profits and associations allowing them unlimited “free speech” by prohibiting any financial limitations on funding such activity. As a result giant Political Action Committees now aggregate unlimited funding from corporations which can deliver their messages during political campaigns.

¹⁴ Bigamy, child abuse and other civil crimes are prohibited even when committed in the name of religion.

¹⁵ The Second Amendment of the US Constitution accommodates numerous federal and state limits on the types of arms that can be owned, how and where they are sold, where they can be used, types of ammunition that can be owned, etc.

banning certain forms of speech and Nazi paraphernalia. Germany has not failed as a liberal democratic government due to these restrictions.

However, we do not need to look to historical catastrophes to see evidence of the wisdom of some judicious limits on speech. We have such *de facto* limits in the United States right now. We do not allow the following: a) speech by those avowing acts of terrorism, b) speech by sadists about home torture techniques, c) speech by those engaged in and advocating child sexual abuse. It is embarrassing to find it necessary to list such possibilities. But only by so doing can we unmask the absurd claim that “absolute free speech” is either a reality or desirable. And only by coming to this recognition can we begin to understand the blind spot we have in our collective civic conscience concerning the repugnance of hate speech and its often obvious, but ignored, connections to acts of violence and exploitation.

I believe that many of us in this second decade of the 21st century are desperate for common-sense grounding and clarity in the matter of debating free speech and the related intellectual discourse which has run amuck. We are in many ways like the fictional construct of “*the rebel*” that Albert Camus created in his post-World War II philosophical treatise of the same name. Camus argued that the nihilist and existentialist post-war intellectual climate in which he lived missed an obvious fact. While post-war philosophers claimed that there were no absolute values and that human existence confronts a void of meaninglessness, Camus simply pointed out that the authors of these doctrines themselves vociferously rebelled against many strains of thought and practices of modern society. Those acts of rebellion contain, Camus argued, affirmations of implicit limits on what is tolerable. They affirm values. This is the situation in which we find ourselves. Many of us are rebelling against the absurdist notion that in the realm of public discourse there are no legal or academic thresholds for intolerable and impermissible speech. What we lack is the ability to articulate boundaries.

So, the question remains: how can we bring more people to these realizations, and then what corrective actions can we take? How can we transform acts of rebellion, acts of protest, into educational and enlightening acts of social transformation?

Public Response to Hateful and Violent Speech

Let us begin by recognizing that we cannot accept being assigned the role of being silent public witnesses, or marginalized counter-protestors, to platformed hate speech. Showing up and listening, giving passive audience, is too comfortably close to the notion that silence is consent. Second, let us acknowledge that some form of immediate strong public response to hateful, factually dishonest, and threatening speech is necessary. Third, let us acknowledge that actions like carrying signs denouncing hate speech, or interrupting it, often do not stimulate critical public reflection; they merely polarize. Until hate speech is limited by law or by overwhelming public moral outrage that marginalizes hate-speakers to a category of social pariahs who are powerless and ignored, we must take bolder and more carefully crafted strategic action.

1. First and foremost, we must continually bear in mind that when we are dealing with social conflict that is being characterized as being primarily about free speech, we are in fact more often dealing with a cluster of interconnected volatile social issues, most of which we cannot resolve immediately and decisively, while also working through the speech issues. ***Free speech is an important pillar in***

a democratic society, and as such it deserves and begs for our protection. We cannot sacrifice this precious right for short term gains on political and social issues about which we feel passionate. On the other hand, we cannot protect “absolute free speech” as if it were the primary and most essential pillar of democracy, as we then risk seeing this pillar stand while the surrounding edifice of democracy is pulled down with the crowbars of red hot iron tongues hell bent on destruction. Our challenge, our charge, is to rebalance the inherent tensions between the ideal of free speech and other social institutions and values we hold dear.

2. We must make a distinction between the morally repugnant and untruthful, and the immediately threatening. While these categories of speech may be first cousins, or even Siamese twins on occasion, responding to repugnant and irresponsible intellectual dialogue (such as campus speeches by scholars whose work is tainted) with the same tools that we would employ in confronting a public demonstration of Neo-Nazis or Ku Klux Klan members is self-defeating. As with good diplomacy, responses must be proportionate to the threat level.
3. To move out of our paralysis and comfort zone, we need to start small and practice “interventions” in hate speech situations. The Southern Poverty Law Center has developed guidelines for intervening in situations of bullying. We should practice our techniques at the micro-level before engaging crowds.¹⁶ We should not, however, think for a moment that such micro-interventions are without danger. They are typically face-to-face and can become violent, even life-threatening.¹⁷
4. We need to consider how our every action, our words, our hand held signs, and our body language will be read by the broader public and how they may appear as sound-bites or isolated images in various media. This is not to suggest that we must compromise our moral message. But, our means must not obscure our ends. It is an old adage and worth noting that occupying and holding the moral high ground is the best strategy.
5. We must be prepared to explain ourselves in some detail beyond poster slogans, while avoiding lengthy diatribes and wordy polemics. Even in the age of digital media, or perhaps ever more so, a clear *brief* written statement of counter-protesters’ concerns in a hand-out at hate speech events is useful, actually essential. Such position papers or policy statements are not designed to change the hearts and minds of those who practice hate-speech or seek to control public space by making it uncomfortable for others. Converting the adversary is a laudable ambition embodied in Gandhi’s notion of *satyagraha*. However, it is best pursued one-on-one, in small groups, and in neutral time and space, not the conflict context being addressed in this essay.

¹⁶ For more information on the Southern Poverty Law Center’s free film on anti-bullying strategies see <https://www.splcenter.org/news/2010/09/23/%E2%80%98bullied%E2%80%99-offers-lessons-students-educators>

¹⁷ “Two Killed in Portland While Trying to Stop Anti-Muslim Rant, Police Say”, <https://www.nytimes.com/2017/05/27/us/portland-train-attack-muslim-rant.html? r=0>

6. Timing and context are everything. When hate groups plan to march through or occupy public space, the sooner such actions are challenged, the better. On the other hand, when a campus or public speaker is known to lie openly or to pass insidious claims in the guise of science, the offending remarks may need to be given free exposure before they are directly challenged. If and when there is no realistic expectation of the ability of the audience to *meaningfully* engage and cross-examine a campus speaker's assertions, interrupting speech may be necessary. Interruptions of a speaker at the moment of delivering a repugnant comment are most effective. Let ridiculous speakers climb far out on a limb before beginning to saw it off.
7. Humor, signs, and gestures can *often (but not always, read below)* deflate a speaker far more effectively than "impolite" verbal interruptions and shouting. Audible laughter, moaning, and disapproving silent gestures (thumbs down, facial signs of disapproval, etc.) can demolish the presentation of a speaker who has departed from the realm of reason. Social psychology has demonstrated that crowd signals impact how listeners process information. On the other hand, needlessly interrupting a speaker can backfire and make "free speech" process the focus of audience attention, thereby making a sympathetic figure out of someone deserving derision.
8. We must challenge "platforming" in public and on college campuses. We are taught to listen in silence to those who are granted the honor of standing behind the podium, pulpit, bimah, or minbar¹⁸. We must overcome this cultural programming and challenge public officials and authorities who recklessly grant the legitimacy and honor of a public platform. And we must, under some circumstances, not listen in silence to those who occupy an elevated platform.
9. And then there are times to "be rude", to break social norms about being a silent audience. Actually we need to recognize that "heckling" is widespread and often socially acceptable. The British and Canadian Parliaments endure heckling, indeed may benefit from its democratic levelling impact. Opera audiences in Europe boo poor performances when they feel that the performers have not made their best effort. They are now beginning to boo villains in opera (perhaps reflecting the growing need for public opportunities to affirm moral outrage). For me as a one-time grassroots environmental organizer, learning to tolerate "impolite" interruptions was a transformative moment. I remember one member of our local environmental group interrupting a lengthy speech by a purported scientific expert who repeatedly lied about the totally toxic nature of industrial waste destined for a landfill in our region. My colleague, after enduring a half dozen such statements, stood and shouted, "Bull-s**t, do you think we are idiots?". Although red-faced at our member's rudeness, we all clapped at great length, and broke into laughter.¹⁹ The speaker's

¹⁸The bimah is an elevated platform where the Torah is read, the minbar a platform where the Iman delivers a sermon.

¹⁹ An example closer to the overt hate speech addressed here is the statement made by Otfried Best, a neo-Nazi candidate running for mayor in Germany. He was asked a trick question by a reporter from a satirical newspaper: "I find it alarming that in Völklingen many house numbers are displayed in Arabic numerals. How would you like to take action against this creeping foreigner infiltration?". Mr Best replied: "You just wait until I am mayor. I will change that. Then there will be normal numbers." The entire audience burst into laughter and the story went global. <http://www.independent.co.uk/news/world/europe/german-neo-nazi-mayor-candidate-arabic-house-numbers-ban-western-digits-otfried-best-volklingen-a7928726.html>

credibility was shattered. More importantly, the audience delivered a message that it was not to be fooled. We eventually won our struggle to prevent the toxic landfill. We had risked being perceived as rude. *But by knowing our audience, and using exquisite timing, we learned how effectively not to be silent, while avoiding suffering from public condemnation for being impolite.*

Interrupting a speaker can even provide a moment of inspiration, enlightenment for both speaker and audience. On August 28, 1963 Martin Luther King Jr. spoke to a large gathering of civil rights demonstrators who had gathered at the Lincoln Memorial. He spoke about the broken promises made to black people for generations. As he spoke, Mahalia Jackson, who had sung to and inspired the crowd, interrupted Martin and said, “tell them about the dream, Martin.” At her urging King put aside the speech he had written and agonized over for much of the previous night, and improvised, adding back in lines and an image he had considered but dismissed. When King’s speech continued on the theme of “I have a dream...” it became history, and is now considered not only King’s best speech, but one of the greatest speeches ever delivered in the English language.²⁰

Of course, Jackson’s “interruption” of King was by a sympathetic supporter, and on a helpful note. The point remains, however, that speech, along with other forms of communication, benefits from audience feedback. Otherwise dialogue becomes pontification and opportunities for learning and real enlightenment are nil.

10. Sometimes even “rude” disruption is not enough. There are times that a speaker, or speakers, should simply be denied a public platform for hate speech designed to inspire violence and intimidation. The time for civil disobedience has come. A week after the right wing demonstration in Charlottesville discussed above, and the violence it inflicted, another rally was planned for Boston Common. Right wing organizers represented it as a “Free Speech” rally. When a few hundred of them showed up at the park, they were confronted by 30,000 counter demonstrators bearing messages of tolerance. Police terminated the right wing rally. Right wing groups complained that their free speech rights had been violated by the counter-demonstration. I have no problem agreeing with their “legal” claim. I see the counter-demonstration as a beautiful act of massive civil disobedience, a challenge to insane legal norms that have run off the rails. My hope is that future acts of similar civil disobedience will more successfully articulate the danger of current court interpretations and affirmations of “absolute free speech”. Perhaps then we can have a broad social dialogue about needed *legal reform* that will adjust speech norms needed to protect us from intimidation and violence. And perhaps such civil disobedience will help to preserve our republic.
11. When we are made uncomfortable by “impolite” counter-demonstrators, it would be helpful to recognize that allowing deeply held beliefs to be expressed in a manner that makes us squirm is preferable to allowing such discontent to accumulate and then erupt as violence. As violence on the right increases, violence-prone leftists, such as Antifa, are gaining a foothold and recruiting

²⁰<http://www.nytimes.com/2013/08/28/opinion/mahalia-jackson-and-kings-rhetorical-improvisation.html>

passionate and frustrated youth who see the broader society sitting silently on its hands in the face of threats from far-right hate groups.²¹

12. We must understand that all of the above intervention strategies may be dangerous and involve some risk of physical harm. It is essential to consult the abundant literature on non-violent protests and to read and internalize guidelines on how to conduct such actions as peacefully as possible.
13. Those of us who are entitled must recognize that we are often tone-deaf and emotionally blind to the threatening sub-text of spoken and written words, as well as symbols. And like those who are cognitively or emotionally impaired, or those to whom we refer as on the autistic spectrum, we “normal ordinary folk” may routinely miss the full and real meaning of hate speech.

Free Speech Controversy in Public Space versus On Campus

Conflicts surrounding “free speech” on college campuses and “free speech” conflicts in public spaces such as parks, at monuments, and in the streets both ultimately tap into the same social and cultural dimensions: they attempt to control (continue, or overturn) a historical narrative (who ruled, who suffered) in order to reinforce claims about who should rule today. This deeper narrative struggle and these implications are unfortunately often too historically distant, too obscure, and too complex for much of the public and most of the media. Therefore, what occurs on campus is particularly significant. Campus events hold particular promise for informing broader public discussions, *if academia and students both* do a better job of insuring that complicated narratives are explored, developed and articulated in a manner that is widely digestible. For academic administrators and professors, this means that they must strive to be certain that they do not unwittingly platform *unchallenged* racist, hateful, pseudo-scientific speakers. If and when controversial speakers are to appear, it should always be in a panel format (not behind the lectern/pulpit) where other knowledgeable speakers can *immediately* challenge irresponsible and invalid assertions. Similarly, students must tolerate moderately offensive speakers and allow them to be challenged within the panel discussion format. Failing these

²¹ Mark Bray examines the roots and strategic thinking behind the leftist movement in *Antifa: The Anti-fascist Handbook*. His analysis allows the reader to understand the reasoning behind an antifascist strategy that includes the use of violence as one of many tools to oppose extreme right wing movements. This may be Antifa’s best and most thoughtful public face. Regardless of the reader’s ethical or strategic perspective, the book should be a wake-up call to those mistakenly thinking that intelligent and thoughtful youth will not be attracted to a violent cause. In a contrary vein, Prof. Laurie Marhoefer, drawing on her research on German history, argues that leftist violence in opposition to Nazis in the 1930s backfired, and that history suggests that leftist violence in the United States would play into the hands of right wing groups. <https://theconversation.com/how-should-we-protest-neo-nazis> <https://theconversation.com/how-should-we-protest-neo-nazis-lessons-from-german-history-82645> Taken together, these two distinct well-articulated arguments may leave many readers confused. And this is indeed my point. In the current environment, reasonable people are struggling to find rational and effective strategic solutions to hate speech that are grounded in ethics and rational argumentation. This essay’s focus is free speech. It relates to social conflict strategy because some right wing demonstrators are carrying weapons at demonstrations claiming that doing so is a form of “free speech” affirming their constitutional rights. Mainstream Americans are asking if counter-speech, mere words, and the dynamics of a ‘marketplace of ideas’ are adequate to respond to and push back against such intimidation.

corrections in current practice, academia will become the new platform for hate speech, both explicit and insidiously masked, and it will become a battleground.

So-called “free speech” controversies in public spaces involving hate groups will continue to be more about who controls parks, streets, sidewalks, and symbols of cultural and social domination right now. While the academic narrative discussed above is relevant in these situations, and handouts making this connection will be useful to counter-demonstrators, we must recognize that hate groups who appear in military uniforms, and bearing weapons, Nazi symbols, and Confederate insignia have a short-term agenda: they wish to make those they designate as “outsiders” so uncomfortable that they will abandon public places, or even the state or country. They are like urban gangs using graffiti to mark territorial boundaries. And they do this under the guise of “free speech” and their right to assemble. They must not be allowed to drag the noble concept of free speech into the gutter. A simple counter-message must be repeated: “This is NOT Free Speech, This is Hate Speech, Threatening Speech”.

Rights, Responsibilities, and Restraint

We must recognize the paradox that political philosophers acknowledged when they developed the notion of a “social contract”. They all recognized that we are born, individually and collectively, as a species, totally free. But this freedom is a chaotic state of nature where brute force reigns. In order to escape this precarious existence we give up some of our “absolute freedom” and agree to live within the constraint of the rule of law. The paradox is that by surrendering absolute freedom we actually increase our freedom and security.

It is time for us to recognize that we are living in something akin to the chaotic state of nature when we attempt to live in a society where “absolute freedom” of any sort exists. If we wish to secure a very high degree of free speech, we must accept some minimal regulation on this right lest it vanish in the chaos of a ferocious and hate filled state of nature.

But even more is at stake. Currently the “free speech” discussion has the potential to be the loose thread that when pulled on can unravel the whole fabric: the fabric of democracy.²²

²² To end on a less ominous note, we can find hope in the fact that in recent decades the human intellect has created computer programs that can, with an astounding degree of reliability, engage in facial recognition, identify emotional states with a face scan, and even predict sexual orientation from facial characteristics. If we can do this, it is certainly not beyond our reach to develop 21st century *human* capabilities allowing us to identify and distinguish between “the merely repugnant”, and communications designed to intimidate and incite violence. “Keeping a Straight Face”, *The Economist*, September 9 2017, 73-75. This article notes that some computer software programs make these distinctions as well as humans do, and other software can make these distinctions even more accurately than humans. This is not to suggest that we delegate decision making about what is dangerous and what is protected free speech to computers. I am merely establishing the fact that our 18th century notion of free speech based only on disembodied printed or spoken words needs to be updated to consider what we have learned about the package of gestures that surrounds “the word” and gives it context which often transforms meaning.

