

The Alternative

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Dear Reader,

The topic of this issue is Freedom of Speech. It is one of the United States' characteristics that its citizens are most proud of. It is also something that other countries are most critical of. Are these other countries just jealous or are there problems with the idea that are hardly ever acknowledged in the United States? The recent rise of white supremacists and their rallies of hate-filled speech raise a question about whether there should be limits on some speech.

Freedom of Speech is enshrined in the first amendment of the U.S. Constitution. Without freedom of speech the other four freedoms in the amendment (religion, press, assembly, petition) could not function. Justice Benjamin Cardozo described it as "the matrix, the indispensable condition of nearly every form of freedom."

One thing that has to be acknowledged is that the first amendment is very limited in what it guarantees. It says that the federal government will not "abridge" a citizen's freedom of speech. That is all that it asserts. The first ten amendments to the Constitution are misleadingly called the "bill of rights" which suggests that the government will establish or enforce the rights that are listed. Instead, the amendments are concerned only with the government's not acting, that is, not interfering.

How does one get such rights? The U.S. Constitution does not say. Jefferson famously wrote that some rights are "self-evident" though they do not seem to have been evident to most people. Jefferson did trace the origin of rights to the "Creator" to which the eighteenth century at least paid lip service (the French Declaration of Rights attributed the origin of rights to "nature.>"). When the United Nations in 1948 declared that everyone has "human rights" they could not reach any agreement on what or who was the origin of such rights.

There are many other possible "abridgements" of freedom of speech than actions by the federal government. After the U.S. Civil War the federal government tried to enforce a respect for rights on the states but with limited success. State governments, especially the confederate states, restricted the rights of black people for over half a century and some of those restrictions remain. Women had to struggle to have their voices heard, for example, in the right to vote. That struggle also remains incomplete. Most restrictions on freedom of speech are not by the federal government or any government. Restrictions are built into how business and social life are conducted in the country.

SPEECH IS NOT FREE

By Gabriel Moran

One misleading assumption connected to freedom of speech is its equation with the phrase “free speech.” Except for referring to money, the use of “free” as an adjective is usually misleading. For example, the phrase “free market” is a favorite of people who oppose any sensible regulations of economic activity. But a market consists of a complex set of conditions and innumerable forces. The question is not whether there should be controls of the market but who sets the controls and who benefits from particular controls.

Similarly, the phrase “free will” is the source of endless confusion and unhelpful debate. Each human being has a will by which he or she accepts one possibility from the narrow range of what is possible at any moment. To decide means to cut. The will is like a movie director who views several takes on a scene and at some point says “cut.” The human will is always subject to numerous external and internal controls. People who argue against the existence of “free will” have an easy target though they still have to account for the fact that human beings think that they have some control over the direction of their lives.

The common reference to “free speech” hides all the problems that arise when human beings exercise one of their most cherished faculties. In any gathering of more than eight or ten people there arise questions of who speaks, when they speak, how long they speak, what they speak about, and other questions of procedure. A debate between those who defend “free speech” and those who favor limits on speech is a false choice. Also, the claim that the only way to counter hate speech is with more speech neglects other needed controls. The supposition that the choice is between violent resistance and being passive, except for speech, is to conflate violence and “force.” A reaction of violence to hate speech is never justified. But all kinds of force can and should be brought to bear, including municipal regulation of rallies and marches, and the presence of a police force to avoid situations that will likely lead to violence.

“Freedom of speech” is a description of a person’s exercise of his or her basic right as a human being. The only thing “free speech” can mean is that you don’t have to pay for it. There is a certain irony in this economic meaning of “free speech.” What badly distorts the freedom of speech is big money. These days if speech is to be heard it can require lots of money for buying a television network or backing a political candidate. One of the worst decisions that the U.S. Supreme Court has ever made was its ruling in *Citizens United v. Federal Elections Commission* (2010) that money is simply a form of speech so that rich people and big corporations can make unlimited contributions to political campaigns. There is a legitimate argument to be made that a citizen who makes a donation to a candidate is expressing his or her freedom of speech. But Supreme Court justices have to be living in another universe to not see that tens of millions of dollars inserted into a political campaign has the effect of overwhelming the voices of ordinary citizens.

The use of the misleading phrase “free speech” is the reason for a puzzling change that occurred about twenty-five years ago. In the 1960s, “free speech” was the rallying cry of left-wing groups. The fight was against repression by big institutions, including the government, big business, the news media, the university, and anyone representing authority. The surprising thing today is that the political right complains that the left represses speech and demands conformity to a language code. The far left and the far right are joined in their opposition to limits upon “free speech.” The ACLU sometimes awkwardly finds itself in the company of right-wing hate groups. Its apotheosis of free speech seems at times to take precedence over defense of the legitimate role of public and private institutions to protect the rights of all citizens, especially those who are very young, very old, sick, or disabled.

Today’s defense of “free speech” on the political right is under the banner of opposition to something called “political correctness.” This phrase needs some explanation and then burial. The first thing to note is that the phrase was invented in the 1930s as a cartoon joke by communist sympathizers.. The fact that the phrase has no meaning was the point of the joke. The phrase gained currency in the 1980s, when the Soviet Union was collapsing and there was confusion about conformity to communist orthodoxy. Since no one was sure from one day to the next what the proper ideology was, there was a joke about one’s “political correct” orthodoxy. The phrase was picked up in a few universities as a convenient way to attack the views of an opponent. It was an effective weapon because there was no logical defense. If someone is attacked as “politically correct,” should he or she claim to be “politically incorrect”? The two English words “political” and “correct” have clear meanings; the phrase “political correctness” has no historical or logical meaning; it is merely a weapon against which there is no ready reply.

The phrase “political correctness” was employed in universities against removing linguistic barriers to groups that have been discriminated against in U.S. history. It became used as an indictment of any criticism of language. Sometimes college students take up causes which do not deserve the passion that they direct at the proposed changes. But when a change is based on a knowledge of history and contemporary practical effects, changes of language are indispensable to seeking justice for all citizens.

The migration of the phrase into politics was especially helped by Ben Carson who championed the phrase in defending himself. During the 2016 presidential campaign Carson often claimed that “political correctness” was the biggest problem in the country. At the start of the campaign the other Republican candidates seldom used the phrase but by campaign’s end all of them (including the nominee) had discovered the usefulness of responding to any criticism of false or outrageous statements by dismissing the criticism as “political correctness.”

Carson had made his debut in the political arena by insulting President Obama. Carson said that the Affordable Care Act was the worst thing to happen in the country since slavery. His comment drew predictable praise from opponents of Obama but widespread ridicule from other groups. Carson wrote a book, *One Nation*, recounting the attacks on his comparing the health care act and slavery. In his narration, he was the victim in the

story, a man unfairly maligned, perhaps because of racism. He was not allowed to voice the truth because of “political correctness.” He did not consider the possibility that he was being ridiculed because what he had said was stupid and indefensible. He never did have much to say that politically made sense although he got a job as head of housing and urban development for which he has no qualifications.

Freedom of speech does not exempt anyone from criticism of their speech. Neither does it guarantee employment for those who are convinced that they have something important to say. Universities have become embroiled over questions of who is invited to speak and especially who is disinvited to speak after protests from within the university. A university has the mission of searching for truth and that entails a commitment to a range of viewpoints that are allowed and encouraged. But that policy involves complications concerning the limits for each university. One limit which is by no means trivial is how a university uses its money for salaries of teachers and stipends to speakers. Some speakers are paid outrageous amounts of money more for their celebrity status than for any wisdom they can convey in a one hour speech. The same university may be outrageously underpaying part-time professors who do most of the teaching in some of its departments.

It is appropriate that a professor or a department or a group of students should be able to invite any speaker who can contribute to their work in the university. That is especially the case when little or no money is at issue. The case is different when an invitation to a speaker seems to have the stamp of the whole university or a large part of it. The university is announcing that it endorses the speaker’s reputation and views though not every opinion he or she may express. The commencement address is the most obvious example of where there can be disputes over whether a speaker is representative of what the university stands for. A student protest against an invitation can be entirely appropriate although in the end the leaders of the university have to decide whether to revise their original decision or simply proceed. A university should be an institution where there can be civil disagreements; those who lose a particular argument should observe common courtesy toward those with whom they disagree.

One should note that there is some difference on this issue depending on whether the university is public or private. A public university is supported by the government and to that degree is an extension of government. Its commitment to a wide range of views has to be greater than is required of private universities. However, these days large private universities are heavily dependent on the government and their commitment to a diversity of views is unlikely to differ significantly from public universities. There are institutions that call themselves universities but hardly deserve the name given the narrow range of views that they represent in their faculty and outside speakers. Any serious university wishes to be part of the ongoing conversations in the society that it is part of. This means providing a place for views that many other parts of society dismiss or condemn.

Every university nonetheless has restrictions on the range of views it can encompass. A speaker who encourages an uncivil attitude might be seen to conflict with the very purpose of a university. Certainly, a speaker who spews hatred of particular religious or ethnic groups, using vicious speech that can incite violence, should hardly be surprised at

being refused a platform at a university. Such people today are champions of “free speech” which does not refer to their willingness to waive their stipend but to their supposed right to say anything they wish. They piously assert that their main concern is that everyone be free to speak their minds and that any restrictions on their speech is unfair and a violation of their constitutional right. The phrase “political correctness” is perfectly suited to their ridiculing anyone who interferes with their bigoted speech.

Several speakers drew strong protests this year at Berkeley. Ann Coulter, who has managed to become rich by writing books that brim with anger at anyone she disagrees with, was chagrined at her loss of a handsome stipend when students strongly objected to her appearance. Even more attention was generated by Milo Yiannopoulos who was probably unknown to most people but had generated some reactions on the college circuit and now has a book titled *Dangerous*. The book was published in the middle of July and within ten days was the second best-selling book in the country.

The first chapter of *Dangerous* is predictably “On Freedom of Speech and Political Correctness.” Nine of the book’s ten chapters that follow are descriptions of the groups that hate Milo; he seems to take all this hatred as proof that what he is saying is of great value. “My supporters,” he writes, “see me for what I am: a critical voice in the pushback against political correctness, and a free-speech fundamentalist defending the public’s right to express themselves however they please.” This free-speech fundamentalism might seem okay except that the public doesn’t express itself in one voice; it consists of innumerable voices of individuals who have to learn to respectfully disagree with one another. His claim that “the most important right you have in America is the right to think, do, say and be whatever the hell you want,” is a prescription for social chaos and a trampling upon anyone who is not able or ready to fight against everyone else.

Freedom of speech is not of much value if all it means is that everyone can say whatever they want. Speech has value as a means of communication with other human beings; it is the alternative to violence. When speech is employed for vicious attacks on others, the basis of human society is undermined. When Donald Trump has tweeted attacks on individuals, for example, attacking a newscaster who had criticized him, the explanation offered in his defense is that when someone punches him he punches back twice as hard (Melania said “ten times as hard”). That may seem logical to some people but it can only lead to the destruction of civil discourse. For a president of the United States such a policy is insane.

Freedom of speech cannot be guaranteed by the U.S. Constitution. It depends on the government providing safe spaces for unpopular speech, taking measures to prevent violence and swiftly punishing outbreaks of violence. It depends on U.S. citizens maintaining some sense of decorum and civility even when they strongly disagree. It depends on respecting institutions whose purpose is to be receptive to the voices of citizens. It depends on using the resources of the English language for expressing one’s convictions in a precise way that avoids unnecessary conflicts and insulting others.

FREEDOM OF SPEECH AND THE INTERNET

By Lindy West

The first thousand times I was accused of being a politically correct, anti-free-speech censor, it seemed silly. The charge was always in response to some relatively innocuous bit of cultural criticism — like, say, that racism is bad and artists should try not to make racist art if they don't want to be called racists. Or that if comedians want to joke about rape, they should write their jokes very carefully because rape is very horrible.

I always laughed at the anti-free-speech charge. I was not the government. I literally could not censor anyone. I cannot go around handcuffing comedians and dragging them off to joke jail. (Anyway, I am a prison abolitionist. That goes for open-mic-based offenses, too.) Criticism is not censorship, and no matter how insistent Twitter's free speech brigade might be, I felt safe knowing that we could always go back to the text. The Constitution was on my side.

But that was when I thought facts had power, when what we think of as the truth was based more on observable reality and less on the incantations of paranoid uncles who would rather die of preventable diseases than let America's first black president leave an intact legacy. When the "free speech" canard started nibbling away at me, around 2012 or so, it seemed as goofy as the idea of Donald Trump becoming president. Oops.

Since then, the anti-free-speech charge, applied broadly to cultural criticism and especially to feminist discourse, has proliferated. It is nurtured largely by men on the internet who used to nurse their grievances alone, in disparate, insular communities around the web — men's rights forums, video game blogs. Gradually, these communities have drifted together into one great aggrieved, misogynist gyre and bonded over a common interest: pretending to care about freedom of speech so they can feel self-righteous while harassing marginalized people for having opinions.

At the recent online video conference VidCon, the feminist cultural critic Anita Sarkeesian took the stage for a panel on women's experiences online, only to find the first two rows of seats stacked with her online harassers, leering up at her, filming her on their phones. Ms. Sarkeesian has been relentlessly stalked, abused and threatened since 2012, when she started a Kickstarter campaign to fund a series of YouTube videos critiquing the representation of women in video games.

In retaliation, men have threatened to rape and murder her, dug up and disseminated her personal contact information, called in mass shooting threats to her public events and turned their obsession with shutting her up into a competitive sport. All of this, they insist, is in defense of freedom of speech, to which Ms. Sarkeesian, with her precise, rigorously argued opinions about the relative loincloth sizes of male and female video game avatars, somehow poses a threat. It is not an enviable position to be in.

You can find disingenuous rhetoric about protecting free speech in the engine room of pretty much every digital-age culture war. Nothing is more important than the First Amendment, the internet men say, provided you interpret the First Amendment exactly

the same way they do: as a magic spell that means no one you don't like is allowed to criticize you. The law does not share that interpretation. "The First Amendment only regulates the government," explained Rebecca Tushnet, a professor of First Amendment law at Harvard. Does she think there is any merit in telling a person that her critique of your art is infringing on your free speech? "No."

It's been a surprisingly effective rhetorical strategy nonetheless. Americans are fiercely proud of our culture of (nearly) unfettered expression, though often not so clear on the actual parameters of the First Amendment. To defend speech is to plant a flag on the right side of history; to defend unpopular speech is to be a real rogue, a sophisticate, the kind of guy who gets it. "Freedom of speech is such a buzzword that people can rally around," Ms. Sarkeesian said, "and that works really well in their favor. They're weaponizing free speech to maintain their cultural dominance."

If their goal was really to foster free public discourse, we would have seen deafening bipartisan support for Keeanga-Yamahtta Taylor, the Princeton African-American studies professor and author of "From #BlackLivesMatter to Black Liberation," who canceled two speaking engagements in late May after Fox News aired video of her calling President Trump a "racist and sexist megalomaniac." Professor Taylor received more than 50 "hate-filled and threatening emails," many racially charged, some containing "specific threats of violence, including murder," Where were the brave knights of free speech when Professor Taylor was being intimidated into silence?

They were nowhere, of course, because their true goal has always been to ensure that if anyone is determining the ways that we collectively choose to restrict our own speech in the name of values, they are the ones setting the limits. They want to perform a factory reset to a time when people of color and women didn't tell white men what to do. The election of Donald Trump and crying "free speech" to end any discussion of cultural sensitivity are not unrelated. Casting the dissent of marginalized groups as a First Amendment violation is the kind of pseudo-intellectual argument that seems reasonable to people who don't have enough skin in the game to bother paying attention.

"Discourse" is good! Sunlight is the best disinfectant! The more airtime we give to irrational bigots on high-profile platforms — the more assiduously we hear both sides, stay "fair and balanced" — the sooner they'll be rejected by the public at large! Unfortunately, as any scientist can tell you (for as long as we still have those), more often than not, sunlight makes things grow. Conflating criticism with censorship fosters a system in which all positions deserve equal consideration, no bad ideas can ever be put to rest, and lies are just as valid as the truth.

It's not hard to draw a straight line from internet culture warriors' misappropriation of free speech to our current mass delusions over climate change, the Hyde Amendment, abstinence-only education, health care as a luxury and class as a meritocracy. "Free speech" rhetoric begot "fake news," which begot "alternative facts." The right cannot lay claim to the First Amendment when its own president is actively hostile to it. Sometimes disinfectant is the best disinfectant.

NO APOLOGY

By Wesley Morris

In the last year, Jeff Sieting, the village president of Kalkaska, Mich., posted rants on Facebook calling for the United States to kill “every last Muslim” and declaring Islam “a flesh-eating bacteria.” Asked at a village meeting in June whether he would apologize for the posts, Sieting told the room, “I owe nobody an apology for exercising my First Amendment rights.” Sieting suspects that the antipathy toward him is coming from nonresidents’ disdain for the president.

The current allergy to apology meets up with exasperation over so-called political correctness, exasperation that became a selling point of Donald Trump’s candidacy. He won. So, then, did the offenses, insults and assaults he and his campaign not only refused to apologize for but also, in the case of, say, the former campaign staffer and journalist-mauler Corey Lewandowski, swore never happened. Witnesses and contradictory video footage be damned.

If you see things that way, you’re also likely to be of the mind that all Barack Obama did as president was apologize for America. Mitt Romney’s book, from 2010, was called “No Apology: The Case for American Greatness” and sprang from the premise that, in 2009, Obama toured the world asking other governments for forgiveness. According to Romney, “He has apologized for what he deems to be American arrogance, and derision; for dictating solutions, for acting unilaterally and for acting without regard for others.”

That’s not *untrue*. In reality, though, Obama spent some of his overseas visits *ruminating* on the United States’ strengths and weaknesses. “America, like every other nation, has made mistakes and has its flaws,” he said to students in Istanbul. “But for more than two centuries, we have strived at great cost and sacrifice to form a more perfect union.” Obama spoke directly to Muslim leaders and their people about the importance of the bond between the Islamic world and the West, rebuking, at least in spirit, the George W. Bush administration’s bellicosity.

In Obama’s view, apologies were sometimes warranted and should be offered without shame. But among nationalists and certain conservatives, his humility secured him a reputation as weak. Trump succeeded where Romney failed, in part because he could run against a caricature of Obama instead of Obama himself. The concoction of a chronically contrite Obama made the anti-apologetic Trump seem more masculine, more American.

During Obama’s overseas trip to Saudi Arabia, Egypt, Germany and France in early June 2009, he cheered America’s diversity, but earlier that year, in Turkey, he spoke about our country’s “darker periods.” He was referring to the torture of Iraqis but also to America’s enslavement of Africans and its decimation of American Indians. Maybe this is what really stuck in certain people’s craw: He was airing our dirty laundry in front of foreign hosts, talking about ugly flash points in the creation of the United States that we haven’t settled. The offspring of that violence still await a substantial apology. At this point, they know not to hold their breath.