# UNIVERSITY OF CALIFORNIA, BERKELEY

## Lili Fabilli and Eric Hoffer Essay Prize

## 2017-18 Topic: Is Free Speech Free?

## Winners: Katherine Beniger, Alexandra Maloney, JaVonte Morris-Wilson, David Olin, Jack Sadler,Maggie Mead, Ishani Joshi,Evan Bauer, Irina Popescu, Hideyasu Kurose, and Rudraveer Reddy
## Topic: Is Free Speech Free?

Katherine Beniger

Is "free speech" free? The construction of the question itself is strikingly unstable, even volatile. What exactly constitutes speech? Still more dubious: what exactly constitutes freedom? These concepts are as illusive and multifaceted as they are imbued with deep emotion, shifting contextual nuance, as well as a myriad of political and societal associations. However, that is not to say that the notion of "free speech" should be viewed as a mere abstraction. The term itself is a testament to the immense value we attribute to the expression or voicing of ideas. We value the act of speech, whatever that may encompass, because we recognize its power. The very existence of the constructed category of "free speech" is fundamentally an admission of the capacity of ideas to inspire and incite real, tangible consequences in our shared communities. Speech may certainly, and in many ways rightfully, seem incredibly difficult to define but it is a grave and even dangerous mistake to think of speech as nonconcrete or ineffectual.

Although we employ the phrase "free speech," this marker represents a concept unquestionably seeped through in various costs. In spite of the much-exalted and widely-celebrated descriptor "free," the right to speak in the United States is arguably a commodity not all have been able to afford both historically and to this day. This is evident in the literal buying (not so free, after all) of platforms that ultimately operate to disseminate and validate only the speech of those who can afford and are afforded.

Considering this, perhaps some more pressing and productive questions to ask are: which voices are free to speak in theory, but consistently silenced in practice? Whose speech has been historically amplified and made accessible and, in turn, whose speech has been continually lost in the cacophony? Most importantly, what can we do to change this narrative?

## Alexandra Maloney – “The Price of Free Speech”

Far from it. Free speech comes with a price. Not just the price of defending that freedom in international conflicts, but the price we must pay in allowing speech that we abhor. As an initial matter, there are some legal restrictions to speech. The First Amendment restricts the government from infringing on Americans' right to free speech but with some limitations. The classic example cited is that a person cannot jokingly shout "fire" in a crowded movie theater, as established in the U.S. Supreme Court Case Schenck v. United States, nor can a person threaten or incite violence. Similarly, slander and libel can result in significant legal trouble. There is little controversy today over these speech restrictions.

But what about hate speech? Verbal attacks on a race, religion, gender or sexuality are at the heart of conflict in America today. It has become en vogue these days to claim to be tired of or too constrained by politically correct speech. One poorly worded tweet or statement can cause public condemnation that some have felt to be unjustified. This sentiment, however, has encouraged an anti-political correctness backlash that some have used to go beyond simply airing frustrations and instead feel emboldened to belittle others and spew hate speech.

Under today's free speech standards, we must however, allow them to speak: that is the price we must pay to speak ourselves. While often intentionally provocative, that speech can and should be countered with positive and constructive speech that respects all - even the racist, bigoted, homophobic, and sexist tirades. Setting limits on this speech may set off a slippery slope of limiting any offensive speech and make defining the line between hateful and critical impossible. Some suggest we ignore hate speech entirely and not give it the news coverage they seek. However, as Elie Wiesel would say, silence only allows that type of evil speech to gain a foothold and grow. Instead, positive free speech itself, along with new 21st century technology, should be

used to counter this hate speech. While the government may not stop the speech, ordinary citizens can exercise their own free speech to counter the hate in non-violent ways. For example, while the internet has allowed some bloggers to hide their identities to spew hate, once they are revealed, they are forced to take ownership of their actions and face consequences. If they participate at a demonstration, they should be prepared to be videotaped so that a permanent record is made. The mainstream public has and will continue to provide a check on hate speech with the use of economic boycotts in places that support it and termination of employees who have spewed the hate and create a hostile work environment. This too, is the price that must be paid for that speech.

With the great power of free speech comes great responsibility. Thus, it is our responsibility to utilize our right to speak to neutralize those who use theirs for bigotry.

## JaVonte Morris-Wilson

Over the course of three years, I served as a representative for a nonprofit LGBTQ organization that has served thousands of queer people around the world. The position provided an intersection to simultaneously explore my passions for social work and writing. I was tasked with utilizing an internet platform to provide resources and counsel to fellow gender and sexual minorities. After working within the organization for two years, I was notified that certain members of the staff were not comfortable with my commentary on racism, classism, and islamophobia on the platform that they believed should have been dedicated to queer issues. After expressing that I believed that it was important to acknowledge the diversity of queer people and the intersection of social categories, I received a response that indicated that all of my superiors did not agree with my position.

I was not silenced by my supervisors. I subsequently received countless emails, which included criticisms of my character and allusions that I would never be promoted in the organization. I expected that the day would arrive when my superiors would relieve me of my position; however, the debates never ended in decisive action. It was not until our last discussion on the subject that I realized that I would never be removed from my position. I was the staff member who was most often available to perform the administrative tasks that others found tedious. They hoped that their comments and behavior towards me would pressure me into passivity and compliance. I was appointed to encourage queer youth to be critical of the social hierarchies that exist in society, yet it was deemed detrimental that I highlighted the hierarchies that exist within the queer community. In the end, I chose to leave the organization because the leadership did not maintain the values that I believed that queer advocacy necessitated to be inclusive.

The mandate of free speech is meant to protect civilians from governmental retaliation in response to their speech. Nevertheless, the treatment that we receive

from employers, neighbors, and strangers is often cited a violation of that mandate. While my positions on social issues do not often align with the majority, I vehemently rejection the notion that free speech suggests a lack of consequence. Freedom is not freedom from scrutiny, conflict, or rejection. Freedom is possessing the agency to choose disobedience and unpopularity over compliance and silence. Freedom is the ability to maintain our values and vocalize our assessments of political and social issues despite the grievances of others. If we believe that our positions should not incite varied emotions in our peers and influence their perception of us, then we believe that our speech should be met with apathy. If speech does not enthuse, provoke, arouse, induce, persuade, or aggravate, it ceases to be a method of communication. Meaningful speech in public venues will never be inconsequential, but the ability to transcend the consequence demonstrates the freedom.

## David Olin

People assume that the point of speaking is to be heard. Free speech is thought of in terms of journalists, politicians, academics, and others who speak to an audience- we think to be heard means to be heard by as many people as possible. However, most often speech is for one person, and one person only. We speak to ourselves. We make words in air because thoughts are not satisfying enough. They are not physical. They are not as real as speech. The ramblings of the homeless on street corners and the murmurs of the most lauded minds have equal weight, because their purpose is the same: to give life to one's own thoughts.

Such speech is not free. It requires enormous effort, for internal criticism is just as profound as that of society. Speech must first overcome the barriers set for it by our own mind.

The true threat to free speech in our time does not come from outside forces. The actions of protestors or the words of the president hold little power relative to one's own beliefs. The real danger lies in the establishment of mental orthodoxies. We tell ourselves that certain thoughts, often the most important ones, are not fit to be said. If we cannot say them to ourselves, then ·we cannot make them real.

Every one of us has felt this internal pull away from stating the truth. Things that seem obscene or confusing are pushed aside. Many times I have had an idea pop into my head only to think that it can't be true. "Do I believe that?" I sometimes ask. “I can’t believe that." I assure myself. Then, the thought is snuffed out before it could ever have become real enough to say.

Society holds great respect for thinkers who are seen as ahead of their times, but how many such thinkers have we lost because they refused to believe their own radical notions? How many Copernicuses and Galileos have stayed silent not because of 0titside

pressure, but because: they refused to let themselves believe the Earth revolves around the Sun?

This has always been true, but in recent years we have closed our minds more firmly than ever before. Much has been said about the creation of bubbles in our society. How people of the same values live together, work together, and even sleep together. We don't often consider how this process affects us as individuals. It creates an internal pressure even greater than that of our community. The left hears only the left and then thinks like the left. The right hears only the right and then thinks like the right. We are unwilling to speak controversial ideas in front of a crowd because we can't even say them to ourselves.

Before free speech must come free thought, and it will not be free of cost. To utter our thoughts even to ourselves requires enormous courage, but this is courage we must find.

## Jack Sadler

Precedented yet unavoidable, a conflict between parents and their children is consuming our country. Our institutions, culture and social structures are once again up for generational review.

Ivan Turgenev summed up the recurrent philosophy of youthful reexamination in his 19th century novel Fathers and Sons. "We base our conduct on what we recognize as useful. In these days, the most useful thing we can do is to repudiate - and so we repudiate". Youthful repudiation is driven by the belief that compromise is appeasement and acknowledgment of an idea is an endorsement of it. If we just excise and eliminate the Nazis, the fascists, the men's rights activists, the 4-Chan nihilists, the corporate shills, the sexual harassers, the neo-cons, the establishment... our progressive utopia will be in grasping distance ...

In recent years, freedom of speech has been a target of this youthful repudiation. Fetishized by a generation of parents, freedom of speech has been advertised as an unequivocal blessing. It's hard to reconcile the rhetoric around free speech with images of Nazis marching through Charlottesville. Young activists have sensed these inconsistencies, and have passionately argued that certain speech is wrong and must be removed from public discourse.

Freedom of speech, however, is a right that has been improperly advertised and understood. There is a reason it is enshrined in our constitution: generations of Americans have deemed it too important to be subject to the whims of youthful reexamination. Freedom of speech is not a gift from the government. It is not a positive right. Freedom of speech is the least bad way to address troubling speech.

Foundational to the idea of free speech is the belief that the unpleasant and disagreeable parts of society can't be excised. Rational redesign can only go so far in

stopping our most repulsive ideas. The experience of older generations has taught us that bad ideas must be ideologically confronted, not ignored. It was democratic action and discussion, not government edict that created the climate for our country's ideological advancements.

When Nazis march through Charlottesville, it is not an indictment of freedom of speech, but an indictment of ourselves. Freedom of speech is a responsibility, not a gift. It is a responsibility to publically and democratically engage with the worst ideas of our nation. The first amendment is predicated on the optimistic belief that when argued for properly, good ideas will win out. It demands, however, that the people, not the government, promote and persuade others of what we ought to believe. The first amendment incentivizes us to reject tribalism and division.

Free speech is not free, it is a burden. We cannot engineer our way out of this burden. Reason and science do not absolve us of this burden. We must reject our impulses to take the easy way out. When we ask the government to intervene, we not only presuppose our own ideas to be objectively right, but we fail what the first amendment asks of us: to engage with one another.

## Maggie Mead

Speech costs nothing to use. In service of your conscience, it takes courage to use. The act of using it, whether free or taxing, holds untold value. Protection of speech is a threshing machine: chaff is winnowed, truth is revealed. This, regardless of listener.

My father served in the Vietnam War from 1968 to '69. He was stationed in Chu Lai, I Corps, which saw some of the most intense fighting. And he had one of the worst assignments: as long-range reconnaissance patrol, he was helicoptered out with a few other men in advance of troops -with a knife, a gun, a high risk of ambush.

I grew up in a small agricultural town in Oregon. The majority of my classmates' fathers had also been drafted, but we never talked about that. We didn't talk about it, because it was taboo. You didn't talk to your friends about it, you didn't talk to your mom or siblings about it, and you certainly didn't talk to your dad about it. But never mind; it lived in your house all the same, like a family member no one acknowledges. Sometimes it screamed in the vice grip of an agonizing headache or memory, often it suffocated itself in alcohol. It could sleep under a parent's skin, invisibly, and make them not them.

When I was twenty-four, Dad started talking to me about Vietnam. My deep surprise at this, during a phone conversation, forced me to instinctively-the only way to explain it-stop hearing him. I wanted desperately to know but, in that same instant, his words became fuzzy. Or maybe they were just garbled because he was sobbing. The beginning of the story seared into me, though, and stayed there. It went like this.

His unit came upon a little old man, sitting cross-legged on the side of the road with his pots and pans. The sergeant ordered a private to shoot him. To shoot the man. He was just a little old man, sitting on the side of the road. He was an old man, an old man. He had these pots and pans to sell. He wasn't doing anything. Goddamn it, he was just an old man. The sergeant ordered to shoot....

Now I am forty-four. Dad passed away twelve years ago. I never did ask him to finish the story. I assumed the private had followed orders and moved on with his unit. I thought I was the only one to have heard any of it.

A few weeks ago, Mom brought up the war. She asked if Dad had ever said anything to me. I hesitated to tell the little I knew, to form the words aloud. Mom said, "Oh, I know that story too. Your dad told me before you were born." I caught my breath and listened where, twenty years before, I had willed myself not to -and saw clearly the doubt and fear I had harbored: that the shooter had actually been my father.

"Your dad was ordered to shoot the man."

"What?"

"Your dad was ordered to shoot the man. He said, 'No.'"

## Ishani Joshi – A Penny for Your Thoughts?

*Lallita and I stepped outside o□r building; I held my umbrella over our heads as we walked to class, in awe of the graffiti - "ANTIFA" "IMPEACH TRUMP" - wrapping the pillars bearing the weight of our educational institution. Visual memories of crowds overtaking the streets and men in black masks pushing down fences robbed my thoughts. To our left, caution tape enclosed the damaged Martin Luther King J1: Student Union. I shook my head at the irony; last night's acts literally shattered the ideals of the leader who represented freedom and nonviolence. I turned to Lallita and asked her, "A penny for your thoughts?" But before she could say anything, a man on the street, inappropriately energized by last night's transgressions, yelled at us to go back to our country. I cowered; though this slander was familiar, I still felt my persona/freedom slip away a little. But Lallita turned around as he walked by and yelled, "How original!" and then added on, "nobody asked you!"*

With every mode of art and knowledge, there is both a private and public mode of discourse. For example, oil paintings can be available in museums whereas murals are for public enjoyment. In the context of knowledge, the idiom "a penny for your thoughts" serves as a meditation on the private exchange of opinions; one person is incentivizing another to participate in an exchange by offering a symbolic "penny." Thus

in the private mode of discourse, you need some level of privilege - "a penny" - to participate. This formalized exchange allows mutually beneficial interaction; one pays a penny to hear another person's valued opinion.

Free speech is a form of public discourse. Anecdotally, free speech to me is graffiti sprawled on walls, people gathering on streets, strangers voicing their opinions. Theoretically, free speech is blind to status; practically, free speech can be practiced by anyone. Essentially, people are "free" to engage in free speech.

Free speech is intrinsically a resistance to the traditional exchange of knowledge; by equalizing the grounds for expression, anyone can engage with this grassroots genre. However, even though one does not have to invest with a "penny" to employ this form of discourse- even if free speech is the most accessible mode of expression in our culture - does it come at no cost?

Is it *free* if it rejects monetary exchange, but still takes time and energy? Is it freeing if it enables people to speak up and voice their opinion, but in the process, leave some people boxed in? City workers were employed to remove the graffiti, protestors paid for the protests with their time, students were prepared to renounce their safety, and I paid for the passing man's rude comments personally by offering a morsel of confidence.

*After all of this, Lallita finally had a chance to offer her opinion. She turned to me with a pained expression, and only said one thing- "why must I pay for his freedom with mine?"*

## Evan Bauer

Does a bear shit in the woods? Of course free speech is free -- it's in the name. But we might do away with that line of thinking altogether and go ahead and say that speech is never free, is impossible of being free. On a biological level, any utterance requires some chemical energy, some splicing of ATP molecules. Though more interesting, I think, are the psychological, emotional, and physical costs exacted both before and when speech enters the social fabric of its environment.

Let's take a simple example, which I've selected for it's brevity: *I'm gay*. It took me 12 years of considering and reconsidering how to say those two words to my parents, whether I even could say them. My face went numb when I finally did; my hands trembled. I'm not sure exactly what biological processes are involved in numbing a face, but I'm sure it costs some energy. I'm one of the lucky ones-I was accepted, my life drastically better than it was a year ago, but my point stands: anytime we speak,

even if it be just two words, there are (sometimes immense) social considerations to be made.

Let's take another example: one should assuredly never open an essay submitted to a university prize with the line does a bear shit in the woods? Everyone knows this. So why do so? Of course there is the slim chance (if the gods be in my favor) that whoever reads this gets a solid chuckle out of that opening bit of recalcitrance. But more likely, perhaps, is that someone who sat down in a committee meeting and earnestly helped brainstorm a meaningful topic for this year's prize will read it and think: what an asshole. Is there any reason to take a shit on someone's thoughtful work?

No, I would argue. There are in fact things which not only don't need to be said, but also shouldn't be said. I understand the world is more complex than a 500-word essay, so I'll offer just the synopsis of a solution: We treat words as having the power they do. We stop narratives which pretend that words are just sounds and thus any sequencing of them should be fine, narratives in which the blame of hurt is placed on an "oversensitivity" of the listener. We conceive of speech as sending out small throbbing orbs into the air around us, and these orbs can emit either grace or pain. We pay attention to who's around, who's listening, who's going to absorb the impact of our throbbing, metaphorical speech orbs. Because words hurt-they sear, they lacerate, they dig their claws in and pull at the seams. But they can also exalt, soothe, heal. It's up to us to recognize which do which. I believe this equilibrium comes about naturally, for the most part, but sometimes a reminder is in order. We do not have the right to make others hurt, or to give others the platform to do so (looking at you, Milo).

## Irina Popescu

I grew up under a dictatorship, doesn't really matter which one, they are all the same. I grew up going to protests with my parents and banned poetry readings hoping no one would rat us out and ruin our love of political lyric. My parents taught me, from a young age, to always fight and speak up even when free speech was a costly idealistic dream we read about in books. The "free speech" week this past semester has really put a lot of my upbringing into perspective. Is free speech free? Of course not. Nothing is free anymore.

My relationship with Berkeley is up and down. Fraught, one might say. I love her yet she sometimes shuns me. I speak up for her yet she sometimes does not speak up for me. I have been teaching at Cal for over 7 years and in those years we have had countless meetings about boycotts and demonstrations. I have participated in countless

discussions about what to do as we watch our campus being turned into a militarized zone to protect our students and ourselves. Although I am finishing up my doctorate this year, I am still as confused as ever about what free speech even is anymore. When did free speech and hateful speech start masquerading as one? How is hate so free?

When classes got evacuated in this semester for "free speech week," students were moved out from lectures and small seminars and forced to abandon their classrooms and go home. They were forced into silence and it came at a cost. I am not sure what I feel about boycotting classes, even though I understand the need to do so. I am not sure what I feel about backing down from the education that I feel my students deserve. After all, they pay an arm and a leg for it. I decided to hold classes in protest. I decided that the best way to fight against the ignorant discourses infiltrating our campus is to teach discourses on empathy and human rights. We need to redraw the map as educators. We need to reestablish the rules of the game and our commitment to our undergraduates, who always seem to be on the losing end of this battle. Let's teach. Let that be our form of protest. Let's make free speech free of hate again.

I sometimes feel like Cal is its own island, running on a different set of rules, a crazy mixture of anarchy and conservatism, two opposing sides of a spectrum that seems circular, enabling them to meet in the middle. Hate is hate any way you spin it. Hate is hate is hate. Free speech is not hateful speech so let's stop mushing them together. The cost of free speech has gone up and we must work together to remove the price tags of ignorance and bigotry.

## Hideyasu Kurose—Dartmouth and Kaepernick

In the watershed Supreme Court ruling, "Trustees of Dartmouth College v. Woodward", Justice Marshall controversially established the strong correlation between an individual and a corporation. Naturally, most individuals in the United States are affiliated with a corporation in a vocational sense and their 1st Amendment rights are curtailed subject to intramural agreements they sign upon acceptance of a position. Justice Marshall famously hearkened back to the British Parliament to explain why New Hampshire could not abridge certain rights of Dartmouth College which possessed a private charter yet happened to be located in the Granite State. To use Justice Marshall's eloquent words:

> Even in the worst times, this power of parliament to repeal and rescind charters has not often been exercised ... The legislature of New Hampshire has no more power over the rights of the plaintiffs than existed ... before the revolution ... The British parliament could not have annulled or revoked this grant, as an act of ordinary legislation. If it had done it at all, it could only have been, in virtue of that sovereign power, called omnipotent, which does not belong to any legislature in the United States.

In the midst of a controversial free speech battle in the NFL between a prominent player and a prominent corporation, it has become readily apparent that the jurisprudence invoked by Justice Marshall effectively answers the question "Is free speech free?" More specifically, athletes such as Mr. Kaepernick are victims of 1st Amendment rights abridgement insofar as they exist more as corporations themselves than individuals within an organization such as the NFL. Due to the massive amount of income which a player such as Kaepernick brings into the NFL, the fact that he is permitted to incorporate his "brand" outside the NFL, and nuances of the most recent Collective Bargaining Agreement, he incontrovertibly can be framed in the same light as Dartmouth College.

Accordingly, just as Dartmouth hypothetically has been free to oppose any and all aspects of New Hampshire's public policy in a ritualistic manner, Mr. Kaepernick, as a corporation loosely embedded in the NFL, is by all means within his 1st Amendment rights to kneel. To qualify this statement, it is necessary to clarify that Mr. Kaepernick's genuflection is neither obscene nor designed to incite a riot. Any attempt by the NFL to restrict Mr. Kaepernick from kneeling is thus equivalent to "rescinding his charter" in conflict with a centuries-old ruling.

Yet in a provocative twist it must be noted that Mr. Kaepernick would not have these same rights as a student of a college. In this sense, free speech is not necessarily free for students or employees who do not enjoy the classification of a corporation. Since offensive speakers who do not reflect the collective opinion of a given sh1dent body are not employees or corporations affiliated with the educational institution, it would not represent "omnipotence" on the part of the college to silence them. Silencing them does not amount to "rescinding their charter" or for that matter violating their First Amendment rights.

## Rudra Reddy— “Defense of Freedom”

It is often the worry of decent-minded individuals that keeping free speech free, immune from censorship, would corrode an inclusive society. It is relatively common to hear sensible persons argue for "reasonable restrictions" on the expression of ideas, citing the rise of collective hatred as the reason for such an action. I fear such people suffer from a misplaced confidence, an underlying arrogance in the supremacy of their own judgment. It is true that if one considered himself or herself a paragon of morality, one would feel empowered to demarcate the kinds of speech we should no longer

consider free. But the central question is that if we all consider ourselves flawed and imperfectly moral, why would we repose such faith in a government?

In August, white nationalists marched through Charlottesville, igniting a major debate on just how free should free speech be. If a society couldn't censor controversial speech, what about speech that any reasonable person would find repugnant, like Nazi propaganda? Why couldn't we move to a system of limited censorship such as that followed by European nations like Germany, where disseminating such propaganda is punishable by law? It is important to remember that speech restrictions such as those implemented in Europe arise from a profound fear of breaking apart. Germans passed their censorship laws fearing a return of the Nazi ideology that had wrought havoc on the nation and its people. However, the lawmakers and judges who are responsible for the freedoms we enjoy today understood that the freedom of speech would be moot if it did not include the freedom to express opinions that we loathed and found morally reprehensible. The assumption they made while granting Americans these rights was that no matter how many forces attempted to use these freedoms to divide and spread hatred, the societal bonds that held American society together were uniquely able to withstand any strains that would have reduced other nations to ruins.

There is a prevailing belief that allowing free speech to be truly free hurts minorities and marginalized persons who are the most likely to be the targets of bigoted speech. The historical record serves as an ample record to demonstrate that this belief is quite simply false. The civil rights movement in the American South was severely hampered for decades because the white majorities in the South would forbid activists from spreading their message of equality. Supporters of Martin Luther King, Jr. actively sought to inform the Northern public about the atrocities being committed against blacks in the South and fought several landmark First Amendment cases, like New York Times v. Sullivan, to secure their rights to free expression.

What the civil rights movement serves to illustrate is that any authority that is granted the power to regulate speech cannot be trusted to act in good interests, including the State. Hence, it proved that free speech must be free for if it isn't, all our other freedoms are void.