Is Free Speech a Dangerous Idea?

written by Samuel Farber | August 16, 2026

What is Free Speech? The History of a Dangerous Idea

Fara Dabhoiwala

The Belknap Press of Harvard University Press, 2025

Fara Dabhoiwala, a senior research scholar at Princeton University, delivers in this book a sharp criticism of the doctrine and practice of free speech, particularly as it has developed in the United States. This main focus is framed by a lengthy historical background, in which he shows that the growth of manuscript and printed news and commentary as early as the Middle Ages were signs of the vitality of popular political opinion and of the expansion of the public sphere. In the western hemisphere this included the talk of slaves, about which their owners obsessed since they could never completely control it and feared its power to bind and inspire. A proverb of the Akan people, an ethno-linguistic group in West Africa, proclaimed that "to be prevented from speaking…was akin to being murdered: to silence another unjustly was a grievous crime" (78).

Nevertheless, Dabhoiwala contends that the overwhelming currency of popular political discourse in past times was not reasoned debate but hateful lies and conspiracy theories, inflammatory misinformation, crazy rumors, and outright fakery (25). These were, in his view, the numerous problems caused by free speech that have not disappeared. Dabhoiwala argues that words can be at least as damaging as physical blows and can leave deep and lasting scars not just on individuals, but on society. Moreover, as he relates it, speech can perpetuate sexual and racial discrimination, fuel religious persecution, sow social and political division, undermine legitimate political and scientific authority, and pave the way for violence (18). With this outlook, he joins a number of liberal and leftist critics of free speech, with some supporting its restriction, such as Stanley Fish, Catherine A. MacKinnon, and Herbert Marcuse.

Most importantly, Dabhoiwala insists that a responsible freedom of speech requires the establishment of different constraints in different contexts to balance its negative effects. According to him, if the purpose of speech is "to establish truth, it requires one set of conditions; if justice a different set; if political legitimacy, yet another; if to create art or generate amusement, still others, and so on" (178–9). Therefore, it is clear that Dabhoiwala objects to the free speech tradition especially in the U.S. not because of its limitations, or because it has been betrayed or abandoned by some of its well-known previous supporters, but because its absolutism ignores the conditions and especially the constraints that may make it relevant and valid—or not—under differing circumstances. Unfortunately, although this book extends to 343 pages of text with an additional 98 pages of notes, the author does not give us any clue as to who would determine the appropriate circumstances and establish the pertinent constraints for free speech, or how they would do so. Neither does he provide a single example of what would constitute, according to his contextual rules, a violation of the right of free speech in any of these areas of human endeavor.

Although the author ignores it, there is in fact an extensive U.S. jurisprudence that addresses many of these matters, although it has not been firmly committed to the protection of free speech, and certainly not before the twentieth century. Moreover, as Kwame Anthony Appiah argued in his review of this book ("Watch What You Say," New *York Review of Books,* Sept. 25, 2025), while Dabhoiwala seems to think that the American tradition of free speech lacks a crucial balancing of liberty rights against public interests, it has in fact "always been in the balancing business." As Appiah explained, the Supreme Court has for several decades sorted speech into tiered categories. Political speech generally receives the highest protection, i.e., strict scrutiny that requires that any restriction has to serve a compelling government interest and be narrowly tailored to it, while commercial speech receives less. Other types of speech (obscenity, speech integral to crime) may get no protection at all (65).

On the other hand, the balancing approach adopted by the 1950 European Convention on Human Rights, which Dabhoiwala favors, although not uncritically, emphasizes that free speech carries with it duties and responsibilities and that it is legitimately subject to legal restrictions that are necessary in a democratic society, including national security, public safety and order, the protection of health and morals, the authority and impartiality of the judiciary, and the protection of the reputation and rights of others. Moreover, broadcasting, television, and cinema enterprises could be subject to state licensing. In sum, according to this European approach, the rights of any speaker must always be balanced against their responsibilities to the public (327).

In fact, the European approach to free speech has turned out to be less defensible than the American one. As Appiah pointed out in his review (64), after the British Race Relations Act of 1965 prohibited the incitement of racial or ethnic hatred, most of those convicted of the offense in the first five years were people of color, beginning with Michael X, who was among the Black nationalists convicted in 1967 of stirring up hatred of white people. The German government's recent penalties and severe restrictions on public criticisms of the Israeli government's ruthless attacks on the people of Gaza are comparable to the attacks carried out by the second Trump administration on critics of Zionism, although without Trump's hateful rhetoric. As Jacob Mchangama, executive director of The Future of Free Speech, has argued, the European approach has

> neither eliminated intolerance nor produced a public square free of falsehoods. Instead, they have expanded the state's discretionary power over dissent. Peaceful protests against Israel's war in Gaza, insults aimed at politicians, critiques of immigration policy, and irreverent attacks on religion have all led to investigations, arrests, and convictions—and minorities have been among those targeted by laws ostensibly adopted to protect them. ("Who Has Free Speech? The Global Fight Over a Powerful Idea" *Foreign Affairs*, Nov./Dec. 2025, p. 170.)

While claiming to oppose dictatorial governments and support democracy, Dabhoiwala has in several instances availed himself of unoriginal arguments that have been part of the armory of the authoritarian right (and, unfortunately, of the "campist" anti-democratic left as well). Thus, according to him, if one thinks of freedom of expression not as a means to an end, but as an end, then speech would be elevated to the supreme ideal and would be "more important than truth, justice, equity or any other value" (179). Following this mode of thinking, we could ask whether gasoline and/or electricity are more important to automobiles than, say, the car's engine. Or is it rather that cars, and their engines, cannot generate movement without an indispensable source of energy just as free speech is indispensable to democracy, justice, equity, and truth?

Similarly, Dabhoiwala, in his efforts to challenge or at least diminish the singular importance of free speech, objects to the very concept of free speech with the hackneyed argument that there is no difference between speech and action since speech constitutes action (325). This is certainly true, but hardly strengthens his position, because he fails to follow up on this point by addressing the

more important question of *what kind* of action is speech. He alludes to this issue in passing (226, 234), but he does not examine it. Verbal or written speech action is often a form of advocacy that can be countered *in time* by other forms of speech actions. Particularly in cases such as racist and sexist speech actions, opponents can mobilize to counter the effects of the original speech action, particularly in connection with the broader issue of reducing the influence of hate speech in shaping public opinion. Most of all, the effects of speech actions are generally reversible while that is not generally the case with what could be called immediate executive actions. Viewed on the individual level, there are obviously great differences between the following actions, speech and executive, even though they may all be repulsive. For example, a very chauvinist male teacher may engage in various distinct actions such as thinking or fantasizing about rape, advocating it in a public park, advocating it in a classroom where students are obliged to attend and be subject to the discipline and the teacher's power to grade exams, and actually trying to engage in the (executive) act of rape.

Individual Rights and Individualism as a Legal and Political Ideology

Dabhoiwala is surely right in pointing to the individualist politics and ideology underlying much of the original development of the U.S. doctrine of free speech. Of course, that ideology and politics have been pervasive in the U.S.'s legal doctrine and tradition well beyond the issue of free speech. Take the legal doctrine of standing, for example. Unlike in other legal traditions, a U.S. citizen does not have the right just by virtue of being a citizen to challenge a law that might be unconstitutional. She must very concretely show that she has been injured as an individual by the law in question. This is why the NAACP and other civil rights organizations have historically had to find specific Black individuals who could make a credible claim to have individually been injured by discriminatory racist laws to be able to challenge them in a court of law. The notion that whatever constitutionally affects my neighbor, also inevitably affects me, is completely absent from the Anglo-American common law tradition.

To take another example, labor law has also historically been subject to the reign of individualist assumptions and precedents. The philosophy and politics of individualism specifically underlined relations between workers and employers under the fictitious notion of freedom of contract, as if workers and employers had equal power and really free choice in the marketplace. This notion was especially powerful in the United States during what has been referred to as the Lochner era, from the 1890s to the 1930s. (The name Lochner derived from the 1905 Supreme Court decision in *Lochner v. New York*, striking down a New York state law limiting bakers' work hours.) At that time, the Court considered "liberty of contract" to be one of the liberty rights protected by the 14th Amendment.

It is entirely true as Dabhoiwala argues that the free speech doctrine was, especially at its beginning in the age of Enlightenment, based on certain questionable assumptions. These assumptions often seemed to be animated by a kind of optimistic, if not naïve, consequentialism. As Dabhoiwala tells us, the nineteenth-century philosopher James Mill asserted that truth always won out over falsehood and was irresistible to the human mind. His son, John Stuart Mill, disagreed, arguing with the more reasonable but still questionable assumption that over time, truths have advanced and become established and that this was a mark of progress. He also argued that as humanity improves, the number of doctrines that are no longer disputed or doubted will constantly increase. The dramatic growth of religious-based fundamentalism in the last several decades and the open rejection of science in the contemporary United States, especially during the present Trump administration, lead us to at least replace Stuart Mill's apparently linear development of progress with a more skeptical nonlinear view (219). We could also modify Stuart Mill's expectations with the assertion that although we cannot expect free speech and free inquiry to guarantee progress, the absence of those democratic advances is far more likely to guarantee its absence.

Perhaps more modest in its claim was Justice Louis Brandeis's legal position in the early twentieth century that, as related by Dabhoiwala, in the face of bad or dangerous speech (often falsely based on the farfetched notion that Communism constituted a clear and present danger in the United States of the 1920s) "the remedy to be applied is more speech, not enforced silence." While allowing and encouraging more speech is obviously a good idea, Brandeis's proposal is also implicitly reductionist in narrowing social and economic reality and the question of how to change it to the realms of communication and persuasion by groups and individuals, ignoring broader forces in society that may stand not only in the way of "more speech," but more generally as obstacles to any kind of human progress. Even in those realms, the views of such Supreme Court justices as Brandeis were wholly inadequate to fully address, let alone remedy, problems such as the lack of an ample and fair production and dissemination of news in contemporary capitalist society. At the time, the influential columnist Walter Lippmann cited by Dabhoiwala argued that the opinions of these Justices were simply "misleading"—"too feeble and unreal…to protect the purpose of liberty, which is the furnishing of a healthy environment in which human judgment and inquiry can most successfully organize human life." Since the most important issue in this context was the development of public opinion, "the protection of the sources of its opinion is the basic problem of democracy. Everything else depends on it." (Walter Lippmann, *Liberty and the News*, Harcourt, Brace & Howe, 1920, pp. 35, 63). In other words, Brandeis was attempting to establish some free-speech rules for the delivery and dissemination of opinions without looking into how those opinions were formed and shaped in the first place in an economically-advanced capitalist society (285–7).

Central to this issue was that notion of the "free market" of ideas that was in reality an oligopolistic market when in fact publishing and the press were in the hands of and controlled by a small group of companies. During this period (approximately 1900 to 1930) the lion's share of newspapers were already in the hands of companies and individuals like the Hearst and Scripps-Howard chains plus the influential major newspapers owned by Joseph Pulitzer, and the *Chicago Tribune*, which belonged to the Medill/McCormick family. At the same time, other newspaper chains, such as those owned and controlled by Gannett and Knight-Ridder, were rising. As far as book publishing was concerned, it was highly concentrated, controlled to a very large degree by the following companies: Doubleday, Page and Company, Harper, Macmillan, J.B. Lippincott, G.P. Putnam's Sons, Charles Scribner's Sons, Simon and Schuster, and the McGraw-Hill Book Company.

In sum, what even the more liberal defenders of free speech on the Supreme Court were unable and unwilling to argue for in their decisions was how corporate capitalism by its very nature made it impossible to provide equal access to the highly concentrated media and how the absence of such access constituted a major obstacle to democracy.

The Internet and Social Media

Today, while the number of social media companies is smaller than the newspaper and book publishers of Lippmann's epoch, the number of users is immensely greater both in the United States and abroad. As Jacob Mchangama has reminded us, in the mid-nineties only 40 million people worldwide had access to an internet that was radically different from the increasingly centralized and commercialized internet of 2021 with its 4.66 billion active users, 4.2 billion of whom also used social media. In 2019, 43 percent of the world's internet traffic ran through the same six giants and their intermediaries (*Free Speech. A History from Socrates to Social Media,* Basic Books, p. 354). The internet has often helped the development of mass mobilization and protests in many countries with political and social systems as diverse as those of the United States and Cuba. However, it does appear that the Chinese government, among other authoritarian political regimes, has been able, with the help of U.S. companies, to achieve a substantial degree of political control of the internet.

Critical in the present context is section 230 of the Communications Decency Act, approved in 1996,

that provides immunity for hosting third-party content to “interactive computer services” companies such as Facebook. These companies have on the one hand been able through the use of algorithms to manipulate what users can see or not see, affecting both the reception and dissemination of content. Thus, these algorithms silently but effectively limit and manipulate the exercise of free speech. At the same time, these companies evade the responsibilities involved in the dissemination of content. Thus, for example, newspapers and magazines generally employ fact-checkers that lead them to reject content that may expose them to libel suits and at the same time protect their credibility and trust as dispensers of news and opinions. Of course, this does not make these news and opinion organs truly democratic since only people with substantial amounts of capital at their disposal are able and willing to acquire businesses that must be made profitable if they are to survive. This is even truer in the era of the transformation of media that has prominently included a sharp decline in the number of newspapers and magazines.

For business and political reasons, particularly in the era of Trump, the big social media companies have been unwilling to curtail the dissemination of the grossest lies, blatantly erroneous medical information, and straight factual errors such as falsely announcing the death of some prominent people. Facebook has not even bothered to erase the names and pictures of “friends” who are no longer alive, which means that eventually there will be more “friends” who are dead than part of our living world. Obviously, this could only be avoided by hiring a considerable number of people who would keep abreast of these mortal developments. In line with their critical importance, these companies have become public utilities like telephone and electricity companies that badly need lawful regulation of their activities.

In sum, Dabhoiwala is correct when he claims that social media acts as publishers of content and not just neutral conduits for it. As he puts it, they “purposefully arrange the information on their websites, algorithmically targeting each viewer in order to boost certain communications and demote others. And they also all have standards about permissible and impermissible speech, which they enforce (or not) as they please, free from external oversight” (321).

Individualism and Individual Rights

Still, the philosophy and politics of individualism that has backed and provided essential support to the so-called free enterprise economic system in the United States as it applies to the media, should not be confused with the related but very distinct issue of individual rights. By this, I am referring to rights like those contained in the Bill of Rights establishing free speech and freedom of religion, the right of peaceful assembly, the protection against arbitrary search and seizure, and the right to a public trial among others.

Habeas corpus is also explicitly enshrined in the Constitution: “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” (Article I, Section 9, paragraph 2).] Contrary to the brutishly ignorant Kristi Noem, the former head of Homeland Security, who publicly claimed that Habeas Corpus referred to President Trump’s power to essentially do what he wished, Habeas Corpus (meaning “you have the body” in Latin) refers to the prohibition to hold a detained person beyond a certain number of hours (generally from 48 to 72) without the police authorities and the accused person having to appear before a judge to decide whether there is sufficient reason for that person to be held in prison, or be freed (if not entirely discharged) with or without bail.

Moreover, as important as the individualist tradition has been in the United States, what Dabhoiwala plays down if not entirely ignores is that popular struggles by workers, Black people and other racial minorities, as well as women and other oppressed groups, have dealt major defeats to individualism as a reigning political and ideological philosophy in the country. Laws like the Wagner Act in the

1930s, the Civil Rights and Voting Rights Act in the 1960s, and numerous other laws have dealt serious blows to individualism, affirming what could be called democratic collectivist rights. Moreover, the vigorous exercise of the right of free speech has been essential to all such collective struggles. The Industrial Workers of the World (IWW), the radical socialist union active in the first decades of the twentieth century, organized numerous "free speech fights" to support strike action and disseminate their political views. The socialist leader Eugene Debs repeatedly invoked his First Amendment right to voice and propagate his political opinions as well as those of the then very significant Socialist Party

The Left and Free Speech in the United States

Civil liberties groups such as the ACLU defend the free speech rights of individuals and groups on a daily basis, and so should the left. But the left is also engaged in a political and social struggle to change society, which is not usually part of the agenda of civil liberties organizations. As part of this struggle, the left also fights against the authoritarian and anti-democratic politics of many of the groups and organizations, usually on the right of the political spectrum, that are trying to advance and gain popular support for their thoroughly anti-democratic and often racist, sexist, and antisemitic agendas.

This is especially true today when a massive offensive is taking place against the left, liberals, and many universities to eliminate affirmative action and change even the content of academic courses themselves, often under the specious excuse of antisemitism as a convenient disguise for a clear and blatant right-wing ideological agenda.

The governmental violation of free speech has had a particularly negative impact on students and faculty opposing Israel's barbaric acts in Gaza and increasingly in the West Bank. Among its victims are first of all Arab and Palestinian students such as Mahmood Khalil, a recent graduate of Columbia University who may have been deported as this issue of *New Politics* appears, for playing a leading role in the protests that took place on that campus against the Israeli invasion of Gaza. Elsewhere, repression has been unleashed against tenured professors such as Tom Alter in Texas, who was fired for the "crime" of stating his opinions as an American citizen to an off-campus socialist audience.

But how can the left fight these often-extreme right-wing actions and organizations while at the same time respecting the right to free speech of all Americans, two commitments that sometimes may appear to be irreconcilable?

In a period of relative social peace, by which I mean the absence of civil war or revolution, the radical and socialist democratic left should distinguish between what I have chosen to call racist and anti-democratic persuaders from racist and anti-democratic intimidators. People like Arthur Jensen, Richard Herrnstein, and Charles Murray among others that have propagated offensive racist myths under the guise of social science, are racist persuaders, as well as other right-wing spokespeople who ideologically oppose liberals and the left. However, their pronouncements take place entirely within the realm of discourse, to which opponents, some of them well-known such as the late Stephen Jay Gould and many other commentators have vigorously responded through rational discussions and careful refutation.

Mass protests can and should be organized against racist and anti-democratic persuaders. These protesters can use other free speech rights, including the venerable traditions of picketing and heckling against such people, but stop short of using force to stop figures like them from speaking. Even the sharpest ideological and political struggles ought to abide by implicit rules that social movements have occasionally violated when they have replaced persuasion with the use of force. This not only violates the speakers' fundamental rights, but more importantly, the rights of the

audience, which may at least in part consist of people who are undecided, confused, or with mixed consciousness, as well as who just wish to preserve the right to free speech.

This differs from racist, sexist or antisemitic acts of *intimidation* perpetrated by organized groups with a history of physical violence, such as, for example, the various right-wing groups that organized and participated in the violent acts carried out at the nation's Capitol building on January 6, 2021, to prevent Congress from certifying the electoral victory of Biden over Trump in the 2020 election. With such groups, which include open neo-Nazis, as well as other groups such as the KKK, the left is not just in ideological struggle, but also in a state of open belligerence. Violent intimidators are not trying to persuade, but to intimidate. Their language is the language of violence. As far as the social movements are concerned, the otherwise reasonable rule that speech is protected until violence is imminent should not apply to these violent intimidators. Instead, that principle allows these extreme right-wing groups to select the time, place and manner most favorable for their violent actions.

Therefore, the question of forcefully stopping such intimidators from demonstrating or marching altogether should not be regarded as a question of principle but rather as a question of strategy and tactics. Several considerations are relevant here, including the relation of forces in the streets, whether most protesting groups would support preventing the intimidators' actions from taking place, and whether significant sections of the public would recognize that in these cases forceful actions are fair and justified instead of perceiving the intimidators as victims.

However, in no case should the radical and leftist democratic forces call on the state to stop or illegalize marches or other forms of political actions by the intimidators. As we discussed above, what happened in Britain after the Race Relations Act was approved in 1965 demonstrates that the state cannot be trusted to consistently act in the defense of free speech and other civil liberties. To call on the state to ban, for example, right-wing political demonstrations is to provide the state with political legitimacy and legal weapons that can be used against the public actions of other citizens, including the left. Thus, in many such cases, the left should oppose governmental bans on, for example, demonstrations, while at the same time working to organize the broadest opposition in the streets to such right-wing racist and anti-democratic activities.