

Should an Armed Nazi Horde Be Permitted to Invade Your Town?

The American Civil Liberties Union has reversed itself to [decide](#): now it's gone too far. They will defend the right of speech, the right to associate, the right to protest and march. They will defend the rights of hate groups, hate speech, and the most egregious gatherings you can imagine.

What they will no longer defend is the right to do all these things while armed with guns.

"We've had people with odious views, all manner of bigots. But not people who want to carry weapons and are intent on committing violence," ACLU spokeswoman Stacy Sullivan told the New York Times.

In other words, your right to carry while shouting "Jews will not replace us" is something the ACLU will no longer defend.

No, ACLU, You Are Wrong

I get the intuition here. The scene in Charlottesville was terrifying for residents, especially since the alt-right protestors were not from the city. It was bone-chilling for most anyone who watched the news. The videos that came out afterward had the optics of an invading Nazi army carrying torches and shouting threats. This was not a protest for rights but a demand for power. And it shook a nation that fought a hugely costly war against exactly this kind of thing.

Basically, you wouldn't want this happening to your charming town of merchants, students, professional, and picnic goers. And this is why the ACLU finally decided to draw the line and declare it would no longer use its influence to back such

things.

However, my answer: the ACLU is wrong here.

The right to carry is defended by the Constitution, same as the right to speech. It should also be similarly absolute. Once you pick and choose the way you want rights exercised, you threaten the very idea of rights and make them all contingent on political expediency. Even aside from that, the right to carry is an extension of property rights. To carry is not to threaten. To carry while shouting hateful things about other groups is also not to threaten. To threaten means to pull the weapon with an intent to use it.

In that sense, and on purely technical grounds, the marchers on that fateful evening and day were within their rights. They also knew that, and pushed this as far as it could go. They created the optics of an invasion: Nazi uniforms and flags, torches, weaponry, angry chants. Standing back from this and watching, it is a completely understandable reaction to say: this should not be allowed.

If so, the place to exercise that intuition is on private property. In Atlanta, Georgia, we have [large spaces](#) in the center of town that are public access but privately owned with their own set of rules. They don't allow smoking, gang wear, swearing, or running. An armed group of Nazis showing up to Atlantic Station would be escorted out in minutes – to the cheers of residents and merchants.

Based on the same principle, it is perfectly reasonable that privately owned ISPs and social media network have banned many alt-right and Nazi websites and accounts from using their services. They specifically cited their terms of use but that is not even necessary. The Bill of Rights gives no one the right to a website and Twitter account.

But cities also have public property that is owned and controlled by the city, parks and monuments, and the like, and

it is through this loophole that groups like this gain permission to organize, march, carry torches, and so on. And this is precisely their right by virtue of American tradition and the demands of the free society, which must learn to tolerate speech, associations, and the exercise of fundamental rights in ways that make us not only uncomfortable but even disgust us.

Public and Private

One answer to the problem of exercising rights on public property would be: privatize everything and these problems go away. That's a solid answer from a purely academic perspective. Conceivably, if everything were private, we would not need a Bill of Rights or any of these principles at all. Everything would be managed with terms of use, based on contract only, and there would be no problem to solve.

That's a fascinating point but it is not the world we live in. There are public (city-owned) spaces now and for the foreseeable future. And there are controversies and issues that must be dealt with right now.

One answer might be: regulate public spaces as if they are private. If a country club wouldn't allow Nazi marchers, neither should town centers. If a private home wouldn't allow immigration, neither should a nation. If the symphony hall doesn't permit free speech, neither should our town. If a church doesn't allow same-sex marriage, neither should the county courthouse. And so on.

This is an extremely dangerous idea that mis-renders the whole of the liberal tradition. The reason for the Magna Carta, the Bill of Rights, and so on, is to restrain public authority. If we give that up, we give up freedom itself.

My mother, for example, absolutely bans alcohol consumption in her home. If we were to say "a territory should be managed the same way as a private home," we could have a rationale for

all-around alcohol prohibition.

That's the reduction to the absurd, but think about it. The whole reason for private spaces is to provide experimentation in rules. The symphony hall has different rules than the local dive bar. The subdivision has different standards than the downtown apartment complex. The country club, the midtown synagogue, the jewelry store, and the local mall are all private but they have different rules. Private ownership allows these rules to be adaptable to market conditions.

If you choose one set of those rules, and impose them on public property, you have already disabled the reason for private property to begin with. You have locked down an adaptable process and frozen it with rules that may or may not maximize social value.

What's more, the whole point of declaring certain rights to be inviolable is to provide a standard for public life as it affects relationships between the individual and the civic authority. Starting about half a millennium ago, we discovered that the best way to go about managing public spaces was to erect barriers between the state and society. We said: the state can go no further than this. Here is precisely the origin of things like freedom of religion, speech, association, and so on.

Why did we do this? Precisely to preserve freedom of experimentation in the private realm. Having minimum rules for the state allows experimentation for rules in the rest of society. And there is another consideration. People came to realize that permitting states to act like private agents is very dangerous. This is because states are different. They can tax, jail, start wars, and generally use legal violence. Declaring certain rights to belong to all, and restricting state actions to narrow cases, serves to keep power in check.

This is why we have a Bill of Rights. This is why it must be

adhered to in an absolute sense. This is why we should never be tempted to think that states should be given the latitude to do to us what we otherwise accept without question when done to us by private actors (such as my mother not allowing me to drink wine in her home).

The Lesson

And this is precisely why towns with public spaces must permit things like armed Nazi marches whereas the local bowling alley can kick out Nazis with impunity.

Now let's take up the question of being armed. To carry a weapon is not to threaten directly anyone. Only pulling it out and threatening someone amounts to a threat. Otherwise we must presume that the weapon is for self defense, which is an absolute human right.

And let us remember this: even in Charlottesville, no one was hurt by a gun. The people who were injured, and the woman who was killed, was because of a car, not a gun. In this case, banning arms at the march would have made no difference at all. In fact, it might have been more violent because the extremely angry counter-protesters might also have killed someone. For that matter, if the counter-protesters had been carrying guns, that murderer with the car might have thought twice about his road rage.

And let's consider, too, aside from the tragic death, the ultimate effect of that Charlottesville march. The results were to create a nationwide disgust toward the alt-right, the Klan, the Nazis, and so on. Right now, the public culture in America is more anti-Nazi than anytime since the early 1940s. This has been the effect, and it is a good one for freedom. The entire march has created a strong appetite among the middle class for decency, normalcy, peace, and an end to violent political struggles. Overall, the effect has been great for freedom.

We need to learn to trust freedom and human rights to create the best-possible social outcomes. This is why the ACLU's initial instincts were right. Let the armed marchers associate, speak, and reveal their malevolent worldview to public, so that we can reject it and move on with our lives.

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Jeffrey Tucker is Director of Content for the [Foundation for Economic Education](#). He is also Chief Liberty Officer and founder of [Liberty.me](#), Distinguished Honorary Member of [Mises Brazil](#), research fellow at the [Acton Institute](#), policy adviser of the [Heartland Institute](#), founder of the CryptoCurrency Conference, member of the editorial board of the [Molinari Review](#), an advisor to the blockchain application builder [Factom](#), and author of five books. He has written 150 introductions to books and many thousands of articles appearing in the scholarly and popular press.

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