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Occupy Wall Street's Free-Speech Appeal

By [Nathan Schneider](#)

The often-brutal police crackdowns on Occupy sites around the United States in recent weeks have made it hard to remember the euphoria with which the movement began in September. A bit of that feeling was captured by Iva Radivojevic and Martyna Starosta's video "We the People Have Found Our Voice," whose title comes from words spoken through the "people's mic" during the General Assembly meeting at Liberty Plaza on the evening of September 27.

The juxtaposition between riot police demolishing encampments with court approval and the occupiers' cry of self-empowerment, couched in Constitutional language, suggests the extent to which Occupy Wall Street has been posing legal, moral, strategic, and political dilemmas about the meaning of free speech. This tension has birthed a minor growth industry, especially among legal working groups at the various occupations, who have sought to cast indefinite encampment as protected by the First Amendment. But legal rationales are not the only way to argue for the kind of free speech the occupations represent. They may not even be honest ones.

Nathan Schneider is writing a piece on the Occupy movement for the February 2012 issue of *Harper's Magazine*.

During the planning process for Occupy Wall Street, which took place in open meetings at Tompkins Square Park, participants had expected that setting up camp and sleeping in a public space would create legal conflicts, and that they would probably have to be arrested to make their point. Civil-disobedience training was held to teach people how to manage these engagements as safely and nonviolently as possible. The planners sometimes reminded each other that they were breaking the law already, simply by congregating in a group larger than twenty in a New York City park. When a police car drove by, a silence would fall over the group as they watched.

Some of those early planners were more eager to break the law than others. A number of them had taken part in the [Bloombergville encampment](#) over the summer, sleeping legally on city sidewalks for three weeks. As September 17 approached, sidewalk sleeping was [the strategy promoted by U.S. Day of Rage](#), one of the groups

that endorsed and helped organize Occupy Wall Street.

The prevailing feeling at Tompkins Square Park, however, was “wait and see.” It would all depend on how many people showed up. If the 20,000 people that *Adbusters* had initially called for turned out, the occupation’s chances of being able to “hold the space,” as the planners put it, would be high. If it was only the sixty to a hundred people showing up for the meetings, the odds were slimmer.

In other words, while legality was *one* concern, it wasn’t the only concern. Most planners hoped that the occupation would challenge the authorities’ willingness to enforce the law.

Sure enough, the night of September 17, NYPD officers lined up in two rows along Broadway, ready to clear Zuccotti Park by force. I remember watching while Commissioner Raymond Kelly drove up in a black Suburban, surveyed the scene, and ordered his officers to stand down.

As the movement matured, however, it became common practice for occupiers to make reference to the guarantees of the First Amendment as they justified their actions to the public. The “Declaration of the Occupation of New York City,” passed by the General Assembly on September 29, states, “We have peaceably assembled here, as is our right.” It further calls on “the people of the world” to “exercise your right to peaceably assemble; occupy public space; create a process to address the problems we face, and generate solutions accessible to everyone.” The “Statement of Autonomy” passed on November 1 described the occupation as “a forum for peaceful assembly.” Meanwhile, lawyers working on behalf of the movement were trying to establish, on First Amendment grounds, the occupations’ legal right to exist — even as the constant police presence around the occupiers suggested that they had none. The “right” the legal documents spoke of were more an aspiration than a reality.

Ultimately, however, the struggle didn’t play out on legal grounds; Zuccotti Park remained occupied mostly thanks to extra-legal pressures. When the city proposed to clean the park on October 14 — effectively a forcible removal — thousands of people arrived before dawn to stand in the way. A month later, when the eviction finally came, it was as a surprise in the middle of the night. The difference wasn’t so much legal as tactical.

New York City mayor Michael Bloomberg nevertheless defended his decision to clear the park in legal terms, in a public statement and in court. [His statement](#) said:

No right is absolute and with every right comes responsibilities. The First Amendment gives every New Yorker the right to speak out — but it does not give anyone the right to sleep in a park or otherwise take it over to the exclusion of others — nor does it permit anyone in our society to live outside the law. There is no ambiguity in the law here — the First Amendment protects speech — it does not protect the use of tents and sleeping bags to take over a public space.

One can see the logic in this posture. Nobody wants freedom of speech to extend to the point that it obstructs the lives of others. We wouldn’t, for instance, condone freelance roadblocks or preachers sermonizing freely in our backyards. While a violent nighttime raid was hardly the wisest way of enforcing the city’s concern for law and order, I can’t help but think there was some validity to that concern. A New

York City judge thought so, too.

But from the outset, the organizers of Occupy Wall Street were intent on denouncing a legal order that seems rigged by and for the wealthy. One need only consider the disparity between the free speech available to Michael Bloomberg, a billionaire media mogul who [bought his way to high office](#), compared with that available to most everyone else. By occupying public spaces around the country and around the world, the Occupy movement was practicing what political scientist Bernard Harcourt [has aptly called](#) “political disobedience”: not simply opposition to particular laws, but a wholesale rejection of the system.

The word “revolution” has been bandied about frequently in the Occupy movement, and while it certainly isn't a goal all of its sympathizers share, it does fit the logic of occupation as a tactic better than a more modest agenda for reform within the bounds of law. The call to “Occupy!” was meant to be adjudicated not so much by the free speech inscribed in the Constitution as by the one inscribed in the conscience.

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