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**2017 January/February LD Brief**

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### Introduction

Hi all,

This is Premier’s third brief of the 2016-2017 season, and the topic is “Resolved: Public colleges and universities in the United States ought not restrict any constitutionally protected speech.” We’ve gotten a lot of great feedback over the past year on our free briefs, and while we can’t make them any freer, we can make them better. Please, let us know what you think! And send them around. Not everyone has the resources to pay for briefs and this is one important way to level the playing field. If you use these briefs please help us and direct other debaters to PremierDebate.com/Briefs. The more people that are aware of the service, the more likely it gets to those who need it most.

We’d like to thank Elizabeth Pavlath and Bo Slade for their efforts toward this communal resource. They worked really hard to provide some of the best evidence you’ll see this early on the topic. Do send them a thank you for their hard work!

Lastly, we want to remind the readers about standard brief practice to get the most out of this file. Best practice for brief use is to use it as a guide for further research. Find the articles and citations and cut them for your own personal knowledge. You’ll find even better cards that way. If you want to use the evidence in here in a pinch, you should at least re-tag and highlight the evidence yourself so you know exactly what it says and how you’re going to use it. Remember, briefs can be a tremendous resource but you need to familiarize yourself with the underlying material first.

Good luck everyone. See you ‘round!

Bob Overing & John Scoggin

Directors | Premier Debate



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# Aff



## Hate Speech, Etc.

#### This section includes most of the cards relating to hate speech, safe spaces, trigger warnings, microaggressions, speech codes designed to protect minority students, “PC” or “political correctness,” speaker invitations and de-invitations, etc.

### Ad Hominem Attacks

#### Restricting speech leads to ad hominem attacks

Loury 10

Loury, Glenn C. (Prof of Philosophy @ BU) "Self-Censorship in Public Discourse: A Theory of "Political Correctness" and Related Phenomena." Rationality and Society (2010): n. pag. Print. [Premier]

What forces, we should ask, could create and sustain such patterns of inference? Note that in the examples above what might be called an ad hominem impulse determines the audience's response: Their question is, "What type of person would say such a thing?" and not, "Does this argument have merit?" Ad hominem reasoning lies at the core of the political correctness phenomenon. A speaker's violation of protocol turns attention from the worth of his case toward an inquiry into his character, the outcome of which depends on what is known about the character of others who have spoken in a similar way. When sophisticated speakers are aware of this process of inference, many of them will be reluctant to express themselves in a way likely to provoke suspicion about whether their ultimate commitments conform with their community's norms.¶ Ad hominem inference, though denigrated by the high-minded, is a vitally important defensive tactic in the forum. When discussing matters of collective importance, knowing "where the speaker stands" helps us gauge the weight to give to an argument, opinion, or factual assertion offered in the debate. If we know a speaker shares our values, we more readily accept observations from him contrary to our initial sense of things. We are less eager to dismiss his rebuttal of our arguments, and more willing to believe facts reported by [them] him with unpleasant implications. The reason for all of this is that when we believe the speaker has goals similar to our own we are confident that any effort on his part to manipulate us is undertaken to advance ends similar to those we would pursue ourselves. Conversely, speakers with values very different from ours are probably seeking ends at odds with those which we would choose, if we had the same information. The possibility of adverse manipulation makes such people dangerous when allowed to remain among us undetected. Thus, whenever political discourse takes place under conditions of uncertainty about the values of participants, a certain vetting process occurs, in which we cautiously try to learn more about the larger commitments of those advocating a particular course of action.

### Chilling Effect / Too Broad

#### Speech codes chill acceptable speech because they create ambiguity

Harris and Ray 14 Vincent T Harris has an M. Ed. degree and is a doctoral student @ LSU, Darrell C. Ray is a prof @ LSU, HATE SPEECH & THE COLLEGE CAMPUS: CONSIDERATIONS FOR ENTRY LEVEL STUDENT AFFAIRS PRACTITIONERS, Race, Gender & Class 21.1/2 (2014): 185-194. ProQuest. [Premier]

Additional strategies include understanding what the campus considers offensive or acceptable forms of expression, and recognizing which speech forum is adopted. For example, **fighting words,** those words (or forms of expression) that add nothing to the public dialogue and are overtly threatening to public ideals and social conventions, **can be considered offensive and reason for exclusion from the general conversation** (Uecker, 2011). **However**, **when a university implements a system of penalties or regulations to intentionally limit offensive speech, these ramifications indirectly create an ambiguous distinction between what is acceptable and what is offensive** (Silverglate et al., 2012). Down and Cowan (2012) write, "**If speech is restricted, it silences those who may benefit largely from its expression**" and vice versa (p. 1354). This is an important aspect to remember in that faculty culture and tenure are based on the protection of free exchange of ideas.

#### What constitutes discrimination is expanding – destroys acceptable speech

Jacobson 16

Daniel, prof of philosophy @ Michigan, Freedom of Speech under Assault on Campus, CATO POLICY ANALYSIS NO. 796, 8-30-16, [Premier]

Yet, many academics—including leading constitutional law scholars—consider this standard more sophisticated than what they decry as American exceptionalism. “In much of the developed world, one uses racial epithets at one’s legal peril,” Frederick Schauer, a First Amendment scholar at Harvard Law School, writes approvingly, “and one urges discrimination against religious minorities under threat of fine or imprisonment.”13 **Even a ban on racial epithets faces the same problem: there is no principle for what counts as a slur and no prospect for consistency of application. Worse yet, the proposal that it be illegal to urge discrimination empowers the politically powerful to censor dissent by declaring opinions to be discriminatory. Does it count as urging discrimination to publish polls on the percentages of Muslims in various countries who agree with various less-than-peaceful, even extremist, ideas? If we accepted the proposals of Schauer and others, that question would be answered at our legal peril. Clearly, those are not the conditions under which we can conduct an honest discussion of the claim that Islam is a religion of peace.**

#### If anything can be called hate speech, free speech is squelched because any idea can be labeled as such and excluded

Jacobson 16

Daniel, prof of philosophy @ Michigan, Freedom of Speech under Assault on Campus, CATO POLICY ANALYSIS NO. 796, 8-30-16, [Premier]

In short, **to advocate a position contrary to the orthodox ideology is de facto racist, regardless of the speaker’s reasoning or motivation; but progressives are given broad immunity to engage in what would otherwise be considered hate speech against their political opponents regardless of race, class, and gender. Again, mere partisan intolerance of unpopular opinion gets framed as an exception for speech that somehow constitutes violence.** Yet, such putatively hateful or violent speech is not identified by its motivation or effect, because **analogous speech that targets dissenting opinion is immune. What matters is whether the speech serves the social justice ideology or not.** That is the realization of Marcuse’s “liberating” practice of intolerance, an overtly partisan goal carried out subversively.

In fact, **the popular conflation of speech and violence is the inevitable consequence of the dogma that hateful speech is beyond the pale of free speech immunity**. Here is the crux of the matter. **The idea that opinions can wound, that they can trigger traumatic emotional episodes—which lead to (often violent) behavior for which the victim is not responsible—and that people should be safe from offensive views amounts to a substantive and dangerous claim that masquerades as innocuous and benign. The practical effect of banning hate speech is to present a new weapon to the antagonists of free speech: to argue that some doctrine is beyond the pale of toleration, one merely needs to claim that it constitutes hate speech. If putatively harmful or hateful speech is banned, then those who wish to suppress unorthodox opinion will attempt to frame it as hateful and violent. That is just what we now see playing out on campus.**

Consider the degree to which political argument gets couched in terms that censure the motives of the opposition. We can put entirely to the side the question of the merits of various positions on gay rights. The relevant issue is semantic: **positions held to be anti-gay are now almost universally called homophobic. That usage is highly tendentious, implying that the only basis for opposition to the legalization of same-sex marriage, or so-called bathroom equality, is the irrational fear of homosexuality.** That is the nature of a phobia. **The same rhetorical ploy is now being taken up by people who use the term Islamophobia as their analogue to anti-Semitism.** Moreover, what can be done with fear can also be done with hate. When hatefulness becomes the criterion of speech that is beyond the pale, subject to either legal or social sanction, then that criterion creates a powerful incentive to label one’s opponents’ motives as hateful. It should be no surprise to see this happening.

#### Speech codes are vague and overly broad about what speech is restricted

Majeed ’10 Azhar(Azhar Majeed is the Associate Director of Legal & Public Advocacy, Foundation for Individual Rights in Edu- cation (FIRE). B.A., University of Michigan, 2004; J.D., University of Michigan, 2007.) Putting Their Money Where Their Mouth is: The Case for Denying Qualified Immunity to University Administrators for Violating Students’ Speech Rights, September 29,2010, Cardozo Public Law, Policy, and Ethics Journal, Vol. 8, No. 3, 2010, Date Accessed 12/4/16 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1690730> [Premier]

Speech codes are “university regulations prohibiting expression that would be constitutionally protected in society at large,”51 or “any cam- pus regulation that punishes, forbids, heavily regulates, or restricts a sub- stantial amount of protected speech.”52 In other words, by their very terms, they infringe upon the right of university students to engage in constitutionally protected expression.53 Courts have repeatedly found them to be doctrinally flawed under the First Amendment owing to their vagueness,54 overbreadth,55 or both. Speech codes abound at colleges and universities, and just a few examples are illustrative of the problems they present. One policy at Johns Hopkins University prohibits any and all “[r]ude, disrespectful behavior,”56 thus covering much protected speech, moreover, in patently vague language. Similarly, Texas A&M University maintains a policy on “Student Rights and Obligations” which prohibits students from violat- ing others’ rights to “respect for personal feelings” and “freedom from indignity of any type.”57 San Jose State University’s policy on “Harass- ment and/or Assault” bans “verbal remarks,” “publicly telling offensive jokes,” and even “[p]ractical jokes and pranks,”58 presenting fundamen- tal vagueness and overbreadth concerns. Still other examples are revealing. New York University’s “Anti- Harassment Policy” expressly prohibits “insulting, teasing, mocking, de- grading or ridiculing” another individual, as well as “inappropriate . . . jokes.”59 Murray State University in Kentucky lists “[t]elling sexual jokes or stories,” “[l]ooking a person up and down (elevator eyes),” and even “[d]isplaying sexual and/or derogatory comments about men/wo- men on coffee mugs” as examples of sexual harassment.60 Lastly, North- eastern University bans students from using the school’s information systems or facilities to “[t]ransmit or make accessible material, which in the sole judgment of the University” is “offensive” or “annoying.”61 These and other existing speech codes suffer from the same First Amendment flaws found in previously challenged speech codes, and as a result continue to impinge upon student speech rights.

#### PC culture and speech codes create self-censorship, silencing those who have moderate positions who may be scarred of ostracism

Loury 10

Loury, Glenn C. (Prof of Philosophy @ BU) "Self-Censorship in Public Discourse: A Theory of "Political Correctness" and Related Phenomena." Rationality and Society (2010): n. pag. Print. [Premier]

First, though political correctness is often spoken of as a threat to free speech on the campuses (and this is indeed the case when it results in legal restrictions on open expression, as with formal speech codes), the more subtle threat is the voluntary limitation on speech which a climate of social conformity encourages. It is not the iron fist of repression, but the velvet glove of seduction, that is the real problem. Accordingly, I treat the PC phenomenon as [is] an implicit social convention of restraint on public expression, operating within a given community. Conventions like this can arise because: (i) a community may need to assess whether the beliefs of its members are consistent with its collective and formally avowed purposes; and, (ii) scrutiny of their public statements is an often efficient way to determine if members' beliefs cohere with communal norms. This need to police group members' beliefs so as to ferret out deviants, along with the fact that the expression of heretical opinion may be the best available evidence of deviance, creates the possibility for what I call self-censorship: Members whose beliefs are sound but who nevertheless differ from some aspect of communal wisdom are compelled by a fear of ostracism to avoid the candid expression of their opinions.

#### Self-censorship silences the moderates and props up the radicals

Loury 10

Loury, Glenn C. (Prof of Philosophy @ BU) "Self-Censorship in Public Discourse: A Theory of "Political Correctness" and Related Phenomena." Rationality and Society (2010): n. pag. Print. [Premier]

It is in this sense that I can say, "There is no (entirely) free speech." Anyone speaking-out on a controversial matter pays the particular price of having others know that [they are] that he was willing to speak, under a given set of circumstances, in a certain way. When listeners know that not everyone would be willing to pay that price, and specifically that "true believers" are less likely than "apostates" to risk incurring the community's wrath, they can make empirically valid inferences about reckless speakers. Norm-offending speech then conveys more than just literal meanings. Anticipating these inferences, and wanting not to be seen as deviant, prudent "true believers" may elect to say nothing which risks offending collective norms. By doing so, they leave the field clear for the "apostates," thereby creating the meaning-in-effect that "norm-offending speech identifies deviant belief." In a circumstance of this kind, a climate of self-censorship can become entrenched.

### Counterspeech Solves

#### Over time, we learn to change our ideologies – that’s better than dogmatism that silences and shuts down the other side

Dalmia 16

Shikha Dalmia, Reason magazine, “Debating NYU's Jeremy Waldron on Free Speech vs. Hate Speech on College Campuses” <http://reason.com/blog/2016/09/22/debating-nyus-jeremy-waldron-on-free-spe> [Premier]

One: **Hate speech bans make us impatient and dogmatic**

The main reason that libertarians like me are partisans of **free speech** is not because we believe that a moral laissez faire, anything goes attitude, is in itself a good thing for society. Rather, it **stems from an epistemic humility that we can't always know what is good or bad a priori – through a feat of pure Kantian moral reasoning. Moral principles, as much as scientific ones, have to be discovered and developed and the way to do so is by letting competing notions of morality duke it out in what John Stuart Mill called the marketplace of ideas. Ideas that win do so by harmonizing people's overt moral beliefs with their deeper moral intuitions or, as Jonathan Rauch notes, by providing a "moral education." This is how Mahatma Gandhi, Martin Luther King and Frank Kamney, the gay rights pioneer, managed to open society's eyes to its injustices even though what they were suggesting was so radical for their times.**

**But this takes time. With free speech, societies have to play the long game. It takes time to change hearts and minds and one can't be certain that one's ideas will win out in the end. One has to be willing to lose. The fruits of censorship -- winning by rigging the rules and silencing the other side -- seem immediate and certain. But they unleash forces of thought control and dogmatism and repression and intolerance that are hard to contain, precisely what we are seeing right now on campuses**.

#### Good speech will conquer the bad

Davidson ’16 Alexander(Cal Polytechnic Senior, paper in partial fulfillment of Bachelor of Science in Journalism) The Freedom of Speech in Public Forums on College Campuses: A single site case study on Pushing the Boundaries of Free Speech, June 2016, Accessed 12/4/16 [http://digitalcommons.calpoly.edu/cgi/viewcontent.cgi?article=1119&context=joursp [Premier]

Back in 2008, there was an incident that took place at California Polytechnic State University’s on-campus crop science house that involved a noose, a confederate flag and allegations of a sign that contained racial and gay slurs. The sign and props were used as decorations for a Halloween party that took place on campus. Hundreds of students gathered to protest the incident to try to foster an environment of acceptance. The students hoped to raise awareness about the happening that took place as well as showcase disapproval of the hate speech that took place. During the protest, a petition was also passed around that garnered 150 signatures for the expulsion of the students that were living in the crops house at the time. Much like the incident that took place on the free speech wall at California Polytechnic State University, the free marketplace of ideas allowed for good speech to conquer the bad speech. The censorship of negative speech will not destroy it, but instead drive it under the ground; however, having it out in the open allows both sides of an issue to be presented and it allows for the people to decide which side of the coin they want to land facing the surface.

### Definition

#### Hate speech is conduct or behavior that is threatening, discriminatory or hostile based on a person’s identity – but the definition is expanding

Harris and Ray 14 Vincent T Harris has an M. Ed. degree and is a doctoral student @ LSU, Darrell C. Ray is a prof @ LSU, HATE SPEECH & THE COLLEGE CAMPUS: CONSIDERATIONS FOR ENTRY LEVEL STUDENT AFFAIRS PRACTITIONERS, Race, Gender & Class 21.1/2 (2014): 185-194. ProQuest. [Premier]

**Hate speech is defined as the use of conduct or behavior (verbal, nonverbal, or written) that is threatening, harassing, intimidating, discriminatory, or hostile and in most cases based on a person's identity or group affiliation, including (but not limited to) such aspects as race, ethnicity, age, religion, disability status, gender, gender identity/expression, national origin, or sexual orientation** (Anthony (2013, May); Smolla, 1990). Though the term "hate speech" is commonly utilized, **definitions may vary on campuses based upon institutional characteristics, such as public, private, religious affiliations, or relevant state laws and statutes. Many institutions are also expanding their definitions to include mediums of communication that were previously unconsidered.** Many professionals in the southeastern U.S. are familiar with the intense conversations surrounding free speech in regards to the civil rights movement. Few recognize , however, the struggle to forge a rightful place for free speech in America has a long and detailed history (Silverglate, French, & Lukianoff, 2012).

### Due Process

#### Hate Speech has no legal definition in the United States and policies that prohibit it violate students’ due process rights

FIRE ’16 Foundation for Individual Rights in Education,(FIRE launched its Stand Up for Free Speech Litigation Project in July 2014 to combat campus speech codes, so far 7 lawsuits have been successful in removing campus speech codes) On Speech Codes, The State of Free Speech on Our Nation’s Campuses, FIRE, 2016, Date Accessed 12/5/16 <https://d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2013/06/27212854/SCR_Final-Single_Pages.pdf> [Premier]

In recent years, colleges and universities around the country have instituted policies and procedures specifically aimed at eliminating “bias” and “hate speech” on campus. These sets of policies and procedures, frequently termed “Bias Reporting Protocols” or “Bias Incident Protocols,” often include speech codes prohibiting extensive amounts of protected expression. “Hate speech” has no legal definition in the United States, and while speech or expression that is based on a speaker’s prejudice may be offensive, it is entirely protected unless it rises to the level of unprotected speech (harassment, threats, and so forth). The speaker’s motive has no bearing on whether or not the speech is protected. The protocols often also infringe on students’ right to due process, allowing for anonymous reporting that denies students the right to confront their accusers. Moreover, universities are often heavily invested in these bias incident policies, having set up entire regulatory frameworks and response protocols devoted solely to addressing them. While many bias incident protocols do not include a separate enforcement mechanism, the reality is that the mere threat of a bias investigation will likely be sufficient to chill protected speech on controversial issues. And when the only conduct at issue is constitutionally protected speech, even investigation is inappropriate.

### Empty Moralism

#### PC and speech codes supplant in-depth political and ethical analysis with meaningless symbolism

Loury 10

Loury, Glenn C. (Prof of Philosophy @ BU) "Self-Censorship in Public Discourse: A Theory of "Political Correctness" and Related Phenomena." Rationality and Society (2010): n. pag. Print. [Premier]

Self-censorship and cleansing of speech wipes away the ability to make in-depth analysis of political and ethical questions

The case at hand illustrates how the effective examination of fundamental moral questions can be impeded by the superficial moralism of expressive conventions. If exploring an ethical problem requires expressing oneself in ways that raise doubts about one's basic moral commitments, then people may opt for the mouthing of right-sounding but empty words over the risks of substantive moral analysis. The irony here is exquisite. For, though the desire to police speakers' morals underlies the taboo, the sanitized public expression that results precludes the honest examination of history and current circumstance, from which genuine moral understanding might arise. As we shall see, discussion of racial issues in the U.S. is plagued by a similar problem.

### Free Speech K2 Minority Empowerment

#### Free expression is key to civil rights for racial minorities, women, and LGBT folks – it leads to other rights like equal education

Harris and Ray 14 Vincent T Harris has an M. Ed. degree and is a doctoral student @ LSU, Darrell C. Ray is a prof @ LSU, HATE SPEECH & THE COLLEGE CAMPUS: CONSIDERATIONS FOR ENTRY LEVEL STUDENT AFFAIRS PRACTITIONERS, Race, Gender & Class 21.1/2 (2014): 185-194. ProQuest. [Premier]

Down and Cowan (2012) note that Americans who notice the importance of **free expression** believe, it benefits more than just the oppressor, but **aids in the advancement of the minority group.** **For example, historical movements such as the civil rights movement, the women's movement, and the gay liberation movement were advanced due to freedom of speech, expression, and ideas** (Down & Cowan, 2012). **This advancement has granted many minority groups the ability to experience various prohibited privileges such as, the right to attain an equal education. As campuses strive to become more inclusive and respectful communities there is a critical need to identify the spaces and ways in which students feel free to express themselves and their views**.

#### The first amendment has historically helped minorities and the minority of the left that attempt to demonize it are misguided

Friedersdorf 15

Friedersdorf, Conor. (Friedersdorf is a staff writer at The Atlantic, where he focuses on politics and national affairs) "Free Speech Is No Diversion." The Atlantic. Atlantic Media Company, 12 Nov. 2015. Web. 09 Jan. 2017. <http://www.theatlantic.com/politics/archive/2015/11/race-and-the-anti-free-speech-diversion/415254/>. [Premier]

Over the course of U.S. history, both the protections enshrined by the First Amendment and the larger ethos of free expression that pervades American culture have played a major role in every successful push that marginalized groups have made to secure civil rights, fight against prejudice, and move toward greater equality.¶ Despite that history, Jelani Cobb asserts in The New Yorker that to avoid discussions of racism, critical observers of student protests at Yale and the University of Missouri “invoke a separate principle, one with which few would disagree in the abstract—free speech, respectful participation in class—as the counterpoint to the violation of principles relating to civil rights.” The fact that race controversies “have now been subsumed in a debate over political correctness and free speech on campus—important but largely separate subjects—is proof of the self-serving deflection to which we should be accustomed at this point,” he declares.¶ Cobb calls these supposed diversions “victim-blaming with a software update,” and positing that they are somehow having the same effect as disparaging Trayvon Martin, he cites my article “The New Intolerance of Student Activism” as his prime example.¶ He writes as if unaware that millions of Americans believe the defense of free speech and the fight against racism to be complementary causes, and not at odds with each other. The false premises underpinning his analysis exacerbate a persistent, counterproductive gulf between the majority of those struggling against racism in the United States, who believe that First Amendment protections, rigorous public discourse, and efforts to educate empowered, resilient young people are the surest ways to a more just future, and a much smaller group that subscribes to a strain of thought most popular on college campuses.¶ Members of this latter group may be less opposed to speech restrictions; rely more heavily on stigma, call-outs, and norm-shaping in their efforts to combat racism; purport to target “institutional" and “systemic” racism, but often insist on the urgency of policing racism that is neither systemic nor institutional, like Halloween costume choices; focus to an unusual degree on getting validation from administrators and others in positions of authority; and often seem unaware or unconvinced that others can and do share their ends while objecting to some of their means, the less rigorous parts of their jargon, and campus status-signaling. For this reason, they spend a lot of time misrepresenting and stigmatizing allies.

#### Defense - hate speech bans don’t represent the disempowered

Jacobson 16

Daniel, prof of philosophy @ Michigan, Freedom of Speech under Assault on Campus, CATO POLICY ANALYSIS NO. 796, 8-30-16, [Premier]

That objection, however, presupposes a conception of freedom of speech as the freedom to perform any speech act, which is to argue against a straw man. No defender of free speech advocates the liberty to do anything that can be done merely by speaking, such as to incite a riot or suborn murder. A more sophisticated version of this challenge admits that no one defends such sweeping immunity, but it claims these examples to show that **what seems to be an argument about principle is really a political dispute over who is allowed to speak and who will be silenced.** Yale law professor Robert Post insists that censorship is inevitably “the norm rather than the exception” and celebrates the Left’s liberation from the constraints of toleration.9 Thus, **contemporary debates over freedom of speech on campus have become power struggles in which the dominant political force silences opposition while claiming to represent the disempowered**. Yet, this ironic state of affairs does not arise from any incoherence in the liberal conception of free speech but from a misguided or disingenuous caricature of it.

#### Critiques of PC culture do not presume a lack of care for racism, rather a different method, failure to provide a critique leads to ideological monopoly

Friedersdorf 15

Friedersdorf, Conor. (Friedersdorf is a staff writer at The Atlantic, where he focuses on politics and national affairs) "Free Speech Is No Diversion." The Atlantic. Atlantic Media Company, 12 Nov. 2015. Web. 09 Jan. 2017. <http://www.theatlantic.com/politics/archive/2015/11/race-and-the-anti-free-speech-diversion/415254/>. [Premier]

Let me underscore how erroneous his assumptions are. His article is premised on the notion that my piece on Yale and others like one I wrote a day later on Missouri are part of a “diversion,” an attempt to avoid talking about racism through deflection. “The fault line here,” he posits, “is between those who find intolerance objectionable and those who oppose intolerance of the intolerant.” Of course, it’s far more consistent to find intolerance objectionable across the board, and to speak out against it especially when its targets have historically faced discrimination.¶ It’s why I have written not only about recent events at Yale and Missouri, but also about Ferguson’s conspiracy against black residents; racial disparities in police killings; dangers of constructed white identity; the Campaign Zero agenda; the importance of declaring the Charleston attack to be racial terrorism; the long history of thugs attacking black churches; how video is confirming very old claims about prejudice against blacks; the brutality of police culture in Baltimore; radical experiments in converting racists; the importance of grappling with race, even imperfectly; Islamophobia and its deleterious effects; the perils of standing while Hispanic in the Bronx; the harassment of a black man tazed by a white police officer; carnage caused by drone strikes; the horrifying effects of profiling innocent Muslims, etc.¶ Few outside a small part of the ideological left would mistake me for someone seeking to divert discourse away from racism. Moreover, my advocacy for free speech encompasses numerous articles about controversies having nothing to do with race, as well as advocacy for the First Amendment rights of people fighting racism (including high schoolers who sought to wear “I can’t breathe” t-shirts, Black Lives Matter protestors, and Muslims who sought to build a mosque near Ground Zero.) When a staunch defender of free speech in all realms, who writes about racism as often as I do in a national publication, is reflexively cast as using free speech to divert attention from racism, it suggests a charge rooted in ideological blindness, not careful observation.¶ I hope to bridge that gap, and help everyone understand that liberals, libertarians, conservatives, and individualists alike are just as engaged in the fight against racism as the campus left, but in very different ways.¶ We exist. Update the heuristics!¶ Our diverse critiques of the campus left are not a sign that we care too little about fighting racism, advocating for justice, opposing prejudice, or protecting civil rights, or that we’ve yet to be enlightened by the right theorists. They are, rather, a sign that these issues, and concerns that they touch on, free speech among them, are too important to be ceded to a narrow, ideologically insular subculture as prone to blind spots, mistakes, wrongdoing, and excesses as any other; and too fond of jargon that more readily facilitates evasiveness than analytic clarity. The activist left on campus no more benefits from blanket deference than any other political movement, and their defenders should stop conflating criticism of their means and contested assumptions with opposition to or a desire to distract from widely shared ends.¶

### Inherency

#### Despite decreases in speech codes there are still overly strict sexual harassment policies and restrictions on protected speech absent a policy

FIRE ’16 Foundation for Individual Rights in Education,(FIRE launched its Stand Up for Free Speech Litigation Project in July 2014 to combat campus speech codes, so far 7 lawsuits have been successful in removing campus speech codes) On Speech Codes, The State of Free Speech on Our Nation’s Campuses, FIRE, 2016, Date Accessed 12/5/16 <https://d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2013/06/27212854/SCR_Final-Single_Pages.pdf> [Premier]

Despite the critical importance of free speech on campus, too many universities—in policy and in practice—censor and punish students’ and faculty members’ speech and expressive activity. One way that universities do this is through the use of speech codes—policies prohibiting speech that, outside the bounds of campus, would be protected by the First Amendment. FIRE surveyed 440 schools for this report and found that 49.3 percent maintain severely restrictive, “red light” speech codes— policies that clearly and substantially prohibit protected speech. This is the eighth year in a row that the percentage of schools maintaining such policies has declined, and the first time in FIRE’s history that the figure is below 50 percent. In addition, an unprecedented number of schools have eliminated all of their speech codes to earn FIRE’s highest, “green light” rating: As of September 2015, 22 schools received a green light rating from FIRE. This number is up from 18 schools as of last year’s report. While speech codes declined overall, FIRE did see a continued increase in restrictive harassment policies in response to the federal government’s unprecedented intervention into universities’ handling of sexual harassment claims. Between September 2014 and September 2015, FIRE downgraded 10 universities from a “yellow light” rating to a red light rating for adopting overly restrictive definitions of sexual harassment. Moreover, despite the dramatic reduction in speech codes over the past eight years, FIRE continues to find an unacceptable number of universities punishing students and faculty members for constitutionally protected speech and expression. It is essential that students, alumni, faculty, and free speech advocates remain vigilant not only about campus speech codes, but also about the way universities may—even in the absence of a written policy—silence or punish protected speech. What, then, can be done about the problem of censorship on campus? Public pressure is still perhaps the most powerful weapon against campus censorship, so it is critical that students and faculty understand their rights—and are willing to stand up for them when they are threatened. At public universities, which are bound by the First Amendment, litigation continues to be another highly successful way to eliminate speech codes. In July 2014, FIRE launched its Stand Up For Speech Litigation Project, a national effort to eliminate unconstitutional speech codes through targeted First Amendment lawsuits. To date, we have filed 10 lawsuits, three of which remain ongoing. The seven suits completed thus far have each settled successfully, restoring the free speech rights of almost 200,000 students and securing over $350,000 in damages and attorney’s fees. State legislatures can also play an important role. In July 2015, Missouri enacted the Campus Free Expression Act (CAFE Act), which prohibits Missouri’s public colleges and universities from limiting students’ expressive activities to small or out-of- the-way “free speech zones.” Virginia also enacted a similar law in 2014. Overall, supporters of free speech must always remember that universities can rarely defend in public what they try to do in private. Publicizing campus censorship in any way possible— whether at a demonstration, in the newspaper, or even in court—is the best available response. To paraphrase Justice Louis Brandeis, sunlight really is the best of disinfectants.

#### Disinviting speakers, requiring trigger warnings, striking books from the curriculum, and calling out microaggressions – all examples of free speech under attack

Dalmia 16

Shikha Dalmia, Reason magazine, “Debating NYU's Jeremy Waldron on Free Speech vs. Hate Speech on College Campuses” <http://reason.com/blog/2016/09/22/debating-nyus-jeremy-waldron-on-free-spe> [Premier]

Indeed, **a new kind of campus politics scarcely imaginable 20 years ago has emerged around the "right not to be offended."** It's goal is to ferret out every last vestige of sexism, racism, and all other -isms lurking in the deep structure of the human mind and turn campuses into intellectual "safe spaces." **FIRE** (Foundation for Individual Rights in Education, an outfit that fights for constitutional rights on campuses) **has uncovered 257 incidents from 2000 to 2014 of speakers who were disinvited because of their views.** Weirdly, **social justice warriors have banned not only right wing speakers such as former Secretaries of State Condoleezza Rice and Henry Kissinger for perpetrating war crimes but also liberal ones such as Dan Savage, a gay rights advocate and sex columnist** (because he used the word tranny for transsexual); **International Monetary Fund head Christine Lagarde was disinvited by Smith College for the "strengthening of imperialist and patriarchal systems that oppress and abuse women worldwide." Regrettably but predictably, conservative students have also jumped in on the action and started disinviting leftist speakers.** Some at CUNY even asked New York state legislators to ban anti-Israel protests as hate speech. It's a bipartisan game.

But **the forces of political correctness want to sanitize not only the campus environment outside of class but in class as well. They are demanding trigger warnings for any course material that can upset anyone. What counts as upsetting? The Great Gatsby for its misogyny; Mrs. Dalloway because it is not feminist enough; Mark Twain's Adventures of Huckleberry Finn for discussing slavery from a white boy's perspective. This has created such a chilling environment that junior, untenured faculty in particular have taken to omitting any controversial material from their course offerings** such as Rousseau's discussion of natural gender differences in Emile, Aristotle's discussion of natural slavery in the Politics, and Nietzsche's attack on Christianity as a slave religion.

**And then there are "microaggressions" – or subtle insults that unintentionally denigrate a group. What counts as microaggression? Any criticism of affirmative action**, of course. **But also statements like "America is a land of opportunity." "Or if you work hard you can succeed" -- because such statements "microinvalidate" the experience of marginalized groups.** And a professor correcting a student for spelling indigenous with an uppercase "I."

#### Free speech is being attacked in the status quo

Shibley 14

Shibley, Robert. (Shibley, a civil liberties attorney, is Senior Vice President of the Foundation for Individual Rights in Education.) "Colleges Are Slowly Taking Away Your First Amendment Rights." The Washington Post. WP Company, 2 July 2014. Web. 08 Dec. 2016. <https://www.washingtonpost.com/posteverything/wp/2014/07/02/colleges-are-slowly-taking-away-your-first-amendment-rights/?utm\_term=.5a1cf96f9dc4>. [Premier]

September 17 last year was a pretty bad day for the Constitution on our campuses. Robert Van Tuinen of Modesto Junior College in California was prevented from passing out copies of the Constitution outside of his college’s tiny “free speech zone.” Near Los Angeles, Citrus College student Vinny Sinapi-Riddle was threatened with removal from campus for the “offense” of collecting signatures for a petition against NSA domestic surveillance outside his college’s tiny free speech area. I mention September 17 because that was Constitution Day.¶ These attempts to silence students are all in a day’s work for today’s college administrators. Thanks to the continuing menace of campus speech codes—rules restricting what students may say and where they may say it—these sorts of offenses happen every day on our nation’s college and university campuses. The only difference between the above cases and hundreds or thousands of others is that these students decided to stand up for their rights in court. That’s about to [its] become a lot more common.¶ Modesto quickly settled, paying $50,000 and signing a binding agreement to dismantle its unconstitutional rules. And Tuesday, Vinny and plaintiffs at three other schools filed federal lawsuits asserting their rights as part of a major new litigation campaign from the Foundation for Individual Rights in Education (FIRE, where I work) to finally end speech codes on public campuses. More cases are planned in the coming weeks and months.¶ The nature of the lawsuits shows the authoritarian bent of campuses today, where every sector of a student’s life is festooned with regulations. Two of Tuesday’s suits, at Ohio University and at Iowa State University, have to do with unconstitutional regulation of the content of student group t-shirts—one because of a suggestive joke, the other because it advocated marijuana legalization. If you are a student or parent worried about the fact that college costs are up 80 percent in the last 10 years and continue to rise, the fact that campuses are paying people to act as t-shirt police for their adult students offers little reassurance.¶ The remaining suit shows how free speech and academic freedom for faculty are threatened, as well. Administrators at Chicago State University evidently are unable to accept the idea that people might criticize their alleged mismanagement online. So Chicago State has engaged in increasingly ridiculous stunts to try to silence the professors who author the CSU Faculty Voice blog, the most recent of which involved rushing to pass a “cyberbullying” policy it immediately used to target them. This threatens not just free speech but also academic freedom, which to be meaningful must include[s] the right of professors to speak out on matters of public concern—like the university’s well-publicized problems with finances and graduation rates.¶

### Oppression

#### Antagonists of free speech are using university power structures to oppress

Jacobson 16

Daniel, prof of philosophy @ Michigan, Freedom of Speech under Assault on Campus, CATO POLICY ANALYSIS NO. 796, 8-30-16, [Premier]

The great irony at the heart of the current attack on freedom of speech in academia is that the **antagonists of free speech claim to be defending the victimized when, in fact, they are the oppressors. The social justice warriors on campus ignore the actual power structure of the university to maintain the pretense that those groups disempowered in society at large are similarly victimized within academia.** Hence the third argument against freedom of speech, the multiculturalist challenge, has—in the name of diversity—become the driving force behind the antagonism to intellectual and political diversity on campus. This argument shares the ideology of the progressive argument and accepts the postmodern doctrine that censorship is inevitable. What is novel about **the multiculturalist argument** is that it **invokes the rhetoric of violence as justification for its own threats. In this view, the only issue is how violence is going to be used: in service of the social justice agenda or against it**.

### Not Protected

#### Hate speech is only protected if it’s not imminently dangerous – this disallows many forms of hate speech historically linked to violence

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

The case remains relevant even though more recent jurisprudence has qualified its central holding.90 In Brandenburg, **the Court indicated that only under imminently dangerous circumstances does advocacy warrant regulation** to prevent speakers from inciting others to commit lawless actions91 In examining the constitutionality of restrictions, the Court determined that **trial courts must review the context in which a statement was made to determine whether it is likely to instigate socially or individually harmful consequences**.92 In criminal trials, the prosecution must also prove beyond a reasonable doubt that the speaker actually intended to achieve the advocated criminal act.93 **The Brandenburg standard prevents the punishment of empty or even emotionally charged threats. It aims to prevent the government from persecuting anyone who jokingly, in the heat of the moment, or out of simmering anger, urges unlawful conduct**. Professor Thomas Healy's recent claim that criminal advocacy is part of the search for truth, selfgovernment, or self-fulfillment 4 does not get at the core of the decision's holding. In fact, criminal advocacy coupled with intent to bring about the crime is unlike the Ku Klux Klan scenario of Brandenburg.95 The Klan gathering was at a private location with only one person, the invited journalist, not a participant of the rally. Unlike Frohwerk, Debs, and Schenck, the inflammatory language in Brandenburg was not directed to a public audience. As I will explain below, the Court has found that expression of hate only becomes criminal when it is advocacy calculated to achieve criminal conduct.

**General racist statements at public university campuses are probably protected forms of expression, but when a person stands up in a classroom or in the college commons area and advocates the commission of specific criminal conduct, his statements are no longer immune from campus regulation and criminal prosecution**.9 6 **No educational purpose is served by criminal incitement on campus that incorporates symbols historically linked to violence, such as swastikas and burning crosses.** 97

#### Demeaning messages can be restricted to protect the peace and well-being of the State

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

**In Beauharnais, the Court upheld the constitutionality of a group libel statute that rendered it actionable to "portray[] depravity, criminality . .. or lack of virtue of a class of citizens, of any race, color, creed, or religion" and to expose those citizens to "contempt, derision, or obloquy."**' 02 **The majority found that, given Illinois's history of racial friction, its legislature could enact legislation to punish the dissemination of demeaning messages, such as those opposed to neighborhood integration, because those messages threatened "the peace and well-being of the State."** 03 The opinion conceived of government playing a role in establishing a standard of decency designed to prevent intergroup friction.

#### *Collins* and *American Booksellers* did not overturn *Beauharnais* restrictions on speech

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

**A weakness in this line of counter-arguments is that while proclaiming allegiance to Supreme Court jurisprudence, Smolla and Volokh avoid key cases that challenge their perspective. Particularly glaring is the reliance on a circuit court case, Collin v. Smith,"** 6 **in an effort to demonstrate that "subsequent developments in libel and political speech jurisprudence have implicitly overruled Beauharnais."" Relying on an appellate court case in order to demonstrate the invalidity of Beauharnais is analytically unsound**. In Collin, the Seventh Circuit stated that cases like Brandenburg "implicitly" raised a question as to whether "Beauharnais would pass constitutional muster today."" 8 But **the court of appeals never assumed away the binding precedent; instead, it found that the law in question did not survive the Beauharnais analysis."** 9 The Collin court's rhetorical statement used implicit logic, but its **explicit statements about Supreme Court precedent lead to the opposite conclusion.** After the Supreme Court denied certiorari in Collin, Justice Blackmun took the unusual step of publishing a statement on behalf of himself and Justice White. Blackmun did so to indicate his sense that "the Seventh Circuit's decision is in some tension with **Beauharnais**. That case **has not been overruled or formally limited in any way**." 2 0 While this assertion is not part of a binding opinion, it has been borne out by subsequent majority opinions, the most recent one issued in 2010, demonstrating that the holding in Beauharnais has neither been overturned nor even questioned.121

**Another common error in the academic literature is to rely on a second Seventh Circuit case, American Booksellers** Ass'n v. Hudnut,12 2 to claim, **in the sternly dramatic words of one author, that "[t]he doctrinal tides that have swept libel in general into the First Amendment ocean have left Beauharnais ... high and dry**."1 23 In Hudnut, the appellate court in fact believed it was following precedent, claiming "that cases such as New York Times Co. v. Sullivan [have] so washed away the foundations of Beauharnais that it [can no longer] be considered authoritative."24 **[but] The circuit court admitted** that its presumption might be incorrect, but found that **the case did not support the challenged ordinance irrespective of Beauharnais's status.**12 5

#### Campuses can curtail intentionally intimidating hate speech

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

**What is clear is that only intentionally symbolic intimidation may be regulated**, but the Court in Black did not agree on whether the fact-finder can infer the scienter element or if the prosecutor must prove it-only a plurality of the Court found the statute's prima facie evidence presumption to be unconstitutional.16 0 The group of four justices who comprised the plurality argued that without requiring prosecutors to prove a defendant's state of mind, juries would lack context to determine "whether a particular cross burning is intended to intimidate."l 6 1 **Several states currently have cross burning and harassment laws**.162 **The new doctrine on hate speech provides state universities clear parameters for developing hate speech policies that punish the depiction of hateful symbolic speech with a culpable frame of mind.** International protocols on racist and xenophobic speech provide further reason to believe that university hate speech codes do not violate the underlying principles of democratic free speech.

### Racism

#### Hate speech restrictions turn out to be racist – especially against minorities who don’t agree and are labeled race traitors

Jacobson 16

Daniel, prof of philosophy @ Michigan, Freedom of Speech under Assault on Campus, CATO POLICY ANALYSIS NO. 796, 8-30-16, [Premier]

The leading thought of this movement is that the expression of hateful ideas is literally an act of violence, which should be treated accordingly. In that view, words wound like weapons, and hate speech traumatizes its targets like the injuries caused by violent actions.21 But **according to the multiculturalist argument, only specifically protected groups of people are vulnerable to the harms of hate speech. (No one considers punishing a department head who calls Republicans stupid and encourages hatred of them, for instance, on the grounds that she thereby commits violence against conservative students.)** Moreover, those of us who reject the assimilation of speech with violence, without engaging in hate speech ourselves, are often claimed to be complicit in the assault on victims of institutional oppression. Our arguments are not disputed so much as denigrated as vestiges of privilege, even though they protect the speech rights of all students and faculty regardless of their politics or identity.

**One of the most blatant examples of persuasive definition can be found in the claim, now approaching a dogma in academia, that only the powerful can be racist. That definition is not the commonplace meaning of racism but a politically motivated redefinition, designed to obscure its subversion of the liberal commitment to equality under the law.**22 **Even if the racially motivated murder of a member of a nonprotected group cannot be racist, because the murderer lacks social or institutional power, that does not change anything about the action’s underlying nature**. It just does not count as racist by stipulation, given the persuasively defined term.23 **But moral arguments cannot rest on semantic fiat. If the racially motivated murder of a “privileged” victim cannot be racism, because of the persuasive definition, that does not change its character.** We could call it racist\* instead, though that approach would be to capitulate to subversive semantics.

**Perhaps the most objectionable aspect of such a rhetorical ploy is that it gets used to defend hateful and even racist** (or racist\*) **speech against dissenters who are women or minorities—even when the objectionable speech is perpetrated by white men, so long as it supports the progressive orthodoxy.** As a matter of sociological fact, **the immunity to racism and hate speech ordinarily given to members of protected groups does not extend to those who fail to espouse progressive positions. On the contrary, they are attacked even more vehemently as race traitors, often in overtly racist or sexist terms. Women, minorities, or gays and lesbians who dare to stray from the opinions they are supposed to have—that is, those considered representative of their assigned identity—not only are subject to abuse by the supposedly oppressed campus activists but also forfeit the special protections they would otherwise be granted.**24 Thus, **Ayaan Hirsi Ali and Condoleezza Rice have been disinvited and heckled at academic events, and they have been attacked by the very groups that claim to defend women of color against assaultive speech. But white progressive allies who champion the correct ideology—who “check their privilege”—are allowed to speak**, albeit as social inferiors who must defer to their more authentic superiors.

### Root Cause

#### Speech codes mask underlying causes and shift debates to distracting legal questions about the First Amendment

Harris and Ray 14 Vincent T Harris has an M. Ed. degree and is a doctoral student @ LSU, Darrell C. Ray is a prof @ LSU, HATE SPEECH & THE COLLEGE CAMPUS: CONSIDERATIONS FOR ENTRY LEVEL STUDENT AFFAIRS PRACTITIONERS, Race, Gender & Class 21.1/2 (2014): 185-194. ProQuest. [Premier]

**Speech codes** can be utilized to censor uncomfortable behavior, but, they often **mask symptoms of larger underlying issues** around the lack of civility. Research indicates that **speech codes and other non-legal alternatives enact an illusion of cohesion and stability** in addressing the First Amendment on a college campus (Davis, 2004; Uecker, 2011). Uecker (2011) asserts **this illusion sends a message of definiteness in the debate between freedom of speech and civil discussion, which some entry-level student affairs practitioners chose to hide behind, instead of facilitating difficult conversations around the use of hateful words or expressions**, they share:

**Without addressing the complexity of those things we find most offensive on campus, we risk ending up as cudgel-wielding thought police rather than as skilled educational architects, able to call upon multiple tools in the process of interacting with students with challenging ideas and opinions** (p. 359).

**The variance in the composition of codes based on public or private status steers attention away from more meaningful conversations.** For example, in 2003 **a federal district court** in Pennsylvania, **ordered that** the implementation of **Shippensburg University's harassment policy did violate the First Amendment.** The harassment policy of Shippensburg regulated that any student's speech or expression that would, "provoke, harass, intimidate, or harm another," would not be permitted on the university's campus (Silverglate et al., 2012). Additionally, **at San Francisco State** University in 2007, **a California federal judge dismantled a speech policy dictating** the "**civility**" of student interactions (Silverglate et al., 2012). **The judge argued that, "having their audience perceive and understand their passion, their intensity of feeling, can be the single most important aspect of an expressive act"** (Silverglate et al., 2012:23).

#### Negative speech brings issues to the surface

Davidson ’16 Alexander(Cal Polytechnic Senior, paper in partial fulfillment of Bachelor of Science in Journalism) The Freedom of Speech in Public Forums on College Campuses: A single site case study on Pushing the Boundaries of Free Speech, June 2016, Accessed 12/4/16 [http://digitalcommons.calpoly.edu/cgi/viewcontent.cgi?article=1119&context=joursp [Premier]

During the 26th Anniversary of the Berlin Wall’s falling, the California Polytechnic State University College Republicans created a free speech wall for students to speak their minds. That’s the thing about free speech, it allows for conventionally positive speech to emerge, but it also allows for conventionally negative speech to surface. After the walls successful establishment on Dexter Lawn, which is considered to be a public forum on California Polytechnic State University’s campus, there were remarks written that contained derogatory statements about Muslims as well as the LGBTQ community. One of the messages contained on the wall was a drawing of the Muslim prophet Muhammad carrying explosives and various rifles, the cartoon expressed the sentiment, “Islam is a political movement of violence and oppression.” Next to the drawing read, “Don’t draw me I’ll jihad your face! ALLAHU AKBAR” (Bandler, A., 2015). The free speech wall also featured a mockery-style voting ballot with the check- boxes for “male” and “female” and a caption reading, “Gender: Pick One” (Bandler, A., 2015). At first glance it would seem that free speech has created a soapbox for hatred, but this isn’t entirely the case. 130 students gather to protest the wall and to speak out against the hurtful statements. One of the California Polytechnic State University Republicans members expressed that people of all religions have committed terrorist attacks and that they do not represent their religious communities as a whole. The thing is, that while some speech is vastly unpopular, it does not mean it is any less worthy of protection; however, it created positive feedback from the community. This speech created a safe environment for taboo issues to be brought to the surface instead of lying beneath the surface. This speech brought a group of 130 people together to stand and speak for what they believe in and that is the purpose of free speech – to allow a free marketplace of ideas to exist.

### Self-Defeating

#### Allowing majoritarian forces to define appropriate and acceptable speech will backfire in the long-term when different groups are in power

Dalmia 16

Shikha Dalmia, Reason magazine, “Debating NYU's Jeremy Waldron on Free Speech vs. Hate Speech on College Campuses” <http://reason.com/blog/2016/09/22/debating-nyus-jeremy-waldron-on-free-spe> [Premier]

Two: **Hate speech bans breed self-defeating pathologies**

**One of the more surreal things about the campus PC movement is that it claims to be acting in the name of minorities and yet considers the First Amendment's free speech protections as an impediment to its goal. But the reason behind the First Amendment's guarantee of free speech is precisely to create a space for intellectual minorities.**

**So why has the First Amendment become so inconvenient for our campus warriors? It is because on campuses they are the dominant ideology and offering the courtesies required by the First Amendment to their ideological opponents has become too inconvenient. It is the classic pathology of power corrupts and absolute power corrupts absolutely.**

But here's the problem: They still operate in a democracy governed by majoritarian rule. Hence, **to the extent that they are trying to get their way by silencing "majority" voices instead of winning them over, they are making themselves vulnerable. That's because these voices will generate counter-ideologies and vote into power those people who echo them. But when these scurrilous majoritarian ideologies emerge, with the guardrail of the First Amendment weakened, minorities will be less able to prevent majoritarian passions from pushing them overboard. Much as I hate Trump, his rise represents the revenge of the masses against political correctness.**

### Spillover

#### **Speech restrictions spill over from academia to politics**

Weigel 16 - Moira Weigel, “Political correctness: how the right invented a phantom enemy,” 11-30-16, <https://www.theguardian.com/us-news/2016/nov/30/political-correctness-how-the-right-invented-phantom-enemy-donald-trump> [Premier]

**The right had been waging a campaign against liberal academics for more than a decade.** **Starting in the mid-1970s, a handful of conservative donors had funded the creation of dozens of new thinktanks and “training institutes” offering programmes** in everything from “leadership” to broadcast journalism to direct-mail fundraising. They had endowed fellowships **for conservative graduate students, postdoctoral positions and professorships at prestigious universities. Their stated goal was to challenge what they saw as the dominance of liberalism and attack left-leaning tendencies within the academy. Starting in the late 1980s, this well-funded conservative movement entered the mainstream with a series of improbable bestsellers that took aim at American higher education**. The first, by the University of Chicago philosophy professor Allan Bloom, came out in 1987. For hundreds of pages, The Closing of the American Mind argued that colleges were embracing a shallow “cultural relativism” and abandoning long-established disciplines and standards in an attempt to appear liberal and to pander to their students. It sold more than 500,000 copies and inspired numerous imitations. In April 1990, Roger Kimball, an editor at the conservative journal, The New Criterion, published Tenured Radicals: How Politics Has Corrupted our Higher Education. Like Bloom, Kimball argued that an “assault on the canon” was taking place and that a “politics of victimhood” had paralysed universities. As evidence, he cited the existence of departments such as African American studies and women’s studies. He scornfully quoted the titles of papers he had heard at academic conferences, such as “Jane Austen and the Masturbating Girl” or “The Lesbian Phallus: Does Heterosexuality Exist?” In June 1991, the young Dinesh D’Souza followed Bloom and Kimball with Illiberal Education: the Politics of Race and Sex on Campus. Whereas Bloom had bemoaned the rise of relativism and Kimball had attacked what he called “liberal fascism”, and what he considered frivolous lines of scholarly inquiry, D’Souza argued that admissions policies that took race into consideration were producing a “new segregation on campus” and “an attack on academic standards”. The Atlantic printed a 12,000 word excerpt as its June cover story. To coincide with the release, Forbes ran another article by D’Souza with the title: “Visigoths in Tweed.” These books did not emphasise the phrase “political correctness”, and only D’Souza used the phrase directly. But all three came to be regularly cited in the flood of anti-PC articles that appeared in venues such as the New York Times and Newsweek. When they did, the authors were cited as neutral authorities. Countless articles uncritically repeated their arguments. In some respects, these books and articles were responding to genuine changes taking place within academia. It is true that scholars had become increasingly sceptical about whether it was possible to talk about timeless, universal truths that lay beyond language and representation. European theorists who became influential in US humanities departments during the 1970s and 1980s argued that individual experience was shaped by systems of which the individual might not be aware – and particularly by language. Michel Foucault, for instance, argued that all knowledge expressed historically specific forms of power. Jacques Derrida, a frequent target of conservative critics, practised what he called “deconstruction”, rereading the classics of philosophy in order to show that even the most seemingly innocent and straightforward categories were riven with internal contradictions. The value of ideals such as “humanity” or “liberty” could not be taken for granted. It was also true that many universities were creating new “studies departments”, which interrogated the experiences, and emphasised the cultural contributions of groups that had previously been excluded from the academy and from the canon: queer people, people of colour and women. This was not so strange. These departments reflected new social realities. The demographics of college students were changing, because the demographics of the United States were changing. By 1990, only two-thirds of Americans under 18 were white. In California, the freshman classes at many public universities were “majority minority”, or more than 50% non-white. Changes to undergraduate curriculums reflected changes in the student population. The responses that the conservative bestsellers offered to the changes they described were disproportionate and often misleading. For instance, Bloom complained at length about the “militancy” of African American students at Cornell University, where he had taught in the 1960s. He never mentioned what students demanding the creation of African American studies were responding to: the biggest protest at Cornell took place in 1969 after a cross burning on campus, an open KKK threat. (An arsonist burned down the Africana Studies Center, founded in response to these protests, in 1970.) More than any particular obfuscation or omission, the most misleading aspect of these books was the way they claimed that only their adversaries were “political”. Bloom, Kimball, and D’Souza claimed that they wanted to “preserve the humanistic tradition”, as if their academic foes were vandalising a canon that had been enshrined since time immemorial. But canons and curriculums have always been in flux; even in white Anglo-America there has never been any one stable tradition. Moby Dick was dismissed as Herman Melville’s worst book until the mid-1920s. Many universities had only begun offering literature courses in “living” languages a decade or so before that. In truth, **these crusaders against political correctness were every bit as political as their opponents.** As Jane Mayer documents in her book, Dark Money: the Hidden History of the Billionaires Behind the Rise of the Radical Right, Bloom and D’Souza were funded by networks of conservative donors – particularly the Koch, Olin and Scaife families – who had spent the 1980s building programmes that they hoped would create a new “counter-intelligentsia”. (The New Criterion, where Kimball worked, was also funded by the Olin and Scaife Foundations.) In his 1978 book A Time for Truth, William **Simon, the president of the Olin Foundation, had called on conservatives to fund intellectuals who shared their views: “They must be given grants, grants, and more grants in exchange for books, books, and more books.” These skirmishes over syllabuses were part of a broader political programme – and they became instrumental to forging a new alliance for conservative politics in America, between white working-class voters and small business owners, and politicians with corporate agendas that held very little benefit for those people.** By making fun of professors who spoke in language that most people considered incomprehensible (“The Lesbian Phallus”), wealthy Ivy League graduates could pose as anti-elite. By mocking courses on writers such as Alice Walker and Toni Morrison, they made a racial appeal to white people who felt as if they were losing their country. As the 1990s wore on, because multiculturalism was associated with globalisation – the force that was taking away so many jobs traditionally held by white working-class people – attacking it allowed conservatives to displace responsibility for the hardship that many of their constituents were facing. It was not the slashing of social services, lowered taxes, union busting or outsourcing that was the cause of their problems. It was those foreign “others”. **PC was a useful invention for the Republican right because it helped the movement to drive a wedge between working-class people and the Democrats who claimed to speak for them. “Political correctness” became a term used to drum into the public imagination the idea that there was a deep divide between the “ordinary people” and the “liberal elite”, who sought to control the speech and thoughts of regular folk. Opposition to political correctness also became a way to rebrand racism in ways that were politically acceptable in the post-civil-rights era**. **Soon, Republican politicians were echoing on the national stage the message that had been product-tested in the academy**. **In May 1991**, President George HW **Bush** gave a commencement speech at the University of Michigan. In it, he **identified political correctness as a major danger to America**. “Ironically, on the 200th anniversary of our Bill of Rights, **we find free speech under assault throughout the United States,”** Bush said. “The notion of political correctness has ignited controversy across the land,” but, he warned, “In their own Orwellian way, crusades that demand correct behaviour crush diversity in the name of diversity.”

### Trade Off

#### Focus on speech trades off with concrete efforts to curb violence on campus

Burleigh 16

Nina Burleigh, Newsweek, “The Battle Against 'Hate Speech' on College Campuses Gives Rise to a Generation That Hates Speech” 6-3-16, Proquest. [Premier]

**Colleges and universities, and their fraternities and athletic departments, need to do a better job of monitoring and weeding out the men who are rapists or potential rapists. Instead of focusing on that, colleges and universities--encouraged by feminists and women's studies departments**, and in many cases ordered to do so by various Department of Education edicts--**have inserted themselves as referees into the messiest and most emotionally complicated and intimate entanglements human beings are capable of creating. Their rulebook is called Title IX,** the federal law requiring that colleges ensure women get an equal education. It was originally applied to sports teams and funding but has been **expanded to cover how universities handle claims of sexual assault and harassment.** Acting in loco parentis and under orders from the federal government, administrators form de facto star chambers that act as judge, jury and executioner, without adhering to legal rules of evidence or due process.

#### Normalized fragility trivializes the worst attacks by equating all acts of violence

Burleigh 16

Nina Burleigh, Newsweek, “The Battle Against 'Hate Speech' on College Campuses Gives Rise to a Generation That Hates Speech” 6-3-16, Proquest. [Premier]

**Feminists deserve some of the blame for normalizing the aggrieved fragility of students. Rape and sexual harassment are real problems on campus, as they are in the rest of the world. But just as there is a "rape culture," there is also a campus rape victim culture that tends to treat all young women as "survivors." Accusers who say they have endured any sort of unpleasant incident with a male**--from having to turn down a date request to deciding, the morning after getting naked and in bed with a man, that they wished they had not--**are deemed as deeply damaged as child pedophile victims, battered women and rape survivors.**

### Trump

#### Restrictions on speech create Trump

Nichols 1-3

Tom Nichols, “How the P.C. Police Propelled Donald Trump,” 1-3-16, <http://www.thedailybeast.com/articles/2016/01/04/how-the-p-c-police-propelled-donald-trump.html> [Premier]

These brutish **leftist tactics radicalized otherwise more centrist people toward Trump not because they care so much about gay marriage or guns or refugees any other issue, but because they’re terrified that they’re losing the basic right to express themselves. Many of these people are not nearly as conservative or extreme as the white supremacists, nativists, and other assorted fringe nuts who are riding along on Trump’s ego trip. But they are cheering on Trump because they feel they have nowhere else to go.** And for that, **liberals**—especially those **who have politely looked away as such methods were employed in the public square—must directly shoulder the blame.**

**The great mistake made by both liberals and their most extreme wing on the American left is to assume that ordinary people, once corrected forcefully enough, will comply with their new orders. This is, of course, ridiculous**: **Americans do not magically become complacent and accepting multiculturalists just because they’ve been bullied out of the public debate. They will find a new vessel for their views, and will become more extreme with each attempt to shut them down** **as the issue moves from particular social positions to the far more encompassing problem of who has the right to tell whom to shut up,** and to make it stick. Nixon’s “Silent Majority” increasingly feels itself to be a silenced majority, and **Trump is their solution**. Note, for example, how Trump turned the incident in which Black Lives Matter activists humiliated Sen. Bernie Sanders to his own advantage. He didn’t bother drawing partisan lines or going after Sanders. Trump and his supporters couldn’t care less about any of that, and Trump until that point almost had almost never mentioned Sanders. Instead, he made it clear that he’d never allow himself to be shut down by a mob. That, for his loyalists, was the money shot, especially when Trump pretty much dared BLM to disrupt a Trump event, in effect inviting them for an ass-kicking. A lot of people loved that shtick, because they want to see someone—literally, anyone—stand up to groups like BLM, even if it’s in defense of poor Bernie, because they worry that they’re next for that kind of treatment. For the record, I despise Donald Trump and I will vote for almost any Republican (well, OK, not Ben Carson) rather than Trump. I’m a conservative independent and a former Republican. I quit the party in 2012 because of exactly the kind of coarse ignorance that Trump represents. The night Newt Gingrich won the South Carolina primary on the thoughtful platform of colonizing the moon, I was out. If in the end God turns his back on America and we’re left with only the choice of Trump or Hillary Clinton, I will vote for a third candidate out of protest—even if it means accepting what I consider the ghastly prospect of a Clinton 45 administration. But I understand the fear of being silenced that’s prompting otherwise decent people to make common cause with racists and modern Know-Nothings, and I blame the American left for creating that fear. With that said, we have to consider the GOP elephant in the room. If regaining their voice is all that Trump supporters really want, then why haven’t they turned away from him as his statements have become increasingly insane? Trump reveled in the endorsement of Putin, an avowed enemy of the United States; if Obama had accepted a similar endorsement, conservatives would have impeached him. (Recall that when the U.K.’s David Cameron said a nice word about Obama in the 2012 campaign, people who no doubt now approve of Trump’s bromance with Putin went berserk at this foreign interloping from one of our closest allies.) What’s it going to take? **Trump’s staying power**, however, **is rooted in the fact that his supporters are not fighting for any particular political outcome, they are fighting back against a culture they think is trying to smother them into cowed silence. What they want, more than any one policy, is someone to turn to the chanting mobs and say, without hesitation: “No, I will not shut up.”** How long this will go on, then, depends on how long it will take for those people to feel reassured that someone besides Trump will represent their concerns without backing down in the face of catcalls about racism, sexism, LGBTQ-phobia, Islamophobia, or any other number of labels deployed mostly to extinguish their dissent.

#### Restrictions on speech propel Trumpian backlash

Tumulty and Johnson 1-4

Karen Tumulty and Jenna Johnson, “Why Trump may be winning the war on ‘political correctness’” 1-4-16 <https://www.washingtonpost.com/politics/why-trump-may-be-winning-the-war-on-political-correctness/2016/01/04/098cf832-afda-11e5-b711-1998289ffcea_story.html?utm_term=.db9bc85e5b87> [Premier]

“Driving powerful sentiments underground is not the same as expunging them,” said William A. Galston, a Brookings Institution scholar who advised President Bill Clinton. “**What we’re learning from Trump is that a lot of people have been biting their lips, but not changing their minds**.” One thing is clear: **Trump is channeling a very mainstream frustration**. **In an October** poll by Fairleigh Dickinson University, **68 percent agreed** with the proposition that “**a big problem this country has is being politically correct**.” It was a sentiment felt strongly across the political spectrum, by 62 percent of Democrats, 68 percent of independents and 81 percent of Republicans. Among whites, 72 percent said they felt that way, but so did 61 percent of nonwhites. “**People feel tremendous cultural condescension directed at them**,” and that their values are being “smirked at, laughed at” by the political and media elite, said GOP strategist Steve Schmidt. “‘Political correctness’ are the two words that best respond to everything that a conservative feels put upon,” added pollster Frank Luntz, who has advised Republicans. The label is, he said, a validation that what many on the right see as legitimate policy and cultural differences are not the same as racism, sexism or heartlessness. “**Allegations of racism and sexism have turned into powerful silencing devices**,” Galston agreed. “You can be opposed to affirmative action without being a racist.” The PC backlash does not necessarily mean that people support the kinds of things that Trump is saying, or the way he says them. When the Fairleigh Dickinson pollsters added his name to the same question — prefacing it with “Donald Trump said recently . . . ” — the numbers dropped sharply. Only 53 percent said they agree that political correctness is a major problem. This is not a new debate. It has raged since at least the early 1990s, when college campuses began adopting speech codes. Some went well beyond obvious slurs — with animal rights activists contending, for instance, that the word “pet”was disrespectful and should be changed to “companion animal.” **More recently, the PC wars have flared again in academia, where there is an ongoing argument over whether campuses should be a “safe space” where students are protected from upsetting ideas, and receive “trigger warnings” when course material contains distressing information**. Few would argue that it is wrong to confront and eliminate prejudice. But even some liberals have called political correctness a form of McCarthyism aimed at stifling free expression. **Trump has brought the question from the university quad to the political arena** in a way that no leading candidate has in the past. For many, “it’s satisfying to have a loud tribune like Trump,” said David Axelrod, who was President Obama’s top campaign adviser. “But I don’t think the hunger for authentic plain speech is Trump-specific. One of the appeals of [Democratic presidential candidate] Bernie Sanders is that people think he says exactly what he thinks and is not passing it through a filter. **There is a fundamental yearning for authenticity** that is probably felt more broadly.” The edgy liberal comedian Bill Maher, who for nearly a decade hosted a talk show called “Politically Incorrect,” has said that Trump’s ideas sound “a little ­Hitler-adjacent.” But he has also noted a yearning for “somebody to say, ‘You know what, I just don’t bend to your bull----.’ And Donald Trump, I’ve got to say, I don’t agree with him on a lot, but I kind of get him. We’ve been doing the same thing.” Trump sounded the anti-PC clarion call at the first Republican debate in August, when moderator ­Megyn Kelly of Fox News challenged him on comments that he had made disparaging women. “I think the big problem this country has is being politically correct,” he said. “I’ve been challenged by so many people, and I don’t frankly have time for total political correctness. And to be honest with you, this country doesn’t have time either. This country is in big trouble. We don’t win anymore. We lose to China. We lose to Mexico both in trade and at the border. We lose to everybody.” **It is hard to follow the logic of an argument that insulting women could somehow make the country stronger overseas. But the sentiment behind it came through clearly**. **And it has been picked up by other GOP contenders**. “Political correctness is killing people,” said Sen. Ted Cruz (R-Tex.), because it prevents the Obama administration from focusing on the communications and activities of potential terrorists who are Muslims. “Political correctness is ruining our country,” said former neurosurgeon Ben Carson, after he was criticized for saying a Muslim should not be president. It is corrosive, Carson said in an interview, because “many people will not say what they believe because someone will look askance at them, call them a name. Somebody will mess with their job, their family. This was not supposed to be the way it was in America.” Last month’s terrorist attack in San Bernardino, Calif., carried out by a Muslim couple who appear to have been inspired by the Islamic State, also known as ISIS, has become a case in point for many conservatives. They say political correctness has made the Obama administration too timid in calling it what it is — which is why Cruz and other Republicans taunt the president for not uttering the phrase “radical Islamic terrorism.” “What animates ISIS is an ­apocalyptic religious philosophy. People look at that and don’t understand the unwillingness to say red is red and blue is blue,” Schmidt said. “We live in a post-fact America, where the facts are subordinate to the advancement of an ideology.” Political strategists and others say a number of other forces are behind the backlash. It has both a cultural and an economic component, and it also reflects the continuing polarization that has grown deeper during Obama’s presidency. “For many of these people, they played the game by the rules, and essentially, they got shafted,” Democratic pollster Peter Hart said. **Trump is “the voice of an aggrieved cohort in our society — lower-middle-income working whites who have taken the hit from the big changes in the economy, and are angry about it,” Axelrod said. “He creates a permission structure for others.”**

### AT Institutional Racism

#### It’s contradictory to say that institutional racism exists and that we should then give power of policing speech to those very institutions

Friedersdorf 15

Friedersdorf, Conor. (Friedersdorf is a staff writer at The Atlantic, where he focuses on politics and national affairs) "Free Speech Is No Diversion." The Atlantic. Atlantic Media Company, 12 Nov. 2015. Web. 09 Jan. 2017. <http://www.theatlantic.com/politics/archive/2015/11/race-and-the-anti-free-speech-diversion/415254/>. [Premier]

All these incidents should be roundly condemned; harassment should be punished; hostility on Internet forums will exist regardless of what anyone does, as most working journalists can attest; and yes, the limits of liberty do lie at the point where one begins to impose on another. But excepting instances in which protected speech is not at play, blithely declaring a free-speech defense to be “tone deaf” is an evasion, not a position. And it is lamentably familiar to civil libertarians, who often take positions that most of their countrymen regard as tone-deaf.¶ Defending the “Ground Zero mosque” was seen as tone-deaf, but I defended it.¶ Defending accused criminals and their procedural rights is seen as tone-deaf. Should I stop?¶ Defending due process for Anwar Al-Awlaki, an Al Qaeda terrorist, was tone deaf. And it was vital, because a precedent now exists to assassinate Americans without due process.¶ The core liberties that protect all Americans, and that are especially important to the most marginalized, are much more important than “tone.” Suggestions to the contrary speak volumes about the elevation of rhetorical sensitivity over substance among those ostensibly seeking change. To me, it is bizarre that the same campus activists who declare their institutions and the United States to be rooted in white supremacy and hostile to students of color want to empower the very authorities in charge to punish speech at their discretion! The impulse to declare the First Amendment null and void when it interferes with punishing racist, hurtful speech may seem, in the moment, as though it shows compassion toward marginalized groups, salving their anger and pain. But it does so at their ultimate expense, and I’m not even convinced that the immediate anger and pain would be less.

### AT Trigger Warnings

#### Trigger Warnings reflect the values of those who are proponents of them

Levinovitz ’16 Alan(Alan Levinovitz is an assistant professor of religion at James Madison University) How Trigger Warnings Silence Religious Students, The Atlantic, August 30,2016, Date Accessed 12/5/16, <http://www.theatlantic.com/politics/archive/2016/08/silencing-religious-students-on-campus/497951/> [Premier]

Students should be free to argue their beliefs without fear of being labeled intolerant or disrespectful, whether they think certain sexual orientations are forbidden by God, life occurs at the moment of conception, or Islam is the exclusive path to salvation; and conversely, the same freedom should apply to those who believe God doesn’t care about who we have sex with, abortion is a fundamental right, or Islam is based on nothing more than superstitious nonsense. As it stands, that freedom does not exist in most academic settings, except when students’ opinions line up with what can be broadly understood as progressive political values. Trigger warnings and safe spaces are terms that reflect the values of the communities in which they’re used. The loudest, most prominent advocates of these practices are often the people most likely to condemn [Western yoga](http://www.slate.com/articles/double_x/doublex/2015/11/university_canceled_yoga_class_no_it_s_not_cultural_appropriation_to_practice.html) as “cultural appropriation,” to view arguments about the inherent danger of Islam as [hate speech](http://yaledailynews.com/blog/2014/09/10/groups-embroiled-in-controversy-over-speaker/), or to label arguments against affirmative action as impermissible [microaggressions](http://www.latimes.com/nation/la-ed-microaggression-what-not-to-say-at-uc-20150624-story.html). These advocates routinely [use the word “ally”](https://en.wikipedia.org/wiki/Straight_ally) to describe those who support their positions on [race](http://www.alternet.org/news-amp-politics/11-things-white-people-can-do-be-real-anti-racist-allies), [gender](http://publici.ucimc.org/man-up-being-an-ally-to-women/), and [religion](http://www.huffingtonpost.com/zoha-qamar/an-a-z-guide-to-being-a-muslim-ally_b_9367284.html), implying that anyone who disagrees is an “enemy.” Understood in this broader context, trigger warnings and safe spaces are not merely about allowing traumatized students access to education. [Whatever](http://www.forbes.com/sites/emilywillingham/2016/08/26/u-chicago-dean-gives-trigger-warning-in-letter-denouncing-trigger-warnings/#beb669059512) their original purpose may have been, trigger warnings are now used to mark discussions of [racism, sexism](https://www.theguardian.com/commentisfree/2014/mar/05/trigger-warnings-can-be-counterproductive), and [U.S. imperialism](http://www.notsorryfeminism.com/2016/06/islamophobia.html). The logic of this more expansive use is straightforward: Any threat to one’s core identity, especially if that identity is marginalized, is a potential trigger that creates an unsafe space.

#### Trigger warnings go too far and make the power dynamic lopsided in the opposite direction

Levinovitz ’16 Alan(Alan Levinovitz is an assistant professor of religion at James Madison University) How Trigger Warnings Silence Religious Students, The Atlantic, August 30,2016, Date Accessed 12/5/16, <http://www.theatlantic.com/politics/archive/2016/08/silencing-religious-students-on-campus/497951/> [Premier]

The unpleasant truth is that historically marginalized groups, including racial minorities and members of the LGBT community, are not the only people whose beliefs and identities are marginalized on many college campuses. Those who believe in the exclusive truth of a single revealed religion or those who believe that all religions are nonsensical are silenced by the culture of trigger warnings and safe spaces. I know this is true because I know these students are in my classroom, but I rarely hear their opinions expressed in class. There is no doubt that in America, the perspective of white, heterosexual Christian males has enjoyed disproportionate emphasis, particularly in higher education. Trigger warnings, safe spaces, diversity initiatives, and attention to social justice: all of these are essential for pushing back against this lopsided power dynamic. But there is a very real danger that these efforts will become overzealous and render opposing opinions taboo. Instead of dialogues in which everyone is fairly represented, campus conversations about race, gender, and religion will devolve into monologues about the virtues of tolerance and diversity. I have seen it happen, not only at the University of Chicago, my alma mater, but also at the school where I currently teach, James Madison University, where the majority of students are white and Christian. The problem, I’d wager, is fairly widespread, at least at secular universities. Silencing these voices is not a good thing for anyone, especially the advocates of marginalized groups who hope to sway public opinion. Take for example the idea that God opposes homosexuality, a belief that some students still hold. On an ideal campus, these students would feel free to voice their belief. They would then be confronted by opposing arguments, spoken, perhaps, by the very people whose sexual orientation they have asserted is sinful. At least in this kind of environment, these students would have an opportunity to see the weaknesses in their position and potentially change their minds. But if students do not feel free to voice their opinions, they will remain silent, retreating from the classroom to discuss their position on homosexuality with family, friends, and other like-minded individuals. They will believe, correctly in some cases, that advocates of gay rights see them as hateful, intolerant bigots who deserve to be silenced, and which may persuade them to cling with even greater intensity to their convictions. A more charitable interpretation of the University of Chicago letter is that it is meant to inoculate students against allergy to argument. Modern, secular, liberal education is supposed to combine a Socratic ideal of the examined life with a Millian marketplace of ideas. It is boot camp, not a hotel. In theory, this will produce individuals who have cultivated their intellect and embraced new ideas via communal debate—the kind of individuals who make good neighbors and citizens. The communal aspect of the debate is important. It demands patience, open-mindedness, empathy, the courage to question others and be questioned, and above all, attempting to see things as others do. But even though academic debate takes place in a community, it is also combat. Combat can hurt. It is literally offensive. Without offense there is no antagonistic dialogue, no competitive marketplace, and no chance to change your mind. Impious, disrespectful Socrates was executed in Athens for having the temerity to challenge people’s most deeply held beliefs. It would be a shame to execute him again.

## Advantage Areas / Aff Ideas



### Advertising

#### Free speech in advertising is essential for consumer identity formation

Whittington 05

Keith E. Whittington, polisci prof @ Princeton, “A Note on Commercial Speech in the Era of Late Capitalism” The Good Society, Volume 14, No. 1–2, 2005, <https://scholar.princeton.edu/sites/default/files/Commercial_Speech_0.pdf> [Premier]

Political identity coheres with the notion that “the personal is the political.” Explicit political action rests on the base of political identity, which is itself not a pre-social given but the result of ongoing social processes. **In the era of late capitalism, commercial speech is an essential component of those social processes that help constitute political identity**. As such, **the social value of commercial speech lies not merely in its utility in conveying information that facilitates efficient economic exchanges but also in providing the raw materials upon which modern political culture is built.** Consequently, **commercial speech should be regarded as on par with other forms of speech as politically relevant**.20 Moreover, **it is precisely the forms of commercial speech that are most feared by political authorities that should, in this light, be protected. The brand imaging of consumer goods is not about market efficiencies, but rather about personal identity and desire.**21 Indeed, it is precisely because of the capacity of, for example, cigarette and alcohol advertising to help constitute personal identity that it is feared, regulated, and prohibited. Joe Camel and the Marlboro Man are deserving of constitutional protection precisely because they function in the cultural rather than the purely economic realm. This might also suggest that the “lesser” should not be included in the “greater” when it comes to commercial regulation.22 Though **the state** may have the authority to prohibit entirely certain commercial products and activities (e.g., gambling, narcotics, tobacco), it **should not** be understood to **have** an equal **authority to prohibit** the **cultural production** related to that activity. **Commercial speech for illicit products may have the potential for the greatest identityforming effects, and individuals should be no more denied the cultural signs of such activity than they should be denied the political rhetoric advocating the legalization of such activity**. **Having an independent cultural logic beyond simply matching consumers and producers, the protection of commercial speech should not hinge on the state sanction of the underlying commercial activity**.

#### Advertising is protected speech – it can be used to affect public policy

Whittington 05

Keith E. Whittington, polisci prof @ Princeton, “A Note on Commercial Speech in the Era of Late Capitalism” The Good Society, Volume 14, No. 1–2, 2005, <https://scholar.princeton.edu/sites/default/files/Commercial_Speech_0.pdf> [Premier]

**The Court has been increasingly sympathetic to the protection of commercial speech beyond its utility in informing citizens on matters relating to public policy. The interests of consumers in receiving information on matters relating to their economic decisions has itself been recognized as relevant to the interpretation and application of the free speech clause**.8 Such an expansion of the protections of commercial speech, however, may be subject to limitation in extending beyond the central constitutional commitments to political speech. It also fails to recognize that **advertising, the primary form of commercial speech, “**is no longer built around the idea of informing or promoting in the ordinary sense, but **is increasingly geared to manipulating desires and tastes through images** that may or may not have anything to do with the product to be sold.”9

### Authoritarianism

#### Free speech restrictions are tantamount to the thought police!

Burleigh 16

Nina Burleigh, Newsweek, “The Battle Against 'Hate Speech' on College Campuses Gives Rise to a Generation That Hates Speech” 6-3-16, Proquest. [Premier]

**American college campuses are starting to resemble George Orwell's Oceania with its Thought Police, or East Germany under the Stasi. College newspapers have been muzzled and trashed, and students are disciplined or suspended for "hate speech," while exponentially more are being shamed and silenced on social media by their peers. Professors quake at the possibility of accidentally offending any student and are rethinking syllabi and restricting class discussions to only the most anodyne topics.** A Brandeis professor endured a secret administrative investigation for racial harassment after using the word wetback in class while explaining its use as a pejorative.

#### Speech restrictions face a line-drawing problem – first it’s hate speech then it’s climate denialism then anything goes…

Dalmia 16

Shikha Dalmia, Reason magazine, “Debating NYU's Jeremy Waldron on Free Speech vs. Hate Speech on College Campuses” <http://reason.com/blog/2016/09/22/debating-nyus-jeremy-waldron-on-free-spe> [Premier]

It is, no doubt. But is it more important than, say, stopping, terrorism, by censoring articles on "how to make a pressure cooker bomb," something that Trump just demanded? And **if Holocaust denial to protect Jewish sensibilities ought to be a prosecutable offense, why not articles by global warming deniers to prevent global climate catastrophe?** **Why is speech that questions such existential threats to be tolerated if hate speech is to be suppressed? How will we draw any principled limits to stop slipping down the slope of repression and censorship?**

#### The left is redefining words and controlling speech to covertly further its agenda

Jacobson 16

Daniel, prof of philosophy @ Michigan, Freedom of Speech under Assault on Campus, CATO POLICY ANALYSIS NO. 796, 8-30-16, [Premier]

That stark divergence has been obscured by the change in meaning of **liberal**, especially in American usage, where it **has become almost synonymous with progressive as a name for leftist politics**. Sometimes progressivism purports to be a merely pragmatic program with an optimistic view of the ability of government to promote the common good through paternalism and redistribution. Classical liberals take a narrower view of the legitimate role of government in principle and of its abilities in practice. But the profoundly illiberal turn of progressivism comes when it goes beyond the softer paternalism of seat belt laws and drug prohibitions—which at least compel people for the sake of goods they accept—to the radical claim of false consciousness. This is the idea that the unenlightened masses are pervasively mistaken about what is good for them, perhaps because they have been duped by repressive social norms, propaganda, or the machinations of the rich.

By its own admission, such a radical program cannot succeed by persuasion but must be subversive. In part, that subversion is linguistic, in that **it involves coopting central liberal ideals such as toleration, freedom, and justice.** The current illiberal moment cannot be understood without appreciating the manipulation of language at its core, especially through persuasive definition, meaning **the redefinition of words** to **mask ideological claims as matters of fact or uncontroversial value judgments**. A prominent figure in this subversive turn was Herbert **Marcuse**. He **argued that “the realization of the objective of tolerance would call for intolerance toward prevailing policies, attitudes, [and] opinions,”** which he recommended expressly as “a partisan goal, a subversive liberating notion and practice.

The general pattern of that argument is to advance a tendentious view of the objective of some liberal ideal, such as toleration or freedom of speech, and then claim that the end is best advanced through illiberal means. **Though the underlying critique of liberalism can be put forward in an intellectually honest manner**, the subversive aspect lies in the tendency to coopt the language of liberalism. (Note that Marcuse’s school of thought, critical theory, poses as blandly critical of the status quo rather than as advocating a specific ideology—when, in fact, its central inspiration is Marxist.) Whatever the substantive merits of this view, its political weakness lies in the fact that **its conception of liberation is so authoritarian that it can triumph only covertly, at least in the United States**. Nevertheless, **its success in academia can be seen in the widespread acceptance of the activist or “engaged” conception of the mission of the university.**

**Consider** just one example by way of illustration. On October 22, 2012—two weeks before the presidential election—the **University of Michigan sponsored a panel discussion whose** original **title was “The Republican War on Women.”** That was, of course, a Democratic campaign slogan of the season. **The panel comprised journalists from Jezebel.com, Salon.com, and The Nation—all overtly leftist publications**. The moderator, the chair of the Communications Department, is the author of essays called “It’s the Stupid Republicans, Stupid” and “It’s Okay to Hate Republicans.”16 Inconveniently for the organizers of the event, however, both Michigan law and university rules prohibit using public resources to engage in political activities for or against a candidate.17 The solution found by the event’s organizers, which evidently sufficed for the administration and university lawyers, was to rename the event, “The Republican War on Women?” The addition of a question mark was all that was required.

**That is what the so-called scholarship of engagement looks like under one-party rule. It involves indoctrination into leftist causes—to the point of violation of law and university rules and the organized silencing of what exists of the Right—in the name of social justice. The protest side of campus activism silences dissenting opinion in two ways. It uses the traditional heckler’s veto methods of shouting down the opposition, blocking access to auditoriums, and otherwise menacing its antagonists. But the novel turn might be called the victim’s veto, which amplifies the offense taken to expressions of dissent into harm, in order to accuse those expressing unpopular opinions of violence.**18 However benign the label—whether it is called the scholarship of engagement or campus activism—such fashionable deviations from the liberal conception of the mission of the university are hard to distinguish from indoctrination and censorship.

Subversive semantics allow many academics to deny that they are engaged in indoctrination despite championing activism that amounts to just that. Often, they sincerely see themselves as engaged merely in the pursuit of social justice: a substantive political program that purports to be simply morality. As F. A. Hayek noted, however, **one would be hard pressed to find a definition of social justice that does not simply recapitulate leftist ideology**. Insofar as the term has a determinate meaning, it opposes the liberal conception of justice as a criterion of individual conduct according to moral rules. “**The most common attempts to give meaning to the concept of ‘social justice’ resort to egalitarian considerations**,” Hayek wrote, “and argue that every departure from equality of material benefits enjoyed has to be justified by some recognizable common interest which these differences serve.”19

Perhaps some form of egalitarianism is true, but it requires an honest argument rather than persuasive definition. **How can one oppose social justice except by being anti-social or anti-justice?** Yet, that **ideology** subverts the liberal conception of justice, which is premised on equality under the law and other rules about what counts as permissible means to a desired end. And it **has come into conflict with freedom of speech because its champions are now firmly in power on campus**.

### Campaign Finance

#### Campaign finance reforms limit speech and increase cynicism

Will 15 GEORGE WILL, Washington Post, June 6, 2015 8:00 PM Read more at: http://www.nationalreview.com/article/419417/campaign-finance-reformers-first-amendment-problem-george-will

**Casual observers of politics, including most voters, are understandably puzzled by the process of contributing to super PACs independent of (not “coordinated with”) the candidates the super PACs are created to help. Perhaps this prompts cynicism among voters who see soon-to-be presidential candidates feign indecision about running while they solicit large contributions to their super PACs.** Voters might wonder: Why have this misleading minuet? Smith’s answer is that “anti-coordination” rules are required if limits on contributions to candidates are to have even today’s minimal effects. **The limits the reformers hoped would decrease cynicism about politics is increasing it, which is just another unpleasant surprise for reformers who are repeatedly surprised by their own consequences. Someday even they might understand the wisdom of choosing what the Constitution, properly construed, actually requires — unregulated politics**.

#### Campaign finance is constitutionally protected speech

Will 15 GEORGE WILL, Washington Post, June 6, 2015 8:00 PM Read more at: <http://www.nationalreview.com/article/419417/campaign-finance-reformers-first-amendment-problem-george-will> [Premier]

**The court has consistently held that regulation of campaign financing is constitutional when it regulates conduct rather than speech. The court has implicitly rejected,** as a reason for regulating contributions to independent groups, **the supposition that large donations distort the political process. It has explicitly said that it “is wholly foreign to the First Amendment” for government to “restrict the speech of some elements of our society in order to enhance the relative voice of others.”**

#### Campaign finance reform is undemocratic

Smith n.d.

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This is not to suggest that the sponsors of McCain-Feingold and Shays-Meehan sat down and tried to figure out how to limit competition. However, when it comes to political regulation and criticism of government, **legislators have strong vested interests that lead them to mistake what is good for them with what is good for the country**. **Government is inherently untrustworthy when it comes to regulating political speech, and this tendency to use government power to silence political criticism and stifle competition is a major reason why we have the First Amendment.** The Supreme Court has recognized the danger that campaign finance regulation poses to freedom of speech, and for the past 20 years, beginning with **Buckley v. Valeo**, has **struck down many proposed restrictions on political spending and advocacy, including mandatory spending limits.** Supporters of campaign finance reform like to ridicule Buckley as equating money with speech. In fact, Buckley did no such thing. Instead, Buckley recognized that limiting the amount of money one can spend on political advocacy has the effect of limiting speech. This is little more than common sense. For example, the right to travel would lose much of its meaning if we limited the amount that could be spent on any one trip to $100. Shays-Meehan and McCain-Feingold are Congress’s most ambitious attempt yet to get around Buckley. The spending limits in each bill are supposedly voluntary, so as to comply with Buckley, but in fact the provisions are so coercive as to be all but mandatory, which should make them unconstitutional. For example, Shays-Meehan penalizes candidates who refuse to limit spending by restricting their maximum contributions to just $250, while allowing their opponents to collect contributions of up to $2,000. Shays-Meehan also attempts to get around Buckley by restricting the ability of individuals to speak out on public issues. The bill would sharply limit financial support for the discussion of political issues where such discussion “refers to a clearly identified candidate.” In Buckley, the Supreme Court struck down a similar provision as unconstitutionally vague. Fueling the momentum to regulate “issue advocacy” is Republican outrage over last year’s advertising blitz by organized labor attacking the Contract With America and the GOP’s stand on Social Security and Medicare. Even though the AFL-CIO’s ads were ostensibly about issues, there is no doubt that they were aimed at helping Democrats regain control of the House. Of course, **the purpose of political campaigns is to discuss issues; and the purpose of discussing issues is to influence who holds office and what policies they pursue. Naturally, candidates don’t like to be criticized**, especially when they believe that the criticisms rely on distortion and demagoguery. **But the Founders recognized that government cannot be trusted to determine what is “fair” or unfair” when it comes to political discussion. The First Amendment doesn’t promise us speech we like, but the right to engage in speech that others may not like.** Recognizing that many proposed reforms run afoul of the Constitution, **some**, such as former Sen. Bill Bradley and current House Minority Leader Richard Gephardt, **are calling for a constitutional amendment that would, in effect, amend the First Amendment to allow government to regulate political speech more heavily.** This seems odd, indeed, for while left and right have often battled over the extent to which the First Amendment covers commercial speech or pornography, until now no one has ever seriously questioned that it should cover political speech. In fact, constitutional or not, campaign finance reform has turned out to be bad policy. **For most of our history, campaigns were essentially unregulated yet democracy survived and flourished.** However, **since passage of the Federal Elections Campaign Act and similar state laws, the influence of special interests has grown, voter turnout has fallen, and incumbents have become tougher to dislodge. Low contribution limits have forced candidates to spend large amounts of time seeking funds. Litigation has become a major campaign tactic, with ordinary citizens hauled into court for passing out homemade leaflets; and business and professional groups have been restrained from communicating endorsements to their dues-paying members.** The reformers’ response is that more regulation is needed. If only the “loopholes” in the system could be closed, they argue, it would work. Of course, some of today’s biggest loopholes were yesterday’s reforms. Political action committees were: an early 1970s reform intended to increase the influence of small donors. Now the McCain-Feingold bill seeks to ban them. (Even the bill’s sponsors seem to recognize that this is probably unconstitutional— Sen. Feingold boasts that in anticipation of such a finding by the Supreme Court, the bill includes a fallback position.) Soft money, which both bills would sharply curtail, was a 1979 reform intended to help parties engage in grassroots political activity, such as get-out-the-vote drives. **When a law is in need of continual revision to close a series of ever-changing “loopholes,” it is probably the law, and not the people, that is in error. The most sensible reform is a simple one: repeal of the Federal Elections Campaign Act.**

### Climate Change Denial

#### [Note: Some of these are equally serviceable as links to a Climate Change / Climate Talk Disadvantage on the neg]

#### Academia and now government is turning against free speech in the realm of climate science

Williamson 16

KEVIN D. WILLIAMSON, roving correspondent for National Review, April 3, 2016 4:00 AM, <http://www.nationalreview.com/article/433582/free-speech-climate-science-campus-censorship-only-beginning> [Premier]

Shortly after Professor Torcello’s tentative exploration of criminalizing political disagreement, **Gawker published an article by Adam Weinstein bearing the straightforward headline: “Arrest climate-change deniers.”** Building on Professor Torcello’s argument, **Weinstein called explicitly for the imprisonment** (“denialists should face jail”) **of those working to further particular political goals** (“quietist agenda posturing as skepticism”) on climate change. Never mind that protecting people and institutions attempting to further a political agenda is precisely the reason we have a First Amendment. **Weinstein dismisses the First Amendment out of hand, with the expected dread cliché: “First Amendment rights have never been absolute. You still can’t yell ‘fire’ in a crowded theater.** You shouldn’t be able to yell ‘balderdash’ at 10,883 scientific journal articles a year, all saying the same thing.”

Yelling “balderdash” at the conventional wisdom has a very long and proud tradition. (Not that it should matter to this debate, but I suppose I should here note for the record that I hold more or less conventional views on climate change as a phenomenon but prefer mitigatory policies to preventative ones.) The name “Elsevier” is not beloved on college campuses (the modern company is a publisher of academic journals and sometimes is criticized for its pricing), but it is to that company’s spiritual ancestor, the Dutch printing house of Lodewijk Elzevir and his descendants, that we owe the publication of, among other articles of samizdat, the works of Galileo, at that time under Inquisitorial interdict. (The story of Elzevir’s 1636 covert mission to Arcetri to meet with Galileo and smuggle his manuscripts to Amsterdam, a city that was then as now a byword for liberality, would make a pretty good movie.) It isn’t that it’s likely that our contemporary global-warming critics are doing work as important as Galileo’s: It’s that no one knows or can predict, which is the practical case for free expression, which should be of some concern even to our modern progressives, self-styled empiricists and pragmatists who reject the moral case for free expression. I raised some alarm about the Gawker article at National Review, and once again the response was the predictable one: “It’s just Gawker, and it influences no one possessing any intelligence. No sensible person takes Adam Weinstein seriously.” That is all true enough, but it is not only or mainly the intelligent and the sensible who move the world of public policy. We have Kennedys to consider.

The subsequent developments are relatively well known: **Robert F. Kennedy Jr., speaking at a large climate-change march in New York, called for the imprisonment of those holding impermissible views on global warming and those who with their financial resources support and spread such views.** **New York attorney general Eric T. Schneiderman opened a case against Exxon,** and the attorneys general of Massachusetts and the U.S. Virgin Islands announced their intended participation in this inquisition. (Al Gore was present at the announcement.) **Schneiderman’s prosecution**, in the words of the New York Times, **would focus on “the company’s funding, for at least a decade, of outside groups that worked to dispute climate science.”** This is straight from Professor Torcello. **The goal of course is to bully institutions, corporations, and particularly donors and the nonprofits sustained by them.** Torcello: “The charge of criminal and moral negligence ought to extend to all activities of the climate deniers who receive funding as part of a sustained campaign to undermine the public’s understanding of scientific consensus.” **Kamala Harris**, the California attorney general who is seeking a Senate seat, **announced an identical investigation of her own. The Obama administration has referred the federal question to the FBI for possible prosecution; currently, progressive strategists are pushing for prosecution under** the **RICO** law, a racketeering statute used to prosecute sprawling organized-crime syndicates.

“The First Amendment,” Schneiderman proclaimed, “does not give you the right to commit fraud.” Which is of course true. It is also true that the invocation of “fraud” in this instance is something very close to fraudulent. But once the censors work up a head of steam, it is difficult to stop them. This week, Senator **Elizabeth Warren bemoaned the fact that businessmen have “become accustomed to saying whatever they want about Washington policy debates,” and she is pressuring the Securities and Exchange Commission to file fraud charges against businesses that lobby against regulations that they believe would hurt them**. Senator **Warren charges that the businesses in question exaggerate the costs of regulations when lobbying against them in public** and do not do so when communicating with investors and shareholders — which is to say, **she wants to make a felony out of what amounts to at most hyperbole or political spin**.

#### Colleges are restricting free speech on environmental issues – spills over into politics

Thomas 15

Ginni Thomas, Daily Caller writer, “Scholar: Campus Mobs Reject Free Speech, Academic Freedom And Even Facts,” Read more: <http://dailycaller.com/2015/11/21/scholar-campus-mobs-reject-free-speech-academic-freedom-and-even-facts/#ixzz4VQ0xHG2b> [Premier]

And now more victims clamor for such treatment. Today’s victims include those fearing global warming, which President Obama touts as America’s biggest national security threat. “**Saving the planet,”** Kurtz added, **justifies any tactic, so “free speech is out the window.”** Mobs form to mete out justice, he says, “because we are getting comfortable violating our fundamental principles that formed this nation.”

**Because colleges have tilted so far left**, as expressed recently by Mona Charen, **Kurtz sees new vulnerabilities for these orthodoxy-enforcing institutions. Since political correctness needs to silence any opposing views, Kurtz is promoting the idea of “freedom of speech tours” that can only make the elites uncomfortable.** A recent Yale University panel on freedom of speech demonstrated the utility of Kurtz’s idea.

Exposing or naming specific colleges could shame or stop donations or prospective students from attending offensive-behaving colleges, he added. Leadership could also come from trustees, alumni and state legislatures for state schools, Kurtz said.

One valuable group he cited is **the National Association of Scholars that is shining a light on what the Left is doing throughout American higher education on sustainability, the divestment in fossil fuel movement, and the evolution of “common reading books” given to incoming freshmen to show them how they are expected to think.**

**Republicans are losing at the ballot box because they allowed the culture of campuses, the media and Hollywood to embrace the ideological left without adequate counter-engagement. Conservative donors who think politics can solve cultural problems are “nuts,” Kurtz says. Now, we are “beyond the tipping point” on campuses, he added.**

#### Climate debate was banned in one Colorado classroom – including online forums

Williams 16

Thomas D. Williams, PhD, “University of Colorado Bans Free Inquiry of Students Questioning Global Warming” 9-6-16 <http://www.breitbart.com/big-government/2016/09/06/university-colorado-bans-free-inquiry-students-questioning-global-warming/> [Premier]

In the midst of national debates concerning free speech on college campuses, the University of **Colorado** at Colorado Springs **has opted to clamp down on students who challenge the reigning orthodoxy regarding manmade global warming.** Last week, **three professors** co-teaching a course titled “Medical Humanities in the Digital Age” **emailed a statement to all students informing them that anthropogenic climate change is not up for debate in their course. “We will not, at any time, debate the science of climate change, nor will the ‘other side’ of the climate change debate be taught or discussed in this course,**” the professors said in their letter obtained by The College Fix. Regarding those inquisitive students who would like to discuss the issue rather than blindly accepting the global warming dogma, the professors “respectfully ask that you do not take this course.” “The point of departure for this course is based on the scientific premise that human induced climate change is valid and occurring,” the letters states. The letter, signed by course instructors Rebecca Laroche, Wendy Haggren and Eileen Skahill, was sent in response to concerns expressed by several students after watching the first online lecture about the impacts of climate change. **The professors, backed by University Communications Director Tom Hutton, said that the ban on debate even extends to discussion among students in the online forums. Students are also forbidden from using outside sources for research in the course, and may only reference materials that have been approved by the Intergovernmental Panel on Climate Change.** The decision by the University of Colorado to eliminate free inquiry came hard on the heels of the University of Chicago’s contrary decision to encourage debate and discussion, even on unpopular subjects. In an August letter to incoming freshmen, Chicago’s Dean of Students Jay Ellison reiterated the University’s “commitment to freedom of inquiry and expression” against the restrictive political correctness codes in force on many U.S. college campuses. Countering the trend toward less freedom of expression in higher education, Chicago stated that its commitment to academic freedom “means that we do not support so-called ‘trigger warnings,’ we do not cancel invited speakers because their topics might prove controversial, and we do not condone the creation of intellectual ‘safe spaces’ where individuals can retreat from ideas and perspectives at odds with their own.” In other words, if you are afraid of others disagreeing with you or challenging your ideas, then Chicago is not for you. “You will find that we expect members of our community to be engaged in rigorous debate, discussion, and even disagreement. At times this may challenge you and even cause discomfort,” the letter warned. In an earlier report on freedom of expression, University officials cited former Chicago President Hanna Holborn Gray, who observed that “education should not be intended to make people comfortable, it is meant to make them think.” “Universities should be expected to provide the conditions within which hard thought, and therefore strong disagreement, independent judgment, and the questioning of stubborn assumptions, can flourish in an environment of the greatest freedom,” the report stated. The University of Chicago’s decision garnered plaudits from First Amendment advocates. **“Free speech is at risk at the very institution where it should be assured: the university,”** University of Chicago president Robert Zimmer said. The university is preparing students for the real world and would not be serving them by shielding them from unpleasantness, said Geoffrey Stone, chair of the committee, law professor and past provost at the U. of C. “The right thing to do is empower the students, help them understand how to fight, combat and respond, not to insulate them from things they will have to face later,” Stone said. Last May, DePaul University cancelled a speech by Breitbart’s Milo Yiannopoulos after protests broke out on campus. When Yiannopoulos tried to reschedule, DePaul declared that he was banned from the University.

#### Climate change denial is suppressed

Jacobson 16

Daniel, prof of philosophy @ Michigan, Freedom of Speech under Assault on Campus, CATO POLICY ANALYSIS NO. 796, 8-30-16, [Premier]

**Consider contemporary efforts to suppress climate change “denial.” Those efforts ostensibly address a matter of empirical fact rather than an evaluative judgment. Yet, modern censors consider skepticism about catastrophic anthropogenic global warming so dangerous that it cannot be tolerated. Rather than engage in argument against the skeptical position, they seek to suppress it.** The rhetoric of denial is, of course, borrowed from Holocaust denial, which has been banned for decades in Europe without succeeding in eradicating the proscribed view, let alone eliminating the hatred and persecution of Jews. Similarly, **the movement to ban climate change skepticism is not based on any calculation of the actual effects of toleration versus suppression. Instead, the argument is simply that because it would be bad for people to doubt the doctrine, skepticism should be suppressed.** Again, **dissent gets punished rather than refuted—here, in the name of science but contrary to the norms of scientific inquiry**. And on matters in which scientific evidence seems to support heretical opinion—as with the existence of innate differences between the sexes—this fealty to science gets sacrificed to ideology.

### Education

#### The purpose of college is to challenge student’s beliefs, open intellectual inquiry is the cornerstone

Bloomberg & Koch 16

Bloomberg, Michael, and Charles Koch. (Yes, it's THAT Michael Bloomberg and THAT Charles Kock, no credentials needed) "Why Free Speech Matters on Campus." The Wall Street Journal. Dow Jones & Company, 12 May 2016. Web. 18 Dec. 2016. <http://www.wsj.com/articles/why-free-speech-matters-on-campus-1463093280>. [Premier]

Across America, college campuses are increasingly sanctioning so-called “safe spaces,” “speech codes,” “trigger warnings,” “microaggressions” and the withdrawal of invitations to controversial speakers. By doing so, colleges are creating a climate of intellectual conformity that discourages open inquiry, debate and true learning. Students and professors who dare challenge this climate, or who accidentally run afoul of it, can face derision, contempt, ostracism—and sometimes even official sanctions.¶ ¶ The examples are legion. The University of California considers statements such as “America is the land of opportunity” and “everyone can succeed in this society, if they work hard enough” to be microaggressions that faculty should avoid. The roll of disinvited campus speakers in recent years continues to grow, with the Foundation for Individual Rights in Education identifying 18 attempts to intimidate speakers so far this year, 11 of which have been successful. The list includes former Secretary of State Madeleine Albright, who is scheduled to give the commencement address at Scripps College this weekend. Student protests have vilified her as a “genocide enabler” and 28 professors have signed a letter stating they will refuse to attend.¶ ¶ Colleges are increasingly shielding students from any idea that could cause discomfort or offense. Yet without the freedom to offend, freedom of expression, as author Salman Rushdie once observed, “ceases to exist.” And as Frederick Douglass said in 1860: “To suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker.”¶ ¶ When a professor last year decided to write online about the trend toward intolerance on campuses, he did so under a pseudonym out of fear of a backlash. “The student-teacher dynamic,” he wrote, “has been reenvisioned along a line that’s simultaneously consumerist and hyper-protective, giving each and every student the ability to claim Grievous Harm in nearly any circumstance, after any affront.”¶ ¶ We believe that this new dynamic, which is doing a terrible disservice to students, threatens not only the future of higher education, but also the very fabric of a free and democratic society. The purpose of a college education isn’t to reaffirm students’ beliefs, it is to challenge, expand and refine them—and to send students into the world with minds that are open and questioning, not closed and self-righteous. This helps young people discover their talents and prepare them for citizenship in a diverse, pluralistic democratic society. American society is not always a comfortable place to be; the college campus shouldn’t be, either.¶ ¶ ¶ Education is also supposed to give students the tools they need to contribute to human progress. Through open inquiry and a respectful exchange of ideas, students can discover new ways to help others improve their lives.

#### Lack of free speech causes echo-chambers that negatively impact student’s education

Kelly-Woessner 16

KELLY-WOESSNER, APRIL. (Woessner is a professor and chairwoman of the political science department at Elizabethtown College) "The Fierce Debate over Free Speech on American College Campuses." LancasterOnline. N.p., 18 Sept. 2016. Web. 10 Jan. 2017. <http://lancasteronline.com/opinion/columnists/the-fierce-debate-over-free-speech-on-american-college-campuses/article\_8c208d66-7b65-11e6-88de-d78bce73d4c3.html>. [Premier]

We are all uncomfortable with speech that challenges our core values. The evidence from social psychology is that we are becoming less open to disagreement. Our social networks have narrowed, such that they have fewer friends across party lines.¶ More people now say they would be more upset if their child married someone of a different party than of a different race or religion.¶ We choose to live in giant echo chambers, exposed only to arguments that reinforce our views. So it is no surprise that members of minority groups find some speech uncomfortable because it challenges deeply held values about equality and fairness. We all react negatively to challenge.¶ Yet, the evidence from social psychology overwhelmingly supports the argument that exposure to disagreement is good for us, even if we don’t like it. It makes us better thinkers. It makes us more tolerant of those who are different from us.¶ People who are exposed to counterarguments and diverse opinions are more politically informed and engaged. If we want to reduce intergroup conflict, we need to encourage difficult conversations about race, gender, religion and sexual preferences. People simply aren’t willing to engage in dialogue if they believe that disagreement will be interpreted as a form of aggression.¶ Silencing those with whom we disagree, through speech codes, bans on speakers, and other means of coercive control, serves a political purpose, in that our positions become dominant over those of our opponents.¶ This is an effective method for winning a political debate. But this creates intergroup conflict and resentment, making it quite counterproductive to the goals of education. Ironically, it is also counterproductive to the goal of equality. Real cross-cultural understanding requires people to engage in open and honest communication. When we characterize disagreement and value conflicts as forms of aggression, or define discussion participants as victims or perpetrators, we only exacerbate group conflicts.

### Israel / Palestine

#### The UC system and California lawmakers have instituted bans on criticisms of Israel and have been threatening students

Greenwald 15

Greenwald, Glenn. (Greenwald is one of three co-founding editors of The Intercept. He is a journalist, constitutional lawyer, and author of four New York Times best-selling books on politics and law) "The Greatest Threat to Campus Free Speech Is Coming From Dianne Feinstein and Her Military-Contractor Husband." The Intercept. N.p., 25 Sept. 2015. Web. 10 Dec. 2016. <https://theintercept.com/2015/09/25/dianne-feinstein-husband-threaten-univ-calif-demanding-ban-excessive-israel-criticism/>. [Premier]

There is no shortage of American pundits who love to denounce “PC” speech codes that restrict and punish the expression of certain ideas on college campuses. What these self-styled campus-free-speech crusaders typically — and quite tellingly — fail to mention is that the most potent such campaigns are often devoted to outlawing or otherwise punishing criticisms of Israel. The firing by the University of Illinois of Professor Steven Salatia for his “uncivil” denunciations of the Israeli war on Gaza — a termination that was privately condoned by Illinois Democratic Senator Dick Durbin — is merely illustrative of this long–growing trend.¶ One of the most dangerous threats to campus free speech has been emerging at the highest levels of the University of California system, the sprawling collection of 10 campuses that includes UCLA and UC Berkeley. The university’s governing Board of Regents, with the support of University President Janet Napolitano and egged on by the state’s legislature, has been attempting to adopt new speech codes that — in the name of combating “anti-Semitism” — would formally ban various forms of Israel criticism and anti-Israel activism.¶ Under the most stringent such regulations, students found to be in violation of these codes would face suspension or expulsion. In July, it appeared that the Regents were poised to enact the most extreme version, but decided instead to push the decision off until September, when they instead would adopt non-binding guidelines to define “hate speech” and “intolerance.”¶ One of the Regents most vocally advocating for the most stringent version of the speech code is Richard Blum, the multi-millionaire defense contractor who is married to Sen. Dianne Feinstein of California. At a Regents meeting last week, reported the Los Angeles Times, Blum expressly threatened that Feinstein would publicly denounce the university if it failed to adopt far more stringent standards than the ones it appeared to be considering, and specifically demanded they be binding and contain punishments for students found to be in violation.¶ The San Francisco Chronicle put it this way: “Regent Dick Blum said his wife, U.S. Sen. Dianne Feinstein, D-Calif., ‘is prepared to be critical of this university’ unless UC not only tackles anti-Jewish bigotry but also makes clear that perpetrators will be punished.” The lawyer Ken White wrote that “Blum threatened that his wife … would interfere and make trouble if the Regents didn’t commit to punish people for prohibited speech.” As campus First Amendment lawyer Ari Cohn put it the following day, “Feinstein and her husband think college students should be expelled for protected free speech.”

#### The UC’s adoption of the State Department’s definition is overreaching, it makes violations easy and denies nearly any constructive criticism

Greenwald 15

Greenwald, Glenn. (Greenwald is one of three co-founding editors of The Intercept. He is a journalist, constitutional lawyer, and author of four New York Times best-selling books on politics and law) "The Greatest Threat to Campus Free Speech Is Coming From Dianne Feinstein and Her Military-Contractor Husband." The Intercept. N.p., 25 Sept. 2015. Web. 10 Dec. 2016. <https://theintercept.com/2015/09/25/dianne-feinstein-husband-threaten-univ-calif-demanding-ban-excessive-israel-criticism/>. [Premier]

The specific UC controversy is two-fold: whether, in combating “anti-semitism,” the university should adopt the State Department’s controversial 2010 definition of that term, and separately, whether students who express ideas that fall within that definition should be formally punished up to and including permanent expulsion. What makes the State Department definition so [is] controversial — particularly for an academic setting — is that alongside uncontroversial and obvious examples of classic bigotry (e.g., expressing hateful or derogatory sentiments toward Jews generally), that definition includes a discussion of what it calls “Anti-Semitism Relative to Israel.”¶ How does speech about Israel become “anti-Semitic”? According to the State Department, “anti-Semitism” includes those who (1) “Demonize Israel” by “drawing comparisons of contemporary Israeli policy to that of the Nazis” or “blaming Israel for all inter-religious or political tensions”; (2) espouse a “Double standard for Israel” by “requiring of it a behavior not expected or demanded of any other democratic nation” or “multilateral organizations focusing on Israel only for peace or human rights investigations”; or (3) “Delegitimize Israel” by “denying the Jewish people their right to self-determination, and denying Israel the right to exist.” The State Department generously adds this caveat at the end: “criticism of Israel similar to that leveled against any other country cannot be regarded as anti-Semitic.”¶ The ironies of this definition are overwhelming. First, it warns against advocating a “double standard for Israel” — at exactly the same time that it promulgates a standard that applies only to Israel. Would the State Department ever formally condemn what it regards as excessive or one-sided criticism of any other government, such as Russia or Iran? Why isn’t the State Department also accusing people of bigotry who create “double standards” for Iran by obsessing over the anti-gay behavior of Iran while ignoring the same or worse abuses in Saudi Arabia, Egypt and Uganda? The State Department is purporting to regulate the discourse surrounding just one country — Israel — while at the same time condemning “double standards.”¶ Worse, this State Department definition explicitly equates certain forms of criticism of Israel or activism against Israeli government policies with “anti-Semitism.” In other words, the State Department embraces the twisted premise that a defining attribute of “Jews” everywhere is the actions of the Israeli government, which is itself a longstanding anti-Semitic trope.¶ But most important of all, whatever you think of this State Department definition, it has no place whatsoever regulating which ideas can and cannot be expressed in an academic institution, particularly one that is run by the state (such as the University of California). Adoption of this “anti-Semitism” definition clearly would function to prohibit the advocacy of, say, a one-state solution for the Israel-Palestine conflict, or even the questioning of a state’s right to exist as a non-secular entity. How can anyone think it’s appropriate to declare such ideas off limits in academic classrooms or outlaw them as part of campus activism?

### Neoliberalism

#### Colleges and universities are key to combatting neoliberalism

Polychroniu interviewing Giroux ’13 C.J. and Henry A. (C.J. Polychroniou is a political economist/political scientist who has taught and worked in universities and research centers in Europe and the United States. Henry A. Giroux currently holds the Global TV Network Chair Professorship at McMaster University in the English and Cultural Studies Department.) Neoliberalism and the Politics of Higher Education: An Interview With Henry A. Giroux, Truthout, March 26,2013, Date Accessed 12/20/16, <http://www.truth-out.org/news/item/15237-predatory-capitalism-and-the-attack-on-higher-education-an-interview-with-henry-a-giroux> [Premier]

**Chronis Polychroniou:** How do you define neoliberalism?

**Henry Giroux:** Neoliberalism, or what can be called the latest stage of predatory capitalism, is part of a broader project of restoring class power and consolidating the rapid concentration of capital. It is a political, economic and political project that constitutes an ideology, mode of governance, policy and form of public pedagogy.

As an ideology, it construes profit-making as the essence of democracy, consuming as the only operable form of citizenship, and an irrational belief in the market to solve all problems and serve as a model for structuring all social relations. As a mode of governance, it produces identities, subjects, and ways of life free of government regulations, driven by a survival of the fittest ethic, grounded in the idea of the free, possessive individual, and committed to the right of ruling groups and institutions to accrue wealth removed from matters of ethics and social costs.As a policy and political project, neoliberalism is wedded to the privatization of public services, selling off of state functions, deregulation of finance and labor, elimination of the welfare state and unions, liberalization of trade in goods and capital investment, and the marketization and commodification of society.As a form of public pedagogy and cultural politics, neoliberalism casts all dimensions of life in terms of market rationality. One consequence is that neoliberalism legitimates a culture of cruelty and harsh competitiveness and wages a war against public values and those public spheres that contest the rule and ideology of capital. It saps the democratic foundation of solidarity, degrades collaboration, and tears up all forms of social obligation. **Polychroniou:** You claim neoliberalism is the most dangerous ideology of our times. In what ways? **Giroux:** Neoliberalism creates a political landscape that destroys the social state, social protections, and democracy itself. As a theater of cruelty, it produces massive inequality in wealth and income, puts political power in the hands of ruling financial elites, destroys all vestiges of the social contract, and increasingly views those marginalized by race, class, disability and age as redundant and disposable. It facilitates the dismantling of democracy and the rise of the punishing state by criminalizing social problems and ruling through a crime-control complex. It also removes economics and markets from the discourse of social obligations and social costs.The results are all around us, ranging from ecological devastation and widespread economic impoverishment to the increasing incarceration of large segments of the population marginalized by race and class. The language of possessive individualism now replaces the notion of the public good and all forms of solidarity not aligned with market values. Under neoliberalism the social is pathologized. As public considerations and issues collapse into the morally vacant pit of private visions and narrow self-interests, the bridges between private and public life are dismantled, making it almost impossible to determine how private troubles are connected to broader public issues. Long-term investments are now replaced by short-term profits while compassion and concern for others are viewed as a weakness.Neoliberalism drains the pubic treasury while feeding the profits of the rich and the voracious military-industrial complex. In the end, it abolishes institutions meant to eliminate human suffering, protect the environment, ensure the right of unions, and provide social provisions. It has no vision of the good society or the public good and it has no mechanisms for addressing society's major economic, political, and social problems. **Polychroniou:** What is, for you, the role and the mission of the university? **Giroux:** Higher education must be understood as a democratic public sphere - a space in which education enables students to develop a keen sense of prophetic justice, claim their moral and political agency, utilize critical analytical skills, and cultivate an ethical sensibility through which they learn to respect the rights of others. Higher education has a responsibility not only to search for the truth regardless of where it may lead, but also to educate students to make authority and power politically and morally accountable while at the same time sustaining a democratic, formative public culture. Higher education may be one of the few public spheres left where knowledge, values and learning offer a glimpse of the promise of education for nurturing public values, critical hope and a substantive democracy. Democracy places civic demands upon its citizens, and such demands point to the necessity of an education that is broad-based, critical, and supportive of meaningful civic values, participation in self-governance, and democratic leadership. Only through such a formative and critical educational culture can students learn how to become individual and social agents, rather than merely disengaged spectators, able both to think otherwise and to act upon civic commitments that demand a reordering of basic power arrangements fundamental to promoting the common good and producing a meaningful democracy.

**Polychroniou:** For years now, you have been saying that higher education is under attack by market fundamentalism - and you are, of course, absolutely right. Why are governments all over the world keen on turning public universities into training facilities for corporations?m**Giroux:** In the United States and in many other countries, many of the problems in higher education can be linked to low funding, the domination of universities by market mechanisms, the rise of for-profit colleges, the intrusion of the national security state, and the lack of faculty self-governance, all of which not only contradicts the culture and democratic value of higher education but also makes a mockery of the very meaning and mission of the university as a democratic public sphere. Decreased financial support for higher education stands in sharp contrast to increased support for tax benefits for the rich, big banks, military budgets, and mega corporations. Rather than enlarge the moral imagination and critical capacities of students, too many universities are now wedded to producing would-be hedge fund managers, depoliticized students, and creating modes of education that promote a "technically trained docility." Strapped for money and increasingly defined in the language of corporate culture, many universities are now driven principally by vocational, military and economic considerations while increasingly removing academic knowledge production from democratic values and projects. The ideal of the university as a place to think, to engage in thoughtful consideration, promote dialogue and learn how to hold power accountable is viewed as a threat to neoliberal modes of governance. At the same time, higher education is viewed by the apostles of market fundamentalism as a space for producing profits, educating a docile labor force, and a powerful institution for indoctrinating students into accepting the obedience demanded by the corporate order.

### Online Civility

#### Professors’ online speech is subject to a “civility” test to determine if it can be used for discharge, aff gets rid of that standard

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CONN, KATHLEEN. (Dr. Conn received her J.D. and her LL.M. in Corporate Law and Finance, both with honors, from Widener University School of Law) "REGULATING PROFESSORS’ ONLINE SPEECH: ACADEMIC FREEDOM OR “INCIVILITY”." Ed. Richard S. Vacca. THE COMMONWEALTH EDUCATIONAL POLICY INSTITUTE 14 (March 2016): 1-8. THE COMMONWEALTH EDUCATIONAL POLICY INSTITUTE AN INSTITUTE IN THE CENTER FOR PUBLIC POLICY. Web. 10 Jan. 2017. [Premier]

Civility as a standard for employment decisions in any context, but especially in academia, is¶ problematic. Civility can be viewed differently by different individuals at different times, and the need¶ to be viewed as “civil” may stall or foreclose full discussion of sensitive issues. The basic premise of the¶ First Amendment is defense of the “marketplace of ideas.”¶ At public institutions, contrary to Garcetti, professorial speech may be protected by the First¶ Amendment, but at the current time that protection is jurisdiction dependent, with Circuit Courts of¶ Appeals creating contradictory precedents for lower courts. In addition, the very different and more¶ expansive nature of online speech may influence the outcome of any institutional disciplinary¶ deliberation. The more controversial or profane the speech, the wider its dissemination, and the more¶ tangential to the professor’s assigned teaching duties, the less likely is First Amendment protection. Bad¶ publicity translates into decreased funding, alumni and otherwise. Boards of Trustees fully comprehend¶ this reality.¶ A professor’s duties revolve around teaching and scholarship, with institutions of higher¶ education known as “teaching institutions” or “research institutions.” However, the common¶ denominator is that institutions hire certain faculty members because the institutional search committees¶ collectively decide that the successful candidates will fulfill a need in the institution, and will be a “good¶ fit” with the institution’s mission, goals, and colleagues. Even so, rescission of Steven Salaita’s job offer¶ because of his tweets was unprecedented.¶ What should be the guiding principles for professorial speech online? First, professors are by¶ collective reputation “smart.” Publishing controversial opinions in inflammatory rhetoric, without¶ substantive factual support or elaboration, is not smart, and allowing those opinions to be broadcast¶ online to the world is even less smart. Second, professors should remember the caution of the AAUP:¶ the public, including donors to universities, may indeed interpret professorial speech as representing the¶ university’s mission and vision.¶ On the other hand, civility cannot be an excuse for bad decisions. As one commentator remarked,¶ college and university administrators must take care not to create campuses of “nice people” where¶ professors are afraid to state well-supported, but unpopular opinions. The Foundation for Individual¶ Rights in Education (FIRE) recently surveyed 437 institutions of higher education and asserts that 55%¶ maintain severely restrictive speech policies for students and faculty, prohibiting protected speech under¶ the guise of respect for others and civility. College and university administrators must re-examine their¶ speech policies together with their legal counsel, to make sure that protected speech rights are not¶ abridged.

### Qualified Immunity

#### Plantiffs are barred from suing university officials in their official capacity, the only way they can is through personal capacity

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**[Bracketed for gendered language]**

Section 1983’s requirement of action under color of state law means that the government official must have exercised power “pos- sessed by virtue of state law and made possible only because the wrong- doer is clothed with the authority of state law.”11 The United States Supreme Court has held that if an official’s conduct satisfies the state action requirement of the Fourteenth Amendment, such conduct also constitutes action under color of state law and will support a § 1983 suit.12 To constitute state action, “the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible,” and “the party charged with the deprivation must be a person who may fairly be said to be a state actor.”13 official acts under color of state law when he undertakes the action in his official capacity or pursuant to his responsibilities under state law.14 Section 1983 suits may be brought against government officials in either their personal capacity or their official capacity. A personal capac- ity suit aims to impose personal liability upon a public official for ac- tions taken under color of state law,15 whereas an official capacity suit “generally represent[s] only another way of pleading an action against an entity of which an officer is an agent.”16 The Court has stated that “[a]s long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity . . . . It is not a suit against the official personally, for the real party in interest is the entity.”17 Whereas a damages award against an official in his personal capacity is executed against the official’s personal assets, a plaintiff seeking damages in an official capacity suit looks to recover from the government entity itself.18 Additionally, a plaintiff in an official capacity suit must do more than demonstrate the deprivation of a federal right by a government official acting under color of state law; he or she must also demonstrate that the government entity was a “moving force” behind the deprivation and that the entity’s “policy or custom” played a part in the violation of federal law.19 Finally, an official named as a defendant in an official capacity suit cannot use qualified immunity as a defense, but rather can only avail him or herself of the sovereign immunity that the entity, as an entity, might possess.20 A plaintiff seeking monetary damages under § 1983 for violation of a federal right by a state government official, such as a public college or university administrator, must pursue a personal capacity suit rather than an official capacity suit.21 This is due to the fact that “absent waiver by the State or valid congressional override, the Eleventh Amendment bars damages actions against a State in federal court,”22 and this bar “remains in effect when state officials are sued for damages in their official capacity.”23 The latter point reflects the reality that a judgment against a public official in [their] his official capacity imposes liability on the entity that [they] he represents.24 The Court has made clear that § 1983 does not constitute a valid congressional override for purposes of Eleventh Amendment immunity,25 thereby making damages unavailable in a § 1983 suit against a state official in his or her official capacity. There- fore, plaintiffs seeking monetary damages for a state official’s act must pursue a personal capacity suit.

#### Speech Codes have proliferated on college and university campuses, and given the defeat of speech codes in court, qualified immunity should be denied to public university administrators

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In spite of the case law, speech codes have proliferated on college campuses. In fact, the Foundation for Individual Rights in Education’s most recent annual speech code report found that 266 out of 375 col- leges and universities surveyed, or 71 percent, maintained “at least one policy that both clearly and substantially restricts freedom of speech.”120 Significantly, the report found that this percentage remained the same among public colleges and universities surveyed,121 despite the fact that public institutions are legally bound by the guarantees of the First Amendment. Thus, the case law has not stemmed the tide of speech codes, as officials at public universities continue to fail to respect stu- dents’ free speech rights. Given the uniform defeat of speech codes in the courts over ap- proximately the past two decades, including two federal circuit court decisions in Dambrot and DeJohn, courts should deny qualified immu- nity to public university administrators being sued in their personal ca- pacities under § 1983 for drafting and maintaining speech codes. The two-part test for qualified immunity asks, first, whether the facts al- leged, taken in the light most favorable to the party asserting injury, demonstrate violation of a statutory or constitutional right122 and, sec- ond, whether that right was “clearly established” at the time of the gov- ernment official’s alleged conduct, such that it would have been clear to a reasonable person that the conduct was unlawful under the circum- stances of the case.123

#### Speech codes are unconstitutional and jeopardize one of the fundamental rights of the American Republic

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The act of depriving public university students of their freedom of expression by maintaining a doctrinally flawed speech policy is a consti- tutional violation for the purposes of the first prong. Whether or not a speech code has ever been enforced, its very existence will chill expres- sion on campus.124 The Supreme Court has made clear that “[t]he loss of First Amendment freedoms, for even minimal periods of time, un- questionably constitutes irreparable injury.”125 It has held that “[t]he Constitution gives significant protection from overbroad laws that chill speech within the First Amendment’s vast and privileged sphere,”126 and that consequently “constitutional violations may arise from the deter- rent, or ‘chilling,’ effect of government regulations that fall short of a direct prohibition against the exercise of First Amendment rights.”127 Moreover, that the freedom of speech guaranteed by the First Amendment is one of the most essential and sacred rights belonging to Americans makes the constitutional violation all the more blatant. The Court has eloquently expressed the “need to preserve inviolate the con- stitutional rights of free speech, free press and free assembly” because “[t]herein lies the security of the Republic, the very foundation of con- stitutional government.”128 It has made clear that “‘precision of regula- tion must be the touchstone in an area so closely touching our most precious freedoms,’” in order that “[t]he danger of [the] chilling effect upon the exercise of vital First Amendment rights” be avoided.129 Re- garding the particular importance of free expression in college, the Court has stated that “[t]he Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues, [rather] than through any kind of authoritative selection.’”130 With these pronouncements in mind, it is patent that the drafting and implementation of speech codes curtailing a wide swath of protected speech is a constitutional violation.

#### The ruling on university speech codes is clear—they are unconstitutional

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With respect to the second element of the qualified immunity test, the law regarding speech codes is by now clearly established. The case law, from Doe in 1989 to Smith in 2010, is remarkable for its consistent results, as the courts have on each occasion rejected the implementation of a doctrinally flawed speech code and acted to uphold campus speech rights.131 The Third Circuit’s 2008 decision in DeJohn is perhaps the most important among the recent cases. As a federal circuit court opin- ion which spoke forcefully of students’ speech rights, DeJohn should send an unequivocal message, once and for all, to university administra- tors that they risk personal liability by maintaining speech codes. In other words, DeJohn should set the final nail in the coffin for the argu- ment that the judiciary has not provided a clear indication of the legal tenability of university speech codes. It is true that there have been a finite number of speech code deci- sions to date and that not every single type of speech code imaginable has been litigated.132 However, as discussed in the previous section,133 in order for a government official’s conduct to constitute violation of clearly established law, it is not necessary that the precise action have been held unlawful by a prior decision. Rather, the law regarding qualified immunity requires that “in the light of pre-existing law the unlaw- fulness must be apparent.”134 The Supreme Court has held that “a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though the ‘the very action in question has [not] previously been held unlawful.’”135 Elsewhere, the Court has stated that “officials can still be on notice that their conduct violates established law even in novel factual circumstances . . . . Although earlier cases involving ‘fundamentally simi- lar’ facts can provide especially strong support for a conclusion that the law is clearly established, they are not necessary to such a finding.”136 Under these principles, the fact that courts have overturned speech codes on all eleven occasions that they have been litigated to a final decision—and, conversely, have not upheld them on a single occa- sion137—should convey to any reasonable university administrator that speech codes are legally untenable at public colleges and universities. The courts have made clear that a university speech regulation, which is facially vague or overbroad, or both, will be struck down on constitu- tional grounds.138 It is an outrage—and a violation of clearly estab- lished law—for colleges and universities to continue to maintain overbroad or vague speech policies, as the unlawfulness of such practice should be apparent on its face.139 Administrators should be aware that student speech at public institutions is generally entitled to the full pro- tection of the Constitution and therefore should not be proscribed by university policy, except in those narrow instances where it would meet one of the prohibited categories under the First Amendment.140 Free- dom of speech should be the norm, not the exception, on college campuses.

#### The Supreme Court’s decision gives enough notice to university officials that speech codes will pierce qualified immunity

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In the cases discussed in the previous section,227 the Supreme Court strongly defended the free speech rights of students at public col- leges and universities. The federal circuit courts, in case law spanning decades, have largely followed the Court’s jurisprudence. The First,228 Second,229 Fourth,230 Fifth,231 Sixth,232 Seventh,233 and Eighth234 Cir- cuits have all, for example, upheld students’ speech rights in cases arising from applied violations. While the respective decisions of the circuit courts represent a mere sampling of the case law on university students’ expressive rights, they lend additional weight to the lessons of the Su- preme Court cases.235 That is, they should make it even clearer to uni- versity officials that they must take great care to avoid violating students’ speech rights. The decisions of the Supreme Court and the federal circuits are sufficient to defeat qualified immunity in the vast majority of cases chal- lenging applied violations. University officials should, as part of their basic training and education, be expected to be familiar with the hold- ings of Supreme Court cases pertaining to their work responsibilities and functions. They also should be aware of federal circuit court deci- sions following those important precedents, whether taking place within their own circuit or a sister circuit. Even where their circuit has not clearly established the unlawfulness of a particular First Amendment deprivation, the decisions of the sister circuits, taken in conjunction with the Supreme Court’s holdings, will typically be sufficient to create “a consensus of cases of persuasive authority such that a reasonable of- ficer could not have believed that his actions were lawful.”236 While the case law is not exhaustive and has not addressed every potential applied violation as a specific proposition, it provides adminis- trators with the general constitutional rules governing university stu- dents’ expressive rights to defeat qualified immunity. As the Supreme Court has made clear, the doctrine of qualified immunity does not turn on whether “the very action in question has previously been held unlaw- ful,” but rather requires that “in the light of pre-existing law the unlaw- fulness must be apparent.”237 In the Court’s words, “general statements of the law are not inherently incapable of giving fair and clear warning,” and in many instances “a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though the ‘the very action in question has [not] pre- viously been held unlawful.’”238 Under these principles, the Supreme Court’s strong defense of stu- dents’ expressive rights at public colleges and universities in case law spanning decades, put together with the holdings of circuit courts in cases challenging applied violations, provides university officials with sufficient notice for purposes of qualified immunity. The case law should convey to administrators that the vast majority of student speech and expressive conduct is entitled to constitutional protection, and that restrictions on student speech are only permissible in narrow, excep- tional cases. Moreover, as previously discussed,239 these principles have been af- firmed by both Congress and the Office for Civil Rights (OCR), mak- ing them even clearer and, consequently, more difficult to ignore. In two separate “sense of Congress” resolutions within the past twelve years, Congress has expressed that our nation’s institutions of higher education are places where the free exchange of ideas is to be pro- moted.240 Likewise, OCR has responded to the abuse of overbroad har- assment rationales in speech codes by making clear that colleges and universities seeking to comply with federal harassment regulations should not infringe upon protected student speech.241 In other words, the legislative and executive branches of our federal government have joined the judiciary in calling for colleges and universities to uphold students’ expressive rights. These declarations lend additional weight to the Supreme Court’s jurisprudence and the federal circuit court decisions, making universi- ties’ infringements upon students’ free speech rights all the more unrea- sonable and, ultimately, indefensible. Given the different sources of authority on this matter, courts adjudicating student suits challenging applied violations should deny qualified immunity to administrators in all but the most exceptional cases.

#### Piercing qualified immunity will force university officials to be held accountable and possibly do away with speech codes

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This Article asserts that because the law governing students’ speech rights at public colleges and universities is clearly established, university officials should not be granted qualified immunity, except in rare cases, for applied violations of students’ free speech rights. The Article also posits that because speech codes at public institutions have been clearly shown to be unconstitutional, administrators are not entitled to quali- fied immunity for drafting and maintaining speech codes. Denial of qualified immunity in either type of case should not come as a surprise to a university official who has followed the develop- ment of the law, particularly over the past two decades. University ad- ministrators, whose work duties and very reason for existence on campus require a proper understanding of student rights, must afford students’ free speech rights the level of respect and protection to which they are entitled. This should logically follow from administrators’ basic training and experience, as well as from the case law and policy updates they typically receive from such organizations as the National Associa- tion of College and University Attorneys (NACUA),292 the Association for Student Conduct Administration (ASCA),293 and others. The com- bination of prior and ongoing education should be sufficient to keep administrators well-informed on issues that are central to their job func- tions and responsibilities. It is patently unreasonable for university offi- cials in positions of authority to plead ignorance when, first, their official duties require given knowledge and understanding of the law294 and, second, they have reasonable access to the relevant information.295 Nevertheless, public colleges and universities continue to ignore and violate their students’ First Amendment right to free speech, mak- ing student responses, including litigation, necessary. Crucially, § 1983 provides a vehicle for individuals to vindicate federal constitutional and statutory rights such as the right to freedom of speech, and an important aspect of § 1983 litigation is the ability to hold government officials liable in their personal capacity for monetary damages. Suits brought against officials in their personal capacity serve the public interest in “hold[ing] public officials accountable when they exercise power irre- sponsibly”296 and in “deterrence of unlawful conduct and . . . compen- sation of victims.”297 In this way, individuals are able to use the courts as a check on the abuse of authority by government officials and thereby advance compliance with the law. As discussed, speech codes have persisted and indeed proliferated at colleges and universities despite two decades of cases uniformly invali- dating them.298 The most telling statistic, taken from FIRE’s 2009 speech code report,299 is that 71 percent of institutions surveyed main- tained “at least one policy that both clearly and substantially restricts freedom of speech,” with the percentage remaining the same among public colleges and universities surveyed.300 Thus, administrators either lack an understanding of the lessons to be drawn from the case law or are acting in defiance of the law, or perhaps in some cases both. Whatever the case may be, they are simply not “getting it.” Students should therefore utilize personal capacity suits under § 1983 in order to vindicate their speech rights by holding university administrators individually accountable for drafting and maintaining speech codes. This requires courts to pierce qualified immunity. Once courts begin to award damages to students who have been harmed by the existence of speech codes, administrators will suddenly face a differ- ent set of incentives. Faced with the real prospect of paying monetary damages out of their own pockets, administrators will be forced to re- consider their institution’s stated policies toward student speech. They will have to address the constitutional infirmities presented by these pol- icies. On many if not most campuses, this will likely result in eradica- tion of speech codes and rewriting of speech regulations to comport with the guarantees of the First Amendment, creating a major victory for students’ free speech rights. Likewise, piercing qualified immunity in cases of applied violations will change the calculus for administrators and force them to confront the First Amendment problems in their practices. Despite decades of case law from the Supreme Court and federal circuit courts affirming the sanctity of freedom of speech at public colleges and universities,301 these institutions continue to violate their students’ speech rights. The examples provided of applied violations from recent years302 demon- strate that such violations take many different forms and revolve around varying fact patterns, but that the end result is the same: student expres- sion is censored or punished despite its clear entitlement to constitu- tional protection and, often, its tame and innocuous nature. Again, far too many administrators are not “getting” the message from the case law, either because they fail to understand the rights belonging to stu- dents on public campuses or because they willfully ignore those rights, or in some cases both. Therefore, students should pursue personal capacity suits under § 1983 for applied violations of their free speech rights. If courts pierce qualified immunity in such cases, they will provide students with the ability to use § 1983 as a check against the abuse of authority by public university officials. As the author has shown, courts have already re- jected qualified immunity in a number of cases arising from applied violations.303 If more courts do the same in future cases, the result on many campuses will likely be that administrators, facing a powerful dis- incentive with respect to violations of student speech rights, will more closely examine the impact of their actions on those rights. Knowing that they will face personal liability for monetary damages if their ac- tions are found to violate clearly established law, officials at public col- leges and universities will be less likely to restrict the exercise of speech and expressive activity protected by the First Amendment. This too will represent a major victory for students’ free speech rights at public col- leges and universities.Ultimately, litigation under § 1983 is one of many weapons to be used in the fight against campus censorship and punishment of student speech.304 Freedom of speech is one of the most sacrosanct rights pos- sessed by Americans and certainly at public colleges and universities, where the freedom of students to interact, debate, and exchange views is crucial to the university’s ability to fulfill its mission as a true “market- place of ideas.” This Article posits that § 1983 litigation against public university officials in their personal capacity is a crucial vehicle for vindi- cating students’ speech rights and that, in order to allow these suits to proceed, courts should pierce qualified immunity. By doing so, the ju- diciary can act as a check against university administrators’ abuse of authority. It is the author’s hope that this will have the long-term effect of upholding and protecting students’ speech rights on public university campuses, a result that would greatly benefit students, their institutions, and ultimately society as a whole.

## Morals



### Free Speech Framework

#### Freedom of speech and the press is key to check abuses of power and uphold community norms.

Larson 13

Robert G Larson III, MA Journalism and Mass Communication from Minnesota, “FORGETTING THE FIRST AMENDMENT: HOW OBSCURITY-BASED PRIVACY AND A RIGHT TO BE FORGOTTEN ARE INCOMPATIBLE WITH FREE SPEECH” 18 Comm. L. & Pol'y 91, Winter 2013 [Premier]

The final First Amendment theory to be discussed here is Vincent Blasi's checking value theory. n200 Motivated by the concerns about the abuses of government officials expressed in works by John Locke and Cato, as well as later American Revolution era writers, Blasi's theory posits that free speech is necessary to prevent abuse of the trust and power that society invests in public officials and the government. n201 In many ways, the theory may be seen as a corollary to the self-governance theory, and it arises out of the same democratic principles undergirding Meiklejohn's theory. n202 The checking value theory suggests that robust protection of First Amendment speech and press freedoms allow people to report and discuss official dereliction, thus granting the citizens a "veto power to be employed when the decisions of officials pass certain bounds." n203 However, while Meiklejohn's self-governance theory is concerned primarily with the right of citizens to discuss matters with which the government may disagree, n204 Blasi's checking value theory is focused on the right of the press to expose to the public government actions with which the public disagrees. n205¶ At the heart of Blasi's theory is the tacit recognition of the problems caused by obscurity. He points to the difficulties inherent in discovering official wrongdoing, and in disseminating information about it to the public. n206 And, although Blasi describes his theory in terms of the press serving as a watchdog to protect the people from the government, n207 it can be applied to private individuals, as well. n208 Erwin Chemerinsky notes that "[t]he First Amendment ... is not limited to protecting speech related to the political process. Speech can benefit people with information relevant to all aspects of life." n209 There may be any number of reasons why one individual needs or wants to know things about another, from learning about the unsavory, unsanitary or unscrupulous [\*119] practices of a local professional n210 to the protective quasi-neighborhood watch activities of the nosy neighborhood gossip. n211¶ The harm caused by a person's misconduct is every bit as real, regardless of his status as a public official or private citizen. Indeed, many times, the injury inflicted on one individual at the hands of another is far greater than the abstract harm he suffers from the misconduct of a public official, who is merely a single cog in the bureaucratic machine of government. Thus, it can be argued that the reasoning Blasi uses to justify speech with respect to public officials applies equally to speech about an individual. As discussed in relation to the self-fulfillment theory, individuals have an interest in the workings and operation of their community. n212 Accordingly, it is in the individual's interest to learn of and correct undesirable events and situations.

#### Free exchange of ideas is a public good – allows us to replace our ideas, beliefs, and assumptions which better ones. We shouldn’t take anything for granted before it’s tested by competition in the marketplace of ideas

Larson 13

Robert G Larson III, MA Journalism and Mass Communication from Minnesota, “FORGETTING THE FIRST AMENDMENT: HOW OBSCURITY-BASED PRIVACY AND A RIGHT TO BE FORGOTTEN ARE INCOMPATIBLE WITH FREE SPEECH” 18 Comm. L. & Pol'y 91, Winter 2013 [PDI]

One of the best-known theories supporting the First Amendment right of freedom of expression is the marketplace of ideas. At its core, **the marketplace of ideas theory holds that unencumbered free speech is a public good because it enables members of society to evaluate and compare their ideas, beliefs and assumptions.** n162 **In doing so, they are able to exchange incorrect or unsound notions for better ones.** n163 Although the concept arises from John Milton's Areopagitica, it was introduced to American First Amendment jurisprudence in 1919 by Oliver Wendell Holmes Jr. n164 In his characteristic eloquence, Justice Holmes encapsulated the concept thusly: **If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition.** To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole heartedly for the result, or that you doubt either your power or your premises. **But when** [**humans**] men **have realized that time has upset many fighting faiths**, **they may come to believe even more** than they believe the very foundations of their own conduct **that the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out**. n165

#### The importance of self-fulfillment requires a right to free speech—individuals must have free access to all information that affects them.

Larson 13

Robert G Larson III, MA Journalism and Mass Communication from Minnesota, “FORGETTING THE FIRST AMENDMENT: HOW OBSCURITY-BASED PRIVACY AND A RIGHT TO BE FORGOTTEN ARE INCOMPATIBLE WITH FREE SPEECH” 18 Comm. L. & Pol'y 91, Winter 2013 [PDI]

The first of Emerson's justifications for a right of speech was the idea that "[m]aintenance of a system of free expression is necessary ... as assuring individual self-fulfillment." n140 Emerson wrote that this is because:¶ The achievement of self-realization commences with development of the mind. But the process of conscious thought by its very nature can have no limits. An individual cannot tell where it may lead nor anticipate its end. Moreover, it is an individual process. Every man is influenced by his fellows, dead and living, but his mind is his own and its functioning is necessarily an individual affair. n141¶ [\*110] As that passage suggests, the self-fulfillment theory finds justification for a right of free speech in both societal and individual values. n142 The social element of the theory considers the role that an individual plays in society. n143 Observing that human beings are social creatures, and that culture is created as a result of the participation of individuals in a society, Emerson arrives at two principles: (1) "that the purpose of society ... is to promote the welfare of the individual"; and (2) "that every individual is entitled to equal opportunity to share in decisions which affect him." n144 Thus, the individual has a duty to work cooperatively with others in the society, which in turn both entitles and encourages him to speak his mind. n145 In order to maximize the benefit of the relationship for the both society and the individual, the individual requires a right to access knowledge, so as to form ideas and opinions. n146¶ Apart from the value of free speech to society, the self-fulfillment theory also views freedom of expression as a purely individual right. n147 Because human beings have an innate capacity for abstract thought, reasoning and imagination, the sharing of those internal thoughts and emotions with others -- who are able to understand them -- is an intrinsic and necessary part of humanity. n148 Emerson premises this piece of his theory on the Western philosophy that "the proper end of man is the realization of his character and potentialities as a human being." n149 Regarding freedom of speech as an individual right, he reasons that:¶ [E]very man -- in the development of his own personality -- has the right to form his own beliefs and opinions. And, it also follows, that he has the right to express these beliefs and opinions. Otherwise they are of little account. For expression is an integral part of the development of ideas, of mental exploration and of the affirmation of self. The power to realize his potentiality as a human being begins at this point and must extend at least this far if the whole nature of man is not to be thwarted. n150¶ Another prolific First Amendment scholar, C. Edwin Baker, advanced a similar argument for basing a right of free speech on self-fulfillment values. n151 Professor Baker observed that "[s]peech is protected not as a [\*111] means to a collective good but because of the value of speech conduct to the individual ... [and] the way the protected conduct fosters individual self-realization and self-determination." n152 Expanding on Emerson's work, Baker anchored his formulation of this theory in the importance of autonomous decision-making, n153 noting that "any time a person engages in chosen, meaningful conduct, whether public or private, the conduct usually expresses and further defines the actor's identity and contributes to his or her self-realization." n154

#### Free speech epistemically valuable

Jacobson 16

Daniel, prof of philosophy @ Michigan, Freedom of Speech under Assault on Campus, CATO POLICY ANALYSIS NO. 796, 8-30-16, [Premier]

**Mill’s arguments for free speech anticipated several psychological phenomena that are now widely recognized: epistemic closure, group polarization, and confirmation bias, as well as simple conformism. Epistemic closure is the tendency to restrict one’s sources of information, including other people, to those largely in agreement with one’s views, thereby avoiding adverse discussion. Group polarization describes how like-minded people grow more extreme in their beliefs when unchecked by the presence of dissenters**. (Whence Nietzsche: “Madness is rare in individuals—but in groups, parties, nations, and ages it is the rule.”5) **Confirmation bias is the tendency to focus on evidence that supports what we already believe and to discount contrary evidence.** **These phenomena are widespread and well documented, and they all tend to undermine the justification of our beliefs. Hence, the toleration of unpopular opinions constitutes a prerequisite for knowledge**. Yet such toleration amounts only to its immunity to punishment, not its protection from criticism.

## ATs



### AT Bullying

#### Anti-Bullying legislation is vague and cannot give a good definition of what is considered bullying

FIRE nd Foundation for Individual Rights in Education,(FIRE launched its Stand Up for Free Speech Litigation Project in July 2014 to combat campus speech codes, so far 7 lawsuits have been successful in removing campus speech codes) FIRE’s Guide to Free Speech on Campus—Full Text, Date Accessed 12/20/16 <https://www.thefire.org/fire-guides/fires-guide-to-free-speech-on-campus-3/fires-guide-to-free-speech-on-campus-full-text-2/#__RefHeading__2646_2128351051> [Premier]

In recent years, “bullying” has garnered a great deal of media attention, bringing pressure on legislators and school administrators at both the grade-school and the college levels to crack down on speech that purportedly causes emotional harm to other students. On October 26, 2010, OCR issued a letter on the topic of bullying, reminding educational institutions that they must address actionable harassment, but also acknowledging that “[s]ome conduct alleged to be harassment may implicate the First Amendment rights to free speech or expression.”35 For such situations, OCR’s letter refers readers back to the 2003 “Dear Colleague” letter stating that harassment is conduct that goes far beyond merely offensive speech and expression. However, because it is primarily focused on bullying in the K-12 setting, the letter also urges an in loco parentis36 approach that is inappropriate in the college setting, where students are overwhelmingly adults. Under New Jersey’s 2011 Anti-Bullying Bill of Rights Act, speech that does not rise to the level of actionable harassment (or any other type of unprotected speech) is now punishable as “bullying” at public universities in the state. Critically, New Jersey’s definition lacks any objective (“reasonable person”) standard, labeling conduct as bullying if it “has the effect of insulting or demeaning any student or group of students.” As a result, students must appraise all of their fellow students’ subjective individual sensitivities before engaging in controversial or offensive speech. While the Act does require that there be a “substantial disruption” to the educational environment, it places the onus squarely on the speaker to ensure that his or her speech will not cause another student, however sensitive or unreasonable, to react in a manner that is disruptive to the educational environment (such as by engaging in self-harm or harm to others). Many of the same flaws plague the Tyler Clementi Higher Education Anti-Harassment Act, a bill reintroduced in 2015 by Senator Patty Murray and included in the Senate Democrats’ first draft of the Higher Education Act, which is currently pending reauthorization. The Act defines harassment, in relevant part, as conduct that is sufficiently severe, persistent, or pervasive so as to limit a student’s ability to participate in or benefit from a program or activity at an institution of higher education, or to create a hostile or abusive educational environment at an institution of higher education.37 Again, because of the lack of an objective, “reasonable person” standard, this formulation conditions the permissibility of speech entirely upon the subjective reaction of the listener— something courts have repeatedly ruled unconstitutional.38 Unsurprisingly, with so much attention from federal and state lawmakers, FIRE has seen a dramatic increase in the number of university policies prohibiting bullying. Many universities have addressed the issue by simply adding the term “bullying,” without definition, to their existing speech codes—giving students no notice of what is actually prohibited, and potentially threatening protected expression. Other policies explicitly restrict protected speech by calling it “bullying” or “cyber- bullying.” Examples of such policies include: At the University of South Dakota, “[t]easing, making fun of, laughing at or harassing someone over time is bullying.” Furthermore, “[u]sing university property (i.e. the USD Internet server) to bully other students (cyber bulling) [sic] or express feelings of hatred via Facebook, Twitter, email or other forms of social media is not allowed per university policy that governs the use of USD resources and facilities.”39 At Idaho State University, “[b]ullying includes harsh practical jokes, spreading rumors and gossip, teasing, taunting and using social media to humiliate and ridicule others; using aggressive communication such as insults, offensive remarks, shouting, yelling, angry outbursts, and invading others personal space; and taking intentional actions to exclude or ostracize others from a group.”40

### AT Civility

#### There are no speech codes on college campuses that are both constitutionally viable and regulate civility

Epstein-Garland ’12 Michelle(Michelle Epstein Garland is a Doctoral Student/Graduate Teaching Associate at the College of Communication and Information at the University of Tennessee) Hate Speech versus Free Speech on College Campuses: Exploring the Viability of a Constitutional and Sustainable Campus Speech Code, Campus Speech Codes, 2012, Date Accessed 12/15/16 [Premier]

Many believe that it is the job of the university to promote knowledge and truth while nurturing the development and well being of its students. This can be seen by the codes presented previously in addition to the fact that all of the Pac 10 and SEC schools, with the exception of Auburn University, Louisiana State University, University of Arizona, and University of Washington, possess advertised commitments to free expression. One major issue, however, is that with speech codes, universities are trying to regulate civility, which is impossible. History has shown that regulating beliefs does not get rid of the beliefs. Instead regulation pushes them underground, potentially increasing the danger of both actions and consequences. According to an article in USA Today, “The case [Shippensburg University] illustrates how colleges' efforts to promote campus harmony can violate constitutional rights to free expression by squelching all but the most bland and conformist comments. While some views may be offensive, the best way to confront them is by encouraging open dialogue, not giving veto power to those most easily offended.”28 However, not all agree. “Hate speech is rarely an invitation to a conversation,” says another article in USA Today. “College counselors report that campuses where highly publicized incidents of hate speech have taken place show a decline in minority enrollment as students of color instead choose to attend schools where the environment is healthier.”29 Though a significant portion of the ratings is centered on harassment, this was not the intention of the paper. However, the clear majority of the speech codes receiving green lights are based on harassment. It is anticipated that this is a result of the foundation that has been established in the workplace regarding regulations of harassment. It would be interesting to explore additional workplace codes for parallels in hate speech divisions identified by FIRE and the extent to which these may be found as less restrictive on free speech. Taken together, a speech code should encourage speech, even speech that some may find offensive, while protecting students from a hostile educational environment. The key may be to educate students on challenging what they see and hear through research and discussion. As Voltaire said in 1767, “Anyone who has the power to make you believe absurdities has the power to make you commit injustices.” Based on the research and case precedents, universities can see that codes with a clearly defined regulation that is narrow in scope is more likely to hold up in court. The question is how narrow and well-defined must the code be to be deemed constitutional. To this point, no complete speech codes from universities have been found to be constitutional and workable. Employing the green light codes of the previously examined university regulations, it could be possible to piecemeal a potentially constitutional and sustainable speech code. However, because no green light was given to SEC and Pac 10 schools for some divisions, further research must be done to identify universities that have been given green lights for these divisions for a more inclusive code. Moreover, a speech code that is deemed constitutional and sustainable may not be enough to reach the goal of regulating civility, as many universities appear to be attempting. According to Shiell, “any policy, no matter how sophisticated, no matter how well-grounded in history or law or philosophy or politics, will leave something to be desired.”30

### AT Fighting Words

#### Universities overextend the court’s interpretation of fighting words to justify speech codes

FIRE nd Foundation for Individual Rights in Education,(FIRE launched its Stand Up for Free Speech Litigation Project in July 2014 to combat campus speech codes, so far 7 lawsuits have been successful in removing campus speech codes) FIRE’s Guide to Free Speech on Campus—Full Text, Date Accessed 12/20/16 <https://www.thefire.org/fire-guides/fires-guide-to-free-speech-on-campus-3/fires-guide-to-free-speech-on-campus-full-text-2/#__RefHeading__2646_2128351051> [Premier]

The law has clearly limited the fighting words exception to those words that would tend to provoke the individual to whom they are addressed into responding immediately with violence. Since *Chaplinsky*, the Supreme Court has not decided a single case in which it deemed speech to be sufficiently an instance of fighting words that could be banned. The category of fighting words, thus, is alive far more in theory than in any actual practice. Universities, however, have used an intentionally over-expansive interpretation of the fighting words doctrine as a legal justification for repressive campus speech codes, as if the college or university were populated not by students and scholars, but by emotionally unstable hooligans. For example, in unsuccessfully trying to defend its speech code from legal attack in the important case of UWM Post v. Board of Regents of the University of Wisconsin (1991), the University of Wisconsin argued that racial slurs should fall under the fighting words doctrine. The university conceded the obvious fact that speech that merely inflicts injury does not constitute fighting words, but it claimed that racist speech can still qualify as fighting words because it could provoke violence. The university argued that it is “understandable to expect a violent response to discriminatory harassment, because such harassment demeans an immutable characteristic which is central to the person’s identity.” In striking down the speech code, the United States District Court for the Eastern District of Wisconsin held that while some racist speech may of course promote violence, this could not possibly justify the university’s prohibition on all racist speech: The doctrine of overbreadth (discussed in more detail later) says that the fact that a law may restrict some narrow category of unprotected speech does not mean it may also restrict protected speech. In sum, the fighting words doctrine does not allow, as the University of Wisconsin learned, prohibition of speech that “inflicts injury.” College administrators who seek to justify speech codes by citing the fighting words doctrine demean not only the minority groups deemed incapable of listening peacefully to upsetting words and ideas, but demean as well the entire academic community. Moreover, their argument has failed in every court in which it has been made. A student on a campus of higher education, just like any citizen in a free society, is entitled, in the words of the childhood rhyme, to protection from “sticks and stones,” but not from “words.” Free people have much recourse against name-callers, without calling upon coercive, censorial authority.

### AT International Law / Norms

#### Other countries have terrible track records on free speech rights – why should we follow them

Dalmia 16

Shikha Dalmia, Reason magazine, “Debating NYU's Jeremy Waldron on Free Speech vs. Hate Speech on College Campuses” <http://reason.com/blog/2016/09/22/debating-nyus-jeremy-waldron-on-free-spe> [Premier]

**Countries with hate speech bans don't have much to show by way of stopping hate and protecting minorities. But their record of protecting free speech is way worse than America's. Here are just a few of the many, many egregious examples:**

**Canada has a Human Rights Tribunal that enforces its hate speech laws that were supposed to limit themselves to prosecuting speech that incites hatred and "could lead to a breach of the peace." What is a breach of the peace? Apparently an article by Mark Steyn**, a popular conservative columnist, titled "America Alone," **that worried about Europe's growing Muslim population and its implications for Europe's future. The tribunal decided to prosecute** both Steyn and Maclean, a highly respected magazine in Canada that published his article. Now I disagree with just about every word in Steyn's article, including "a" and "the," but hate speech? C'mon! Likewise, **Britain arrested a British politician for "racial and religious harassment" because he delivered a speech quoting Winston Churchill's unflattering description of Islam.**

### AT States CP

#### States have worse track records on free speech than the federal government

Winkler 09

Adam Winkler, UCLA law prof, Free Speech Federalism, 108 Mich. L. Rev. 153 (2009). [Premier]

Finally, Part III considers a few implications of the federalism effect in free speech law. As part of the larger movement advocating decentralization in the field of constitutional law, **some have advocated giving more authority to state and local governments to burden** even **fundamental individual rights. To the extent state and local laws fail due to poor quality, the free speech cases suggest that these governments may not be trustworthy when it comes to individual rights. A second implication is tied to the emerging literature on rights "tailoring"-that is, the practice of permitting some governmental actors, such as prisons or public schools, more leeway to regulate in ways that burden rights. The free speech cases suggest that tailoring occurs in ways that doctrine has not recognized.** The cases also call into question the underlying rationale courts have offered for applying constitutional provisions differently to distinct government entities.

# Neg



## Hate Speech, Etc.

#### This section includes most of the cards relating to hate speech, safe spaces, trigger warnings, microaggressions, speech codes designed to protect minority students, “PC” or “political correctness,” speaker invitations and de-invitations, etc.

### Causes Genocide

#### Historically, hate speech precipitates violence

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

The weakness with Beauharnais will be one of presenting evidence tending to prove that a derogatory statement about a group caused students or faculty actual and substantial harm. **European norms recognize that history provides ample cases of hate speech instigating violence. History overflows with examples making it clear that propaganda was essential to the Nazis' eventual genocide of Jews, the Hutu slaughter of Tutsis in Rwanda**,30s **the Islamist Arab Janjaweed continued mass murder and enslavement of Darfurians**,306 **the ethnic slaughter during the 2007 Kenya election**,3 07 **and the Turkish exterminationism perpetrated against Armenians.**308 **Despite indisputable centrality of hate propaganda in mass murder and hate crimes, the libertarian strain of American First Amendment law denies the potential harm** resulting from speech, increasing the vulnerability of groups on campus.

### Causes Violence, Alienation

#### Safety is an essential part of the college’s role to foster a learning environment; hate speech prevents students from accessing a full range of opportunities

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

The reasoning in **Virginia v. Black**, which recognized states' power to prohibit intimidating cross burning, **resembled international policies on hate speech more than any other Supreme Court decision in this area of law**. The next case to reach the Supreme Court on the subject might expressly reflect on the lessons of foreign jurisprudence and how to protect free expression while prohibiting violent, group-based agitation. In Black, the Court struck a delicate balance between the right of self-expression and the social dangers of true threats. Integrity to the principles of the First Amendment involves respecting self-expression while preventing intimidation. **Intellectual freedom is particularly critical to a university's mission to preserve an open educational atmosphere, but threatening discourse reviling particular groups of students detracts from their ability to participate in campus activities. Hateful intimidation is particularly incompatible with the university's role because it creates an insecure environment that detracts from students' sense of safety**. 269 **Regardless of whether an individual displays a swastika, burns a cross, or delivers a dehumanizing speech in a dormitory corridor or at a campus commons, the alienating effect is the same. Those expressions of hatred are likely to instigate violence, alienate students, create deep racial and ethnic rifts, or make for a hostile learning environment. These expressions of hatred are very different than a piece of art without any advocacy component. The onus should be on the university's administration to prove that the charged statements did intimidate or advocate discrimination, violence, or exclusion**. Parody, of course, would not fall under this definition since it enjoys First Amendment protections.270

In balancing the interests of intimidated individuals and persons wishing to express prejudiced opinions, the United States' free speech tradition provides public university officials with less latitude to punish group hatred than their administrative counterparts in countries like Canada, Germany, and England. **American jurisprudence is** nevertheless **in accord with international findings that virulent forms of hateful expressions pose a threat to public safety. International norms and foreign laws on this subject suggest that hate speech is harmful to individuals as well as groups. The risk of leaving hate speech unchecked on campuses is that the targets of violent communications remain vulnerable to more harassment. Because targeted groups and individuals are often uncertain of their safety, they tend to be wary of pursuing the full breadth of available educational opportunities, trying to avoid locations and activities that might expose them to calumny or danger**.

#### This isn’t First Amendment speech – it’s intimidation linked to group violence

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

While Black provides college administrators with a good starting point for preventing the use of hate speech on campus, it does not go far enough in identifying expressive harms. **Justice O'Connor's view for the plurality that the First Amendment protects ideologically-driven cross burning not meant to intimidate fails to recognize the symbol's intrinsically social and political connections to the Ku Klux Klan's history of racial violence and white supremacism.** 293 **The supremacist "statement of ideology," which she distinguishes from "intimidation," symbolizes an organization's effort and willingness to segregate and to create racially-polarized forums**.2 94 **The same is true of other hate, exterminationist, or genocidal symbolssuch as swastikas or Hamas flags**295 -that are displayed on campus to advance an ideological agenda. **While the burning cross has a message specifically linked to group violence in the United States, the swastika symbolizes the worldwide effort to commit genocide against Jews and to subject other non-Aryans to subservience. Its threatening message is unambiguous. Further, many forms of hate speech are overtly dehumanizing, degrading, defamatory, and exclusionary.**

### Causes Shootings

#### Hate speech must be monitored and curtailed to prevent it from escalating into violent acts on campus

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

**The potential harms are well illustrated by one of the most heinous cases of school hate speech. Dylan Klebold and Eric Harris revealed their murderous intentions, laced with neo-Nazi terms, before their gruesome attack against fellow students at Columbine High School**.280 **Had a hate speech policy been in place, school officials might have stopped them from carrying out their plans. The school did not take adequate notice of their wearing swastikas at school; writing essays about hatred, murder, and destruction; and presenting a class video project depicting their planned shooting spree**.2 81 Similarly, **Jeff Weise went on a murderous rampage at his Red Lake, Minnesota, high school after extensive racial supremacist** 282 **comments he expressed at school and on websites like www.nazi.org.**

Although not a hate speech case, the shooting spree at Virginia Polytechnic Institute and State University ("**Virginia Tech**") should be mentioned in this context because it **demonstrates the real risk of administrative inaction. Before Seung Hui Cho killed thirty-two and injured many others, he had written a story for his college creative writing class depicting a young man killing fellow students before committing suicide**.283 Even though the creative writing professor informed university officials of his concern about the violent nature of the composition, **university officials decided not to intervene**.284 It became obvious that something should have been done. **If the facts are changed and a student writes a project publically extolling and advocating the eliminationist ideologies of the Nazi Party, the Khmer Rouge, the Ku Klux Klan, or radical Islamicism, or some such genocidal or violent organization, universities should have means of dealing with what may amount to realistic threats.**

The Supreme Court regards the expressive use of symbols denoting violence to be potentially dangerous enough for states to pass laws prohibiting their public display without running afoul of the First Amendment.285 **While solely preventing the display of hateful symbols will not put an end to racist attitudes,** 286 **the state university can prohibit intimidating, true threats.**287 **The criteria courts use for identifying whether a communication poses a serious threat of unlawful violence assesses an objective listener's sense that the threatened violence will occur**.288 **The vitriolic speaker need not intend to commit the violence but only to intimidate** listeners.2 8 **9 A similar consideration should go into hate speech targeting an entire group, which threatens to harm any of its members**.

### Disempowering

#### Hate Speech silences important conversations

Goshgarian citing Delgado ’07 Gary(Gary Goshgarian is an English professor at Northeastern University and Richard Delgado is a law professor at the University of Pittsburgh and author of Understanding Words that Wound) WHAT MATTERS IN AMERICA: Reading and Writing about Contemporary Culture, Chapter 4 Do Campus Speech Codes Violate Students’ Rights , Hate Cannot be Tolerated Richard Delgado, 2007, Date Accessed 12/15/16 <http://www.ablongman.com/freshink/pdf/GOSH_029X_ch04.pdf> [Premier]

Anonymous vandals scrawl hate-filled graffiti outside a Jewish student center. Black students at a law school find unsigned fliers stuffed inside their lockers screaming that they do not belong there. At a third campus, a group of toughs hurls epithets at a young Latino student walking home late at night. In response to a rising tide of such incidents, some colleges have enacted hate-speech codes or applied existing rules against individuals whose conduct interferes with the educational opportunities of others. Federal courts have extended “hostile environment” case law to schools that tolerate a climate of hate for women and students of color. Despite the alarm these measures sometimes elicit, nothing is wrong with them. In each case, the usual and preferred response—“more speech”—is unavailable to the victim. With anonymous hate speech such as the flier or graffiti, the victim cannot talk back, for the hate speaker delivers the message in a cowardly fashion. And talking back to aggressors is rarely an option. Indeed, many hate crimes began just this way: [their] his life. Hate speech is rarely an invitation to a conversation. More like a slap in the face, it reviles and silences. College counselors report that campuses where highly publicized incidents of hate speech have taken place show a decline in minority enrollment as students of color in- stead choose to attend schools where the environment is healthier. A few federal courts have declared overly broad hate-speech codes unconstitutional, as well they should. Nothing is gained by a rule so broad it could be construed as forbidding the discussion of controversial subjects such as evolution or affirmative action. But this is not what most people mean by hate speech, nor are colleges barred from drafting narrow rules that hone in on the conduct they wish to control. And when they do, courts are very likely to find in their favor. Recent Supreme Court rulings striking down laws upholding affirmative action and approving punishment for cross-burning show that the court is not unaware of current trends. Society is becoming more diverse. Reasonable rules aimed at accommodating that diversity and regulating the conduct of bullies and bigots are to be applauded— not feared.

### Dog Whistles

#### The real danger of free speech isn’t outright offensive practices, but the use of dog whistle politics to reinforce beliefs about race and class

Loury 10

Loury, Glenn C. (Prof of Philosophy @ BU) "Self-Censorship in Public Discourse: A Theory of "Political Correctness" and Related Phenomena." Rationality and Society (2010): n. pag. Print. [Premier]

Alternatively, consider a political speaker addressing a crowd in the forum. If the significance of some words as signals of belief is known only to "insiders," their use in public allows the speaker to convey a reassuring message to some listener--"I share your values"--without alarming the others. These words are coded emblems of belief. A racist politician might use code words--"welfare queen," "criminal element," "states' rights"--to appeal to like-minded voters, while maintaining what in the intelligence world is called "plausible deniability" of this motive: If challenged, the speaker exploits the code words' ambiguity of meaning and claims that he intended no offense. Once words become emblems in this way, speakers with different values, who want not to risk being misunderstood, must abandon their use altogether.

### Language = Violence

#### There is empirical evidence that words do hurt, emotional pain is just the same if not worse than physical pain

Rosenbaum 14

Rosenbaum, Thane. (Rosenbaum, a novelist, essayist and Distinguished Fellow at New York University School of Law, is the director of the Forum on Law, Culture & Society) "Should Neo-Nazis Be Allowed Free Speech?" The Daily Beast. The Daily Beast Company, 30 Jan. 2014. Web. 12 Jan. 2017. <http://www.thedailybeast.com/articles/2014/01/30/should-neo-nazis-be-allowed-free-speech.html>. [Premier]

Over the past several weeks, free speech has gotten costlier—at least in France and Israel.¶ In France, Dieudonne M’Bala M’Bala, an anti-Semitic stand-up comic infamous for popularizing the quenelle, an inverted Nazi salute, was banned from performing in two cities. M’Bala M’Bala has been repeatedly fined for hate speech, and this was not the first time his act was perceived as a threat to public order.¶ Meanwhile, Israel’s parliament is soon to pass a bill outlawing the word Nazi for non-educational purposes. Indeed, any slur against another that invokes the Third Reich could land the speaker in jail for six months with a fine of $29,000. The Israelis are concerned about both the rise of anti-Semitism globally, and the trivialization of the Holocaust—even locally.¶ To Americans, these actions in France and Israel seem positively undemocratic. The First Amendment would never prohibit the quenelle, regardless of its symbolic meaning. And any lover of “Seinfeld” would regard banning the “Soup Nazi” episode as scandalously un-American. After all, in 1977 a federal court upheld the right of neo-Nazis to goose-step right through the town of Skokie, Illinois, which had a disproportionately large number of Holocaust survivors as residents. And more recently, the Supreme Court upheld the right of a church group opposed to gays serving in the military to picket the funeral of a dead marine with signs that read, “God Hates Fags.”¶ While what is happening in France and Israel is wholly foreign to Americans, perhaps it’s time to consider whether these and other countries may be right. Perhaps America’s fixation on free speech has gone too far.¶ Actually, the United States is an outlier among democracies in granting such generous free speech guarantees. Six European countries, along with Brazil, prohibit the use of Nazi symbols and flags. Many more countries have outlawed Holocaust denial. Indeed, even encouraging racial discrimination in France is a crime. In pluralistic nations like these with clashing cultures and historical tragedies not shared by all, mutual respect and civility helps keep the peace and avoids unnecessary mental trauma.¶ Yet, even in the United States, free speech is not unlimited. Certain proscribed categories have always existed—libel, slander and defamation, obscenity, “fighting words,” and the “incitement of imminent lawlessness”—where the First Amendment does not protect the speaker, where the right to speak is curtailed for reasons of general welfare and public safety. There is no freedom to shout “fire” in a crowded theater. Hate crime statutes exist in many jurisdictions where bias-motivated crimes are given more severe penalties. In 2003, the Supreme Court held that speech intended to intimidate, such as cross burning, might not receive First Amendment protection.¶ Yet, the confusion is that in placing limits on speech we privilege physical over emotional harm. Indeed, we have an entire legal system, and an attitude toward speech, that takes its cue from a nursery rhyme: “Stick and stones can break my bones but names can never hurt me.”¶ All of us know, however, and despite what we tell our children, names do, indeed, hurt. And recent studies in universities such as Purdue, UCLA, Michigan, Toronto, Arizona, Maryland, and Macquarie University in New South Wales, show, among other things, through brain scans and controlled studies with participants who were subjected to both physical and emotional pain, that emotional harm is equal in intensity to that experienced by the body, and is even more long-lasting and traumatic. Physical pain subsides; emotional pain, when recalled, is relived.¶ Pain has a shared circuitry in the human brain, and it makes no distinction between being hit in the face and losing face (or having a broken heart) as a result of bereavement, betrayal, social exclusion and grave insult. Emotional distress can, in fact, make the body sick. Indeed, research has shown that pain relief medication can work equally well for both physical and emotional injury.¶ We impose speed limits on driving and regulate food and drugs because we know that the costs of not doing so can lead to accidents and harm. Why should speech be exempt from public welfare concerns when its social costs can be even more injurious?¶ In the marketplace of ideas, there is a difference between trying to persuade and trying to injure. One can object to gays in the military without ruining the one moment a father has to bury his son; neo-Nazis can long for the Third Reich without re-traumatizing Hitler’s victims; one can oppose Affirmative Action without burning a cross on an African-American’s lawn.¶ Of course, everything is a matter of degree. Juries are faced with similar ambiguities when it comes to physical injury. No one knows for certain whether the plaintiff wearing a neck brace can’t actually run the New York Marathon. We tolerate the fake slip and fall, but we feel absolutely helpless in evaluating whether words and gestures intended to harm actually do cause harm. Jurors are as capable of working through these uncertainties in the area of emotional harms as they are in the realm of physical injury.¶ Free speech should not stand in the way of common decency. No right should be so freely and recklessly exercised that it becomes an impediment to civil society, making it so that others are made to feel less free, their private space and peace invaded, their sensitivities cruelly trampled upon. ¶

### Trigger Warnings / Safe Spaces

#### Turn-Trigger Warnings and Safe Spaces are key to healing from trauma and empowering minorities to speak out

Pickett ’16 RaeAnn(RaeAnn Pickett is senior director of communications and public Affairs at the National Latina Institute for Reproductive Health and a Ms. Foundation Public Voices Fellows) Trigger Warnings and Safe Spaces are Necessary, Time, August 31,2016, Date Accessed 12/6/16 <http://time.com/4471806/trigger-warnings-safe-spaces/> [Premier]

After the birth of my first son, I had postpartum depression. I was a mess emotionally, and I was in desperate need of feeling safe. I had no idea what “trigger warnings” or “safe spaces” were, but I had been using them internally for days—avoiding the mommy movies and choosing not to go to the breastfeeding support group where I felt like a failure. Being able to know beforehand what experiences I should avoid and create an environment where I felt safe made it easier for me to share my struggles and move past them. Everyone deserves that opportunity. The University of Chicago recently [decided](http://time.com/4466021/uchicago-trigger-warnings/) to put an end to trigger warnings—advance notice of subject material that might upset students—and safe spaces—places where students can avoid those subjects. The university’s reasoning for ending these voluntary practices was a “commitment to academic freedom.” In reality, this policy puts many students in the uncomfortable position of entering spaces that may or may not be safe for them to learn, interact and share in—and puts the onus on them to leave or to endure the situation. The decision doesn’t take students wants or needs into account. As the National Coalition Against Censorship [notes](http://ncac.org/resource/ncac-report-whats-all-this-about-trigger-warnings): “In many cases, the request for trigger warnings comes from students themselves.” And safe spaces can have powerful therapeutic purposes for those who enter them. In fact, the university’s new policy does the exact opposite of what it is purported to do: instead of fostering academic freedom, it could foster mistrust and negatively affect survivors of trauma, including people of color. If students cannot trust that spaces they enter are going to keep them safe, they are less able to feel secure enough to learn. Safe spaces and trigger warnings can help support victims of assault, PTSD and violence. Organizations like [Slut Walk](https://en.wikipedia.org/wiki/SlutWalk) and [Take Back The Night](http://takebackthenight.org/) have made great strides in ending stigma for sexual assault survivors and have called for increasing trigger warnings for sensitive content. A lack of safe spaces can also [compound the mental toll of racism](http://www.psychologicalscience.org/index.php/news/were-only-human), even subtle racism. Past experience with bullying plays a role here: Of the 160,000 children bullied every day, 31% are multiracial, according to Clemson University’s “[Status of Bullying in School](http://womensenews.org/2015/10/multiracial-girls-open-up-about-getting-bullied/)” 2013 report. Racial bullying often goes unnoticed or unreported due to how teachers perceive interethnic relationships. Psychologist Morris Rosenberg [found](https://etd.ohiolink.edu/!etd.send_file?accession=bgsu1182788295&disposition=inline) that African-Americans showed surprisingly high rates of self-esteem when they compared themselves with other African-Americans, but when they compared themselves to white peers, self-esteem levels dropped. Safe spaces can help minorities feel empowered to speak up. Some may say a commitment to free speech, by any means necessary, does more to foster a positive academic setting than safe spaces and trigger warnings. But the bigger question is: whose speech is being protected by these policies? They certainly don’t always foster a healthy relationship with students of color or survivors of trauma or those who live at the intersection of both. Sitting in the dark holding my newborn and struggling with undiagnosed postpartum depression, anxiety and obsessive-compulsive disorder were some of the darkest days of my life. But because of ratings systems on movies and descriptions on the TV guide, I was able to take small steps every day to commit to keeping myself mentally healthy. The pressure of living up to the stereotype of a proud, wise, confident Latina mother kept me from seeking help for a long time. But when my first postpartum depression support group facilitator said in a hushed, happy voice that this was a safe space, I felt the weight slowly start to lift from my chest. All the pent-up anxiety I had felt was dissapating—just by knowing that the physical place I chose to be in was filled with people who understood me and could help me find the tools to get well. Being able to make informed decisions about which spaces students chose to enter and not enter is critical in helping them stay well and take control over the information they decide to receive and how to receive it. A critical phase of healing involves reclaiming power and control in [positive ways](http://www.shrinkrapradio.com/442.pdf). Our universities should be at the vanguard of modeling the way forward—not backward.

#### Turn-Trigger Warnings foster inclusion and are key to learning

Lockhart ’16 Eleanor Amaranth (Eleanor Amaranth Lockhart was a competitive speech, debate, and forensics competitor for Ripon College, Eleanor Amaranth Lockhart earned her doctorate in Communication from Texas A&M University. She emphasizes rhetoric as a method of study, As a transgender woman with an extensive background in argumentation, Eleanor also has an enduring concern with the complex issue of freedom of speech, and the negotiation of safe spaces for discourse which both permit the expression of genuine beliefs and identities, while protecting the marginalized from discrimination.) Why Trigger Warnings are Beneficial, perhaps even necessary, First Amendment Studies, 50:2, 59-69, Date Accessed 12/6/16 DOI <http://dx.doi.org/10.1080/21689725.2016.1232623> [Premier]

The final and strongest argument that has been raised against trigger warnings, and the primary one to inspire this special issue, is that they impede faculty freedom of speech. My colleagues advance this argument in more detail in this issue, but I wish to briefly describe and then rebut what I see to be the strongest form of this argument. As I mentioned at the beginning of this essay, I have found my freedom of speech as a college faculty member abridged, not as a result of trigger warnings, but as a result of a similar rating system, the Motion Picture Association of America (MPAA)’s system of film ratings. The MPAA’s rating system may seem benign, but it has censorious effects. Independent filmmakers... are frustrated with what they perceive as an all too frequently arbi- trary system... which may even discriminate against them for having made a film addressed to an adult audience, which does not represent the Hollywood studios’ targeted demographic.26 The MPAA ratings system was developed to replace an even more censorious system— the Production Code, which was legally required for all films that were publicly shown. However, while the new system technically permitted films with any level of sexual or violent content to be shown, “film makers working for major distributors have had de facto censorship imposed upon them by contractual requirements to deliver an R-rated [and not NC-17 rated] film.”27 Some readers might defend trigger warnings by analogy to the usually stated intention of MPAA ratings. Both, they will argue, allow viewers fair warning before viewing content that they may find problematic. However, I believe that the MPAA ratings code is a threat to freedom of speech, not just for filmmakers but also for faculty, as I learned in Texas. Let me emphasize that trigger warnings are not MPAA warnings, and do not substantively impair faculty freedom of speech in the way that MPAA ratings do. There are three reasons for this. First, virtually all commercially distributed films receive MPAA ratings, establishing an expectation that content notices will be available even for seemingly innocuous films. (Films that the MPAA finds suitable for “general audiences” need not be accompanied by content descriptions from the association, but very few films receive a “G” rating). Consider, for example, that the Classification and Rating Administration (CARA)’s web- site lists the 2015 children’s film Alvin and the Chipmunks: The Road Chip as “rated PG for some mild rude humor and language.”28 It seems unlikely that many adult viewers would eschew the film based on such content, but some might. The virtual omnipresence in the film industry of some kind of MPAA “advisory” can thus lead to smaller audiences, to less speech. The influence of trigger warnings on college class content is different and much less than that of MPAA advisories on films. Trigger warnings direct attention to only a small fraction of any given class’s readings or discussion topics (even if the number of faculty using them seems to be increasing).29 Can we even imagine trigger warnings in physics, chemistry, or historical linguistics syllabi? The second important distinction between MPAA film ratings and trigger warnings is that MPAA warnings are displayed on the packaging and marketing materials of the film. For trigger warnings in the university system to function analogously, they would need to be displayed in the course catalog and in class descriptions. I am not aware of any university which has attempted to implement such policy, nor any movement to require such display. This distinction is important. An MPAA rating may deter many people from going to see a film (“I’m not in the mood for an R-rated movie today, even if it received that rating because of graphic violence.”) Trigger warnings, conversely, generally appear after students have selected and begun attending courses for any given semester—in course syllabi, or in instructor announcements made well after a class is underway. Finally, and most importantly, the purpose of MPAA ratings is to protect children and teens from exposure to “inappropriate” sexual or violent content and crude language. Whatever one’s opinions on the merit of such “protection,” trigger warnings serve a very different purpose. An R rating, at least in theory, prohibits anyone under the age of 17 from attending a public screening of a film unaccompanied by a responsible adult, and an NC-17 rating categorically excludes everyone who is under 18. The purpose of film ratings is to exclude; the purpose of trigger warnings is to include. As I discussed earlier in this essay, it would have been very difficult for me to attend a showing of Les Miserables shortly after a friend committed suicide by jumping, the same method that the character Javert uses in the film adaptation, had I not been warned. But I enjoyed the film and even found some catharsis from reliving a traumatic event. The film rating did not provide information that would have warned me about the suicide trigger, and its goal is to keep children from being exposed to content. Trigger warnings, conversely, allow adults to expose themselves to content with a minimal risk of trauma.

### Uniqueness – Difficult to Prosecute Now

#### Hate speech is too hard to prosecute now because of a lack of standing – the plaintiff has to show a link between the speech and a loss of reputation, so stronger speech codes are needed

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

Where the defamed group is small enough, no such historical evidence is necessary. For instance, **falsely accusing a four-person partnership of fraud because they are Jewish is likely to harm each partner's reputation.** Even if the statement did not name any of the four, **the accusation implicates each of them individually** as Jews, **providing each of them with standing to file a lawsuit. Proving**, however, **that a false statement made against a large group-for instance, purporting that the Holocaust is a hoax spread by Jewish students-**requires historical proof and **will be far more difficult** to prove. **The person filing a group defamation complaint with university authorities would need to show that the content of the statement would likely harm the reputation of an established campus organization or an identifiable but diffuse group of students or professors. Proffering historical evidence is crucial** in the second scenario **because**, unlike the smaller group example, large-scale group **defamation is difficult to link directly to the alleged defamatory statement**. I have demonstrated elsewhere, through multiple examples, how racism, antisemitism, homophobia, xenophobia, and chauvinism have been instrumental for organizing hate crimes, rapes, slavery and genocide.302

Herein lies a paradox: **Hate speech is more likely to instigate mass crimes and atrocities when it is directed against a large ethnic, religious, or racial group, but these complaints will be the least likely to succeed because of issues of standing**. Nevertheless, to assure the constitutionality of a university group defamation code, **university officials can rely on the Illinois law upheld in Beauharnai**.30 3 **The college code might, for instance, prohibit and punish any person or organization that uses university facilities to manufacture, sell, advertise, or publish any statements, graphics, or electronic communications that dehumanize, attribute criminality to, or proclaim the depravity of a class of students, faculty members, or college visitors based on their race, ethnicity religion, sexual orientation, or gender.**

### AT “Coddled”

#### Students are in no way “coddled,” by demanding things like speech codes, their activism is proof of the contrary

Cutterham 16

Cutterham, Tom. (Cutterham is a prof in the Department of History at University of Birmingham) "Today's Students Are Anything but Coddled." Times Higher Education (THE). N.p., 22 Sept. 2016. Web. 11 Jan. 2017. <https://www.timeshighereducation.com/features/todays-students-are-anything-but-coddled>. [Premier]

For a couple of years now, commentators in both the US and the UK have complained that students in higher education are becoming worryingly fragile. Coddled and hypersensitive, they allegedly spend their college years hiding from scary ideas.¶ In a recent article in The Atlantic, Greg Lukianoff, president and chief executive of the Foundation for Individual Rights in Education, and Jonathan Haidt, Thomas Cooley professor of ethical leadership at New York University, say that this approach is putting students’ education, and even their mental health, at risk. For their own good, the commentators argue, students urgently need to stop looking out for themselves and to hand control back to institutions and professors.¶ In 2014, the debate in the US on this subject centred mainly around “trigger warnings” – notices meant to inform students in advance about violent, horrific or damaging content in classroom material. By asking for such warnings, students forced academics to consider what effects the material they select might have on people with backgrounds and experiences different from their own. Some professors complained that it was easier just to avoid all remotely contentious material. But, of course, our established cultural canon is littered with torture, rape, misogyny and racism. Teaching it beyond the exclusively white, male classrooms in which it was formed has turned out to require a new approach, in which the beneficent effect of classic literature is not just taken for granted. We might call that sensitivity. We might also call it critical thought.¶ Trigger warnings, or at least the row about them, never became such a big deal in the UK. Here, the focus of attention of those concerned about “coddled students” has principally been on student activists’ attempts to disrupt speakers they disagreed with. Recently, feminist writer Germaine Greer threatened to cancel a lecture at Cardiff University after students started a petition condemning her “misogynistic views towards trans women” (although the lecture ultimately went ahead). When an anti-abortion group at Christ Church, Oxford invited two men to debate abortion on campus a year ago, it was the college that cancelled the event after student protests. Journalist Brendan O’Neill, who was supposed to speak for the pro-choice side, wrote in The Spectator that the protesters were “bereft of critical faculties and programmed to conform”. The article, “Free speech is so last century. Today’s students want the ‘right to be comfortable’”, went on to say that students were being “rebranded as fragile creatures, overgrown children who need to be guarded against any idea that might prick their souls or challenge their prejudices”.¶ But that description doesn’t fit Niamh McIntyre, one of the student activists who protested against the debate. “I don’t think students today are fragile,” she tells me. “On the contrary, we’re [they’re] more committed to rooting out pervasive sexism, racism, homophobia and transphobia, which actually takes a lot of strength. This generation of students and activists is standing up and saying that, for too long, men have spoken over women, trans and non-binary people, just as white people have spoken over people of colour. In some cases, they should shut up and listen. And sometimes, to the horror of certain academics and professional narcissists, this involves rethinking the right to speak at all times, for all people, on any topic.”¶ Opposing campus speaking invitations has also been part of the US debate after student demands for the cancellation of a series of high-profile commencement speeches, including those by Condoleezza Rice (the US secretary of state under George W. Bush, who was scheduled to address Rutgers, the State University of New Jersey) and Christine Lagarde (managing director of the International Monetary Fund, due to speak at Smith College, a women’s liberal arts college in Massachusetts). In their Atlantic article, “The Coddling of the American Mind”, Lukianoff and Haidt argue that by caving in to such demands for “disinvitations”, universities “will have reinforced the belief that it’s okay to filter out the positive”. After all, these women “could have been seen as highly successful role models for female students”. Shouldn’t that success be more important than the policies and ideas they stand for? Students should avoid focusing on speakers’ supposed failings, just as they should complain less about the misogyny, racism and class prejudice in the films and literature they are asked to study.¶ One thing that critiques of modern students have in common is a recognition of the shifting balance of power between students and faculty. A widely read article in Vox this June, “I’m a liberal professor, and my liberal students terrify me”, exemplifies the growing sense that academics no longer dominate their own classrooms. This is partly a result of the increasing precarity of academic employment. But students have also found new ways of asserting themselves, especially by using the internet. As unions are in the factory, so social media can be on the campus: an organising tool against authority, linking together voices that are otherwise marginalised and disconnected.¶ Such tools would be useless, however, if students didn’t know what to do with them. Critics assert that modern students are losing their powers of critical thinking, but what we are actually seeing is that power in action: students are using their critical faculties to uncover structures of power in their own academic and social environments. They are clearly recognising that discourse and ideas can be powerful, and that is precisely why they struggle to reshape the discursive terrain, to change the conversation in ways that further their political and moral commitments. Humanities professors should be proud.¶ This is what’s so odd about the language of coddling and hypersensitivity. If students are really so fragile, if they’re really hiding from scary ideas in a thoughtless cocoon of political correctness, why are they so often to be found out on the campus, demonstrating, protesting, petitioning and organising? That’s not what hiding looks like. It’s not what coddling looks like. In fact, the people showing greatest signs of coddling are those professors for whom the classroom has been a safe space for way too long. Now they’re apparently afraid that their “small or accidental slights”, as Lukianoff and Haidt put it, are going to get pounced on. They’d much rather students “question their own emotional reactions” than question the assumptions coming from the front of the classroom.

### AT Counterspeech

#### More speech isn’t a solution – prejudices are still too deep rooted. The notion that we can just ‘talk things out’ ignores the effectiveness of racist ideology

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

**The notion that counterspeech will adequately combat group hatred and promote civil liberties, and is sufficient to maintain tolerance on campus,** which Nadine Strossen and the ACLU have advanced,276 **has been roundly rejected by the international community**. 277 The U.S. Supreme Court has now endorsed the consensus perspective on free speech policy. **Just as with sexual harassment in the workplace, counterspeech is an inadequate remedy for the direct, intimidating attack of hate speech**.278 **Racism, chauvinism, ethnocentrism, and xenophobia are too deeply embedded in culture to be changed overnight. While public attitudes are being changed, hate speech continues to menace out-groups. Telling a university employee subject to racial or sexual coercion, racial degradation, or ethnic insults to simply respond to antagonists provides victims no legal redress but mere platitudes. Just as responding** to comments in a hostile environment **does not solve the problem of workplace harassment, neither does counterspeech decrease the risk posed by advocacy groups committed to carrying out a campus campaign of group intimidation, exclusion, and discrimination. Expecting students at public universities to simply talk things out and convince those who intimidate them of the fallacy of their threatening words and behaviors fails to provide a procedurally cognizable way of seeking legal redress**. The mantra of more speech is based on libertarian faith that **the world community discounted after it understood the effectiveness of antisemitic Nazi propaganda.**2 79 **It also elevates harassment and intimidation to an equal plane with dialogue**. To the contrary, the former is a means of disengagement with its reviled object, while the latter is a form of mutual engagement between the interlocutors.

#### Hate speech has no value to dialogue or the marketplace of ideas – it’s just dangerous

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

Allowing students or faculty members to intimidate others through hate symbols or expressions favors the bigots' desire to advocate discrimination and violence while denying the victims' reasonable expectation of security while on campus. 29 0 **The constitutional importance of the First Amendment to democratic governance and self-assertion does not extend to menacing messages that tend to diminish the targeted group's sense of security and its ability to enjoy college commons areas and to attend university sponsored events**.291 **Students and faculty members are more likely to think twice before going to hear the college orchestra or heading to the student union if it requires walking through an area where a cross has recently been burned, a swastika has been displayed, or a supremacist rally has taken place. Hate speakers are neither inviting intellectual debate and rejoinder nor seeking political dialogue. Theirs is a campaign of silencing through intimidation-something that threatens the university's "marketplace of ideas" and is no benefit to educational interactions**.292 **Academic freedom is not a license for harassment. Neither does hate speech further the pursuit for' truth: calling Jews vermin, blacks apes, women whores, Native Americans savages, Tutsis cockroaches, or Mexicans lazy has nothing to do with truth.** **These derogatory statements are meant to exclude and stamp certain groups with the label of outsider** to the university community. **Derisive speech becomes academically punishable when it is meant to defame, intimidate, threaten, terrify, or instigate violence**.

### AT General Statutes Solve

#### The burden of proof is higher for a criminal statute, so colleges and universities restricting speech is more effective

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

In formulating a university hate speech code, it is important to distinguish between disciplinary measures available to administrators and punishments connected to criminal convictions. **Educational penalties are designed to negatively impact a student's or faculty member's record, while criminal punishment is more onerous because it involves the curtailment of liberty and greater social stigma. Educators can assess penalties without following any rules of criminal procedure.** The "beyonda-reasonable-doubt" standard is meant to prevent mistaken deprivations of liberty, something that is unconnected to college sanctions. **Recognizing this contrast is important because the standard of proof for a criminal hate speech law, requiring proof beyond a reasonable doubt, is significantly more rigorous than what would be required for the censure of student hate speech**. The O'Connor plurality's requirement in Black applies within the context of criminal liability, not civil penalties. If a college hate speech code prohibits the use of a prima facie presumption of a hate speaker's mental state, requiring a clear showing of intent, the regulation would have no problem passing the plurality requirement. **College administrators are likely to have more latitude, however, because this standard of proof applies to criminal cases, not administrative codes like those that govern college campuses' activities**

### AT Silencing

#### Student activists call out racism in attempt to promote dialogue, not shut it down

Harper 16

Harper, Shaun R. (Harper is a University of Pennsylvania professor and executive director of the Center for the Study of Race and Equity in Education) "No, Protesters Who Point out Campus Racism Aren’t Silencing Anyone." The Washington Post. WP Company, 10 Mar. 2016. Web. 09 Jan. 2017. <https://www.washingtonpost.com/posteverything/wp/2016/03/10/protests-against-campus-racism-dont-threaten-free-speech-they-embrace-it/>. [Premier]

In my interviews and focus groups with college students of color, a surprising number say they remain silent about these and other threats to their sense of belonging on campuses where they pay the same tuition and fees as their white peers. Where were the critics who now see free speech under siege at universities when people of color were being silenced?¶ Protests on campuses across the nation since last November signify an unmuting of black collegians. They are suddenly speaking more loudly about the everyday racism they experience in classrooms and elsewhere on campus. Student activists are not attempting to shut down conversations at their universities. In fact, it is the exact opposite — they aim to raise the consciousness of white professors, administrators, campus police officers and peers. They want more dialogue, not less. In protests at Yale University, the University of Missouri, Princeton University, and elsewhere, black students exercised their First Amendment rights to speak freely about what they experience on campus. Are their white classmates’ and professors’ rights somehow more valuable?¶ Black activists are saying to whites on their campuses, “You deserve to know how I experienced what you just said or did to me. Perhaps knowing will ensure you don’t similarly harm or offend others in the future.” I do not hear students of color saying, “You are racist, now shut up. Stop talking.” Instead, what often happens is that being called racist instantly paralyzes white people, and they withdraw themselves from the conversation. They shut themselves down. They stop talking. But that doesn’t mean their freedom of speech has been denied.

#### Notions of colleges being political sites rather than educational sites creates a dichotomy of productive and unproductive speech that is bad for both the oppressed and the colleges themselves – it’s not a zero-sum game

Kelly-Woessner 16

KELLY-WOESSNER, APRIL. (Woessner is a professor and chairwoman of the political science department at Elizabethtown College) "The Fierce Debate over Free Speech on American College Campuses." LancasterOnline. N.p., 18 Sept. 2016. Web. 10 Jan. 2017. <http://lancasteronline.com/opinion/columnists/the-fierce-debate-over-free-speech-on-american-college-campuses/article\_8c208d66-7b65-11e6-88de-d78bce73d4c3.html>. [Premier]

Debates over free speech on campus have been framed in recent years as a zero-sum game, where freedom for one group comes at a cost to another group.¶ Speech, some have argued, is a tool of oppression and must be limited in order to protect vulnerable groups from insult and injury. In this environment, defenders of free speech are vilified as promoters of inequality.¶ Numerous professors and college presidents have been caught up in this false dichotomy. Some have been fired or bullied into resigning because they defended the rights of others to express unpopular or offensive ideas.¶ People who are far more skillful with speech than I have become victims of social media shaming or worse when their words on this subject were taken out of context to feed this deceptive narrative.¶ Why is free speech a zero-sum game on campus? The answer is that higher education has defined its mission in political terms rather than educational terms. Colleges see themselves as agents of social change. If our goal is to promote equality, it is tempting to view speech that marginalizes or offends vulnerable groups as counterproductive to our mission.¶ Politics is about power and in order for some groups to gain influence, others have to give it up. In this context, silencing one’s opponents is a fair tactic, because what matters is that one’s own ideas dominate the conversation.¶ Yet, education is not a zero-sum game. One person’s learning doesn’t decrease another’s. If focused on an educational mission, rather than a political one, free speech wouldn’t create winners and losers. If the goal is to educate, understand, and discover truth, an environment that encourages debate benefits everyone.¶ This isn’t to say that we shouldn’t have any limits on speech. Colleges are required to enforce laws against harassment, intimidation and discrimination. This isn’t what the free speech debate is about. Advocates for free speech are not condoning illegal, threatening behaviors. Rather, they oppose limitations on constitutionally protected speech and academic freedom on campus, merely because the content offends or makes someone uncomfortable.

## Kritik



### Cap

#### Many of the arguments under “Advantage Areas / Aff Ideas,” “DA – Donors/Endowment” and “Morals / Consumer Rights / Free Market” could be used as links for a capitalism argument.

### Race

#### Free speech is not neutral; it favors the powerful and its great equality is an illusion when deployed to harm racial minorities

Williams 05

Gwyneth Williams, prof of poli sci, “Hate speech codes on college campuses.” St Louis Journalism Review. [Premier]

Supporters of hate speech policies, however, argue that **the traditional defense of free speech ignores the fact that it favors those who already hold power in a society. Liberties are not wielded equally by those who do not enjoy equally; it is an empty formalism to claim that all have equal freedom to speak.** Instead, **hate speech**, and the tolerance of it, **is used to perpetuate social hierarchies. It further marginalizes the disenfranchised**.

**There is no "equal right" to engage in hate speech**, supporters point out-after all, what is the white equivalent of calling someone a "nigger"? **There is no such word that demeans whites in the way this epithet demeans African-Americans.** They argue all **students**, especially the disadvantaged, **must feel safe and accepted on a university campus if they are to experience equal access to education. Hate speech denies minorities this equal chance to learn**, say the supporters of restrictive codes.

#### The chilling effect is just white fragility, shifting the conversation of racism to white feelings and there is historical precedent for speech codes

Carpenter 16

Carpenter, Bennett. (Carpenter is a grad student of literature at Duke U.) "Free Speech, Black Lives and White Fragility." The Chronicle. Duke Student Publishing Company, 19 Jan. 2016. Web. 11 Jan. 2017. <http://www.dukechronicle.com/article/2016/01/free-speech-black-lives-and-white-fragility>. [Premier]

As I write my first column, I am thinking a lot about speech. I am thinking about how an urgent and overdue conversation about racism—on our campus and across our country—has been derailed by a diversionary and duplicitous obsession with the First Amendment. I am thinking about how quickly the conversation has shifted from white supremacy to white fragility—and how this shift is itself an expression of white supremacy.¶ White fragility refers to a range of defensive behaviors through which white people (or more accurately, people who believe they are white) deflect conversations about race and racism in order to protect themselves from race-based stress. Because white people tend to live in environments where whiteness is both dominant and invisible, they grow accustomed to racial comfort, as a result of which even a small amount of racial stress becomes intolerable. This helps explain why talking about white supremacy can feel more painful to white people than white supremacy itself, why the ostensible "stifling" of debate can feel more pressing than the literal strangulation of Eric Garner and how "free speech" seems more important than Black lives.¶ Needless to say, it requires an astounding degree of narcissism, ignorance and— yes—fragility to scan headlines detailing the daily, state-sanctioned slaughter of people of color and somehow conclude that speech is the real problem. White fragility weighs the minimal discomfort of being confronted with painful realities about race and racism against the literal death of Black and brown bodies and decides that the latter matter less than white discomfort. Which is how we end up here, talking about speech on campus and reading a dozen iterations of the same editorial in which students describe—with utterly unintentional irony—how being called out by anti-racist activists makes them feel upset and hurts their feelings.¶ This leaves those of us committed to abolishing white supremacy in a double bind. To engage with this debate is to fall for a diversionary tactic in which we again center the conversation on white feelings. To refuse to engage grants the latter a monopoly on the airways, drowning out more vital issues in an ocean of white noise. Still, in the interests of the open, honest debate the free speechers ostensibly advocate, let me try to address the constitutional and philosophical principles at play here.¶ The first point to make is that, despite the hand-wringing, I have yet to see a single example of student activists violating the First Amendment. Indeed, it is hard to imagine how they could do so, given that the latter proscribes government abridgment of speech while student activists are private citizens. Many seem to confuse "free speech" with some banal notion of civility, forgetting that the very freedoms they invoke to defend racist drivel permit anti-racists to respond—whether by calling someone out or calling for their resignation.¶

#### Hate speech has never been protected by the constitution, it’s just as violent as actions and the aff lets it go rampant {also state bad arg}

Carpenter 16

Carpenter, Bennett. (Carpenter is a grad student of literature at Duke U.) "Free Speech, Black Lives and White Fragility." The Chronicle. Duke Student Publishing Company, 19 Jan. 2016. Web. 11 Jan. 2017. <http://www.dukechronicle.com/article/2016/01/free-speech-black-lives-and-white-fragility>. [Premier]

This would seem to set up a nice equivalence between racists and anti-racists—both exercising free-speech freedoms, which must be equally and indiscriminately defended. What this ignores, however, is the centuries-long history of racialized oppression to which hate speech contributes. Hate speech is thus both violent and an incitement to further violence. The courts already prohibit walking into a crowded theater and shouting "fire." How is this any different from walking into a white supremacist society and shouting racial slurs?¶ It has become almost a truism that there is no hate speech exception to the First Amendment. Historically speaking, this is inaccurate. As M. Alison Kibler details in her "Censoring Racial Ridicule," the U.S. has a long history of regulating forms of speech that expose racialized groups to "contempt, derision or obloquy." Indeed, as recently as 1952, the Supreme Court upheld an Illinois law applying the standards of libel (another free-speech exception) to hate speech. It is only in recent years that the courts have, as the National Center for Human Rights Education puts it, "privileged white racists to express themselves at the expense of the safety of African-Americans and other people of color."¶ Key to this new interpretation is a firm separation between speech and action, a legal variant on the old childhood adage: "sticks and stones may break your bones, but words will never hurt you." The problem—as anyone who has been the victim of hate speech can tell you—is that this simply isn't true. Words hurt as much as actions; indeed, words are actions. Within the context of white supremacy, any distinction between a defaced poster, a racist pamphlet and legal or extralegal murder can be only of degree.¶ At the same time—and here I'll throw a bone to the civil libertarians—I'm unconvinced that hate speech legislation can resolve this. Not because hate speech isn't violent, but because the state is. As others have noted, we often view the state like some strange sort of Jekyll and Hyde—as if the very government quite literally built on white supremacy could somehow save us from its effects. I've sometimes noticed the same double vision among campus activists, who both call out Duke (quite rightly) for institutional racism yet also call on the administration to fix it.

## Counterplans



### CP – Active Engagement / Laundry List

#### Colleges should actively engage in addressing harassment without suppression or punishment through the following measures, solves constitutionality concerns:

Marcus ’14 Kenneth L.(Kenneth L. Marcus is the president for The Louis D. Brandeis Center for Human Rights Under Law) Higher Education, Anti-Semitism, and the Law, The Louis D. Brandeis Center for Human Rights Under Law, December 22,2014, Date Accessed 12/15/16 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2541907> [Premier]

Administrators always have options for active engagement that do not entail suppression or punishment. As a matter of sound policy, universities should take serious and effective measures to address harassing conduct even when it falls short of a legal violation or is protected by the First Amendment. These steps may include raising student awareness through orientation and training, articulating recommended standards of ethical conduct, and speaking out against coarse, degrading, or uncivil behavior even when it takes the form of protected speech. Additionally, universities may take numerous steps that do not raise constitutional concerns, such as:

• Non-regulatory responses, such as strong leadership statements;

• Regulating non-speech, including responses to the kinds of assault, battery,

and vandalism, which have been recently alleged to occur on many

campuses;

• Regulating the time, place or manner of offensive speech, including

insuring effective security to prevent heckling at university lectures;

• Regulating non-speech aspects of actions with speech components, such as

offensive touching that coincides with offensive speech;

• Regulating speech which falls under a specific exception (e.g., threats of

imminent violence); and

• Providing enhanced discipline for conduct code infractions that are

motivated by hate or bias.60

These principles are not limited to campus anti-Semitism but are generally applicable to harassment in higher education. The universities’ protocols for addressing incivility should not kick in only when federal law is implicated. Nevertheless, universities – especially if they are public institutions – should exercise great caution in their responses. In particular, they should avoid suppressing or punishing protected speech on the basis of content, but they should not hesitate to respond to this speech with speech of their own.

### CP – Classroom-Quad Distinction

#### Speech should be regulated everywhere on campus except for the classroom

Helwink ’16 Jonathan Helwink(Jonathan Helwink is a history professor at a college in Chicago. He is also an attorney licensed to practice law in Illinois. His academic interests include the intersection of law, history, tradition, and contemporary politics in American higher education.) Safe Spaces Just Make the World More Dangerous, The Federalist, November 16,2016, Date Accessed 12/5/16 <http://thefederalist.com/2016/11/16/safe-spaces-make-world-more-dangerous/> [Premier]

I believe that a classroom possesses unique qualities that separate it from the rest of a college campus. This approach, referred to as the “classroom-quad distinction,” states that a college can regulate speech that it deems offensive outside the classroom. Speech in common areas on campus—lawns, hallways, dorms, and concert halls—may be regulated more heavily by the college because of the communal nature of these spaces. Students, especially those from historically under-represented groups, deserve to feel they are full members of the college community. They should be confident in the belief that no matter their background, heritage, faith, gender, ability, or race, their college values them. Regulation of common areas on campus achieves this end. Regulation, however, would not be possible inside the classroom. The classroom should be a welcoming environment for debate, an engine by which closely held beliefs are challenged. It should be a stage for the unscripted drama of confronting the past and the present. With the aid of a good professor and the proper atmosphere, the classroom can be the incubator of ideas deemed unacceptable, subversive, treasonous, and even those yet un-thought, while still creating an environment of equality and understanding. This is not to dismiss some of the arguments made in favor of safe spaces and trigger warnings. It is a mistake to brush aside the students, professors, or institutions that use these practices, saying they’re indulging “delicate snowflakes” or accusing the colleges of caving to leftist activists. The compassion and empathy the advocates of these policies emphasize should not be so easily disregarded. Some students, such as those who are victims of sexual assault or suffer from PTSD, make reasonable arguments for their positions. However, while there is value in empathizing with students, we should not allow a student’s personal history to act as a muzzle on the classroom. Special arrangements for sensitive students have a negative impact on academic progress, and alternative assignments undercut the value of confronting and studying controversial topics and material. Despite the difficulties, it is possible to respect the victims of traumatic events while creating classroom spaces where the free expression—of even the most erroneous ideas—is respected and protected.

#### Harmful speech in the classroom is key to preventing more of it in the future

Helwink ’16 Jonathan Helwink(Jonathan Helwink is a history professor at a college in Chicago. He is also an attorney licensed to practice law in Illinois. His academic interests include the intersection of law, history, tradition, and contemporary politics in American higher education.) Safe Spaces Just Make the World More Dangerous, The Federalist, November 16,2016, Date Accessed 12/5/16 <http://thefederalist.com/2016/11/16/safe-spaces-make-world-more-dangerous/> [Premier]

Trigger warnings and safe spaces don’t solve the problem of harmful speech. Error, in this context, is not the assaultive speech, but the prejudice behind the assaultive speech. When certain thoughts are forbidden, the erroneous thought goes unaddressed and is, consequently, allowed to fester. In the name of saving an oppressed minority from harm, a far greater harm—allowing the furtherance of discriminatory and hateful opinions—has been carried out in society. The classroom-quad distinction drags those harmful opinions out into the daylight and exposes them for what they are: error.

In this open exchange, the classroom learns two critical lessons: 1) the realities of the issues addressed, and 2) how to respectfully confront someone you disagrees with. This method does not pick a side between a speaker and a listener and it doesn’t make a hero out of a bigot. Instead, within a welcoming and moderated environment, this method arms the students with the knowledge to confront an erroneous idea, and with the skills to artfully challenge ideas they disagree with. Free exchange in a college classroom is critical to the development of a young mind’s sense of identity, a student’s experience with democracy, and to the cultivation of rational argument. But real harm can be inflicted on students by assaultive speech, and so regulation of expression outside the classroom is needed to create a safe and welcoming environment for students of all backgrounds. These necessary lessons can be fostered by drawing a classroom-quad distinction. Meiklejohn argued that no citizen should be stopped from speaking because their views were thought to be “false or dangerous.” As Professor Bloom suggests, error is the enemy, but error points the way to truth. That truth can be discovered through the free exchange of ideas. As more students attend American universities, it is imperative that the virtues of democratic debate are nurtured in the incubator of a college classroom.

#### The quad-classroom distinction has a historical basis before the First Amendment

Helwink ’16 Jonathan Helwink(Jonathan Helwink is a history professor at a college in Chicago. He is also an attorney licensed to practice law in Illinois. His academic interests include the intersection of law, history, tradition, and contemporary politics in American higher education.) Safe Spaces Just Make the World More Dangerous, The Federalist, November 16,2016, Date Accessed 12/5/16 <http://thefederalist.com/2016/11/16/safe-spaces-make-world-more-dangerous/> [Premier]

The classroom-quad distinction has as its basis the history of American higher education. Dating back to the earliest colleges in the colonies, the historical record shows that, even before the passage of the First Amendment, free expression in the classroom was respected, while behavior and speech outside of it was regulated by college administrators. Colonial colleges were, most often, founded by dogmatically religious sects that were very strict in their regulation of student behavior. In 1744 at Yale, a college founded as a “safe, sound institution where the faith of the fathers was carefully protected,” two students were expelled for attending a religious revival while on vacation with their parents. Benjamin Homer Hall’s list of fineable offenses for 18th century students at Harvard College provides punishments for student behavior ranging from tardiness at prayer and entertaining persons of “ill character” to frequenting taverns and firing guns in the college yard. At the College of William and Mary, faculty were often required to take oaths of loyalty to the king and the Church of England before they accepted a faculty appointment. The history, however, does not provide evidence that a similarly dogmatic approach to free expression was in place inside the classroom. While the pilgrimage from Harvard to New Haven cannot be dismissed, it is important to point out that the reason behind the exodus from “godless Harvard” was the tolerance of differing ideas in Cambridge, where, according to historian Frederick Rudolph, a spirit of honest disagreement between Puritan believers was allowed to flourish. In fact, the historical record shows that while colonial students attended required religious classes, they also attended lectures on Copernican theory, Newtonian physics, and other discoveries of the Scientific Revolution. Robust student debate was commonplace. Expressions that could get a student in trouble outside the classroom were encouraged inside of it in the name of academic inquiry and communal progress.

#### Varying restrictions are constitutional on college campuses depending on the type of forum

Harris and Ray 14 Vincent T Harris has an M. Ed. degree and is a doctoral student @ LSU, Darrell C. Ray is a prof @ LSU, HATE SPEECH & THE COLLEGE CAMPUS: CONSIDERATIONS FOR ENTRY LEVEL STUDENT AFFAIRS PRACTITIONERS, Race, Gender & Class 21.1/2 (2014): 185-194. ProQuest. [Premier]

Depending on the U.S. state in which a college is located and the governing policies of the institution, **the following four speech forums can be implemented, they are: (1) a traditional or designated public forum, (2) a limited public forum, (3) a non-public forum, and (4) a nonforum** [sic] (Lake, 2002). **A traditional public form is an impartial space, such as a public green space or busy campus concourse** (Lake, 2002). **University administrators who oversee a campus traditional public for[u]m** must understand their **power to control speech that occurs there is confined; their regulation is restricted to "reasonable time, place, and manner of restrictions"** (Lake, 2002:209). **A limited public forum is a physical space designated by the university; some institutions refer to these spaces as "free speech alley", "open forum area", or a "demonstration area"** (Davis, 2004).

**Higher education administrators responsible for a campus limited public forum can impose broader regulations and administer content discrimination if the regulations are, "reasonable in light of the purpose served by the forum"** (Lake, 2002:211-212). **The non-public forum refers to a speech zone that is not open to the general public rather it is open to selected groups** (Lake, 2002). **Student affairs administrators must hold non-public forums areas to lower levels of scrutiny and reasonableness, while simultaneously paying close attention to the environmental and physical realities of a university campus such as pub[l]ic sidewalks** (Davis, 2004). **A nonforum** [sic] **is not open to the public or provides areas where speech is permitted. For example, an executive board meeting is a space where university administrators have a choice to select the content and viewpoint in addition to time, place, and manner** (Lake, 2002). In regards to the four speech forums **the most accurate manner for a university to determine the appropriate forum is to utilize expert legal counsel and to adequately train its administrators on the use of speech forums as they relate to the First Amendment** (Davis, 2004; Lake, 2002). Still, with the use of these speech forums the actual speech or expression of hateful ideas will still occur outside of these designated spaces, so now what? Uecker, (2011) suggest one way to handle confrontational speech is to utilize one essential tenate all institutions have adopted as a part of its core mission, and that is education.

### CP – Internet/Cyber

#### Universities should implement policies including: prevention efforts, such as educational policies on the harm of such speech, reporting structures and investigations of conduct that violates such policies

DuMont 16

DuMont, Susan (DuMont has a J.D., from University of Maryland Francis King Carey School of Law, 2016; M.A., University of Delaware, 2010; B.A., Lake Forest College, 2007.” Campus Safety v. Freedom of Speech: An Evaluation of University Responses to Problematic Speech on Anonymous Social Media”, 11 J. Bus. & Tech. L. 239 (2016) http://digitalcommons.law.umaryland.edu/jbtl/vol11/iss2/7 [Premier]

For university administrators, problematic, anonymous, internet-based speech may¶ appear to be an unsolvable problem that pits free speech against campus safety and¶ includes complex investigatory challenges.170 However, rather than choose to ignore¶ or ban platforms such as Yik Yak, university administrators should develop a¶ strategy for how to respond to anonymous, internet-based problematic speech that¶ affects the campus.171 Universities should recognize the harm these types of speech¶ can cause and should rely on case law and governmental guidance on related topics¶ to develop a multifaceted approach to this problem, including prevention efforts,¶ reporting structures, and investigations into conduct that violates campus policies,¶ regardless of the medium on which it takes place.172 By doing so, universities can¶ better provide a safe learning environment, while also protecting student rights.

#### Speech codes are enacted to help prevent cyberbullying – New Jersey

Harris and Ray 14 Vincent T Harris has an M. Ed. degree and is a doctoral student @ LSU, Darrell C. Ray is a prof @ LSU, HATE SPEECH & THE COLLEGE CAMPUS: CONSIDERATIONS FOR ENTRY LEVEL STUDENT AFFAIRS PRACTITIONERS, Race, Gender & Class 21.1/2 (2014): 185-194. ProQuest. [Premier]

FIRE reported that in 2011 **the state of New Jersey enacted legislation that required every public K-12 school, and college to prohibit, "harassment, intimidation or bullying," that causes any form of "emotional harm"** (p. 26). **Increasing amounts of literature are recognizing the emotional harm of cyber bullying. This has been magnified by several instances of suicides of children and young adults** (Silverglate et al., 2012; Kowalski, Giumetti, Schroeder, & Resse, 2012). Cyber Bullying is defined as, misconduct that occurs online via the use of Information and Communication Technologies (ICTs), [e-mail, chat/instant messages, social networking sites, online games, blogs, and cell phone text messages], that are characterized as aggressive behaviors that occur repeatedly over time when an imbalance in power among individuals or a group are involved (Kowalski, Giumetti, Schroeder, & Resse, 2012).

Research finds that **college aged victims of cyber bullying are "1.9 times more likely to have attempted suicide [and] perpetrators of cyber bullying were 1.5 times more likely to have attempted suicide"** (Kowalski et al., 2012). Although, **the use of some college students First Amendment rights cause tremendous levels of melancholy on a college campus**, a entry-level student affairs practitioners must understand that the rights, formed under our U.S. Constitution, are equally available to all (Silverglate et al., 2012). As a result it is increasingly important to find best practices that create a balance between the current digital student interaction of today, and the enduring principles granted to all students by the First Amendment.

### CP – Speech Codes (Explanation)

#### Speech codes can create precise distinctions, better than general legal requirements

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

**University hate speech codes can create different gradations of proof predicated on whether the hate speech is private or public and at whom it is directed. The highest degree of proof and, perhaps, punishment would be linked to public matters about public figures**. Here are a few examples to clarify the distinctions: **A fraternity that puts out a flier with racist epithets against a college administrator reviling her for increasing tuition would be making a statement about a public figure on a public matter.** Under these circumstances, **defamation** **could only be proven**, in accordance with Sullivan, **upon proof of actual malice. If the fraternity published a racist flier about a fellow student's in-class statements about the tuition increase, that would rise to the level of the Gertz negligence standard. Finally, if the flier contained a racially derogatory remark against a student,** and the fraternity brothers had only overheard that student supporting tuition hikes while talking to his parents on the phone, **the university could resort to a common law standard of defamation for adjudicating the appropriate disciplinary penalty.**

### CP – Student Affairs Practitioners

#### Restrict speech via entry-level student affairs practitioners’ responses – it’s perceived as an institutional move, but it’s not

Harris and Ray 14 Vincent T Harris has an M. Ed. degree and is a doctoral student @ LSU, Darrell C. Ray is a prof @ LSU, HATE SPEECH & THE COLLEGE CAMPUS: CONSIDERATIONS FOR ENTRY LEVEL STUDENT AFFAIRS PRACTITIONERS, Race, Gender & Class 21.1/2 (2014): 185-194. ProQuest. [Premier]

The living environment, classroom discussion, and areas of mutual student engagement such as athletics or recreation, all create the venue for students to express themselves (Levine & Dean, 2012). **Many institutions offer statements of institutional values or community standards, very few have enforcement mechanisms that would deter incidents of hate speech.** **Entry-level student affairs practitioners may be the frontline in responding to incidents of hate speech. This can range from an activities advisor to a live-in residence hall staff member. Whether the incident is reported by the offended party, parents, campus, or members of the local community the initial staff response sets a tone for what will ultimately be perceived as the institutional response.** **Entry-level staff must therefore be able to balance the rights of the aggrieved, while protecting the rights of free speech** of the communicator. This balancing act can be very difficult for those unseasoned in responding to this type of conflict as emotions generally run high for all parties involved. **Careful response and intentional word choice can deescalate a tense situation and place the institution in the best possible position**.

## Disadvantages



### DA – Donors/Endowment

#### Benefactors will quit funding colleges if all speech is protected

MacDonald 05

G. Jeffrey MacDonald Correspondent of The Christian Science Monitor. Donors: too much say on campus speech? ; Colleges feel more pressure from givers who want to help determine who'll be speaking on campus. The Christian Science Monitor [Boston, Mass] 10 Feb 2005: 11. [Premier]

According to Hamilton President Joan Hinde Stewart, **angry benefactors threatened to quit giving if the** Clinton, N.Y., **college were to give a podium to the University of Colorado professor who had likened World Trade Center workers to Nazis in a 2001 essay**. In doing so, **they employed an increasingly popular tactic used at colleges in Utah, Nevada and Virginia** with mixed degrees of success last fall in attempts to derail scheduled appearances by "Fahrenheit 9-11" filmmaker Michael Moore. Although demanding givers are nothing new, **observers of higher education see** in recent events signs of **mounting clout for private interests to determine which ideas get a prominent platform on campus and which ones don't.** Faced with such pressures, administrators say they're trying to resist manipulation. Mr. Hamilton canceled Mr. Churchill's speech, Stewart said, only after a series of death threats pushed the situation "beyond our capacity to ensure the safety of our students and visitors." Yet **in an age when financiers increasingly want to set the terms for how their gifts are to be used, those responsible for the presentation of ideas and speakers seem to be approaching them much like other commodities on campus**. "**People** are **want**ing **their values portrayed and want**ing **institutions to do exactly what they want them to do**," said Dr. Wes Willmer, vice president of university advancement at Biola University in La Miranda, Calif., and a frequent writer on the topic of university fundraising. "They're not giving for the common good. They're giving because they want to accomplish something, and that plays out in the speaker realm as well." Pressure to reshape the landscape of ideas is coming from various corners. At the University of Nevada, Reno, **seven-figure donor Rick Reviglio threatened this fall to stop giving altogether unless the university, which had invited Mr. Moore, would instead arrange for the filmmaker to debate a prominent conservative. The university declined his $100,000 offer** to stage the event. In California and Virginia, state lawmakers helped persuade presidents at California State University San Marcos and George Mason University, respectively, that upwards of $30,000 for Moore's appearance would constitute an "inappropriate" use of state funds on the eve of an election. The San Marcos campus hosted the event anyway, however, after a student group raised its own money to sponsor it. In the case of Mr. Churchill, the controversy rages on. Since Hamilton's decision, administrators have nixed Mr. Churchill's scheduled appearances at Wheaton College (Mass.), Eastern Washington University and even his own institution, the University of Colorado at Boulder. Security concerns were officially to blame in each case, although activists who opposed Churchill's message have offered another explanation. "**Everything comes back down to money,** and they were worried about funding at Hamilton College," says Bill Doyle, outreach director for the World Trade Center United Families Group. He said survivors who lost loved ones in the 9/11 attacks had lobbied Hamilton's four largest corporate donors to withhold future gifts if Churchill were allowed to speak. "**You have all these rich corporations throughout the world and the country. Perhaps they'll take a look at what they're funding,**" says Doyle, **especially** in terms of **paid speakers who "promote hate.**"

#### Colleges face pressures to maintain their brand, so they have to be PC

Sleeper 16

Jim Sleeper, polisci prof @ Yale and Alternet reporter, “What the Campus 'Free Speech' Crusade Won't Say” <http://www.alternet.org/education/what-campus-free-speech-crusade-wont-say-0> [Premier]

When the FIRE and the larger conservative “free speech” campaign assail university administrators for curbing individual rights, they often wind up exposing but then fudging an inexorable reality: **The more market-driven a college, the more anxious it is to restrict free speech, because most deans and trustees serve not politically correct pieties but market pressures to satisfy student “customers” and to avoid negative publicity, liability, and losses in “brand” or “market share.” The real enemy of open inquiry and expression is the over-financialized, corrupt investment that the FIRE and its funders never question and, indeed, are out to defend.**

### DA – International Law / Norms

#### International law and treaties are clear that hate speech should be banned

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

Typically, the balance is struck more in favor of the victims' rights, in contrast to the United States' inclination towards the interests of speakers. The international trend began in the aftermath of World War II, when **the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. It obligates signatory states to punish the "[d]irect and public incitement to commit genocide."**' 6 9 Not satisfied with the rather limited scope of the Genocide Convention, **multiple members of the United Nations broadened the coverage through the Convention on the Elimination of All Forms of Racial Discrimination. The latter convention requires signatories to punish "all dissemination of ideas based on racial superiority or hatred, [and] incitement to racial discrimination."** 7 0 **The International Covenant on Civil and Political Rights is yet another relevant international agreement. It requires that "[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" be "prohibited by law**." 7'

In response to the virtual ubiquity of the Internet,172 **the most recent expansion of the Universal Declaration of Human Rights has been the Council of Europe's Additional Protocol to the Convention on Cybercrime, Concerning the Criminalization of Racist and Xenophobic Acts Committed Through the Operation of Computer Systems**. 7 3 **This convention requires signatory countries to pass laws prohibiting the manipulation of electronic transmission devices to intentionally threaten or insult people who** "(i) ... **belong to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion**, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics."," A glaring weakness of these four protocols is that none of them include sexual orientation as a protected class.

### DA – Internet/Cyber

#### Grey areas now – courts haven’t given enough guidance on internet speech, which leaves entry-level student affairs practitioners to decide for themselves

Harris and Ray 14 Vincent T Harris has an M. Ed. degree and is a doctoral student @ LSU, Darrell C. Ray is a prof @ LSU, HATE SPEECH & THE COLLEGE CAMPUS: CONSIDERATIONS FOR ENTRY LEVEL STUDENT AFFAIRS PRACTITIONERS, Race, Gender & Class 21.1/2 (2014): 185-194. ProQuest. [Premier]

**As universities expand curriculum offerings in the virtual realm an increasing amount of students will be impacted by speech code violations** as consequences for hateful expressions toward other students online. **Online learning platforms and the ever-growing mediums of social media present a unique challenge for the courts as "grey areas" emerge on who owns the platform and who can regulate the speech in those spaces.** **The lack of guidance from the courts is allowing campuses to construct policies and procedures with no clearly delineated role for entry-level student affairs practitioners**.

#### Cyberbullying is bad – narrative evidence

Ambrose et al 12

Meg Leta Ambrose, doctoral candidate, Nicole Friess, JD, LLM, associate of Holland and Hart LLP, and Jill Van Matre, JD, associate director of University of Colorado’s ATLAS institute. “SEEKING DIGITAL REDEMPTION: THE FUTURE OF FORGIVENESS IN THE INTERNET AGE” 11/6/12 [Premier]

Increasing aggregation and availability of information online means the past can be stirred with greater frequency, triggering memories that would have otherwise been forgotten. Philosophy professor Avishai Margalit argues persuasively that successful forgiveness requires the “overcoming of resentment” that attends the memory of the wrong done.96 As individuals will acutely reexperience the humiliation or pain of their indiscretions, offenses or tragedies when memories of such come to mind, the Internet Age has decreased the chances of successful forgiveness.97 When Montgomery County, Texas district attorney Brett Lignon began Tweeting the names of drivers arrested for drunk driving, he stated, “There is an embarrassment factor, the scarlet letter of law enforcement.”98 A number of sites post arrest information, complete with photo, name, and arrest details.99 The posts are not updated100 as the charges progress. Moving beyond an arrest, no matter the innocence surrounding the incident, is more difficult in the Digital Age. The “scarlet letter of law enforcement” was not generally pinned to those simply arrested in an analog world. **Judgments can turn inward in the context of cyberbullying. Fifteen year old Amanda Todd took her own life after posting a desperate YouTube video explaining the details of her bullying**.101 In the video, the vulnerable girl explained that **the scandalous image she had been convinced to create had led to brutal on and offline torment.**102 **She suffered from depression and anxiety; in the video, she holds a card that reads “I can never get that Photo back.**”103 **Overly vivid memories keep resentment alive.**104 **The time is ripe to ask whether the Internet should be a forgiving place or a resentful one**—whether technology is an impediment to the wellbeing of society.

#### New anonymous social media companies open the floodgates for harassment

DuMont 16

DuMont, Susan (DuMont has a J.D., from University of Maryland Francis King Carey School of Law, 2016; M.A., University of Delaware, 2010; B.A., Lake Forest College, 2007.” Campus Safety v. Freedom of Speech: An Evaluation of University Responses to Problematic Speech on Anonymous Social Media”, 11 J. Bus. & Tech. L. 239 (2016) http://digitalcommons.law.umaryland.edu/jbtl/vol11/iss2/7 [Premier]

In the following decade, platforms like Twitter, Snapchat, LinkedIn, Instagram,¶ and other sites which allow users to connect in more nuanced ways, rounded out¶ the social media market for college students. Snapchat, a real time photo-sharing¶ app, has recently emerged as a heavily relied on app for collegiate communication.14¶ LinkedIn identifies itself as the world’s largest professional network on the internet¶ with forty million student and college graduate users.15 Instagram is a photo-based¶ platform with over 300 million users described as “a simple way to capture and¶ share the world’s moments.”16 To use these platforms, a person first creates a¶ username and profile and then connects with other users to build an online¶ network or community within the platform.17¶ Unlike Facebook and Instagram, other platforms, like former gossip site¶ JuicyCampus.com, are based on anonymity.18 Users either create usernames that do¶ not directly identify themselves, or in the case of Yik Yak, post without any¶ identifier at all.19 Instead of creating an online network like Facebook and LinkedIn,¶ Yik Yak focuses on the ability to share information without identifying the poster.20¶ Yik Yak describes itself as a “local bulletin board,” where users can “connect to and share with others without having to know them.”21 Yik Yak’s founder, Brooks¶ Buffington, believes that the app levels the playing field because “[t]he quiet kid is¶ judged the same as the most popular kid.”22¶ Despite statements that indicate positive intentions, Yik Yak and similar¶ platforms have created additional spaces for anonymous hate speech, sexual¶ harassment, violent threats, and suicidal statements by students. For example, in the¶ spring of 2015 at Syracuse University, posts on Yik Yak complained about a step¶ show, a historically black performance art, and called the participants “monkeys,” a¶ racial slur.23 In November of 2015, University of Missouri students responded to a¶ protest by black students against racism on campus by making overtly racists¶ statements on Yik Yak.24 Anonymous sites like Yik Yak have also been platforms for¶ sexual harassment of students and faculty.25 At Eastern Michigan University,¶ students posted dozens of demeaning, crude, and sexually explicit statements on¶ Yik Yak about their female professor during a course, which caused the faculty¶ member to state she had been “defamed . . . sexually harassed and verbally¶ abused.”26 Campuses have also experienced threats of mass violence on Yik Yak and¶ similar sites. At Kenyon College in Ohio, a poster proposed a gang rape at the¶ campus’s women’s center,27 and students involved in a feminist student¶ organization at the University of Mary Washington experienced more than 700 posts threatening rape and violence against them before a leader of the group was actually murdered.28 In the spring of 2015, a Johns Hopkins Student posted on an anonymous chat website, Greekrank.com, about her suicidal intentions following¶ sorority recruitment.29 These examples illustrate the types of anonymous social¶ media postings college communities are experiencing, and the need for universities¶ to develop appropriate, legally sound response strategies.

#### Social media allows the harassment to continue, the aff‘s blind commitment to free speech fails to interrogate who benefits and denies the ability for colleges to make any meaningful reform.

May 16

May, Emily. (May is co-founder and executive director of Hollaback!) "Knight Foundation." Knight Foundation. N.p., 5 July 2016. Web. 11 Jan. 2017. <http://www.knightfoundation.org/articles/what-happens-when-corporations-are-put-charge-free-speech-online>. [Premier]

The internet is the new battleground over free speech—and the battle lines between free speech and online harassment are being drawn not by the legal system, but by social media companies.¶ Last year, my colleagues and I went on a mission to try and make sense of how social media companies defined online harassment. We worked with five social media companies to develop safety guides on online harassment that would be easy for people who are being actively harassed to navigate.¶ What we found was [as] a sea of definitions with little to no consistency. For example, on Twitter, what counts as abuse “must fit one or more criteria: reported accounts sending harassing messages; one-sided harassment that includes threats; incitement to harass a particular user; or sending harassing messages from multiple accounts to a single user.” Twitter then cites examples such as impersonation, doxxing—where someone searches for and maliciously publishes private information about someone—or threats.¶ Meanwhile on reddit, the definition of harassment hinges on the expectations of a “reasonable person.” Reddit defines harassment as a “systematic and/or continued actions to torment or demean someone in a way that would make a reasonable person 1) conclude that reddit is not a safe platform to express their ideas or participate in the conversation, or 2) fear for their safety or the safety of those around them.” But who is reasonable—and who isn’t—is subject to interpretation, and neither of these definitions offer insight into how reddit trains moderators to draw the line. ¶ We found more insight in asking reddit what is “not harassment.” They said they “do not consider incidents in which the parties involved are provoking one another as harassment.” Similarly, “reddit does not consider attacks on an individual’s beliefs as harassment.” At face value, this makes sense and is something we’ve heard echoed in our conversation with other social media companies: Many reports of harassment come in to social media companies when two people are in an online fight and one gets sick of it and reports it. But what if that debate is about whether or not the folks at the Pulse in Orlando “deserved what they got” and you are LBGTQ? Or if slavery should be reinstituted and you are black? In these cases, there is a fine line between opinion and abuse. These types of opinions can cause very real trauma, and side effects include depression, anxiety and post-traumatic stress disorder.¶ When companies tell their users that these types of opinions are protected “free speech,” not harassment, they—intentionally or not—create space for those types of opinions to be spoken freely. Meanwhile, those who dissent lose their protections from reddit when they go into battle—and the conversation moves from an “opinion” to “two people provoking each other. Interestingly, from a trauma perspective “fighting back” is one of the few things shown to reduce the long-term impacts of trauma. It’s in these moments we’re left asking, “Free speech for whom?”¶ As private companies, social media sites can define and enforce policies without regulation or oversight. With sites like Facebook, Twitter, reddit, and others becoming the new town square, these decisions are moving to the center of the free speech debate. Can a profit-making company—whose interests lie with its shareholders first and foremost—truly value democracy?¶

#### Discount older evidence – new modes of virtual communication make speech on college campuses radically different than it was decades ago

Harris and Ray 14 Vincent T Harris has an M. Ed. degree and is a doctoral student @ LSU, Darrell C. Ray is a prof @ LSU, HATE SPEECH & THE COLLEGE CAMPUS: CONSIDERATIONS FOR ENTRY LEVEL STUDENT AFFAIRS PRACTITIONERS, Race, Gender & Class 21.1/2 (2014): 185-194. ProQuest. [Premier]

This generation of college students has evolved in a time where **advances in technology and communication have allowed for the proliferation of ideas from every corner of the world. Opportunities to connect, establish relationships, and identify peers who share similar views are common place.** Though **much of this communication is occurring virtually** students may feel connected in ways based on how they make meaning. **A particular challenge of assimilating into a campus becomes the face-to-face interactions** and potential for having your beliefs confronted. **Many argue students have become more bold and brazen in stating their personal biases**, whether popular or not; **students create virtual communities and feel supported in their thoughts** (Harper, 2008).

Though incidents of hate speech have always occurred on campuses, a cycle of blatant and overt events in recent years communicates a message that **campuses must be prepared to respond differently from previous times.** Many incidents go unreported, allowing only for speculation of the actual number of hate speech and bias events that occur on a college campus. **Emerging technology and devices offer platforms where students can easily record and document events from their phone and immediately post to websites or other forms of social media. The swift pace at which incidents can become nationally known often thrusts campuses into the national spotlight before university administrators are aware of the occurrence**.

### DA – Warming

#### Many of the aff cards under “Advantage Areas / Climate Change Denial” would make great links for a neg disadvantage about the need to suppress ‘climate denialism.’

## Morals



### AT Natural Rights

#### Natural rights approach to speech is arbitrary – anything can be called a right, and rights still must be weighed

Jacobson 16

Daniel, prof of philosophy @ Michigan, Freedom of Speech under Assault on Campus, CATO POLICY ANALYSIS NO. 796, 8-30-16, [Premier]

The classical liberal argument for free speech has historically been championed in two distinct ways. First, **the Founding documents of the United States recognize freedom of speech as a natural right: self-evident, inalienable, and endowed by our Creator. Those words still inspire many people, and the Bill of Rights stands among the paramount achievements of classical liberalism. But there is a problem with natural rights claims in general: they are vulnerable to competing claims about exactly what rights we have**.6 **Thus, in this election cycle, we hear that among our moral rights are access to health care at unspecified levels, free college tuition, and an increased minimum wage. Of course, not all these claims are equally compelling. The point is that sincere disagreement over rights claims makes less plausible the idea that they are self-evident truths.**

### AT Consequentialism

#### Consequentialist justifications for speech rights are too contingent – there are always exceptions

Jacobson 16

Daniel, prof of philosophy @ Michigan, Freedom of Speech under Assault on Campus, CATO POLICY ANALYSIS NO. 796, 8-30-16, [Premier]

**The second way to defend rights claims is to ground them in utility, by claiming that their acceptance best promotes human flourishing. That was Mill’s approach, but it has problems of its own. The trouble with this utilitarian argument is that it is always open to dispute: Would it be optimal to violate a right in exceptional circumstances?** In short, the natural rights approach to freedom of speech can seem too dogmatic, and **the utilitarian approach [is] too contingent.** The two approaches to classical liberalism are embodied, in the philosophical tradition, by John Locke and Mill, respectively. (Note that, although the natural rights approach inspired the U.S. Constitution, and the utilitarian Philosophical Radicals led the liberal movement in 19th-century England, neither the natural rights nor the utilitarian tradition has been uniformly liberal in the classical sense that I use in this essay.7) But if freedom of speech is now especially in need of defense within academia, then, ironically, the very trends on campus that threaten it also lend strong support to both versions of the liberal argument.

### AT Free Speech is Absolute

#### Censorship is inevitable – free speech can never be absolute

Jacobson 16

Daniel, prof of philosophy @ Michigan, Freedom of Speech under Assault on Campus, CATO POLICY ANALYSIS NO. 796, 8-30-16, [Premier]

The traditional objection to free speech is straightforward. It holds that some opinions are so dangerous or immoral—and of such little value—that their expression should be prohibited. Hence, we must reject the liberal claim to rights of free expression for the sake of the common good or the preservation of the moral ecology. The current hostility toward freedom of speech among academics and intellectuals arises from three novel developments. Although the arguments are not entirely distinct or mutually exclusive, it is helpful to differentiate them as the postmodern, the progressive, and the multiculturalist challenges to freedom of speech. **The postmodern challenge holds that freedom of speech is impossible, because censorship is ubiquitous and inevitable**. The progressive challenge holds that freedom of speech ought to be sacrificed to equality, understood in terms characteristic of the social justice ideology. And the multiculturalist challenge holds that certain opinions constitute violence against marginalized groups such as minorities and therefore fall beyond the pale of free speech protection; they are analogous to incitement or even assault. Consider first the postmodern argument that freedom of speech is not so much misguided as impossible. **Although defenders of free speech advance a seemingly absolute and neutral doctrine—the toleration of all opinions, liberal and illiberal alike—no one doubts that some speech must inevitably be prohibited and punished.** Even Mill did not intend the immunity provided to the expression of all opinions and sentiments to extend to threats and fraud; that was his point in referring specifically to the fullest liberty of their profession and discussion as a matter of ethical conviction. **Yet the claim that freedom of speech is impossible relies crucially on the truism that it would be impossible to tolerate all of what philosophers call speech acts: actions performed by speaking. The clichéd example here is shouting “fire” in a crowded theater,** which—in certain contexts, such as when intended to induce panic—lies beyond the pale of free speech immunity.8

#### There is no such thing as free-speech

Loury 10

Loury, Glenn C. (Prof of Philosophy @ BU) "Self-Censorship in Public Discourse: A Theory of "Political Correctness" and Related Phenomena." Rationality and Society (2010): n. pag. Print. [Premier]

It is in this sense that I can say, "There is no (entirely) free speech." Anyone speaking-out on a controversial matter pays the particular price of having others know [they are] that he was willing to speak, under a given set of circumstances, in a certain way. When listeners know that not everyone would be willing to pay that price, and specifically that "true believers" are less likely than "apostates" to risk incurring the community's wrath, they can make empirically valid inferences about reckless speakers. Norm-offending speech then conveys more than just literal meanings. Anticipating these inferences, and wanting not to be seen as deviant, prudent "true believers" may elect to say nothing which risks offending collective norms. By doing so, they leave the field clear for the "apostates," thereby creating the meaning-in-effect that "norm-offending speech identifies deviant belief." In a circumstance of this kind, a climate of self-censorship can become entrenched.

### Consumer Rights / Free Market

#### Speech codes are consistent with consumer preferences – students want them, and universities responded

Posner 15

Posner, Eric. (Posner, is a professor @ the University of Chicago Law School) "Colleges Need Speech Codes Because Their Students Are Still Children." Slate Magazine. N.p., 12 Feb. 2015. Web. 07 Jan. 2017. <http://www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2015/02/university\_speech\_codes\_students\_are\_children\_who\_must\_be\_protected.html>. [Premier]

Most of the debate about speech codes, which frequently prohibit students from making offensive comments to one another, concerns speech outside of class. Two points should be made. First, students who are unhappy with the codes and values on campus can take their views to forums outside of campus—to the town square, for example. The campus is an extension of the classroom, and so while the restrictions in the classroom are enforced less vigorously, the underlying pedagogical objective of avoiding intimidation remains intact¶ Second, and more important—at least for libertarians partisans of the free market—the universities are simply catering to demand in the marketplace for education. While critics sometimes give the impression that lefty professors and clueless administrators originated the speech and sex codes, the truth is that universities adopted them because that’s what most students want. If students want to learn biology and art history in an environment where they needn’t worry about being offended or raped, why shouldn’t they? As long as universities are free to choose whatever rules they want, students with different views can sort themselves into universities with different rules. Indeed, students who want the greatest speech protections can attend public universities, which (unlike private universities) are governed by the First Amendment. Libertarians might reflect on the irony that the private market, in which they normally put faith, reflects a preference among students for speech restrictions.

### Ethics of Care

#### Individuals are created through both external and internal factors of life. Hate speech contributes to the formation of one’s identity and significantly impacts their liberty when they become too intimidated to participate in discussions about oppression, thus making these discussions unproductive. We should focus on understanding the experiences of others by caring about hate speech.

Cornwell ’98 Nancy C.(Nancy C. Cornwell is an ACE Fellow at the College of New Jersey) Rethinking Free Expression in the Feminist Classroom: The Problem of Hate Speech, Feminist Teacher Vol. 12 No. 2(1998) pp. 107-118, Published by the University of Illinois Press, JSTOR, Date Accessed 12/6/16 <https://www.jstor.org/stable/pdf/40545815.pdf> [Premier]

A caring approach to hate speech recognizes that hate speech is a form of communication that creates meaning through a context of racism and bigotry. That context is what provides hate speech with its force and its ability to harm. Allowing harm to others goes against the central imperative of the ethic of care. The ethic of care takes a social constructionist approach to the problem of hate speech. From this perspective, external factors in human life participate in the formation of the internal factors that define individual identity. Therefore, the external, implicit, societal endorsement of hate speech (even if only through a lack of explicit condemnation) is part and parcel of the internal construction of racism and sexism and other expressions of hate and bigotry. And, if individuals are who they are through their social relations with others, then the language of hate speech constructs a "truth" about the victims of hate speech that invariably impacts on their liberty (West 764).Given our connectedness, caring about hate speech requires, as ethicist Joan Tronto suggests, that one be attentive to others. This means more than just paying attention. It means shifting one's energy toward understanding the particular perspectives of others. One can imagine the difference in how hate speech is approached if, instead of the liberal remedy of countering hate speech with more speech, the emphasis is placed on creating a discursive space where mutual communication - as a shared creation of meaning - is the priority. Speech that fundamentally disrupts the balance in the communication process - hate speech being a good example - should not hold the same social value as communication that seeks to bring about better understanding. While the teacher sets the stage for community building in the feminist classroom, much of the dialogue and learning is generated between students as part of the learning community. Furthermore, experience needs to be recognized as an important and valid contribution to epistemology, for it challenges the universal interests that justify the abstract individualist justifications for free speech. Incorporating experience into classroom learning helps accentuate the experience of minorities and hate speech victims in a community dialogue about hate speech and attenuate the force of those who perpetuate it. Those who are victims of hate speech must have the equal footing to enter into the solution seeking process. That cannot happen with hateful, non-productive, non instructional language that silences the victim and does not open the space for the joint project of change. Such an undertaking implies a cooperative, negotiated effort, not a position rooted in individualist ideas. At one level, the ethic of care greatly values free expression as communication, recognizing how important communication is to the connected nature of understanding, care and the particular. However, the ethic of care would be sensitive to the social nature of communication as well as acknowledge the concrete experience of "harmful" communication, such as hate speech. Permitting hate speech in the classroom under the illusion of free and open discussion does not create a better understanding about racism. Permitting hate speech does not reflect a teacher's responsibility to academic freedom in the learning environment. Hate speech in the classroom may effectively be an expressive act that harms, intimidates, and silences students. After all, caring about hate speech means to address hate speech in a content specific way and to engage it in the service of conversation, dialogue, or communication, which is the location of meaning formation.

### Liberal Humanism / Communitarianism

#### We should take a liberal humanist approach to speech because it allows us to recognize the inherent value of individuals and their associations

Heyman ’14 Steven J.(Professor Heyman is a 1984 graduate of Harvard Law School, where he was a Supreme Court editor of the Harvard Law Review. After graduation, he served as a law clerk to Judge Harry T. Edwards of the U.S. Court of Appeals for the District of Columbia Circuit, and then as an associate at the Washington, D.C., law firm of Shea & Gardner. In 1989, he joined the faculty at Chicago-Kent, where he teaches torts, criminal law, constitutional law, and the First Amendment.) The Conservative-Libertarian Turn in First Amendment Jurisprudence, Chicago-Kent College of Law, From the Selected Works of Steven J. Heyman, December 2014, Date Accessed 12/20/16 <https://works.bepress.com/steven_heyman/33/> [Premier]

Like libertarianism, the liberal-humanist view recognizes the inherent value of the individual. But this view seeks to incorporate individualism into a richer and more comprehensive conception of the self. Although there are important ways in which we are separate and independent individuals, we are also social beings who share a common life.591 We realize our nature and find fulfillment not only through the development of our individuality, but also through social relationships and participation in community. Speech and thought play a central role in both dimensions of human life. In addition to cultivating their own inner lives, individuals have a strong desire to communicate with others. At one level, communication involves an effort to convey thoughts, feelings, or information from one person to another. But on another and deeper level, communication creates or reinforces a relationship between the participants, within which they seek to develop mutual understanding, not only of the topics they are discussing but also of one another.592 In these ways, communicative speech is not only subjective, expressing the speaker’s own thoughts and feelings, but also intersubjective and social, involving a relationship between persons.593 And this is true not only when individuals converse with one another but also when they participate in discourse within a broader community.594 From what I have said, it follows that liberal humanism also rejects the conservative-libertarian view of society as a mere aggregation of separate and independent individuals. A society embraces a broad range of associations, from friendships, couples, and families to workplaces, religious bodies, and other groups. An individual often regards the relationships and communities that she belongs to as having important value in themselves, and may incorporate them into her identity: she may see herself as a daughter, a mother, a Jew, an architect, and so on. Moreover, many people feel a strong sense of belonging to the nation as a whole and regard this as a basic aspect of their identity.595 Once again, I do not mean to suggest that libertarianism necessarily fails to appreciate the importance of social relationships. Although some libertarians (such as the followers of Ayn Rand) may be radical individualists, others recognize the deep value that such relationships can have.596 But libertarianism and liberal humanism understand the nature of our sociality in fundamentally different ways. The difference emerges most clearly in the debate over a duty to rescue. Suppose that I see another person in grave danger, who will die unless I provide or summon immediate assistance—something that I can do without serious risk to myself. Libertarians maintain that, because the other person and I are essentially separate and independent individuals, the law would violate my autonomy if it required me to act.597 By contrast, liberal humanists contend that as human beings and members of the community, we have an inherent connection with one another which supports a duty to aid. This connection is not a matter of arbitrary choice but a fundamental aspect of who we are as social beings. Of course, the legislature must also take account of practical considerations in determining whether and how this duty should be given legal form. But as a matter of principle, there is nothing improper about requiring me to rescue in a situation like this.598

#### The conservative-libertarian approach to free speech doesn’t take into account hateful or degrading speech

Heyman ’14 Steven J.(Professor Heyman is a 1984 graduate of Harvard Law School, where he was a Supreme Court editor of the Harvard Law Review. After graduation, he served as a law clerk to Judge Harry T. Edwards of the U.S. Court of Appeals for the District of Columbia Circuit, and then as an associate at the Washington, D.C., law firm of Shea & Gardner. In 1989, he joined the faculty at Chicago-Kent, where he teaches torts, criminal law, constitutional law, and the First Amendment.) The Conservative-Libertarian Turn in First Amendment Jurisprudence, Chicago-Kent College of Law, From the Selected Works of Steven J. Heyman, December 2014, Date Accessed 12/20/16 <https://works.bepress.com/steven_heyman/33/> [Premier]

A second objection to the conservative-libertarian approach is that it grants too much protection to speech that injures, abuses, or degrades other people. To begin, we may note a conceptual progression in some of the decisions we have discussed. *Citizens United* rests on a view of individuals and groups as separate, independent entities that compete with one another for economic and political power.546 In Hudnut, Judge Easterbrook accepts the premise of the Indianapolis ordinance—that some forms of pornography subordinate women by portraying them as mere sexual objects—but strikes it down on the ground that the First Amendment protects speech precisely because of the power that it has, even when this power is used to dominate others.547 The message of domination conveyed by pornography often is only implicit. In *R.A.V.*, however, Justice Scalia grants some protection to cross- burning and other forms of expression that overtly seek to dominate others.548 To be clear, I do not suggest that the conservative-libertarian judges in any way approve of violent or degrading pornography or racist hate speech. In *R.A.V.*, for example, the majority “wholeheartedly” endorses the state court’s view that “diverse communities” have an “obligation . . . to confront” “messages based on virulent notions of racial supremacy . . . in whatever form they appear.”549 Instead, my point is that these judges believe that, for First Amendment purposes, no principled distinction can be drawn between speech that undermines or assaults the personality of others and speech that does not. This facet of the conservative-libertarian view can be traced to its conception of human beings as separate and independent individuals who have no inherent connection with one another. Understood in this way, the individual is a subject who sees himself as the center of the world, in contrast to all that is outside him. Although the individual may choose to cooperate with particular people, he may regard some others as objects to be used for his own purposes (as in *Hudnut*) or as enemies to be dominated or destroyed (as in *R.A.V.*). The problem with conservative libertarianism, then, is not that it approves of the destructive attitudes toward others that are embodied in these forms of expression, but that it conceives of individuals as wholly subjective selves who may well hold such attitudes and who must be allowed to forcefully express them. Expression of this sort can cause serious injury to its targets.550 It nevertheless may seem that such expression should be protected to safeguard the self-realization of the speaker. I believe that this view is mistaken for two reasons. First, an individual should have no right to pursue self-realization in a way that intentionally interferes with the legitimate self-realization of others.551 Second, the expression of destructive attitudes toward others is also self- destructive, for it undermines the speaker’s own humanity and his relationships with other people and the community. In this way, the conservative-libertarian effort to protect individual subjectivity proves to be self-defeating, for the unrestrained expression of subjectivity can injure the selfhood not only of others but also of the speaker herself.552 None of this is meant to say that speech always should be unprotected when it expresses hostility toward others or even when it causes them harm. Instead, my contention is simply that the conservative-libertarian view fails to adequately grapple with the problem of harmful, abusive, and degrading speech. In Part V, I shall contend that this problem should be redefined in terms of competing rights. On this view, freedom of speech is a fundamental right, but one that must be exercised with due regard for the rights of others—a perspective that will shed a different light on issues like hate speech and pornography.

#### Liberal humanism shifts the concept of freedom from solely an individual dimension to a social dimension

Heyman ’14 Steven J.(Professor Heyman is a 1984 graduate of Harvard Law School, where he was a Supreme Court editor of the Harvard Law Review. After graduation, he served as a law clerk to Judge Harry T. Edwards of the U.S. Court of Appeals for the District of Columbia Circuit, and then as an associate at the Washington, D.C., law firm of Shea & Gardner. In 1989, he joined the faculty at Chicago-Kent, where he teaches torts, criminal law, constitutional law, and the First Amendment.) The Conservative-Libertarian Turn in First Amendment Jurisprudence, Chicago-Kent College of Law, From the Selected Works of Steven J. Heyman, December 2014, Date Accessed 12/20/16 <https://works.bepress.com/steven_heyman/33/> [Premier]

As this discussion suggests, the two views also hold fundamentally different conceptions of liberty. Conservative libertarians understand liberty primarily in negative terms, as freedom from interference by other individuals or the state.601 For liberal humanism, this is an important form of liberty but not the only one. This view also conceives of liberty in a positive way, as a person’s ability to act and to pursue her own good. The state affirmatively promotes this form of liberty in a variety of ways. First, it enables individuals to act when it makes laws such as those that establish the legal framework for property and contract.602 Second, the state promotes freedom when it protects individuals against the invasion of their rights by others, something which it does directly as well as by imposing tort and criminal liability on wrongdoers.603 Third, when the state provides benefits like access to health care, it increases the ability of individuals to pursue their own good and thereby enhances their liberty.604 A fourth way in which the state promotes freedom is by enabling individuals to enter into social relationships with others. For example, the state increases the freedom of same-sex couples when it recognizes their capacity to enter into lawful marriages. And conversely, as the Court stated in *United States v. Windsor*,605 laws like the Defense of Marriage Act can be seen “to restrict the freedom and choice of [such] couples.”606As this point suggests, freedom has not only an individual but also a social dimension. When I am isolated from others, I may feel constrained, limited, trapped within myself. From this perspective, social interaction is liberating, for it allows me to escape this isolation and to feel more at home in the world. Through interaction with others, I am enabled to do things (such as form social relationships and take part in collective activities) that I cannot do on my own. Thus, one of the most basic forms of freedom is to be in relationship or community with others.607 On a civic level, this social form of freedom consists of being a member of the political community. This notion is reflected in the Fourteenth Amendment, which was based on recognition that those who were formerly enslaved could not enjoy complete freedom so long as they were denied citizenship.608 The Fourteenth Amendment enhanced their freedom when it recognized them as citizens of the United States with all of the privileges and immunities that inhere in that status.609 Among the most important rights of citizenship is the ability to vote. Of course, this is a right that one does not have as an isolated individual, but only as a member of the community. When individuals vote, they exercise their liberty as citizens collectively through the democratic process. In this respect, freedom is something that exists not in opposition to the state, or even with its affirmative assistance or recognition, but rather through the active participation of citizens in the state. In all these ways, the state is capable of having a positive and not only a negative relation to liberty.

#### Conservative-libertarianism has several flaws, liberal humanism upholds the constitution better

Heyman ’14 Steven J.(Professor Heyman is a 1984 graduate of Harvard Law School, where he was a Supreme Court editor of the Harvard Law Review. After graduation, he served as a law clerk to Judge Harry T. Edwards of the U.S. Court of Appeals for the District of Columbia Circuit, and then as an associate at the Washington, D.C., law firm of Shea & Gardner. In 1989, he joined the faculty at Chicago-Kent, where he teaches torts, criminal law, constitutional law, and the First Amendment.) The Conservative-Libertarian Turn in First Amendment Jurisprudence, Chicago-Kent College of Law, From the Selected Works of Steven J. Heyman, December 2014, Date Accessed 12/20/16 <https://works.bepress.com/steven_heyman/33/> [Premier]

One of Professor Baker’s deepest convictions was that the Constitution must be interpreted in light of our understanding of human beings and the liberty to which they are entitled. In this Lecture, I have explored a view that has become increasingly predominant in constitutional interpretation. This view, which I have called conservative libertarianism, regards people as separate and independent individuals who should be free to pursue their own goals with minimal regulation or restraint. Conservative judges have relied on this conception to promote libertarian positions in a wide range of areas, from enhancing gun and property rights to imposing limits on the regulatory and welfare state. In addition, these judges have frequently used the First Amendment to strike down speech regulations that seek to promote liberal and progressive values I have argued that the conservative-libertarian approach to the Constitution is based on an abstract and one-sided conception of the self. Although we are separate individuals, we are also social beings who share a common life. An adequate conception of liberty must recognize both sides of our nature: it must affirm the value of individual autonomy as well as of the social dimension of liberty—the freedom that we find through relationship with others. On this liberal-humanist view, there is no basic or irresolvable conflict between individual liberty and social values such as human dignity, equality, and community. Instead, when one exercises rights such as freedom of speech and association, one must do so in a way that respects the personality of others and their status as members of the community. It follows that the First Amendment should be interpreted to allow some limits on speech that abuses or degrades other people, such as hate speech, pornography, and funeral picketing, as well as some regulation of association that invidiously discriminates against others. In addition, the liberal-humanist view conceives of political speech as democratic deliberation among free and equal citizens, and thus would permit some restrictions on speech that undermines our ability to engage in that process, such as unlimited electoral spending by corporations and wealthy individuals. In my view, an approach like this is the best way to promote the values of human freedom and dignity on which our Constitution is based.

### Moral Conversations/Development/Virtue

#### Guiding speech on college campuses is key to creating a moral community, allowing student expression, and teaching character

Harris and Ray 14 Vincent T Harris has an M. Ed. degree and is a doctoral student @ LSU, Darrell C. Ray is a prof @ LSU, HATE SPEECH & THE COLLEGE CAMPUS: CONSIDERATIONS FOR ENTRY LEVEL STUDENT AFFAIRS PRACTITIONERS, Race, Gender & Class 21.1/2 (2014): 185-194. ProQuest. [Premier]

While there are various policies in place to reprimand students who use hateful expressions or speech, **an institution of higher education primary goal is to educate its students by fostering an environment where learning can take place, via a set of moral conversations** (Uecker, 2011; Nash, Bradley, & Chickering, 2008; O'Neil, 1997). Nash, Bradley, and Chickering (2008) explains moral conversations as:

A manner of living whereby people keep company with each other and talk good faith, in order to exchange sometimes agreeable, sometimes opposing, ideas. Above all, however, **moral conversation**s **is a mutual sharing of all those wonderful stories that give meaning to people's lives** (p. 27).

In short, **moral conversations allow students to share their own stories of who they really are, and how they create meaning of the world in which they live** (Nash et al., 2008). At the core of this discourse is the idea that universities prepare students to become educated citizens of society, therefore **entry-level student affairs administrators must engage in these moral conversation not only during the moments of controversy but also during everyday discourse** (Uecker, 2011; Nash et al., 2008). Uecker, (2011) explains for this approach to be effective entry-level student affairs **educators** must avoid personifying the "reactionary life of [a] First Amendment interpreter" rather they **must, "dig beneath the surface level of words-where speech codes and First Amendment case law would have us operate-and grapples with the deeper meanings and contexts" of the hateful speech or expressions** (p. 362).

Less seasoned practitioners can be placed in a precarious situation of needing to support the offended students, but must remember the balance of helping the students who have expressed their seemly offensive views. Entry-level practitioners must carefully navigate campus politics as upper-level administrators may have different expectations of how they should respond.

Similarly, **Dr. Martin Luther King Jr. wrote** in his piece The Purpose of Education, "**The function of education, therefore, is to teach one to think intensively and to think critically**.... The most dangerous [man] may be a man gifted with reason, but with no morals.... **We must remember that intelligence is not enough. Intelligence plus character-that is the goal of true education** (Strauss, 2013).

### Free Speech Historically Peculiar

#### The US overvalues the First Amendment when empirically it has been restricted and used by both sides of the political spectrum to further their agendas of others

Posner ’12 Eric(Eric Posner, a professor at the University of Chicago Law School, is author of [The Twilight of International Human Rights Law](http://www.amazon.com/dp/019931344X/?tag=slatmaga-20).) The World Doesn’t Love the First Amendment, Slate, September 25,2012, Date Accessed 12/9/16 <http://www.slate.com/articles/news_and_politics/jurisprudence/2012/09/the_vile_anti_muslim_video_and_the_first_amendment_does_the_u_s_overvalue_free_speech_.html> [Premier]

The universal response in the United States to the uproar over the anti-Muslim video is that the Muslim world will just have to get used to freedom of expression. President Obama said so himself in a [speech at the United Nations](http://www.nytimes.com/2012/09/26/world/obamas-speech-to-the-united-nations-general-assembly-text.html?pagewanted=all) today, which included both a strong defense of the First Amendment and (“in the alternative,” as lawyers say) and a plea that the United States is helpless anyway when it comes to controlling information. In a world linked by YouTube, Twitter, and Facebook, countless videos attacking people’s religions, produced by provocateurs, rabble-rousers, and lunatics, will spread to every corner of the world, as fast as the Internet can blast them, and beyond the power of governments to stop them. [Muslims need to grow a thick skin](http://www.slate.com/articles/news_and_politics/human_nature/2012/09/mohammed_movie_embassy_attacks_don_t_let_internet_videos_drive_you_to_violence_.html), the thinking goes, as believers in the West have done over the centuries. Perhaps they will even learn what it means to live in a free society, and adopt something like the First Amendment in their own countries. But there is another possible response. This is that Americans need to learn that the rest of the world—and not just Muslims—see no sense in the First Amendment. Even other Western nations take a more circumspect position on freedom of expression than we do, realizing that often free speech must yield to other values and the need for order. Our own history suggests that they might have a point. Despite its 18th-century constitutional provenance, the First Amendment did not play a significant role in U.S. law until the second half of the 20th century. The First Amendment did not protect anarchists, socialists, Communists, pacifists, and various other dissenters when the U.S. government cracked down on them, as it regularly did during times of war and stress. The First Amendment earned its sacred status only in the 1960s, and then only among liberals and the left, who cheered when the courts ruled that government could not suppress the speech of dissenters, critics, scandalous artistic types, and even pornographers. Conservatives objected that these rulings helped America’s enemies while undermining public order and morality at home, but their complaints fell on deaf ears. A totem that is sacred to one religion can become an object of devotion in another, even as the two theologies vest it with different meanings. That is what happened with the First Amendment. In the last few decades, conservatives have discovered in its uncompromising text— “Congress shall make no law ... abridging the freedom of speech”—support for their own causes. These include unregulated campaign speech, unregulated commercial speech, and limited government. Most of all, conservatives have invoked the First Amendment to oppose efforts to make everyone, in universities and elsewhere, speak “civilly” about women and minorities. I’m talking of course about the “political correctness” movement beginning in the 1980s, which often merged into attempts to enforce a leftist position on race relations and gender politics. Meanwhile, some liberals began to have second thoughts. They supported enactment of hate-crime laws that raised criminal penalties for people who commit crimes against minorities because of racist or other invidious motives. They agreed that hate speech directed at women in the workplace could be the basis of sexual harassment claims against employers as well. However, the old First Amendment victories in the Supreme Court continued to play an important role in progressive mythology. For the left, the amendment today is like a dear old uncle who enacted heroic deeds in his youth but on occasion says embarrassing things about taboo subjects in his decline. We have to remember that our First Amendment values are not universal; they emerged contingently from our own political history, a set of cobbled-together compromises among political and ideological factions responding to localized events. As often happens, what starts out as a grudging political settlement has become, when challenged from abroad, a dogmatic principle to be imposed universally. Suddenly, the disparagement of other people and their beliefs is not an unfortunate fact but a positive good. It contributes to the “marketplace of ideas,” as though we would seriously admit that Nazis or terrorist fanatics might turn out to be right after all. Salman Rushdie recently claimed that bad ideas, “like vampires … die in the sunlight” rather than persist in a glamorized underground existence. But bad ideas never die: They are zombies, not vampires. Bad ideas like fascism, Communism, and white supremacy have roamed the countryside of many an open society. So symbolic attachment to uneasy, historically contingent compromises, and a half-century of judicial decisions addressing domestic political dissent and countercultural pressures, prevent the U.S. government from restricting the distribution of a video that causes violence abroad and damages America’s reputation. And this is a video that, by the admission of all sides, has no value whatsoever. Americans have not always been so [stuck] paralyzed by constitutional symbolism. During the Cold War, the U.S. foreign policy establishment urged civil rights reform in order to counter Soviet propagandists’ gleeful reports that Americans fire-hosed black protesters and state police arrested African diplomats who violated Jim Crow laws. Rather than tell the rest of the world to respect states’ rights—an ideal as sacred in its day as free speech is now—the national government assured foreigners that it sought to correct a serious but deeply entrenched problem. It is useful if discomfiting to consider that many people around the world may see America’s official indifference to Muslim (or any religious) sensibilities as similar to its indifference to racial discrimination before the civil rights era. The final irony is that while the White House did no more than timidly plead with Google to check if the anti-Muslim video violates its policies (appeasement! shout the critics), Google itself approached the controversy in the spirit of prudence. The company declined to remove the video from YouTube because the video did not attack a group (Muslims) but only attacked a religion (Islam). Yet it also cut off access to the video in countries such as Libya and Egypt where it caused violence or violated domestic law. This may have been a sensible middle ground, or perhaps Google should have done more. What is peculiar is that while reasonable people can disagree about whether a government should be able to curtail speech in order to safeguard its relations with foreign countries, the Google compromise is not one that the U.S. government could have directed. That’s because the First Amendment protects verbal attacks on groups as well as speech that causes violence (except direct incitement: the old cry of “Fire!” in a crowded theater). And so combining the liberal view that government should not interfere with political discourse, and the conservative view that government should not interfere with commerce, we end up with the bizarre principle that U.S. foreign policy interests cannot justify any restrictions on speech whatsoever. Instead, only the profit-maximizing interests of a private American corporation can. Try explaining that to the protesters in Cairo or Islamabad.

## ATs



### AT Anti-Semitism

#### Free speech now is too protective of anti-Semitic remarks that can spark violence

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

**Hate speech that is overtly derogatory toward vulnerable groups persistently occurs on college campuses. Jewish students at several U.S. universities have recently been the targets of a growing number of antisemitic incidents**.17 **An Anti-Defamation League audit found there were ninety-four antisemitic incidents on U.S. campuses in 2007,** representing about six percent of total anti-Jewish harassment and vandalism that year." **This frequency speaks to the need to develop constitutionally sound campus hate speech codes designed to prevent the alienation and intimidation of targeted students. Jewish students at** the University of California, Irvine ("**UC-Irvine**") **report that antagonism has grown to such an extent that they travel the outskirts of campus to avoid conflict, are reluctant to engage in activities sponsored by Jewish organizations, and have trouble focusing on their studies**.' 9 Imam Mohammad Al-**Asi and** Amir Abdel Malik **Ali** **made speeches** at a week-long event at UC-Irvine that wedded traditional stereotypes with modern events, **claiming that Jews are in control of U.S. media and responsible for the terror on September 11, 2001.** In one speech Al-Asi asserted, **"'[w]e have a psychosis in the Jewish community** that is unable to co-exist equally and brotherly with other human beings."' 20 lIn 2010, **the Muslim Student Union** at UC-Irvine, which the University subsequently banned, **brought in a speaker who "compared Jews to Nazis" and "expressed support for Hamas, Hizbullah and Islamic Jihad."** 21 In two separate incidents **at** the University of California, Berkeley ("UC-**Berkeley**"), **swastikas were scrawled on a Jewish student organization's pamphlet and an anti-Palestinian message appeared scrawled on a campus building**.22 **At the Cal**ifornia **Poly**technic University, **students reported seeing a Confederate flag and a noose** hanging in a residence hall, **as well as a sign featuring racist and** 23 **homophobic statements**.23 University attorneys and law enforcement officials presumed, incorrectly as I will demonstrate later, that the First Amendment protects such speech.24 In light of their advice, **the president of the university issued a written reprimand but refused to punish the perpetrators**.25 **In** Eugene, **Oregon**, **several "hate speech-related crime[s]" followed the appearances of Holocaust denier David Irving and Ku Klux Klan supporter Tomislav Sunic at group-sponsored forums held on** the University of Oregon **campus**.26

### AT Authoritarianism

#### The market and private influences regulate speech in the same way the government does, but the government at least is checked by the people

Brison 98

Brison, Susan J. (Brison is a professor of philosophy at UChicago) "The Autonomy Defense of Free Speech." Ethics 108.2 (1998): 312-39. JSTOR. Web. 17 Dec. 2016. <http://www.jstor.org/stable/10.1086/233807?ref=search-gateway:fe5267c05e76e1973dddd9f6994cf516>. [Premier]

In addition, we need to ask whether private pressures and market¶ constraints on speech are less violative of audience autonomy, on this¶ account, than are public, governmental restrictions.¶ 93 Those presenting¶ the autonomy argument against governmental restrictions on speech fail[s]¶ to acknowledge the ways in which the market, or the private sphere, can¶ restrict access to speech, and thus, on their own view, undermine autonomy.¶ A governmental policy of allowing this to go unchecked cannot be defended by appeal to the value of autonomy, as no argument has¶ been given for supposing the market-induced restrictions to be more respectful¶ of autonomy than a well-reasoned and carefully implemented¶ governmental policy would be. In our society, for example, the mass media [is]¶ are not only the main sources of information for most people, but¶ also the selectors of what information we receive.¶ 94 Decisions about what¶ speech to give people access to are not only based on the corporations’¶ judgments of profitability, but are also influenced by advertisers’ effective¶ veto power concerning content.¶ 95 Why should we assume that government¶ regulators would have even less pure motives in deciding what¶ speech to restrict? The exclusive concern with governmental skewing of¶ the market may arise from the view that the default position is no censorship,¶ rather than censorship of the market. The view that there is agency¶ involved in the marketplace as well as in government is noticeably absent¶ in, for example, Oliver Wendell Holmes’s famous reference to ‘‘the¶ power of the thought to get itself accepted in the competition of the market,’’¶ and it is rarely mentioned in discussions of autonomy and free¶ speech.96 An implicit premise in the autonomy defense of free speech is¶ that only governmental regulation of speech can be autonomy undermining,¶ but no argument is given for this assumption.

### AT Citizens United

#### Citizens United drowns out speech, conflates money with speech

Sleeper 16

Jim Sleeper, polisci prof @ Yale and Alternet reporter, “What the Campus 'Free Speech' Crusade Won't Say” <http://www.alternet.org/education/what-campus-free-speech-crusade-wont-say-0> [Premier]

**For example**, the FIRE applauds the **Citizens United** ruling’s **extension of First Amendment-protection of political speech to business and other corporations’** shifting whorls of anonymous investors. “If flag-burning and nude dancing [are protected by the First Amendment], why can’t it protect robust speech?” asked Theodore Olsen, former solicitor general in the George W. Bush administration and counsel for the Citizens United plaintiffs.

His **subtext: Let the lefties rant, as long as the fiduciaries of shifting whorls of anonymous corporate shareholders can drown them out with big, expensive megaphones while the lefties get laryngitis from straining to be heard**. **Money and speech are being equated here, both in the sense that money can buy hired speakers and blast them to millions and in the sense that money-making is permitted to “speak” in public deliberations about how to regulate money according to human, social standards that should transcend money itself.**

**Yet the Citizens United ruling says nothing about the speech rights of workers within the very corporations whose political “speech” the ruling protects. Irony of ironies, a lot of campus political correctness is only a dress rehearsal for conformity to what most business-corporate human-resources departments demand of employees these days.** Yet while the Foundation for Individual Rights in Education assails private universities for restricting students’ individual rights, it would never support the creation of a Foundation for Individual Rights in Employment in private businesses.

### AT Education / Learning

#### Restrictions on free speech are tools of good pedagogy – otherwise students will just blab on about their opinions and learn nothing!

Posner ’15 Eric(Eric Posner is a professor at the University of Chicago Law School, and is author of [The Twilight of International Human Rights Law](http://www.amazon.com/dp/019931344X/?tag=slatmaga-20)) Universities Are Right—and Within Their Rights—to Crack Down on Speech and Behavior, Slate, February 12,2015, Date Accessed 12/10/16 <http://www.slate.com/articles/news_and_politics/view_from_chicago/2015/02/university_speech_codes_students_are_children_who_must_be_protected.html> [Premier]

Lately, a moral panic about speech and sexual activity in universities has reached a crescendo. Universities have strengthened rules prohibiting offensive speech typically targeted at racial, ethnic, and sexual minorities; taken it upon themselves to issue “trigger warnings” to students when courses offer content that might upset them; [banned sexual acts that fall short of rape](http://www.slate.com/articles/double_x/doublex/2015/02/drunk_sex_on_campus_universities_are_struggling_to_determine_when_intoxicated.html) under criminal law but are on the borderline of coercion; and limited due process protections of students accused of violating these rules. Most liberals celebrate these developments, yet with a certain uneasiness. Few of them want to apply these protections to society at large. Conservatives and libertarians are up in arms. They see these rules as an assault on free speech and individual liberty. They think universities are treating students like children. And they are right. But they have also not considered that the justification for these policies may lie hidden in plain sight: that students are children. Not in terms of age, but in terms of maturity. Even in college, they must be protected like children while being prepared to be adults. There is a popular, romantic notion that students receive their university education through free and open debate about the issues of the day. Nothing could be farther from the truth. Students who enter college know hardly anything at all—that’s why they need an education. Classroom teachers know students won’t learn anything if they blab on about their opinions. Teachers are dictators who carefully control what students say to one another. It’s not just that sincere expressions of opinion about same-sex marriage or campaign finance reform are out of place in chemistry and math class. They are out of place even in philosophy and politics classes, where the goal is to educate students (usually about academic texts and theories), not to listen to them spout off. And while professors sometimes believe there is pedagogical value in allowing students to express their political opinions in the context of some text, professors (or at least, good professors) carefully manipulate their students so that the discussion serves pedagogical ends. That’s why the contretemps about a recent [incident](http://www.theatlantic.com/education/archive/2015/02/stripping-a-professor-of-tenure-over-a-blog-post/385280/) at Marquette University is far less alarming than libertarians think. An inexperienced instructor was teaching a class on the philosophy of John Rawls, and a student in the class argued that same-sex marriage was consistent with Rawls’ philosophy. When another student told the teacher outside of class that he disagreed, the teacher responded that she would not permit a student to oppose same-sex marriage in class because that might offend gay students. While I believe that the teacher mishandled the student’s complaint, she was justified in dismissing it. The purpose of the class was to teach Rawls’ theory of justice, not to debate the merits of same-sex marriage. The fact that a student injected same-sex marriage into the discussion does not mean that the class was required to discuss it. The professor might reasonably have believed that the students would gain a better understanding of Rawls’ theory if they thought about how it applied to issues less divisive and hence less likely to distract students from the academic merits of the theory. Teaching is tricky. Everyone understands that a class is a failure if students refuse to learn because they feel bullied or intimidated, or if ideological arguments break out that have nothing to do with understanding an idea. It is the responsibility of the professor to conduct the class in such a way that maximal learning occurs, not maximal speech. That’s why no teacher would permit students to launch into anti-Semitic diatribes in a class about the Holocaust, however sincerely the speaker might think that Jews were responsible for the Holocaust or the Holocaust did not take place. And even a teacher less scrupulous about avoiding offense to gay people would draw a line if a student in the Rawls class wanted to argue that Jim Crow or legalization of pedophilia is entailed by the principles of justice. While advocates of freedom of speech like to claim that falsehoods get squeezed out in the “marketplace of ideas,” in classrooms they just receive an F. Most of the debate about speech codes, which frequently [prohibit students from making offensive comments to one another](http://www.thefire.org/spotlight-speech-codes-2015/), concerns speech outside of class. Two points should be made. First, students who are unhappy with the codes and values on campus can take their views to forums outside of campus—to the town square, for example. The campus is an extension of the classroom, and so while the restrictions in the classroom are enforced less vigorously, the underlying pedagogical objective of avoiding intimidation remains intact Second, and more important—at least for libertarians partisans of the free market—the universities are simply catering to demand in the marketplace for education. While critics sometimes give the impression that lefty professors and clueless administrators originated the speech and sex codes, the truth is that universities adopted them because that’s what most students want. If students want to learn biology and art history in an environment where they needn’t worry about being offended or raped, why shouldn’t they? As long as universities are free to choose whatever rules they want, students with different views can sort themselves into universities with different rules. Indeed, students who want the greatest speech protections can attend public universities, which (unlike private universities) are governed by the First Amendment. Libertarians might reflect on the irony that the private market, in which they normally put faith, reflects a preference among students for speech restrictions. And this brings me to the most important overlooked fact about speech and sex code debates. Society seems to be moving the age of majority from 18 to 21 or 22. We are increasingly treating college-age students as quasi-children who need protection from some of life’s harsh realities while they complete the larval stage of their lives. Many [critics](http://www.washingtonpost.com/opinions/george-will-college-become-the-victims-of-progressivism/2014/06/06/e90e73b4-eb50-11e3-9f5c-9075d5508f0a_story.html) of these codes discern this transformation but misinterpret it. They complain that universities are treating adults like children. The problem is that universities have been treating children like adults. A lot of the controversies about campus life become clearer from this perspective. Youngsters do dumb things. They suffer from lack of impulse control. They fail to say no to a sexual encounter they do not want, or they misinterpret a *no* as *yes*, or in public debate they undermine their own arguments by being needlessly offensive. Scientific research [confirms](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2892678/) that brain development continues well into a person’s 20s. High schools are accustomed to dealing with the cognitive limitations of their charges. They see their mission as advancing the autonomy of students rather than assuming that it is already in place. They socialize as well as educate children to act civilly by punishing them if they don’t. Universities have gradually realized that they must take the same approach to college students. One naturally wonders why this has become necessary. Perhaps overprogrammed children engineered to the specifications of college admissions offices no longer experience the risks and challenges that breed maturity. Or maybe in our ever-more technologically advanced society, the responsibilities of adulthood must be delayed until the completion of a more extended period of education. Yet college students have not always enjoyed so much autonomy. The modern freedoms of college students date back only to the 1960s, when a wave of anti-authoritarianism, inspired by the Vietnam War and the civil rights movement, swept away strict campus codes in an era of single-sex dorms. The modern speech and sex codes have surfaced as those waters recede back to sea. What is most interesting is that this reaction comes not from parents and administrators, but from students themselves, who, apparently recognizing that their parents and schools have not fully prepared them for independence, want universities to resume their traditional role in loco parentis. If all this is true, then maybe we can declare a truce in the culture wars over education. If college students are children, then they should be protected like children. Libertarians should take heart that the market in private education offers students a diverse assortment of ideological cultures in which they can be indoctrinated. Conservatives should rejoice that moral instruction and social control have been reintroduced to the universities after a 40-year drought. Both groups should be pleased that students are kept from harm’s way, and kept from doing harm, until they are ready to accept the responsibilities of adults.

### AT FIRE / Lukianoff

#### FIRE is funded by racists, the founder is known for his microaggressions, and there aren’t any people of color working for them

Sleeper 16

Jim Sleeper, polisci prof @ Yale and Alternet reporter, “What the Campus 'Free Speech' Crusade Won't Say” <http://www.alternet.org/education/what-campus-free-speech-crusade-wont-say-0> [Premier]

The Bradley Foundation is one of the most aggressively, unapologetically racist grant-makers of any great substance in America. Not only did it help Charles Murray (with a $100,000 grant) to finish writing The Bell Curve when even conservative groups were distancing themselves from that project; in 2010 Bradley contributed $10,000 toward putting up voter suppression billboards in black neighborhoods of Milwaukee that depicted a black man behind bars above the message, “Voting Fraud is a Felony.” But, even putting politically correct sensitivities aside in deference to First Amendment rights, there is something so thoughtless and clueless—or else subliminally provocative—in Lukianoff’s analogy to “wiping out an Indian village” quip and in the distribution of “that video” of the overwrought black student that one can’t help but wonder if he and his funders just slip opportunistically into targeting angry non-whites because that boosts their campaign’s appeal to people looking for scapegoats, or if they’re conscious racists themselves. You certainly don’t see many or any people of color holding any staff positions at the FIRE or in the other organizations in its network. The foundation has won more than a million dollars from Bradley and half a million dollars from DonorsTrust, It had $7 million in revenue and $6 million in assets in June of 2015. Yet, basing its tax exemption on its commitments to addressing “censorship, freedom of speech, and press issues,” it deflects liberal and leftist criticism of its agenda by fighting draconian campus speech codes and other constraints on freedoms of expression. It has even defended Israel-bashers against some colleges’ efforts to silence their protests as anti-Semitic hate speech, because, as FIRE reminds us, the First Amendment protects it, at least in public universities.¶ Lukianoff has also gone somewhat out of his way to post appeals to “Stand Up for Global Academic Freedom,” saying that it’s “under threat across the world from Turkey to China to the USA.” With all due respect to slippery slopes, it’s more than a bit slippery to lump American university bureaucracies’ encroachments on academic freedom with draconian crackdowns by governments abroad.¶ Ironically, FIRE has been silent lately about David Horowitz’s efforts to get state legislatures to enact his “Academic Bill of Rights,” which would use government power to monitor and shape academic freedom, in clear violation of the First Amendment. Yet David French, Lukianoff’s predecessor as the FIRE’s president, supported Horowitz’s project in public testimony.¶ It’s characteristic of Lukianoff’s modus that he tells everyone he’s a liberal Democrat and that he worked at the American Civil Liberties Union. Never mind that he left the ACLU to lead the FIRE, whose grants come from the tightly linked conservative foundations I’ve mentioned. His boards of directors and advisors include well-known conservatives such as George Will and T. Kenneth Cribb, assistant for domestic affairs to President Ronald Reagan and a former president of the Intercollegiate Studies Institute. The Yale Buckley Program’s Roger Kimball is on the board of the Sarah Scaife Foundation, one of FIRE’s chief funders, according to tax documents posted on the foundation's website.¶ Even Lukianoff’s big book, Unlearning Liberty: Campus Censorship and the End of American Debate, was published in 2014 by the conservative Encounter Books, which has published books by Kimball, William Kristol, and others in the conservative network. Encounter Books has been given at least $6 million by the Bradley Foundation.¶ What kind of liberal Democrat builds his work around accepting such grants, obligations, and associations? This kind: Lukianoff, invited by The Atlantic to explain how he’d come to write “The Coddling of the American Mind,” chose to explain that:¶ “In the winter of 2007-'08, I slipped into a deep depression. I had struggled with bouts of depression my entire life, many of them quite severe, but this was in a category by itself. I could not shake the feeling that any mistake I made in my professional life—anything short of complete success—would mean ruin; nightmare scenarios played continually in my head.¶ “In January 2008, after I moved from Philadelphia to New York City to be surrounded by family and friends, I started seeing a therapist who practiced cognitive behavioral therapy, and began to turn a corner. I eventually learned to question irrationally negative thoughts about myself, the people I encountered, the future. Since then, my battles with depression have become winnable skirmishes.¶ “As I was learning to identify distortions in my own thinking, I began to recognize them in the thinking of others.”¶ Lukianoff then cites instances of distorted thinking in campus sensitivity exercises.¶ In his conversation with The Atlantic editor James Bennet about the “tidal wave” of public reaction to the “Coddling” essay, Lukianoff says that, “A response to the Atlantic that nearly brought me to tears because it was so beautiful” came from someone who’d lost a sister who’d jumped off a building. The survivor later took a class where a similar thing was described in a work of fiction. According to Lukianoff, she wrote him that because the professor had offered no “trigger warning” about the description of suicide, “It was the first time she had felt normal in years” for being “treated like everybody else.”¶ This brought Lukianoff to tears? Missing from FIRE’s campaign is candor not only about his motives and modus but about his claim that protests, however puerile, about matters such as trigger warnings and Halloween costumes constitute serious threats to open inquiry and expression.¶ Undoubtedly that’s true in some of the disputes FIRE has publicized and some of the very few legal cases it has actually taken up. But we need a distinction between, on the one hand, defending the First Amendment against all encroachments and, on the other hand, defending it selectively, as the FIRE does, for ideological, propagandistic, purposes that can only weaken a citizenry’s ability to be vigilant in protecting the First Amendment itself. Yes, the FIRE has publicized, and in some instances litigated, cases on behalf of “liberals,” Muslims, and others who aren’t white libertarians. But, under Lukianoff, those have served increasingly as protective coloration for a “free speech” crusade claiming that it’s mainly liberal coddling and progressive cry-bullying that are chilling individual rights education.¶ The creeping totalitarianism that the FIRE and its enthusiasts warn about is coming not from the kids but from the system they’ve grown up in—neoliberal, corporatist dispensation, with its manifold and metastasizing encroachments on individual rights, on campus and off.¶

#### FIRE is a right wing organization that wants to shut down speech it doesn’t like under the guise of protecting free speech

Sleeper ’16 Jim(Jim Sleeper is a lecturer in political science at Yale, a former columnist for *Newsday* and *The NY Daily News*, and author of *The Closest of Strangers: Liberalism and the Politics of Race in New York*.) The Conservatives Behind the Campus Free Speech Crusade, The American Prospect, October 19,2016, Date Accessed 12/20/16, [http://prospect.org/article/conservatives-behind-campus-‘free-speech’-crusade](http://prospect.org/article/conservatives-behind-campus-'free-speech'-crusade) [Premier]

Last month, I [disclosed](http://www.alternet.org/education/what-campus-free-speech-crusade-wont-say-0) the conservative-movement funding, premises, strategy, and practices of the Foundation for Individual Rights in Education (FIRE), which purports to protect “free speech” on college campuses, but expends more energy blaming—and chilling—“politically correct” activists and administrators. I also [argued](http://www.nytimes.com/2016/09/04/opinion/sunday/political-correctness-and-its-real-enemies.html?action=click&pgtype=Homepage&clickSource=story-heading&module=opinion-c-col-right-region%C2%AEion=opinion-c-col-right-region&WT.nav=opinion-c-col-right-region), in *The New York Times*, that “free speech is alive and well on campus,” and that demands for “safe spaces,” “trigger warnings,” and speaker cancellations, while real and sometimes chilling, are far less prevalent and dangerous than FIRE insists. Such offenses often prompt not intimidation and silence but more speech, including criticism from liberals. Now a thorough, mostly well-balanced [report](https://pen.org/on-campus) by the PEN (Poets, Essayists, and Novelists) American Center confirms that the conservative “free speech” crusade has gone too far. On October 20 at a Bard College [conference](http://www.bard.edu/news/events/event/index.php?eid=129972), PEN executive director Suzanne Nossel will have an opportunity to question FIRE President Greg Lukianoff, the crusade’s most prominent national leader, about that overreaching. There are several questions that I hope Nossel and another panelist, Angus Johnston, will ask Lukianoff. But first, some context. The *Times’*Jennifer Schuessler reported last weekend that although “[t]he conventional wisdom surrounding American college life these days views campuses as hotbeds of intolerance for free speech,” the PEN report “questions that story line while warning of a different danger: a growing perception among young people that cries of ‘free speech’ are too often used as a cudgel against them.” In other words, one thing threatening freedom of expression on campus is the “free speech” crusade itself. That’s not as Orwellian as it may sound. Not surprisingly, FIRE is trying to put [the best face it can](https://www.thefire.org/pen-america-issues-report-on-campus-speech/) on the PEN report, which stops short of blaming the conservative group for wielding the cudgel, and even credits the organization with calling attention to threats against free speech. The report calls the organization “libertarian” but, confusingly, notes elsewhere in the text that the “FIRE is often regarded as libertarian or conservative and is viewed suspiciously by some liberal or progressive students and faculty.” “Suspiciously?” As I demonstrate in “[What the Campus ‘Free Speech’ Crusade Won’t Say](http://www.alternet.org/education/what-campus-free-speech-crusade-wont-say-0),” FIRE’s funding, board members, and closest associations are heavily right wing. Its major grants come from the ultra-conservative Earhart, John Templeton, and Lynde and Harry Bradley Foundations; the Scaife family foundations; the Koch-linked [Donors Trust](http://www.motherjones.com/politics/2013/02/donors-trust-donor-capital-fund-dark-money-koch-bradley-devos), and funders that sustain a myriad of conservative campus-targeting organizations that include FIRE, the Intercollegiate Studies Institute, the David Horowitz Freedom Center (whose “Academic Bill of Rights” would mandate more hiring of conservative faculty and would monitor professors’ syllabi for “balance”) and Campus Watch (which tracks and condemns liberal professors’ comments on the Middle East). All of these organizations stoke public anger against “political correctness” as a threat to academic freedom and to the free-market economy, which they insist would enhance it. Never mind that, as FIRE keeps discovering—but never invites us to ponder—the college trustees and deans whom it condemns rightly enough for restricting speech are serving not politically correct pieties, but market pressures to satisfy student “customers” and avoid negative publicity, liability, and losses in “brand” or “market share.” FIRE can’t acknowledge that the more market-driven a university, the more restrictive it—like any business corporation—is of individual rights in education. Lukianoff should be asked to acknowledge this at the Bard conference. Lukianoff’s boards of directors and advisers include such prominent “free-market” conservatives as George Will and T. Kenneth Cribb, who was assistant for domestic affairs to President Ronald Reagan and a former president of the conservative Intercollegiate Studies Institute, which trains students to counter “liberal” threats to the “market economy.” Roger Kimball, the thundering author of *Tenured Radicals* and “Taking Back the University—A Battle Plan” and a board member of the Sarah Scaife Foundation, one of FIRE’s big funders, also chairs the William F. Buckley Program at Yale, which invited Lukianoff to campus last fall. There he shot the infamous video of an overwrought black 20-year-old shrieking at a professor, and also “triggered” (if I may) an angry demonstration against the Buckley program itself. Even Lukianoff’s *Unlearning Liberty: Campus Censorship and the End of American Debate*, was published in 2014 by the right-wing Encounter Books, which also publishes such conservative mainstays as Kimball and William Kristol, and which has been funded with at least $6 million by the Bradley Foundation. Lukianoff, a First Amendment lawyer who left the ACLU to head FIRE, claims that he’s a liberal Democrat, but his work depends on the conservative grant makers, board members, and associations mentioned above. What are his equivalent ties and obligations to progressives, whose freedoms he also claims to defend?    The PEN report’s failure to note all this is perhaps its only major failing. And, tomorrow, PEN Executive Director Nossel will have an opportunity to make up for it by asking Lukianoff directly why FIRE highlights and occasionally even provokes “politically correct” threats to freedom of speech, as I watched it do at Yale, and why it seldom if ever mentions the many conservative “politically correct” pressures on students and teachers that I [described](http://www.alternet.org/tea-party-and-right/why-bashing-politically-correct-campuses-hurting-conservatism) in “Why Bashing ‘Politically Correct’ Campuses is Hurting Conservatism.”   FIRE is justified, up to a point, in criticizing black protesters who shout down and intimidate classmates and professors by branding their colleges as racist, and in challenging feminist government and university bureaucrats who impose unfair standards and procedures when judging sexual-assault charges.And the PEN report is justified in saying that “while free speech is alive and well on campus,”—a conclusion that echoes my own observations—it is “not free from threats and must be vigilantly guarded if its continued strength is to be assured.” But FIRE itself poses one of those threats when it waves its “free speech” banner in virtual lockstep with a broader conservative class and culture war against the democratic rights it purports to protect. Here things turn Orwellian, indeed: As I’ve mentioned, the same foundations that fund FIRE’s pretensions at championing campus free speech also fund David Horowitz’s speech-chilling “Academic Bill of Rights,” for which Lukianoff’s predecessor at FIRE, David French, testified favorably before the Pennsylvania legislature.The same foundations also fund a campaign pretending to champion voting rights by passing voter ID laws that would actually disenfranchise voters, including many college students. (One of FIRE’s biggest funders, the Bradley Foundation, even paid for billboards in black neighborhoods that depicted a black man behind bars and the words, “Voting Fraud is Felony,” a not-so-veiled example of voter intimidation.) The same foundations also support—and FIRE has applauded—the duplicitously-named *Citizens United* ruling that, in the name of expanding free speech, opens election campaigns, and therefore public deliberation about how to regulate corporations, to business-corporate fiduciaries of incorporeal whorls of shareholders, who cannot really deliberate about anything but the size of their dividends. Labor unions, too, can now fund election campaigns, but once again, that’s little more than protective coloration for a ruling that lets wealthy corporations buy expensive megaphones to elect legislators who’ll impoverish and break more unions under so-called “right-to-work” laws.

Confronted with this picture, Lukianoff will undoubtedly accuse a questioner of assigning guilt by association, and cite FIRE’s occasional departures from the conservative line. But it’s awfully hard not to connect the dots between FIRE and the conservative funders and organizations engaged in a broad assault on any and all Americans who challenge their “free-market” doctrines. Those doctrines have themselves become dangerous to democracy via casino-style financing (Donald Trump, anyone?), predatory lending, and ever-more intrusive, degrading consumer marketing. The PEN report misses this broader context, conscientious though it is in distinguishing real threats to campus free speech from hyped and imagined ones. It’s also hard to accept at face value Lukianoff’s claim that FIRE takes on so many liberals only because most professors and students are liberals, and are therefore behind most campus constraints on free speech. In truth, as I [have argued](http://www.alternet.org/tea-party-and-right/why-bashing-politically-correct-campuses-hurting-conservatism), conservative political correctness doesn’t need to shout as loudly as its “progressive” variant only because it’s already baked into every Economics 101 course and into the premises and protocols of career advancement that the larger society foists on undergraduates. Pushers of these protocols insist that “free markets make free men,” as the old saying had it, and Lukianoff travels the country touting “the marketplace of ideas” on campus after campus. But the ebb and flow of ideas can’t be reduced to market exchanges, and has to transcend them. Today, “free market” globalization is undermining the individual rights, civic virtues, and republican sovereignty that conservatives claim to cherish. No wonder they’re looking to scapegoat frightened students and deans. Let’s hope that Bard conference-goers will have read [the](http://pen.org/on-campus)[PEN report](https://pen.org/on-campus), [the *Times* account of it](http://www.nytimes.com/2016/10/17/arts/pen-warns-that-college-students-often-see-free-speech-as-a-cudgel.html?_r=0), and my own analysis of “[What the Campus ‘Free Speech’ Crusade Won’t Say](http://www.alternet.org/education/what-campus-free-speech-crusade-wont-say-0).” And let’s hope that they’ll ask Lukianoff to explain his funding, premises, and the pattern and practice of his propaganda and provocations and omissions, which surround and often undermine his group’s legitimate complaints. I’ve sent these questions to FIRE myself, three times, but have never received an answer. Maybe the Bard conferees will have better luck.

#### Free speech advocates have nothing to do with actual freedom of speech, just the desire to keep conservative thought healthy in colleges

Sleeper 16

Sleeper, Jim. (Sleeper, is a lecturer in political science at Yale) "What the Campus 'Free Speech' Crusade Won't Say." Alternet. N.p., 4 Sept. 2016. Web. 11 Jan. 2017. <http://www.alternet.org/education/what-campus-free-speech-crusade-wont-say-0>. [Premier]

Again, though, universities are among the few places where “founding principles” are discussed often and rigorously enough to show that, in practice, some principles subvert others. For example, Lukianoff speaks often and everywhere of reinvigorating "the marketplace of ideas," but ideas in a university (and a healthy democracy) emerge from a culture of open inquiry and expression based in mutual respect, not market exchange values.¶ “You can't build a clear conservatism out of capitalism, because capitalism disrupts culture," said Sam Tanenhaus, biographer of the American conservative icon Whittaker Chambers, now writing a biography of William F. Buckley, Jr., in a lecture in 2007 at the conservative American Enterprise Institute.¶ Tanenhaus’ observation about the tension between today’s capitalism and democratic or republican culture is anathema to the ultra-conservative Lynde and Harry Bradley Foundation, the Scaife Family foundations, the Earhart, John Templeton, Koch-Brothers’ DonorsTrust (a conduit for donors for grants not made under their own names), and other foundations that sustain conservative think tanks like the AEI and a myriad of campus-targeting organizations—including FIRE, the Intercollegiate Studies Institute, The David Horowitz Freedom Center (whose “Academic Bill of Rights” would mandate more hiring of conservative faculty and would monitor professors’ syllabi for “balance”) and Campus Watch (which tracks and condemns liberal professors’ comments on the Middle East). These organizations stoke public anger against political correctness as a threat to academic freedom and to the free market economy that they keep insisting enhances it.¶ Their “free speech” campaign is really a culture war and a class war carried out on several fronts by a much larger network of organizations that are also funded by the very same foundations. The phrase “right wing” is thrown around so often that I was surprised to learn just how “right-wing” the funders of the FIRE and the other groups really are.

### AT Inherency

#### The worst speech codes can be resisted and fought in court – they’re being defeated now

FIRE ’16 Foundation for Individual Rights in Education,(FIRE launched its Stand Up for Free Speech Litigation Project in July 2014 to combat campus speech codes, so far 7 lawsuits have been successful in removing campus speech codes) On Speech Codes, The State of Free Speech on Our Nation’s Campuses, FIRE, 2016, Date Accessed 12/5/16 <https://d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2013/06/27212854/SCR_Final-Single_Pages.pdf> [Premier]

The good news is that the types of restrictions discussed in this report can be defeated. A student can be a tremendously effective advocate for change when he or she is aware of First Amendment rights and is willing to engage administrators in defense of them. Public exposure is also critical to defeating speech codes, since universities are often unwilling to defend their speech codes in the face of public criticism. Unconstitutional policies also can also be defeated in court, especially at public universities, where speech codes have been struck down in federal courts across the country. Many more policies have been revised in favor of free speech as the result of legal settlements, including seven cases brought since July 2014 as part of FIRE’s Stand Up For Speech Litigation Project. Any speech code in force at a public university is extremely vulnerable to a constitutional challenge. Moreover, as speech codes are consistently defeated in court, administrators are losing virtually any chance of credibly arguing that they are unaware of the law, which means that they may be held personally liable when they are responsible for their schools’ violations of constitutional rights.58 The suppression of free speech at American universities is a national scandal. But supporters of liberty should take heart: While many colleges and universities might seem at times to believe that they exist in a vacuum, the truth is that neither our nation’s courts nor its citizens look favorably upon speech codes or other restrictions on basic freedoms.

#### The aff impacts are being solved in the squo and the aff doesn’t solve the root cause

Shibley 14

Shibley, Robert. (Shibley, a civil liberties attorney, is Senior Vice President of the Foundation for Individual Rights in Education.) "Colleges Are Slowly Taking Away Your First Amendment Rights." The Washington Post. WP Company, 2 July 2014. Web. 08 Dec. 2016. <https://www.washingtonpost.com/posteverything/wp/2014/07/02/colleges-are-slowly-taking-away-your-first-amendment-rights/?utm\_term=.5a1cf96f9dc4>. [Premier]

Why is this happening? The main problem is incentives. Colleges fear those who demand censorship more than they fear those who demand they follow the Constitution and their own written policies. (Importantly, they also believe that the former group is more likely to sue than the latter.) And they’re under more pressure than ever to censor; with the explosion of social media, demanding that institutions punish or silence people when they say something “outrageous” has practically become our national pastime. The movement to include expression-chilling “trigger warnings” in curricula and this year’s disgraceful spate of commencement address controversies involving figures like Condoleezza Rice and IMF head Christine Lagarde only to push colleges further toward enforcing a stifling uniformity of opinion.¶ Six years ago, 79 percent of America’s largest and most prestigious public universities chilled student speech with laughably unconstitutional codes. Today, thanks to increased awareness of the problem, that number is down to 58 percent. That’s a real improvement, but it’s still far too high when the law requires that number to be 0 percent. Higher education cannot live up to its fantastic (and now, fantastically expensive) promise if this pervasive culture of censorship doesn’t change. The ugly truth is that far too many of our campuses are now places where making t-shirts, collecting petition signatures, blogging, or distributing pamphlets can get you in trouble.¶ That must end, and the sooner the better. America must not see another generation of students robbed of their basic rights to protest and to dissent on campus.

#### PC and speech codes aren’t a new phenomenon

Loury 10

Loury, Glenn C. (Prof of Philosophy @ BU) "Self-Censorship in Public Discourse: A Theory of "Political Correctness" and Related Phenomena." Rationality and Society (2010): n. pag. Print. [Premier]

Secondly, despite the attention which has been given to recent campus developments, the phenomenon of political correctness, understood as an implicit convention of restrained public speech, is neither new nor unusual. Indeed, pressuring speakers and writers to affirm acceptable beliefs and to suppress unacceptable views is one of the constants of political experience. All social groups have norms concerning the values and beliefs appropriate for members to hold on the most sensitive issues. Those seen not to share the consensus view may suffer low social esteem and face a variety of sanctions from colleagues for their apostasy: Heretics are unwelcome within the councils of the faithful. Communists and their sympathizers paid a heavy price for their "incorrect" views during the early Cold War. "Uncle Toms"--blacks seen as too eager to win favor with their white "overlords"--are still treated like pariah by other blacks who greatly value racial solidarity. Jews critical of Israel or Muslims critical of Islam may find that they "can't go home again."

### AT Legal Rulings

#### Even after losing legal battles, the number of restrictive speech codes increases

Welch ’14 Benjamin(Benjamin Welch, presenting a thesis to the Graduate College at the University of Nebraska In Partial Fulfillment of Requirements For the Degree of Master of Arts) An Examination of University Speech Codes’Constitutionality and Their Impact on High-Level Discourse, University of Nebraska—Lincoln Theses from the College of Journalism and Mass Communications, August 2014, Date Accessed 12/12/16 http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1046&context=journalismdiss[Premier]

It looked like the beginning of the end of speech prohibitions on campus in March 1995, when the California superior court confirmed what four other courts before it had ruled – that collegiate hate speech codes (specifically Stanford’s, in this case) were constitutionally suspect.64 Another study by Jon Gould, however, found the opposite to be true. The year 1997 saw a jump in surveyed universities with speech codes. Of the 100 universities previously surveyed, 54 percent had no speech policy and the other 46 percent allocated thus: 4 percent centered on fighting words, 19 percent verbal harassment, 11 percent verbal harassment against minorities and 12 percent against offensive speech, variations of minus 11, 3, 4, minus 3 and 8 percent, respectively.65 Most surprisingly, following the court rulings, the number of speech policies in the most unconstitutional category – vaguely prohibiting offensive speech – rose the sharpest, and most schools kept or develop their policies on the books in the face of contrary legal rulings. Technically, only the parties to a specific lawsuit are formally required to abide by the holding. In regards to hate speech codes, Michigan, Wisconsin, Central Michigan and Stanford would be the only universities subject to judicial sanctions had they not amended their policies after legal proceedings against them were complete. More broadly, however, the rulings hypothetically should have set a tone on what will or will not be tolerated in the academic environment. Universities were now faced with a quandary: would they bring their policies in line with the spirit of the First Amendment, essentially invalidating their approach, or would they fail to recognize the persuasive authority of the courts’ decisions? Jon Gould examined universities’ reactions and estimated that nationwide, 14 percent kept offending policies, 9 percent adopted an offending policy, 2 percent removed an offending policy, 17 percent kept a non-offending policy, 6 percent adopted a non-offending policy, 0 percent removed a non-offending policy, and 51 percent continued to have no relevant policy.66 Gould predicts that those schools employing passive noncompliance, or the act of maintaining offending policies regardless of legal definitions, did so out of the assumption by collegiate administration that the symbolic advantages of keeping the suspect policies on the books outweighed the low odds that they would be challenged in court. Those who created policies regardless of court decision did so, Gould suggests, by constructing policies administrators either believed would barely skirt legal precedent or blatantly in the face of the new rulings due to the understanding speech policies were the norm in higher education regardless of court rulings.67 Even today, the informal law of speech regulation has prospered, despite the outcome of legal battles in court. Could it be possible, then, that speech codes will eventually and ultimately have an effect on future First Amendment findings? The bounds of free speech continue to be pressed and reinterpreted despite court rulings advocating for the contrary. Jon Gould in his study comments that policies are rarely enforced, occurring at most once a year. He quotes a former college president, who says, “Adopting policies is easier than acting on actual cases... Policies are non-action,” which most college administrators prefer, he says. “The adoption does nothing.”68 Claims by opponents of indoctrinating young adults in schools may not be accurate, as well. A series of surveys conducted at the University of California at Los Angeles shows that freshmen arrive at school already with anti-hate speech ideals. In a 1993 survey, 58 percent of first-year students supported hate speech regulation.69 In 1994, two thirds approved of prohibitions,70 and by the early 2000s, the number had leveled off at around 60 percent of incoming students favoring control of hateful speech.71 Gould found that national media trends were similar; non-existent in 1988, picked up steam, peaked in the mid 1990s, and tapered off by the late ‘90s.72 But, as Anna Quindlen has said, media “do not make social policy, only reflect it once it moves convincingly from the fringe into the mainstream.”73 Simply, proponents of hate speech regulation conclude that it has triumphed in the face of formal constitutionalism. This is especially ironic, as traditional legal theory suggests that formal law prevails, and the support of legal institutions must be attained to secure constitutional rights. As Jon Gould, one of the foremost apologetics for campus speech policy, says, “What may have begun as an instrumental, intra-academic exercise has not been dispatched by its critics. In the early morning of a new century, the norm of hate speech regulation has grown to challenge the formal Constitution.”74

### AT Solvency

#### Most conservative fears about free speech are exaggerated, designed to avoid talking about real problems with American society

Sleeper 16

Jim Sleeper, polisci prof @ Yale and Alternet reporter, “What the Campus 'Free Speech' Crusade Won't Say” <http://www.alternet.org/education/what-campus-free-speech-crusade-wont-say-0> [Premier]

**The conservative free-speech campaign has drawn many other prurient scourges of the decadent young to prowl campuses seeking the thrill of sighting a specimen of the enemy who has become so vivid, so haunting, in their imaginations.**

**Chasing the specter, they can forget about the Iraq war, the 2008 financial meltdown, the mass killings, the road rage, the gladitorialization of sports, the degrading, ever-more intrusive marketing, and Donald Trump’s stampede through conventional herds of sacred political cows, all of these horrors discrediting the neo-liberal paradigm within which the hunters have lived and moved and had their beings. Finally, they can find a target**.

#### Claims of censorship to promote free speech end up crushing the free speech rights of anyone who would respond

Sleeper 16

Jim Sleeper, polisci prof @ Yale and Alternet reporter, “What the Campus 'Free Speech' Crusade Won't Say” <http://www.alternet.org/education/what-campus-free-speech-crusade-wont-say-0> [Premier]

**If Lukianoff’s video was meant to correct the politically correct, it had the contradictory effect of chilling the freedoms of expression that the FIRE and Scott Johnston claim to defend even in highly offensive speech.** (“You do realize that you don't have the right not to be offended, right?”, Johnston had said to the Native American students. And Erika **Christakis, in her open letter on Halloween costumes, had asked, “Is there no room anymore for a child or young person to be a little bit obnoxious… a little bit inappropriate or provocative or, yes, offensive?** American universities were once a safe space not only for maturation but also for a certain regressive, or even transgressive, experience; increasingly, it seems, they have become places of censure and prohibition.”) No, universities haven’t become places of censure and prohibition, at least not before **Lukianoff** **took out his video-cam and used his own rights to shut down someone else’s, a good example of what the conservative “free speech” campaign is doing. That video and the angry Native American students were enough to make Johnston, like alumni of other colleges that have had similar demonstrations, some led by black and Latino students, decide to stop funding what they see as coddled undergraduates and weak-kneed administrators**.

### AT Traverse

#### Exposure to hate speech expands what is considered possibly acceptable – that normalizes violence

Knobe 1-10

Joshua Knobe, Yale philosopher and cog scientist, Jan 10, 2017, 9:30am EST, “Cognitive science suggests Trump makes us more accepting of the morally outrageous” http://www.vox.com/the-big-idea/2017/1/10/14220790/normalization-trump-psychology-cognitive-science

**Once an option is recategorized as “normal,” people are more likely to choose it** There is a corollary to this finding: If people’s ideas about what is normal and abnormal change, that can cause changes in the possibilities they consider — and even the actions they take.

For an especially striking example, consider a real-world problem that arose **in Arizona’s Petrified Forest National Park. Tourists were stealing bark from the trees**, and the park as a whole was gradually being destroyed. What could be done to stop this theft? **The staff** of the park **decided** in the end **to put up a sign: ‘‘Your heritage is being vandalized every day by theft losses of petrified wood of 14 tons a year**, mostly a small piece at a time.’’ The goal was to raise awareness of the problem, making people see more clearly what was so bad about stealing from the park.

Perhaps **the sign did succeed in raising awareness, but** it also had another, more surprising effect. **By drawing attention to the fact that people often steal, it made people see theft as normal. Many of the park visitors might have seen theft as something that wasn’t even worth considering** (like trying to eat your shoe), **but the sign helped to switch them over to seeing it as something that might be bad but was still among the normal options** (like eating chocolate cake). A systematic study examined the impact of this sign. The key result: **Putting up this sign actually led to an increase in the total amount of theft.**

Trump’s rhetoric may be shifting the boundaries of what the American polity will consider This framework now makes it possible to understand the difference between seeing Trump's behavior as bad and seeing it as abnormal. When we see something as bad, we feel there are specific reasons not to move forward with it. This is the attitude that liberals typically take toward tax cuts. They think people should think critically about fiscal policy, see what is bad or wrong about tax cuts, and then fight to resist them.

But this does not seem to be an appropriate response to the sorts of things Trump has been doing. **When a candidate faces a challenge from a college student, we do not want the candidate to be thinking: "Should I start tweeting out insults about her? No, that would be bad** because..." **On the contrary, if we get to the point where candidates are thinking about whether behavior like this would be good or bad, things have already gone too far. This is the sort of possibility that should be ruled out before the process of considering different options has even begun**.

**And it’s not just a matter of a few inappropriate tweets. Once-unthinkable policies, such as new laws to constrain the press, or a federal registry of Muslims, are now being placed in the category of the “thinkable.”** Of course, many people still believe these policies are deeply wrong, but all the same, it can hardly be denied that people are considering them. **These are policies that would at one time have been regarded as completely outside the sphere of possibility.**

It has become something of a cliché to blame the media for these developments. The usual suggestion is that if only the press had been more strident in its condemnation, Trump’s behavior could never have been fully “normalized.” This cliché gets everything wrong. **The sign in the park included a vigorous denunciation of theft, but it nonetheless served to normalize the very behavior it was denouncing. Likewise, no matter how frequently and loudly we insist that what Trump is doing is wrong, we normalize his behavior just by letting people know about it.**

### AT Yale Example

#### Yale incident doesn’t demonstrate lack of speech – it affirmed speech on all sides

Sleeper 16

Jim Sleeper, polisci prof @ Yale and Alternet reporter, “What the Campus 'Free Speech' Crusade Won't Say” <http://www.alternet.org/education/what-campus-free-speech-crusade-wont-say-0> [Premier]

I’ve described this controversy at some length on AlterNet, but it’s worth noting that all of these open letters affirmed everyone’s rights to free expression. As Matthew Frye Jacobson, a professor of American studies, history and African-American studies at Yale, told the New York Times, the FIRE’s spin, and **the subsequent storm of media coverage, was “a complete misconstruction of what happened. The cultural affairs committee made its statement about Halloween costumes, The Christakises critiqued that; the students critiqued them. Then everyone in the world criticized the students. From beginning to end, it was never a matter of [suppressing] free speech.” No one at Yale was censured or punished by any government agency or by any administrator, faculty committee or, as far as I know, any individual faculty member. No one, at any time, demanded or even suggested that Erika Christakis stop teaching** her popular course on early childhood education. At one point in the controversy, though, an angry, black-led student group, Next Yale, posted a list of demands on President Salovey’s door and others who confronted Nicholas Christakis in the courtyard at midnight, among them a demand that the Christakises be dismissed as heads of one of Yale’s residential colleges. That demand was echoed vituperatively by an immature student who yelled it right into Nicholas Christakis’ face in an open confrontation in the residential courtyard.

# Theory/Topicality



### “Any”

#### Any quantity

Merriam Webster, No Date

<https://www.merriam-webster.com/dictionary/any> [Premier]

: **one, some, or all indiscriminately of whatever quantity**: a : one or more —**used to indicate an undetermined number or amount <Do you have any money?>**

### “Constitutionally Protected Speech”

#### Here are the types of speech that are protected by the US Constitution

US Courts nd United States Courts, About Federal Courts, What Does Free Speech Mean?, Date Accessed 12/4/16 <http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does> [Premier]

* Not to speak (specifically, the right not to salute the flag).
* *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943).
* Of students to wear black armbands to school to protest a war (“Students do not shed their constitutional rights at the schoolhouse gate.”).
* *Tinker v. Des Moines*, 393 U.S. 503 (1969).
* To use certain offensive words and phrases to convey political messages.
* *Cohen v. California*, 403 U.S. 15 (1971).
* To contribute money (under certain circumstances) to political campaigns.
* *Buckley v. Valeo*, 424 U.S. 1 (1976).
* To advertise commercial products and professional services (with some restrictions).
* *Virginia Board of Pharmacy v. Virginia Consumer Council*, 425 U.S. 748 (1976); *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).
* To engage in symbolic speech, (e.g., burning the flag in protest).
* *Texas v. Johnson*, 491 U.S. 397 (1989); *United States v. Eichman*, 496 U.S. 310 (1990).

#### Here are the types of speech that are not protected by the First Amendment

US Courts nd United States Courts, About Federal Courts, What Does Free Speech Mean?, Date Accessed 12/9/16 <http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does> [Premier]

* To incite actions that would harm others (e.g., “[S]hout[ing] ‘fire’ in a crowded theater.”).
* *Schenck v. United States,* 249 U.S. 47 (1919).
* To make or distribute obscene materials.
* *Roth v. United States*, 354 U.S. 476 (1957).
* To burn draft cards as an anti-war protest.
* *United States v. O’Brien*, 391 U.S. 367 (1968).
* To permit students to print articles in a school newspaper over the objections of the school administration.
* *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).
* Of students to make an obscene speech at a school-sponsored event.
* *Bethel School District #43 v. Fraser*, 478 U.S. 675 (1986).
* Of students to advocate illegal drug use at a school-sponsored event.

*Morse v. Frederick, \_\_ U.S. \_\_* (2007).

### “Restrict”

#### Restriction means a prohibition – not permitted under any circumstances

Northglenn 11 (City of Northglenn Zoning Ordinance, “Rules of Construction – Definitions”, http://www.northglenn.org/municode/ch11/content\_11-5.html) [Premier]

Section 11-5-3. Restrictions. As used in this Chapter 11 of the Municipal Code, the term "restriction" shall mean a prohibitive regulation. Any use, activity, operation, building, structure or thing which is the subject of a restriction is prohibited, and no such use, activity, operation, building, structure or thing shall be authorized by any permit or license.

#### Restriction means “limitation, condition, or regulation”

OED 89 (Oxford English Dictionary, “Restriction,” Volume 13, p. 759) [Premier]

a. A limitation imposed upon a person or thing; a condition or regulation of this nature.

#### Restriction means “any limitation”

Ottinger et al 5 (Richard L., Dean Emeritus – Pace University School of Law, Former U.S. Congressman, Chair of the Energy Law and Climate Change Specialist Group of the Commission on Environmental Law of the International Union for the Conservation of Nature (IUCN) and is on the IUCN Energy Initiative Executive Committee, Co-Director – Pace Center for Environmental Legal Studies, *Compendium of Sustainable Energy Laws*, IUCN Academy of Environmental Law Research Studies, p. 221) [Premier]

restriction means any limitation, whether made effective through quotas, licenses, permits, minimum or maximum price requirements or any other means;

#### Restrict and limit are functionally the same

Roeper No Date (Kurt, Director of Codes, Standards & Building Regulations for Ingersoll Rand Security Technologies, “NFPA 101,” http://www.nfpa.org/assets/files/PDF/ROP/101-A2005-ROP.pdf) [Premier]

ROEPER: I am returning my ballot with negatives for each of the above referenced logs. My reasons for doing so follow:¶ (1) The definitions to the terms retard, resist, restrict and limit, as determined by the committee, provide no discernible difference to the user of the standard.¶ (2) 101-179 (Log #CP609) strikes the term “restrict” and seeks to replace it with “limit”. Unfortunately, the definitions to these two terms each reference the other term, i.e., restrict is to limit, and limit is to restrict.

### States/Federal Debate Good

#### Different institutions make a big difference in free speech outcomes

Winkler 09

Adam Winkler, UCLA law prof, Free Speech Federalism, 108 Mich. L. Rev. 153 (2009). [Premier]

**The identity of the governmental institution behind a law restricting free speech rights may nonetheless be a significant, if hidden, factor in free speech cases. In this Article, I report the results of an empirical study of free speech decisions in the federal courts and reveal the ways in which the level of government behind a speech law-federal, state, or local-affects the degree of constitutional protection. This study shows that speech restrictions adopted by the federal government are far more likely to be upheld than speech restrictions adopted by other levels of government. Between 1990 and 2003, federal speech restrictions were upheld in 56% of federal court rulings, while only 24% of state speech restrictions were upheld. Even more striking is the fate of speech restrictions adopted by local governments; these were invalidated in almost every case, with only 3% surviving judicial review. In short, the level of government is a very good predictor of whether a speech restriction is likely to be upheld by the federal courts.** This Article details these findings and considers potential explanations for, and implications of, this "free speech federalism."

Part I provides a bit of historical background on the incorporation of the First Amendment and early arguments for distinct judicial treatment of federal and state speech laws. Part I then proposes **two reasons** why the level of government behind a speech burden might matter despite formally equal doctrinal standards: **(1) deference by the federal courts to federal laws and (2) variation in the constitutional quality of lawmaking at the different levels of government.**

Part II reports the results of a comprehensive census of published federal court decisions adjudicating restrictions on core free speech rights issued between 1990 and 2003. The cases show that **federal speech restrictions fare much better in federal court than do state and local speech restrictions**. This Part then estimates a model for predicting the likelihood that a speech law will survive federal judicial review. **Even if we control for differences in the types of speech laws** adopted by the different levels of government, federal laws are still far more likely than state and local speech restrictions to be upheld. This Part concludes with a closer examination of each doctrinal subgroup of free speech cases in which there are overlapping federal, state, or local restrictions. This examination uncovers deference to the federal government by the courts in some cases and poor lawmaking by the lower levels of government in others.

### Private Universities are Often Very Public

#### Private Universities still get some public benefits—They’re included under the topic

Douglas ’06 M.(M. Douglas is a writer for Inside HigherEd) (*Inside Higher Ed*is the online source for news, opinion and jobs for all of higher education.) Public and Private What’s the Difference? Inside Higher Ed Opinion, March 6,2006, Date Accessed 12/4/16 https://www.insidehighered.com/views/2006/03/06/lombardi [Premier]

Similarly, in the real world, the notion of private universities being somehow separate and independent from the obligations of public institutions by virtue of their funding sources is also not entirely accurate. Private universities, even those with exceptional endowments, exist to large extent on the public’s account. Their endowments succeed by virtue of public tax exemptions. The gifts that build the endowment enjoy a public tax exemption. The property and campuses of these private universities enjoy a public tax exemption. The federal government provides extensive tax supported need based financial aid to private institutions, revenue that subsidizes those institutions’ tuition and fess. Private research universities, like their public counterparts, receive federal grants and contracts whose overhead pays some portion of the research costs, a direct taxpayer subsidy. Private universities in many states receive a per-student subsidy for every in-state student they enroll, again a public subsidy. And on occasion, private universities succeed in persuading their states to invest in economic development activities that support the academic objectives of the private institution (either by subsidizing research or helping defray the costs of facilities).   America’s private institutions are a public trust. While they can evade many of the considerable bureaucratic and regulatory costs and obligations that public universities endure, they are nonetheless, publicly subsidized institutions with private governance.

#### No difference between the two

Douglas 06

Douglas, M. "Public and Private: What's the Difference?" Inside Higher Ed. N.p., 6 Mar. 2006. Web. 12 Jan. 2017. <https://www.insidehighered.com/views/2006/03/06/lombardi>. [Premier]

When we say public universities, we immediately bring a prototypical institution to mind, usually a substantial state flagship university, often from a Midwestern frame of reference, perhaps modeled after Iowa or Indiana or Wisconsin. When we say private university we also have a prototype in mind, perhaps Stanford, Yale or Duke. From these prototypes we develop a conversation about the convergence of public and private that leads us to worry about the loss of public purpose and investment in American higher education.¶ In the real world, most of public higher education takes place in state and community colleges that remain often 80 to 90 percent funded by public sources. For these institutions, the issue of public versus private is mostly irrelevant, and while they celebrate every small gift and modest grant, their primary focus is on their states and localities in the endless effort to sustain their operations. They are not at risk of becoming private.¶ Similarly, in the real world, the notion of private universities being somehow separate and independent from the obligations of public institutions by virtue of their funding sources is also not entirely accurate. Private universities, even those with exceptional endowments, exist to large extent on the public’s account. Their endowments succeed by virtue of public tax exemptions. The gifts that build the endowment enjoy a public tax exemption. The property and campuses of these private universities enjoy a public tax exemption. The federal government provides extensive tax supported need based financial aid to private institutions, revenue that subsidizes those institutions’ tuition and fess. ¶ Private research universities, like their public counterparts, receive federal grants and contracts whose overhead pays some portion of the research costs, a direct taxpayer subsidy. Private universities in many states receive a per-student subsidy for every in-state student they enroll, again a public subsidy. And on occasion, private universities succeed in persuading their states to invest in economic development activities that support the academic objectives of the private institution (either by subsidizing research or helping defray the costs of facilities). ¶ America’s private institutions are a public trust. While they can evade many of the considerable bureaucratic and regulatory costs and obligations that public universities endure, they are nonetheless, publicly subsidized institutions with private governance.¶ This is not a bad thing. It is just how we do business in America.

#### But private universities are not subject to the First Amendment

FIRE ’16 Foundation for Individual Rights in Education,(FIRE launched its Stand Up for Free Speech Litigation Project in July 2014 to combat campus speech codes, so far 7 lawsuits have been successful in removing campus speech codes) On Speech Codes, The State of Free Speech on Our Nation’s Campuses, FIRE, 2016, Date Accessed 12/5/16 <https://d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2013/06/27212854/SCR_Final-Single_Pages.pdf> [Premier]

With limited, narrowly defined exceptions, the First Amendment prohibits the government—including governmental entities such as state universities—from restricting freedom of speech. A good rule of thumb is that if a state law would be declared unconstitutional for violating the First Amendment, a similar regulation at a state college or university is likewise unconstitutional. The guarantees of the First Amendment generally do not apply to students at private colleges because the First Amendment regulates only government—not private—conduct. Moreover, although acceptance of federal funding does confer some obligations upon private colleges (such as compliance with federal anti-discrimination laws), compliance with the First Amendment is not one of them.

#### Definition of Public Colleges/Universities

Grove 16

Allen Grove, (Grove is a college admissions expert with more than 25 years of experience) 12-29-2016, "What Is a Public University?," About, <http://collegeapps.about.com/od/glossaryofkeyterms/g/public-university-definition.htm> [Premier]

The term "public" indicates that the university's funding comes partly from state taxpayers. This is not true for private universities (although the reality is that most private institutions do receive benefits from their non-profit tax status and government supported financial aid programs). It's also worth noting that many states do not, in fact, fund their public universities adequately, and in some cases far less than half of the operating budget comes from the state. Lawmakers often see public education as a place to cut back on spending, and the result can sometimes be significant increases in tuition and fees, larger class sizes, fewer academic options, and longer time to graduation.

# Misc



## Agents

### Courts Mess Up

#### Sometimes courts mis-apply precedent based on their own whims

Lukianoff 13

Greg Lukianofff, attorney and the president and CEO of the Foundation for Individual Rights in Education (FIRE), Unlearning Liberty: Campus Censorship and the End of American Debate, Encounter Books, 2013. Google Books. [Premier]

Unfortunately, not all courts have reached the right decision in the last year and a half. In July 2013, **a federal district court judge decided to dismiss the case of Joseph Corlett, the student who submitted the "Hot for Teacher" piece** (see Chapter 9) for his writing class after asking multiple times if he really could write anything he wanted and receiving repeated assurance that he could and encouragement to do so. **The judge let his distaste for Corlett's speech dictate his interpretation of the law, choosing to import a standard from Bethel** School District v. Fraser, **a 1986 case in which the Supreme Court ruled that high schools can punish students for lewd or vulgar speech. The Bethel opinion does not apply to college students, who have far greater expressive rights than those in high school, and is completely incompatible with the Supreme Court's position on freedom of speech in the context of higher education. In 1973, in Papish** v. Board of Curators of the University of Missouri et al., **the Court explicitly ruled that college campuses may not limit speech "based on the conventions of decency alone." Hopefully, judges in future cases won't let their personal discomfort with what a student says interfere with their interpretation of the law**.

## FYI

### Supreme Court Precedent

#### Supreme Court cases on the topic:

Harris and Ray 14 Vincent T Harris has an M. Ed. degree and is a doctoral student @ LSU, Darrell C. Ray is a prof @ LSU, HATE SPEECH & THE COLLEGE CAMPUS: CONSIDERATIONS FOR ENTRY LEVEL STUDENT AFFAIRS PRACTITIONERS, Race, Gender & Class 21.1/2 (2014): 185-194. ProQuest. [Premier]

The courts have been involved in the definition and protection of freedom of speech prior to situations on campuses. Some notable Supreme Court opinions include:

Texas v. Johnson (upholding the right to burn a flag), Hustler Magazine, Inc. v. Falwell (upholding the right to engage in ferocious parody and criticism), and R.A.V. v. St. Paul (banning viewpoint discrimination even when the speech might be considered "hate speech") (Silverglate et al., 2012:19).

As Dixon v. Alabama State Board of Education (1961) lead to the unraveling of in loco parentis, (which is a Latin phrase meaning "standing in the role of the parents"), university administrators were forced to implement more inventive approaches to maintain structure and to limit conflict (Silverglate et al., 2012). University administrators implemented a set of speech codes to police the use of offensive expression or speech on a college campus (Silverglate et al., 2012). Uecker (2011) noted that between the late 1980s and early 1990s almost 200 institutions of higher education adopted speech codes to help regulate the "tension between free speech and the sort of insensitive expression that harms equality, diversity, and civility" (p. 357). The goal of these speech codes were to prohibit and penalize any student or campus visitor who would offend a fellow student in regards to the listener's ethnicity, gender, religious affiliation, or sexual orientation (Silverglate et al., 2012).

### Clear & Present Danger Rule

#### First Amendment is limited when speech poses a clear and present danger

Tsesis 10

ALEXANDER TSESIS\*, prof @ Loyola Chicago Law, Burning Crosses on Campus: University Hate Speech Codes, HeinOnline -- 43 Conn. L. Rev. 619 2010-2011, <https://pdfs.semanticscholar.org/c4c2/a881ffd558d28d2b0d0a738981c7211d85e4.pdf> [Premier]

While Shenck appears to establish a "clear and present danger" rule, no one case could by itself develop the foundations of First Amendment jurisprudence. Just seven days after it decided Schenck, in a closely related case, Frohwerk v. United States, the Court upheld a ten-year prison sentence against a German-born newspaper editor for attempting to cause "disloyalty, mutiny and refusal of duty in the military" during the First World War.42 At his sentencing hearing, the defendant dejectedly declared his loyalty to the United States and his hatred for "kaizerism"; in turn, the trial judge expressed his respect for German culture.4 3 Once again writing for the majority, Holmes recognized that the First Amendment "obviously was not[] intended to give immunity for every possible use of language."" His rationale reflected on the particular circumstances of publication leading to the defendant's harsh conviction, finding that the newspaper was circulated in areas "where a little breath would be enough to kindle a flame and that the fact was known and relied upon by those who sent the paper out."'A While it is highly improbable that an appeal from any prosecution of criticism against the current War on Terror would find so sympathetic a Court, nothing indicates that the principle of Frohwerk has been overruled. The opinion established government's ability to criminalize advocacy to commit criminal acts in circumstances that pose a clear and present danger of serious harm, but it did not grant government a license to impede criticism of the war, even during the course of belligerency. What remains is the principle that, where language instigates violence or threatens violence, it can be regulated without violating the speakers' First Amendment rights. The reason for this leeway in the regulation of dangerous speech is that it does not further the underlying rationale for free speech. Intimidation is neither a step toward truth in the marketplace of ideas nor related to democratic self-governance. In the final case of this trilogy, Debs v. United States, which also 46 upheld a conviction for seeking to incite insubordination of the military, the Court inferred the speaker's advocacy from his choice of words, which tended "to obstruct the recruiting service."47 The significance of the ruling lies in the judicial power to assess whether speech has the "natural tendency and reasonably probable effect" of convincing audiences to commit illegal acts.48 Taken together, the doctrine announced in Schenck, Frohwerk, and Debs allows for the use of circumstantial evidence to prove the clear and present danger of harm from speech.

## Weighing

### Discount Evidence / Precedent on High Schools

#### High school court cases don’t apply. The Supreme Court makes a distinction between high school and college students

FIRE nd Foundation for Individual Rights in Education,(FIRE launched its Stand Up for Free Speech Litigation Project in July 2014 to combat campus speech codes, so far 7 lawsuits have been successful in removing campus speech codes) FIRE’s Guide to Free Speech on Campus—Full Text, Date Accessed 12/20/16 <https://www.thefire.org/fire-guides/fires-guide-to-free-speech-on-campus-3/fires-guide-to-free-speech-on-campus-full-text-2/#__RefHeading__2646_2128351051> [Premier]

It might seem strange that university officials often compare their open, free-wheeling campuses to the regimented world of public high school. When called upon to defend regulations or actions that stifle free expression and unpopular viewpoints, however, our universities too often step back to a time when students were children and food fights in the cafeteria were a greater practical danger to educational order than a protest for or against a nation’s foreign and domestic policies. In four landmark cases, the Supreme Court provided the general outline of student rights on the public high school campus. First, in the case of Tinker v. Des Moines Independent Community School District (1969), the Court emphatically held, “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” Indeed, it declared such a holding “unmistakable.” The school had punished students for wearing black armbands as a silent protest against the Vietnam War. The school claimed that it feared that the protest would cause a disruption at school, but it could point to no concrete evidence that such a disruption would occur or ever had occurred in the past as a result of similar protests. In response, the Supreme Court wrote that “undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression,” and it declared the regulation unconstitutional. After *Tinker*, regulation of student speech (in public high schools) is generally permissible only when the school reasonably fears that the speech will substantially disrupt or interfere with the work of the school or the rights of other students. *Tinker* was not the final word on student speech in public high school, however. Seventeen years later, the Court decided the case of Bethel School District v. Fraser (1986), in which it upheld a school’s suspension of a student who, at a school assembly, nominated a fellow student for class office through “an elaborate, graphic, and explicit sexual metaphor.” In the most critical part of its opinion, the Court stated, “The schools, as instruments of the state, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct such as that indulged in by this confused boy.” According to *Fraser*, there is no First Amendment protection for “lewd,” “vulgar,” “indecent,” and “plainly offensive” speech in a public high school. Another important Supreme Court public school speech case is Hazelwood School District v. Kuhlmeier (1988). In *Hazelwood*, the Court upheld a school principal’s decision to delete, before they even appeared in the student newspaper, stories about a student’s pregnancy and the divorce of a student’s parents. The Court reasoned that the publication of the school newspaper—which was written and edited as part of a journalism class—was a part of the curriculum and a regular classroom activity. Consequently, the Court ruled, “[e]ducators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.” Finally, in Morse v. Frederick (2007), the Supreme Court found that a public high school had not violated the First Amendment rights of a student suspended for unfurling a banner reading “BONG HiTS 4 JESUS” at a school-sponsored (but off-campus) event. Determining that it could “discern no meaningful distinction between celebrating illegal drug use in the midst of fellow students and outright advocacy or promotion,” the Court found that public high schools may “restrict student speech at a school event, when that speech is reasonably viewed as promoting illegal drug use.” Taken together, these four cases give public high school officials the ability to restrict speech that is substantially disruptive, indecent, or school-sponsored, or that may reasonably be viewed as promoting the use of illegal drugs. If these rules were applied to the university setting, the potential for administrative control over student speech would be great, although hardly total. All manner of protests or public speeches could be prohibited, contentious classroom discussions could be silenced or restricted, many school-sponsored expressive organizations could face censorship and regulation, and an entire viewpoint would be silenced. The Supreme Court, however, just as it has never equated the constitutional rights of kindergartners and high school students, also has never held that high school speech cases are applicable to public universities. The Court, in general, extends vital constitutional protections to public higher education. In the area of university-sponsored speech, the Court has decided three vitally important cases, in 1995, 2000, and 2010, which each clearly held that universities must remain viewpoint neutral when funding student organizations. Viewpoint neutrality means that public universities, in making their decisions about funding, may not take into consideration what position or opinion a student or group of students stands for or advocates. In the first case, *Rosenberger v. University of Virginia* (1995), the Court held that the university, having disbursed funds to a wide variety of other campus organizations, could not withhold funds collected as part of student fees from a Christian student publication and thus discriminate against religious viewpoints. In the second case, *University of Wisconsin v. Southworth* (2000), the Court held that a university could not impose mandatory student fees unless those fees were dispensed on a viewpoint-neutral basis. In the third case, *Christian Legal Society v. Martinez* (2010), the Court re-emphasized the requirement announced in *Rosenberger* and *Southworth* that any “restrictions on access” to university resources placed on student groups must be viewpoint neutral. The reasons for the distinction between public high schools and universities are plain. First, public high school students are almost exclusively minors. College students are almost exclusively adults. The age and maturity differences between secondary school students and university students have long been critical to the Court’s analysis in a variety of constitutional contexts. The Twenty-Sixth Amendment to the Constitution, which makes the official voting age eighteen years of age across the United States, also makes it especially clear that both law and society recognize a distinction between college-age students (typically eighteen and over) and high school students (typically under eighteen). Second, America’s universities traditionally have been considered places where the free exchange of ideas—academic freedom, in short—is not only welcome but, indeed, vital to the purpose and proper functioning of higher education. As the Court noted in *Widmar v. Vincent* (1981), speech regulations must consider “the nature of a place [and] the pattern of its normal activities.” The public university—with its traditions of research, discourse, and debate, and with its open spaces and great freedom of movement by students on campus—is so strikingly different, in so many essential ways, from the heavily regulated and more constricted public high school. In striking down speech codes maintained by the University of the Virgin Islands in its 2010 decision in *McCauley v. University of the Virgin Islands* (2010), the United States Court of Appeals for the Third Circuit provided an excellent summary of the clear differences between high schools and colleges, and the important rationales underlying the different speech rights afforded to students at each. Noting the “differing pedagogical goals of each institution,” the Third Circuit observed that while high schools “prioritize[] the inculcation of societal values,” public universities, in contrast, “encourage teachers and students to launch new inquiries into our understanding of the world.” Similarly, while the “*in loco parentis* role of public elementary and high school administrators” is essentially required, given “the common sense observation that younger members of our society, children and teens, lack the maturity found in adults,” the court stated that “[m]odern-day public universities are intended to function as marketplaces of ideas, where students interact with each other and with their professors in a collaborative learning environment.” Finally, the Third Circuit noted that “many university students reside on campus and thus are subject to university rules at almost all times,” and expressed concern that giving “public university administrators the speech-prohibiting power afforded to public elementary and high school administrators” would thus provide a constant infringement on those students’ right to free speech. The educational experience at a public university enjoys a constitutional uniqueness precisely because it is suited and intended to be a “free marketplace of ideas.” Traditionally, there have been few other places in American society where ideas are exchanged and debates engaged in as freely and as vigorously as on the campuses of our public universities. Arguments that attempt to end that tradition by citing those constitutional principles that apply to our nation’s children are constitutionally flawed, intellectually dishonest, and terribly demeaning to the young adults of our colleges and universities.

#### [More evidence mostly about high schools--] Recently, the Court has upheld restrictions on student speech

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During the 1960s, the Court dramatically expanded the First Amendment rights of students. In the landmark case of Tinker v. Des Moines Independent Community School District,403 the Court declared that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” and that they are entitled to “express [their] opinions, even on controversial subjects . . . , if [they do] so without materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school and without colliding with the rights of others.”404 Applying this standard, the Court held that a school could not suspend three students for wearing armbands to protest the Vietnam War.405 In recent decades, however, the Court has consistently sided with school officials by upholding their authority (1) to impose sanctions for a student’s “offensively lewd and indecent speech” at a school assembly in Bethel School District No. 403 v. Fraser;406 (2) to censor the contents of a school newspaper produced by a student journalism class in Hazelwood School District v. Kuhlmeier;407 and (3) to restrict student speech that school officials understood to promote the use of illegal drugs in Morse v. Frederick.408 These decisions reflect the conservative view that the public schools have a “custodial and tutelary responsibility for [the] children” in their care and are entitled to substantial deference in how they carry out that responsibility.409 At the same time, these decisions also highlight the tensions that are present within the conservative position. In *Fraser*, Chief Justice Burger asserted that the public schools have a responsibility to instill in students “the shared values of a civilized social order” and to teach them “the boundaries of socially appropriate behavior”410—a social-conservative view that is clearly at odds with a more libertarian view of the free speech rights of students. In Morse, Chief Justice Roberts declined to wade into the debate between these two views.411 Moreover, he reaffirmed the strong protection that Tinker accords to political speech.412 In a concurring opinion, Justices Alito and Kennedy underlined this point and repudiated the position taken by the school authorities and the Bush Administration “that the First Amendment permits public school officials to censor any student speech that interferes with a school’s ‘educational mission’”—a position that these Justices contended would “strike[] at the very heart of the First Amendment” by giving school officials “a license to suppress speech on political and social issues based on disagreement with the viewpoint expressed.”413 In a separate concurrence, Justice Thomas took a starkly different approach. After arguing that “[e]arly public schools gave total control to teachers” and that “courts routinely deferred to schools’ authority to make rules and to discipline students,” he concluded that “the First Amendment, as originally understood,” provided no protection at all to student speech, and that Tinker should be overruled.414