

FREE SPEECH ON CAMPUS: TRIGGER WARNINGS, SAFE SPACES, AND CONTROVERSIAL SPEECH AT U.S. COLLEGES

The First Amendment to the U.S. Constitution includes the freedom of speech. “Congress shall make no law . . . abridging the freedom of speech.” The freedom of speech guarantees that the government cannot prevent or punish speech itself. Public colleges and universities are government institutions and must abide by the First Amendment in protecting free speech. But what if college students anticipate that speech on campus will do them harm? Does the government have a role in determining what can or cannot be said on college and university campuses?



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Students at the University of Minnesota protesting a campus mural in 2016 that included the phrase “build the wall” from Donald Trump’s presidential campaign.

Campus Diversity and Hate Speech

The Supreme Court has held that diversity is a compelling interest for public colleges. (The terms “college” and “university” will be used interchangeably in this article.) For example, colleges may allow incoming students’ race, ethnicity, gender, disability, or sexual orientation to play a part in their admission to the college.

But the Supreme Court has also held that hate speech is not an exception to the First Amendment. Hate speech is speech that shows hostility to people based upon the same factors that make up diversity (race, ethnicity, gender, etc.). It is protected speech unless it incites violence or provokes a fight. But should free speech on college campuses ever allow any hate speech?

Diversity advocates argue that public and private colleges have an interest in creating a safe environment for all kinds of students. Presumably no student wants to go to a university where he or she is made to feel like an outsider. Nor does anyone want to fear being called racist names as he or she studies.

Advocates also claim that diversity in colleges is important both for the sake of individual students and for the sake of our collective pursuit of knowledge. Individual students of all backgrounds, races, sexual orientations, and genders should be present at our universities

since the Constitution guarantees equal access to education to all.

Diversity is also important for our collective pursuit of knowledge. The more varied perspectives and different points of view that are represented in our universities, the more likely we are to arrive at truth.

Many people worry that unrestricted free speech on college campuses creates tension between free speech and creating a welcoming, diverse campus community. On the one hand, college is supposed to be the place where freedom of speech will allow us to examine even unpopular opinions – possibly even racist, sexist, or homophobic opinions – in the light of day. But on the other hand, it is important that no one is left out of the conversation.

Trigger Warnings

To protect potential student sensitivities, professors often issue “trigger warnings.” These can be verbal or written warnings that some of the content of the course may upset or disturb specific students. For example, if a novel in a literature class involves a character using racist language, the professor can warn students about it before they have to read it.

Proponents of “trigger warnings” say that trigger warnings are just a “heads up” that some material presented in class or presented by a speaker could potentially

Some Exceptions to Freedom of Speech

Incitement. Speech that advocates violence and is “directed to inciting or producing imminent lawless action” and is “likely to produce such action” is not protected speech. (*Brandenburg v. Ohio*, 1969).

Fighting Words. Those words that “by their very utterance inflict injury or tend to incite an immediate breach of the peace,” are not protected if they are also “directed at the person of the hearer.” (*Chaplinsky v. New Hampshire*, 1942).

Obscenity. Material that depicts sexual conduct in a clearly offensive way and that lacks “serious literary, artistic, political, or scientific value,” is not protected speech. (*Miller v. California*, 1973).

set off a trauma for some students. Advanced warning, they claim, can help students prepare for the coming emotional impact. For example, suppose a student has been a victim of sexual assault. If she reads a description of sexual assault in a literature class, it could be very upsetting, even traumatic. It might be helpful for her to have a warning that this is coming in order to mentally prepare.

Critics of trigger warnings argue that there is little evidence that they are actually helpful to students. The American Association of University Professors worries that trigger warnings treat adult students like children. Excessive warnings, they argue, may dissuade students from dealing with challenging ideas – which is critical to the intellectual development of college students. If students demand trigger warnings, faculty just may start to avoid using potentially offensive materials. Critics also worry that trigger warnings can undermine educational goals by “spoiling” literary works in a way that would undermine their force.

Safe Spaces

A “safe space” is an area on a campus where students can meet and share experiences of feeling victimized or marginalized by racism, sexism, anti-Semitism, homophobia, or some other discriminatory practice. Students in a safe space do not want to hear any potential hate speech while they are within the safe space. Safe spaces can be formal, such as an office of multicultural affairs, or informal, such as part of some open area often called the “commons.”

Proponents of campus safe spaces argue that the idea has historic origins. Underrepresented groups, such as black students, women, and LGBT students, have not always been allowed on U.S. college campuses, let alone welcomed in them. Campuses have at times been overtly hostile to members of these groups. Therefore, members of underrepresented groups developed clubs and places to retreat from a hostile campus community and to support one another. Black student unions, Hillel houses (for Jewish students), women’s resource centers, and LGBT centers are examples of more formal “safe spaces” that have existed for a long time.

Historically, safe spaces have also functioned as incubators for new ideas. Cameron Okeke, a recent black

University of Chicago graduate, argues that safe spaces are still important. “As a first generation black student, I needed safe spaces... not to ‘hide from perspectives at odds with my own,’ but to heal from relentless hate and ignorance, to hear and be heard. My ideas were challenged, but never my humanity. I mattered.”

Some commentators claim that a university’s primary purpose is to provide a challenging, rigorous intellectual environment, not safe spaces. They worry that a focus on creating a welcoming environment for all students too often overshadows the university’s true academic mission.

Critics of safe spaces are also often concerned that they do not allow students to deal with conflict in a mature way. In November 2014, Wendy McElroy gave a lecture at Brown University. McElroy is a libertarian political thinker who is known for being critical of the idea of “rape culture,” which is the idea that American society tends to excuse young men for raping young women. Many students were prepared to be “triggered” by McElroy’s talk. As part of the preparation, student volunteers created a “safe space” available during McElroy’s lecture.

According to one description, the room for the safe space “was equipped with cookies, coloring books, bubbles, Play-Doh, calming music, pillows, blankets and a video of frolicking puppies. . . .” Critics argued that this safe space was more appropriate for preschool-aged children than for adult students engaged in a courageous pursuit of truth.

Controversial Campus Speakers

As we saw in the case of Wendy McElroy, campus groups’ choice of speakers can sometimes be a source of conflict. Audience members might continually interrupt or heckle controversial speakers. Students might protest. College officials might revoke invitations. And in some cases, violence has even broken out.

According to the Foundation for Individual Rights in Education, in 2016 alone there were 42 attempts to disinvite speakers from U.S. college campuses. Twenty-four of those attempts did ultimately result in the speaker being disinvited. Of those 42 attempts to disinvite a speaker, Milo Yiannopoulos was targeted more than any other individual speaker.

Milo Yiannopoulos is a writer and former editor of *Breitbart News*. He refers to himself as a political *provocateur* who likes to stir up arguments for their own sake. He is known for making incendiary claims such as “feminism is a cancer,” and he calls the Black Lives Matter movement a “hate group.” Twitter banned him for encouraging his followers to harass actress Leslie Jones, who is black.

Yiannopoulos’s talks have often inspired protests and even violent incidents. In December 2016 at the University of Wisconsin at Milwaukee, he displayed the photo and “birth name” of a transgender student on an overhead projector. He criticized the student for filing complaints against the university in order to be permitted to use the women’s locker rooms. He used LGBT slurs against the student.

In January 2017, at the University of Washington, many students protested a speech he was giving. An apparent supporter of his shot a protester. Yiannopoulos remarked, “If we don’t continue, then they have won.” The audience cheered.

In February 2017, the College Republicans at the University of California at Berkeley (a public university) asked him to speak at their school. Over 100 faculty members signed a letter in an attempt to have this event cancelled.

Chancellor Nicholas Dirks responded in an open letter to the campus community. He argued that since the College Republicans are a separate legal entity from the UC Berkeley, the university had no legal path to cancel the event. Dirks’s position was that even though Yiannopoulos’s speaking style is at odds with the broad values of the UC Berkeley community, Yiannopoulos has the *right* to speak.

As the lecture time drew near, protests became violent, and the UC Berkeley administration eventually canceled the event. President Donald Trump took to Twitter to condemn the cancellation, going so far as to threaten to cut off federal funding to UC Berkeley for abridging Yiannopoulos’s right of free speech.

Protesters at both the University of Washington and UC Berkeley cited concerns about Yiannopoulos singling out students, as he did in Milwaukee, which could endanger those students’ safety on their own campuses.

Those who defended Yiannopoulos’s right to speak, however, argued that we cannot preemptively strip him of his right to speak in all cases because he *may have* crossed the line into unprotected speech on one occasion. Defenders argue that disinviting controversial or possibly incendiary speakers, or shutting down those speakers during their talks, is censorship. When it oc-



Protests against a controversial speaker at UC Berkeley, California became violent in February 2017 .

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curs at a public university like UC Berkeley, it is government censorship.

Private Colleges vs. Public Colleges

When discussing issues of censorship, we should keep in mind that colleges and universities may be public or private. Public colleges were mostly founded by state governments, and state governments pay for most of the schools’ operating expenses (such as staff and professor salaries, building maintenance, and libraries). Again, the First Amendment applies on public college campuses.

State governments also oversee public colleges through appointed boards of trustees. Many public universities have created speech codes to protect vulnerable students from harm, such as hate speech. These codes have often been challenged in court, but the Supreme Court has never ruled that speech codes are unconstitutional under the First Amendment.

Private colleges are privately funded. Most of the money for private college operating expenses comes from student tuition fees that are higher than those at public colleges, as well as endowments (large monetary gifts) from private persons and foundations. Private colleges are independent and can set their own policies, including those related to speech.

In August of 2016, John Ellison, the dean of students of the University of Chicago, a private college, sent a welcome letter to the incoming class. Ellison stated, “Our 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.”

Free speech advocates were encouraged by Ellison's stated commitment to the fearless pursuit of knowledge, even when it might lead to unpopular conclusions.

Nearly 200 faculty members objected to Ellison's letter. They did not believe it should speak for the university community as a whole. They issued their own letter, in which they stated, "Those of us who have signed this letter have a variety of opinions about requests for trigger warnings and safe spaces. . . . To start the conversation by declaring that such requests are not worth making is an affront to the principles of liberal education and participatory democracy."

U.S. colleges have been havens for free expression, the pursuit of truth, and consideration of a diverse range of viewpoints. But now many colleges also see their mission as creating a welcoming environment for a diverse student body as well as teaching respect for free expression of ideas, even if those ideas are unpopular.

WRITING & DISCUSSION

1. What kinds of speech does the First Amendment protect? What kinds of speech does it not protect?
2. In the 1927 Supreme Court decision of *Whitney v. California*, Justice Louis Brandeis wrote that when a person hears offensive speech, "the remedy to be applied is more speech, not enforced silence." Do you agree? Why or why not?
3. Look back at the examples of speech on college campuses in the article. Would Justice Brandeis's "remedy" apply in any of those examples? Why or why not?
4. Should colleges prioritize free speech over creating a welcoming and diverse atmosphere, even if that would allow offensive speech on campus? Why or why not?

ACTIVITY: All's Not Quiet on Campus

You are on the board of trustees for a public university. The following incidents happened within the last year at your university, and the board has been tasked with deciding the university's response to each of the incidents:

Incident 1. A large group of students formed a safe space in the university's commons area following a recent alleged hate crime off-campus. A lone student photographer, working for the university newspaper, entered the safe space to take pictures. One professor, who was part of the safe-space group, demanded the photographer leave. The photographer responded, "The commons is public property. I have a right to be here." The professor then asked some students to physically push the photographer out of the safe space, which they did.

Incident 2. The office of Intercultural Affairs circulated an email requesting that students think twice before wearing Halloween costumes that are "culturally unaware or insensitive." A professor sent an email response to the campus community in which she stated, "Students should wear whatever they like." Many students thought the professor lacked concern for the wellbeing of minority students and were outraged. One student confronted the professor and accused her of creating a "hostile environment." Video of the confrontation went viral on social media.

Incident 3. Some members of a fraternity at the university were captured on video singing a racist song on a bus trip. The song used racial slurs and even glorified violence against some people based on race. One member of the fraternity shared the video on social media where many students saw it.

Incident 4. An author wrote in a controversial book that intelligence is primarily genetic and that one race in particular is naturally more intelligent than the rest. A student club invited the author to speak on campus. Fifty faculty members signed a petition demanding that the speaker be disinvited. Before the author could get to the auditorium, a group of student protesters got into fights with student supporters of the speaker. The police were present, and the protesters clashed with them, too. The author had to flee the campus.

Form small groups. Each group is a committee of board members. The chancellor has assigned one incident to each committee. Discuss your assigned incident with your fellow committee members and answer the following questions for the incident:

- A. What, if any, consequence *should* the university impose on either a professor, a student, or group of students described in the incident?
- B. Does the First Amendment restrict the trustees from imposing the consequence? Why or why not?

Be prepared to share your committee's decisions with the rest of the class.

Debriefing Question: Would a speech code that forbids offensive speech on campus, whether racist, sexist, or homophobic, have prevented any of the incidents above? Why or why not?

Standards

Free Speech on Campus

National Civics Standard 26. Understands issues regarding the proper scope and limits of rights and the relationships among personal, political, and economic rights. Middle School: (1) Understands what is meant by the “scope and limits” of a right (e.g., the scope of one’s right to free speech in the United States is extensive and protects almost all forms of political expression, but the right to free speech can be limited if it seriously harms or endangers others). **High School:** (2) Understands different positions on a contemporary conflict between rights such as one person’s right to free speech versus another person’s right to be heard.

California History-Social Science Standard 12.2. Students evaluate and take and defend positions on the scope and limits of rights and obligations as democratic citizens, the relationships among them, and how they are secured. (1) Discuss the meaning and importance of each of the rights guaranteed under the Bill of Rights and how each is secured (e.g., freedom of religion, speech, press, assembly, petition, privacy).

California History-Social Science Standard 12.5. Students summarize landmark U.S. Supreme Court interpretations of the Constitution and its amendments. (1) Understand the changing interpretations of the Bill of Rights over time, including interpretations of the basic freedoms (religion, speech,

Common Core State Standards: SL.1, SL.3, RH.1, RH.2, RH.3, RH.4, RH.7, RH.10, WHST.1, WHST.2, WHST.9, WHST.10.

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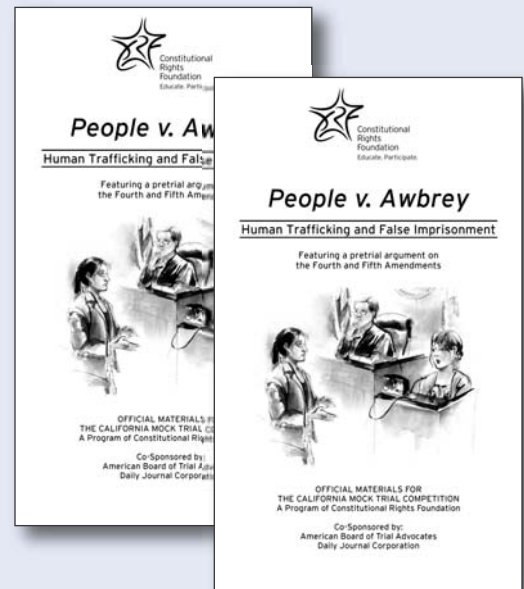


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