FREE SPEECH ON CAMPUS

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CHAPTER THREE

Nullius in Verba: *Free Speech at Colleges and Universities*

HISTORICALLY, governments and societies have not been organized around democracy and free choice, but around fixed ideas of who should rule and how people should behave. The vast majority of people have enjoyed very little freedom to think or express themselves in ways that challenged prevailing authority and prevailing opinion.

Similarly, for many centuries, higher education was not founded on free thought but on indoctrination. Medieval universities established in Europe between the eleventh and fourteenth centuries were grounded in Christian traditions and were organized much like the advanced madrassas of Islamic Spain and the Emirate of Sicily. The flow of ideas was limited to the accepted range of theological discussion among believers, supplemented by Latin, mathematics, biblical

astronomy and physics, moral philosophy, and classical grammar, logic, and rhetoric. The curriculum consisted of some Aristotle and some Cicero (and related thinkers), but it was mostly the New Testament, just as the Quran was the main text in advanced educational institutions in Islamic Europe and the Middle East.[1]

This was the system faced by Galileo when he challenged the prevailing orthodoxy that the earth was the center of the universe. His suggestion that the earth and the planets revolved around the sun was denounced by some church authorities as "foolish and absurd in philosophy, and formally heretical since it explicitly contradicts in many places the sense of Holy Scripture."[2] As happens in systems dedicated to the promotion of an assumed orthodoxy, Galileo received explicit instructions from Pope Paul V "to abandon completely . . . the opinion that the sun still stands at the center of the world and the earth moves, and henceforth not to hold, teach, or defend it in any way whatever, either orally or in writing."[3]

If we still thought that the purpose of higher education was indoctrination, there would be no need for freedom of thought and speech. If one starts from an assumption of already knowing the truth—religious, political, or otherwise—then higher education is merely about instructing students to become disciples. We see such a thing today in the higher education systems of theocratic and authoritarian regimes.

To imagine a special role for freedom of thought and speech one must imagine a university that is designed to serve some purpose other than indoctrination. What could that purpose be?

Rather than create disciples who will preserve some unchanging wisdom, institutions of higher education might dedicate themselves to the creation of disciplined free thinkers who seek new knowledge and are willing to challenge received wisdom if that's where facts and reason take them. Such a community would value expert training and rigorous thinking, but it would also value curiosity, discovery, skepticism, and dissenting viewpoints. Ideas that seemed wrong would not be censored or shouted down but engaged and exposed through argumentation. People who advocated such ideas with rigor and expertise would not be ignored or denied a chance to be heard; rather, they would be permitted, and even encouraged, to challenge authorities with whom they disagreed.

In the modern western tradition, the belief in the value of such a university began to take shape, tentatively, in the seventeenth century, around the time that John Milton began to argue in favor of the toleration of dissenting opinion. The model of such an institution was not traditional monasteries and madrassas, but rather the attitude adopted by members of the Royal Society of London for Improving Natural Knowledge.

Established in 1663, the Royal Society took as its motto the Latin phrase *Nullius in verba*, which can be translated as "take nobody's word for it" or "nobody tells us how to think."[4] The members of the Royal Society were bound by the view that one should not hold a belief merely because someone in authority demanded agreement with it. Rather, beliefs should be tested by free-thinking human beings, and those free-thinking people would decide for themselves what was true

after engaging in debate and experimentation. This was especially vital for any group of people who dedicated themselves to the creation and transmission of knowledge. Without such a rule, it is hard to imagine the creation of knowledge at all, since there is almost always some existing explanation for any phenomenon, generally with authoritative backing.

This view of human reason and rational inquiry enabled the Royal Society to nurture the scientific revolution by publishing Isaac Newton's *Principia Mathematica*,[5] providing the first English account of inoculation, and helping Benjamin Franklin tell the people of the world that any one of them could discover for themselves the electrical nature of lightning simply by using a kite and a key.[6]

Among all the inventions of modern life, few have been more important for promoting human freedom and social progress than the university, organized around the search for knowledge based on free inquiry and debate rooted in reason and experimentation.

Such a thing did not come easily in the United States. In order to have a perspective on contemporary debates about the scope of freedom to express controversial views on campuses, it is important to look at the history of American higher education. As with the history of free speech, the record shows that restrictions on freedom of thought and expression on campuses have been used to stifle and punish dissenters, social critics, vulnerable and marginalized voices, and the sort of innovative thinkers who fuel social progress. The history shows that campuses cannot censor or punish the expression of ideas, or allow intimidation or disruption of those who are expressing ideas, without undermining their core function of

promoting inquiry, discovery, and the dissemination of new knowledge. Although the protections of the First Amendment apply only to America's public colleges and universities (which are government entities), the principles of inquiry and academic freedom we describe should be the same at every institution of higher education, public or private.

In this chapter we begin with a short history of higher education in the United States, sketching the transformation of colleges from places of religious instruction to institutions that value and protect rigorous free inquiry. We then examine the importance within colleges and universities not just of free speech but of a culture of scholarly inquiry, where norms of academic freedom are linked to expectations of professionalism, and where there is tolerance of dissenting and even offensive viewpoints. Next we examine the Berkeley Free Speech Movement, which established an expectation that campuses extend full First Amendment protections to personal and political speech outside the professional and civil settings of the classroom.

FROM DISCIPLES TO DISCIPLINED FREE THINKERS

Early American denominational colleges were founded on evangelical fervor and emphasized Christian piety over Enlightenment rationalism. There was little room for dissenting opinion. New colonies and new colleges often formed because individuals were essentially banished from existing settlements and campuses. Theological battles at Harvard played a role in the founding of Yale College in 1701.[7] Later, splits

among factions at Yale led some exiles to found Dartmouth College in 1769.[8] When Roger Williams was forced out by Massachusetts Bay theocrats over issues of religious liberty, he helped found Rhode Island and, in 1765, Brown University.[9] In the words of historian Walter P. Metzger, the early American college "was centered in tradition, . . . looked to antiquity for the tools of thought, to Christianity for the bylaws of living; it supplied furniture and discipline for the mind, but constrained intellectual adventure."[10]

By the early nineteenth century, some American educators were traveling to European universities and returning with a newfound respect for free inquiry. George Ticknor, a historian at Harvard who received an advanced education at the University of Göttingen in Germany, reported that at German universities the enthusiasm for genuine learning resulted in "an universal toleration in all matters of opinion. . . . No matter what a man thinks, he may teach it and print it, not only without molestation from the government but also without molestation from publick opinion which is so often more oppressive than the aim of authority."[11] When the young Henry Wadsworth Longfellow was a student at Göttingen in 1829, he contrasted the American idea of a university, which he described as "two or three large brick buildings,—with a chapel, and a President to pray in it!" with the German idea "of collecting together professors in whom the spirit moved—who were well enough known to attract students to themselves, and . . . capable of teaching them something they did not know before."[12] Late in his life, Thomas Jefferson could write that the "new university" he was helping to create "will be based on the illimitable freedom of the human mind[,] for

here we are not afraid to follow truth wherever it may lead, nor to tolerate any error so long as reason is left free to combat it."[13]

But as with free speech in the United States, the transition from valuing orthodoxy to valuing freedom of thought and expression did not really gain steam until the late nineteenth and early twentieth centuries. Initially, the major driver behind the transition was the development of scientific ideas that called into question some tenets of Christian orthodoxy. The most important examples were the publications of Charles Lyell's three-volume *Principles of Geology* (1830–33),[14] which challenged biblical accounts of the age of the planet and the origins of life on earth, and Darwin's *Origin of Species*[15] in 1859, with its earth-shaking conclusions about the evolutionary origins of humankind.

The development of scientific findings that contested Christian teachings led to equal and opposite reactions: a theocratic backlash, and increased advocacy for separating the pursuit of knowledge from its evangelical origins. As for the former, it should be no surprise that the more the college's self-image was linked to Christian theology, the less willing it was to accept views that challenged that theology. The presidents of the religiously oriented Amherst College, Williams College, Hamilton College, and Lafayette College prohibited the teaching of Darwin at their schools for decades. Vanderbilt, which in 1873 had been converted from a school for the training of ministers to a multipurpose university, was still in the grip of its Christian heritage when it dismissed a faculty member for suggesting the pre-Adamite origins of humans.[16]

But in the decades after the Civil War, a new development in American higher education was occurring that drew inspiration from the early example of Galileo, the anti-authoritarian creed of the Royal Society, the impressive contributions of science over the previous century, the mid-century Emersonian celebration of the free-thinking person in America, and the recent creation of the National Academy of Science. It was reflected not only in a gradual waning of the sectarian character of established institutions such as Yale, Princeton, and Harvard, but also the founding between 1865 and 1890 of Johns Hopkins, Stanford, Chicago, and public and land-grant universities such as Cornell and the University of California. Each of these was explicitly nonsectarian and inspired by the German example. At such institutions, a topic such as evolution "was not gall and wormwood, but everyday nourishing fare."[17]

For American universities to become centers of rigorous inquiry, decisions about what ideas could be taught or expressed had to be taken out of the hands of boards, administrators, politicians, and donors and given to an expertly trained, independent faculty. The most important leaders who worked to ensure the autonomy of faculty in matters of inquiry were Andrew Dickson White (Cornell's president from 1866 to 1885), Daniel Coit Gilman (who became the third president of the University of California in 1872 and the first president of Johns Hopkins in 1875), Charles William Eliot (the president of Harvard from 1869 to 1909), and William Rainey Harper (who became the first president of the University of Chicago in 1891).[18]

White, who had studied at the University of Berlin in the 1850s (while traveling with his former Yale classmate Daniel

Gilman), spent decades promoting the separation of universities from religious sectarianism and arguing that science, not religion, was the key to human freedom.[19] At the University of California, Gilman advocated language training in German and French so that American scholars could "keep abreast of the progress of discovery in Berlin, Vienna, and Paris." Unlike the University of Illinois (which opened in 1868) and the University of Michigan (founded decades earlier), Gilman's University of California was not a Christian university. He never spoke of it in those terms, and there were no mandatory worship services or presidential lectures on Christian topics. (During his tenure, it did not even have a voluntary chapel, making it perhaps the most secular college in America at the time.)[20] When he moved to the new Johns Hopkins University and addressed the trustees on January 30, 1875, he asserted:

> The Institution we are about to organize would not be worthy the name of a university, if it were to be devoted to any other purpose than the discovery and promulgation of the truth; and it would be ignoble in the extreme if the resources which have been given by the founder without restrictions should be limited to the maintenance of ecclesiastical differences or perverted to the promotion of political strife.
>
> As the spirit of the University should be that of intellectual freedom in pursuit of the truth and of the broadest charity toward those from whom we differ in opinion it is certain that sectarian and partisan preferences should have no control in the selection of teachers, and should not be apparent in the official work.[21]

Gilman's comments anticipated the other major obstacle to the university's protection of the full range of beliefs: external pressures for political conformity. Like those fighting the

larger battle over free speech protections generally, the leaders of American higher education in the late nineteenth century had to find their way toward freedom of thought in relation to politics.

The same fears of anarchism, labor unrest, and eastern European immigration that triggered late nineteenth-century political repression were also felt on college campuses. Some university leaders took steps to fortify freedom of thought; others did not. In the 1890s, when University of Wisconsin economics professor Richard Ely was attacked by state politicians because of his support for labor rights, the university's faculty rallied to his defense, prompting their regents to declare that "Whatever may be the limitations which trammel inquiry elsewhere we believe the great state University of Wisconsin should ever encourage the continual and fearless sifting and winnowing by which alone the truth can be found"—a statement that is now proudly memorialized as "the Wisconsin Idea."[22] By contrast, when Jane Stanford, benefactor and co-founder of Stanford University, judged professor Edward Ross in 1900 to be unacceptably radical because of his support for unions and the Free Silver political movement, she forced his firing, leading to many faculty resignations and a reputation for political censorship that hampered the university's development for decades.[23]

Closely watching the events at Stanford was William Rainey Harper, the first president of the University of Chicago. Harper was determined to make sure the Stanford experience would not be reproduced at his new university. Two years after the Ross affair, during the decennial of the University of Chicago, Harper asserted a creed that has remained fundamental to the identity of that university:

NULLIUS IN VERBA

> the principle of complete freedom of speech on all subjects has from the beginning been regarded as fundamental in the University of Chicago [and] this principle can neither now nor at any future time be called into question. . . . Freedom of expression must be given to members of a university faculty, even though it be abused; for, as has been said, the abuse of it is not so great an evil as the restriction of such liberty.[24]

This perspective was woven so firmly into the culture of the university that when, in the 1930s, a student organization invited Communist Party candidate William Z. Foster to campus and triggered demands for punishment and censorship, President Robert M. Hutchins responded that "our students . . . should have freedom to discuss any problem that presents itself," and (echoing Holmes and Brandeis) that the "cure" for ideas we oppose "lies through open discussion rather than through inhibition."[25] Later Hutchins would say, "free inquiry is indispensable to the good life, that universities exist for the sake of such inquiry, [and] without it they cease to be universities."[26]

Such views did not receive widespread support in the early twentieth century. The American Association of University Professors (AAUP) was founded in January 1915 in direct response to a wave of threats against the freedom of the faculty to hold and express unpopular views.[27] The public was still hostile to the idea that universities should nurture free inquiry. One historian summarizes the accumulating threats this way:

> Distress signals came from the University of Utah, where seventeen professors resigned in protest when four of their colleagues were unceremoniously removed; from the University of Colorado, where a law professor believed he had been fired for testimony given before a government

commission; from Wesleyan University, where a professor believed he had been removed because of anti-Sabbatarian remarks delivered at a nearby café; from the University of Pennsylvania, where Scott Nearing, in a case that achieved great notoriety, was removed from the Wharton School; from the University of Washington, where three professors had been discharged.[28]

The AAUP's founding president was the great American philosopher John Dewey, a product of Johns Hopkins (where he received his doctorate in 1884) and the University of Chicago (where he was a faculty member from 1894 to 1904).[29] As America's leading philosopher of democracy and its relationship to experimental thinking, Dewey was well positioned to defend the idea of academic freedom. As he once put it, "Since freedom of mind and freedom of expression are the root of all freedom, to deny freedom in education is a crime against democracy."[30] By December 1915 the AAUP was prepared to publish its "Declaration of Principles on Academic Freedom and Academic Tenure," which emphasized the importance not only of scientific advancements but also of allowing a broader range of opinion on matters of public interest than might be tolerated in society at large:

> Public opinion is at once the chief safeguard of a democracy, and the chief menace to the real liberty of the individual. . . . An inviolable refuge from such tyranny should be found in the university. It should be an intellectual experiment station, where new ideas may germinate and where their fruit, though still distasteful to the community as a whole, may be allowed to ripen until finally, perchance, it may become a part of the accepted intellectual food of the nation or of the world. . . . One of its most characteristic functions in a democratic society is to help make public opinion more self-critical and more circumspect, to check the more hasty and unconsidered impulses of popular feeling, to train the democracy to the habit of looking before and after.[31]

This statement set in motion a decades-long effort to protect faculty members from being punished merely because their views were considered wrongheaded or harmful. As it was for free speech rights generally, the Cold War was a bad time for dissenters in higher education. In the early 1940s, the city college system of New York and the University of California decided that membership in the Communist Party disqualified a person from being on their faculties. The California Regents explained its reasoning this way: "The Communist Party . . . gives its first loyalty to a foreign political movement and, perhaps, to a foreign government" rather than to the scholar's professional obligation of candor and objectivity.[32] In 1948, a state Un-American Activities Committee looked into alleged communist activities at the University of Washington, causing a number of alleged communist professors to be fired over the objections of a faculty tenure committee. The presidents of Harvard and Yale announced that they would not hire communists on their faculties, with Yale president Charles Seymour clarifying, "There will be no witch-hunts at Yale, because there will be no witches."[33]

By the 1950s the bans and firings extended from "card-carrying" Communists (who acknowledged their current or past affiliation) to "Fifth Amendment" communists, who were punished for refusing to answer questions about their political views. In 1956, the presidents of the nation's thirty-seven leading universities, under the auspices of the Association of American Universities, drew up a statement declaring that a

professor's unwillingness to answer questions about his affiliations "cannot fail to reflect upon a profession that claims for itself the fullest freedom to speak and the maximum protection of that freedom in our society," and thus raised serious questions about that person's fitness to hold a faculty position.[34] The climate was so repressive that even the AAUP did not speak out against anti-communist policies at the time.[35]

By the late 1960s, however, widespread support for the civil rights movement and widespread opposition to the Vietnam War had given the toleration of political dissent a firm foothold in the academy. The act of challenging government policies and academic orthodoxies came to be seen as a force for progress rather than a sign of professional irresponsibility. Professors did not lose their jobs for speaking out against the Vietnam War, and eminent ones did speak out. Scholarship that questioned prevailing attitudes about economic justice, environmental sustainability, historical consciousness, race and ethnicity, women's rights, and gender relations benefited from expanded notions of academic freedom.[36]

We acknowledge that we have framed the fight for free thinking in higher education as a rather stark choice: institutions of higher education can either protect an orthodoxy against challenge or be willing to permit all ideas; they can either treat students as disciples or help them become disciplined independent thinkers. Either there is complete protection for the expression of all ideas and views, or there is an orthodoxy of belief.

One might hope for a middle ground. Are we really limited to choosing between the absence of free thinking and a completely unregulated marketplace of ideas?

We believe there is no middle ground. History demonstrates that there is no way to define an unacceptable, punishment-worthy idea without putting genuinely important new thinking and societal critique at risk. Universities contribute to society when faculty are allowed to explore the frontiers of knowledge and suggest ways of thinking that may be considered crazy, distasteful, or offensive to the community. When people ask the censor to suppress bad ideas in higher education, many important and positive ideas never have the chance to flourish, and many dangerous or evil ideas are allowed to thrive because they are not subjected to evaluation, critique, and rebuttal. In our view, no belief should be treated as sacrosanct. *Nullius in verba* remains vital: we must be willing to subject all ideas to the test.

As a final example, consider what happened in the mid-1990s when the psychologist Richard J. Herrnstein and the political scientist Charles Murray published their book *The Bell Curve: Intelligence and Class Structure in American Life*.[37] They advanced the extremely controversial thesis that there were racial differences in intelligence and that these differences are important factors influencing economic and social success in the United States. Many critics found deeply offensive the idea that blacks in America were overall less successful than whites not because of persistent discrimination, but because they were less intelligent.

Although it would have been tempting to prevent such an idea from being expressed at all, the ability of academic experts to engage and criticize the analysis proved much more important.[38] Popular commentators, lacking the expertise to scrutinize the authors' statistical analyses, were impressed by

the appearance of rigor. Scholars, however, noted that the authors' claimed measurement of intelligence actually also measured education, which fundamentally undermined their claims about proving the effects of inherent intelligence. Most public commentators did not focus on one passing footnote, where Herrnstein and Murray indicated a higher correlation between a college degree and family income than between IQ and family income, thus opening up a more standard argument about the importance of educational opportunity. The authors claimed that the genetic component of IQ might be as high as 80 percent, but when experts at Carnegie Mellon reexamined the basis of their claim, they found the actual number was between 34 and 46 percent.[39] The American Psychological Association's Board of Scientific Affairs found that there is zero evidence supporting the claim that differences in IQ test scores between whites and blacks are due to genetics rather than many other alternative hypotheses (including caste and culture).[40] William J. Matthews and Stephen Jay Gould argued that the authors' entire argument was premised on four dubious assumptions: intelligence must be reducible to a single number, it must be possible to rank people by intelligence in linear order, intelligence must be primarily genetically based, and intelligence must be essentially immutable.[41]

More could be said; the scholarly assessments of the book are voluminous.[42] The example illustrates our basic point: rather than being worse off because such an argument was allowed to circulate, society was much better off because others had an opportunity to subject the book to the highest standards of academic scholarship and provide compelling refutation of its methodology and conclusions.

FOSTERING A CULTURE OF UNFETTERED INQUIRY

Modern colleges and universities achieved their present respect and importance only when they fully embraced a culture of unfettered scholarly inquiry. That culture has two central components: establishing and maintaining norms of academic freedom that acknowledge the faculty's professional obligations, and nurturing a spirit of tolerance within the broader campus community that allows all ideas to be subjected to debate and assessment.

The AAUP's historic 1915 Declaration emphasized professors' right to express themselves "to students and to the general public, without fear or favor."[43] But it also expressed the view that the results of their inquiries "be set forth with dignity, courtesy, and temperateness of language."[44] The "pledge" of the AAUP was "not only that the profession will earnestly guard those liberties without which it cannot rightly render its distinctive and indispensable service to society, but also that it will with equal earnestness seek to maintain such standards of professional character, and of scientific integrity and competence, as shall make it a fit instrument for that service."[45]

From the beginning, therefore, the commitment to academic freedom was inextricably linked to commitment to nurturing and enforcing the norms of an expert, professional, scholarly community. Whether a photon is a wave or a particle or something else is to be resolved not by having faculty members disrupt and censor those who advocate different views, but by coming up with better ideas, arguments, and experiments.

Once we appreciate that, within the realm of professional academic freedom, the notion that "all ideas are protected" is linked to the notion of "maintaining standards of professional character," we can see that colleges and universities actually must impose extensive regulation on speech *in professional settings.* A partial list of how colleges and universities regulate speech in these settings would include the following:

- Campus faculties and administrators may limit the topics that can be discussed in classrooms to those related to the topic of the course, even though this sort of subject-matter restriction would not be acceptable if states or localities attempted to limit what people can say in their everyday lives.
- Campus faculties and administrators may expect teachers and students to treat each other with professionalism and mutual respect in an educational setting. Abusive or profane language that would be protected in society in general can be prohibited in educational spaces on campus.
- Campus faculties and administrators may make judgments about the quality of professors' or students' work based on the content of what is said—meaning that students can be given better or worse grades, and professors can be granted or denied promotion and tenure, as long as the evaluative standards are linked to matters of professional judgment and standards of quality rather than discriminatory considerations (such as a person's partisanship or ideology, or the views that he or she express more broadly in public settings).

At universities, a biology department may choose not to hire a creationist on the grounds that the person lacks professional competence, although they may not discriminate against a Republican. A history department may choose not to hire a person who denies the Holocaust in the Third Reich on the grounds that the person lacks professional competence, but it cannot refuse to hire a candidate whose work is otherwise excellent because they learn that he or she is a member of a neo-Nazi party. Resources to support innovative scholarship can be given to scholars whose work is considered by other scholars to be of high quality and promising (a content-based decision), but it cannot be withdrawn because decision makers disagree with the applicant's Facebook postings. A university can fire the head of an admissions committee who made derogatory comments about Jewish applicants, and can take actions against professors who never allow students to express conservative views in class, because in each case professional norms are being violated.

As Cass R. Sunstein writes, "The university can impose subject-matter or other restrictions on speech only to the extent that the restrictions are closely related to its educational mission."[46] The point is articulated this way in the Academic Policy Manual of the University of California (APM 010):

> [Principles of academic freedom] reflect the University's fundamental mission, which is to discover knowledge and to disseminate it to its students and to society at large. . . . The University also seeks to foster in its students a mature independence of mind, and this purpose cannot be achieved

> unless students and faculty are free within the classroom to express the widest range of viewpoints in accord with the standards of scholarly inquiry and professional ethics. The exercise of academic freedom entails correlative duties of professional care when teaching, conducting research, or otherwise acting as a member of the faculty. . . . Academic freedom requires that teaching and scholarship be assessed by reference to the professional standards that sustain the University's pursuit and achievement of knowledge. The substance and nature of these standards properly lie within the expertise and authority of the faculty as a body.[47]

With respect to students' rights within academic settings—what APM 010 refers to as "student freedom of scholarly inquiry"—the faculty is expected to ensure that students are allowed to critically examine course material and be judged in accordance with fair procedures solely on the basis of their academic performance, and not on whether the professor agrees with a student's personal views.[48] Moreover,

> No student can abridge the rights of other students when exercising their right to differ. Students should be free to take civil and reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study [and the] faculty has authority for all aspects of the course, including content, structure, relevance of alternative points of view, and evaluations.[49]

There will always be disagreements over whether a particular statement by a faculty member while acting in a professional capacity should be considered within the standards of scholarly inquiry and professional ethics, or what constitutes unprofessional or disruptive behavior at faculty meetings or academic conferences, or what statements or behaviors by

students in instructional or research settings are inconsistent with the purposes of those settings. Still, a university's punishment of a faculty member or student never can be based merely on an objection to a stated idea. Rather, it requires an independent, fact-based assessment of the impact particular statements or behaviors have on the person's professional fitness and the university's scholarly mission.[50]

There is always a risk that the scholarly evaluation of the "quality" of work can be influenced by ideology rather than objective measures, and these influences can be subtle. It is, of course, wrong for law schools to refuse to hire someone who has conservative rather than liberal views. But it is not at all uncommon for faculty members to have a higher regard for views with which they are already sympathetic. University leaders and faculties need to be relentless about ensuring that scholarly quality is not just a cover for ideological agreement, and that there is ongoing appreciation for how diversity of perspective mitigates the errors of groupthink and contributes to the mission of inquiry and discovery.[51] More generally, the integrity of the enterprise presupposes the existence of meaningful standards of quality and professional conduct that can guide decision making within the academy.

Although academic freedom and standards of professional conduct are crucial in formal educational settings, they are not by themselves enough to ensure the maintenance of a culture of scholarly inquiry. That requires a second component as well: a willingness within the broader campus community to embrace and defend the unfettered exchange of ideas.

Free speech and academic freedom can be undermined not only by official censorship and punishment but also by

members of the academic community who are intolerant of ideas with which they disagree. Even in institutions dedicated to advancing truth and questioning past assumptions, the pressure to conform to dominant opinion is an ever-present threat. The history of science—to take just one area—is littered with people who risked their careers to promote absurd and heretical ideas that later turned out to be true. Tolerance of views considered wrongheaded or dangerous is not a natural condition anywhere. The success of academic communities depends as much on continually reinvigorating this sentiment than on establishing formal protections for academic freedom. This point echoes a view expressed by Albert Einstein, who wrote:

> Laws alone cannot secure freedom of expression; in order that every man present his views without penalty there must be a spirit of tolerance in the entire population. Such an ideal of external liberty can never be fully attained but must be sought unremittingly if scientific thought, and philosophical and creative thinking in general, are to be advanced as far as possible.[52]

As we have seen all too often, a failure to achieve a spirit of tolerance on campuses can take a number of forms, including refusals to allow student groups to invite controversial speakers to campus,[53] protests designed to prevent controversial individuals from speaking,[54] demands that campus newspapers be defunded or that newspaper editors resign after publishing a controversial op-ed,[55] requirements for "trigger warnings" on course materials that some consider objectionable or potentially upsetting,[56] efforts to prevent students from expressing relevant but dissenting views in class, and calls to dismiss

faculty members from administrative positions if they express views contrary to those held by certain campus groups.[57]

Although it is consistent with free speech values for students and others to express their disagreement or outrage at controversial speakers or objectionable views, we have seen too many cases where the energy was directed at silencing others instead of rebutting them. Rather than view campuses as places that must provide special protections for unfettered inquiry, some students and faculty view them as privileged arenas for the expression of respectable ideas. They consequently argue that university leaders should provide "no platform" for ideas considered unworthy.

The "no platform" policy originated in a decision by the UK National Union of Students (NUS) in 1974 to ensure that certain proscribed persons and organizations be denied any venue to speak on campuses.[58] According to the NUS policy, no "individuals or members of organisations or groups identified by the Democratic Procedures Committee as holding racist or fascist views" may attend or speak at any NUS function or conference.[59] The organization then creates a blacklist of speakers and organizations and also insists that no NUS member share a platform with anyone on the blacklist. In a 2016 poll, nearly two-thirds of university students in the UK approved of such policies.[60]

Originally reserved for fascist parties such as the British National Party, the no-platform blacklist has been used more recently to prevent campus appearances of feminist writer Germaine Greer, human rights activist Maryam Namazie, and HOPE not Hate founder Nick Lowles, out of fear that some students would find their opinions upsetting. This

denial of a platform for controversial speakers stems from the NUS claim that universities should "balance freedom of speech and freedom from harm" in order to accommodate "safer space activism."[61]

There is a place at colleges and universities for the concept of "safe spaces." We have already seen that, in settings such as classrooms or department meetings, it is necessary to create an environment of civility and mutual respect, in order to facilitate the expression of the widest range of viewpoints in accord with the standards of scholarly inquiry and professional ethics. Students are also free to self-organize in ways that reflect shared interests and allow them to talk about their experiences without always needing to defend themselves.[62] But the "safer space activism" of the no-platform movement is not motivated by a desire to create the conditions whereby members of the academic community feel safe to express their views. It is also not motivated by a desire to prevent physical harm, harassment, intimidation, or any of the limited categories of speech that provide a basis for punishment. Rather, the premise is that the academic community should be a safe space for those who consider themselves harmed when they are exposed to views with which they disagree.[63]

Accepting this as a legitimate premise for censorship undermines all protections for dissenting or even disagreeable speech, and is therefore not a kind of harm that universities should try to prevent and not the kind of safe space that universities can establish. More important, the idea of "no platform" itself reflects a misunderstanding of universities. They are not arenas reserved for high-minded and approved ways of thinking. They are spaces where all ideas can be expressed

and challenged. The platform that campuses provide is designed to be an open platform, not one reserved for those who are thinking correct thoughts.

This no-platform mindset also motivates some students in the United States to demand that universities sanction people for writing "I'm with Trump" or "Build That Wall" in chalk on college campuses,[64] to force university administrators to cancel an appearance by the conservative writer Ben Shapiro (who was to speak on how diversity initiatives can hamper free speech),[65] to demand the resignation of a student leader who posted an "All Lives Matter" Twitter message in the wake of the assassination of five police officers in Dallas,[66] or to demand a federal investigation after professor Laura Kipnis wrote a scholarly essay questioning campus attitudes about sexual relations.[67] The list, which is almost endless, demonstrates conclusively one simple lesson: advocating the censorship or punishment of harmful or offensive speech inevitably leads groups to try to silence people merely because they have different beliefs.

Concerns about a culture of intolerance on college campuses led President Obama to tell Rutgers graduates in 2016 that democracy and education require a willingness to listen to people with whom you disagree:

> I know a couple years ago, folks on this campus got upset that Condoleezza Rice was supposed to speak at a commencement. Now, I don't think it's a secret that I disagree with many of the foreign policies of Dr. Rice and the previous administration. But the notion that this community or country would be better served by not hearing from a former Secretary of State, or shutting out what she had to say—I believe that's misguided. . . .

> If you disagree with somebody, bring them in and ask them tough questions. Hold their feet to the fire. Make them defend their positions. If somebody has got a bad or offensive idea, prove it wrong. Engage it. Debate it. Stand up for what you believe in. Don't be scared to take somebody on. Don't feel like you got to shut your ears off because you're too fragile and somebody might offend your sensibilities. Go at them if they're not making any sense. Use your logic and reason and words. And by doing so, you'll strengthen your own position, and you'll hone your arguments. And maybe you'll learn something and realize you don't know everything. And you may have a new understanding not only about what your opponents believe but maybe what you believe. Either way, you win. And more importantly, our democracy wins.[68]

In the words of University of California president Clark Kerr, "The University is not engaged in making ideas safe for students. It is engaged in making students safe for ideas."[69] There are plenty of ways a young person can avoid exposure to new or challenging ideas. Being at a college or university should not be one of them.

THE BERKELEY FREE SPEECH MOVEMENT

If universities and colleges were merely places where professional academics and students were committed to entering into the world of professional inquiry and discovery, it would be easy to establish norms of expression that protected ideas but also insisted on the respectful and professional exchange of positions. But campuses are not only that. Overlaid on top of this idea is a more general view that campuses should be open spaces, including for the noncivilized and nonscholarly

expression of ideas. The event that established this norm was the Berkeley Free Speech Movement of the 1960s.

The Free Speech Movement (FSM) was a series of protests that occurred on the campus of the University of California, Berkeley, in 1964 and 1965.[70] Historically, the Berkeley campus had a policy of preventing student groups from using campus grounds for non-university-focused political activity or protest. Students would get around this prohibition by setting up tables and passing out leaflets on the city-owned sidewalk just on the edge of the campus. In the early 1960s a change in the campus border turned the sidewalk into university property, and the administration approved limited political activity on a small university-owned plaza at Bancroft Way and Telegraph Avenue. However, there was no strong consensus around this accommodation, and after reports that students were using this space to promote external protests (including one at the 1964 Republican National Convention in San Francisco), the dean of students told student groups they could no longer use the space to solicit support for "off campus political and social action."

Student groups responded with months of protests. Using the name Free Speech Movement, they attempted to get the administration to agree that the only limits on student activity and advocacy should be the limits of the Constitution, as interpreted by the courts. Rather than view the university as a heavily regulated space of professional instruction and scholarly activity, the students demanded that it also be recognized as a public forum for free speech. After a December 2 rally featuring the folk singer Joan Baez, many students occupied the administration building, leading to the arrest of

773 people. Many faculty members went to detention centers to retrieve students and bail them out. The following day the Academic Senate voted for no restrictions on the content of speech or advocacy.

These events precipitated what has become known as the "six-year war" on the Berkeley campus over free speech rights. The war involved students, faculty, administrators, Regents, legislators, and the former actor Ronald Reagan, who launched his political career in 1966 by targeting student activists and university leaders. During his successful run for governor Reagan vowed to send "the welfare bums back to work" and "clean up the mess at Berkeley." University of California president Clark Kerr, who resisted pressures to expel student activists, was fired three weeks after Reagan took office.[71] But even with this political backlash, the Berkeley Free Speech Movement helped establish within American higher education the rights of students to express themselves outside the academic context. As a result of the movement, student groups could use campus spaces to organize and advocate for political causes—a very different environment than existed in the 1950s. These precedents were especially consequential as students and others across the country asserted their right to protest the Vietnam War.

The AAUP approach to academic freedom was inextricably linked to professional standards and decorum; the FSM idea was not. The FSM insisted, and we agree, that campuses—public and private—must protect the freedom of the members of the academic community to use campus grounds for the broad expression of ideas, even if those ideas are expressed in ways that run contrary to the norms of professional conduct

that apply within classrooms, scholarly gatherings, and department meetings.

We should think of campuses as having two different zones of free expression: a *professional zone*, which protects the expression of ideas but imposes an obligation of responsible discourse and responsible conduct in formal educational and scholarly settings; and a larger *free speech zone*, which exists outside scholarly and administrative settings and where the only restrictions are those of society at large. Members of the campus community may say things in the free speech zones that they would not be allowed to say in the core educational and research environment.[72]

We believe colleges and universities can almost never punish faculty members or students who express controversial views outside the professional, educational context, where there are no enforceable scholarly standards and no disruption of the educational context other than that certain persons may take offense. Faculty members who make controversial or even offensive statements on their Twitter feeds, but otherwise meet professional standards as teachers and colleagues, should not fear retaliation or harmful effects because of views they express outside their official duties. Similarly, students who are caught making controversial or even deeply offensive statements on their own time, but behave responsibly in the classroom and engage in no illegal harassment of others, cannot be officially penalized because of their offensive statements. Of course, like anyone who expresses controversial views, they will not be immune from criticism by others who also exercise their free speech rights. This means that Steven Salaita should not have been fired from the University of

Illinois because of some incendiary tweets during the 2014 Israel-Gaza crisis; by all accounts, his teaching and scholarship were unimpeachable.[73] A professor should not face sanctions for wearing blackface at an off-campus Halloween party.[74] A UCLA student who posted an internet video of a tirade against the Asian population at UCLA should not have to fear official reprisal as long as her behavior in the classroom and related settings was nondisruptive.[75]

Many will not easily agree to this; they want to see campuses do more to deal with offensive speech. There is a temptation to excommunicate faculty or students who, on their own time, express views that others in the campus community disapprove of. We saw this temptation even with our students, who were uncomfortable knowing that some people on campus might have said hateful things in other settings. But the Berkeley Free Speech Movement forced us all to draw a distinction between one's personal advocacy and one's participation in the scholarly and teaching mission of the university.

LESSONS LEARNED

The original 1915 AAUP document was later updated. The 1940 Statement of Principles on Academic Freedom and Tenure noted that "Institutions of higher education are conducted for the common good" and the "common good depends upon the free search for truth and its free exposition."[76] The updated summary of the basic tenets of academic freedom declared:

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to

the adequate performance of their other academic duties. . . .

2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. . . .
3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations . . . [to] at all times be accurate, exercise appropriate restraint, show respect for the opinions of others, and make every effort to indicate that they are not speaking for the institution.[77]

When the statement was updated again in 1970 in the wake of the Free Speech Movement, it included a new footnote saying that "teachers are citizens and should be accorded the freedom of citizens" and "a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position."[78]

Our view goes ever further than this. The AAUP still contemplates that a faculty member's private expression may itself (rarely but possibly) demonstrate the faculty member's unfitness for his or her position. But the history we have just reviewed shows that there have been too many times when

the political views of faculty—such as those who supported unions in the 1890s, opposed World War I in the 1910s, or sympathized with the teachings of Marx in the 1930s, 1940s, and 1950s—were treated as proof of unfitness. Colleges and universities can resist the temptation to evaluate ideological fitness by focusing on the straightforward question of whether faculty members are meeting their professional obligations as teachers, scholars, and colleagues. Statements by a faculty member may give rise to an inquiry, but a finding of unfitness cannot be based solely on a person's controversial or offensive statements or views.

This is not only our view. In 1967, the United States Supreme Court addressed academic freedom in *Keyishian v. Board of Regents*. Harry Keyishian was an instructor in English at the State University of New York at Buffalo who objected to being forced by his administration, as a condition of his continued employment, to deny that he had ever been a member of the Communist Party. He believed his private political views should have no bearing on whether he was qualified to be a professor at the university. The Supreme Court agreed, stating forcefully that "academic freedom . . . is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."[79]

The history of free speech is the history of a long, difficult, and fragile movement to establish greater protections in society for ideas considered harmful or offensive. That struggle has yielded extraordinary benefits. The history of academic freedom shows that these values have an even more

vital role to play in those institutions that are dedicated to nurturing new ideas, challenging prevailing orthodoxies, and providing society with the best possible example of how to encourage independent thinking and engage in rigorous assessment. Ronald Dworkin expressed this well:

> Liberal public education, freedom of speech, conscience, and religion, and academic freedom are all parts of our society's support for a culture of independence and of its defense against a culture of conformity. Academic freedom plays a special role because educational institutions are pivotal to those efforts. They are pivotal, first, because they can so easily become engines of conformity, as every totalitarian regime has realized, and, second, because they can provide important encouragement and skills for a life of personal conviction. Part of the point of education, in a liberal society, is learning the importance and depth of an allegiance to personal rather than collective truth. . . . In no other occupation is it so plainly and evidently the responsibility of professionals to find and tell and teach the truth as they see it. Scholars exist for that, and only for that.[80]

This is the foundational idea. Still, even if we acknowledge that disciplined free thinkers (scholars and students) deserve special consideration, it is possible to argue that certain kinds of speech acts, which attack and demean people for ugly, hateful reasons, should nevertheless have no place in higher education.