



2020

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### Recommended Citation

Peterson, Romolo (2020) "The State of Free Speech on College Campuses," *The Macksey Journal*: Vol. 1 , Article 60.

Available at: <https://www.mackseyjournal.org/publications/vol1/iss1/60>

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# The State of Free Speech on College Campuses

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## **Abstract**

There is a growing concern about the gradual erosion of free speech on college campuses. In a recent *New York Times* article, the political commentator Nicholas Kristof noted: “Too often we embrace diversity of all kinds except for ideological . . . We want to be inclusive of people who don’t look like us -- so long as they think like us.” In this paper, I will review several specific examples of the suppression of free speech at Yale University, the University of California - Berkeley, and the University of Missouri. I will discuss the most common forms of censorship on college campuses, including safe spaces, trigger warnings, microaggressions and intimidation protests. I will demonstrate the negative impact of these tactics on both students and faculty. This paper will also demonstrate the inefficacy of top-down solutions, such as President Trump’s “Executive Order on Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities,” and policy statements recently issued by some college administrators. This issue will be examined in the context of the complexity of the First Amendment to the American Constitution.

*Keywords:* Free Speech, College Campuses, First Amendment, Safe Spaces, Trigger Warnings, Microaggressions, Intimidation Protests, Donald Trump

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For centuries, colleges and universities have had the obligation of educating young adults to think critically. While colleges have historically been at the forefront of student and professor-led research and advancements in social and technological areas, they have also acted as an outlet for students, whether justly or not, to protest and make their grievances or demands heard. Student-led protests are nothing new, but in recent years, protests and demands for censorship and self-censorship have been the subject of a national debate, making the topic of free speech on college campuses a controversial issue. What is free speech? Why has free speech, specifically on college campuses, become an issue? What is the cause for this concern? What are the potential solutions? These questions have been questions lingering in the minds of the public and academics alike. Examining why students demand trigger warnings, safe spaces, and intellectual coddling will assist in understanding why these actions are detrimental to students, professors, invited speakers, and the colleges which attempt to teach students.

### **Defining Free Speech**

Free speech is guaranteed to all Americans, yet most people have a very superficial understanding of what this entails. The First Amendment of the American Constitution states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances” (U.S. Const., amend. I). This gives United States citizens, among other things, the right to free speech, which is defined as “the right to express information, ideas, and opinions free of Government restrictions based on content and subject only to reasonable limitations (as the power of the Government to avoid a clear and present danger) especially as guaranteed by the First and Fourteenth Amendments to the U.S. Constitution” (Merriam-Webster). Freedom of speech

includes, but is not limited to, contributing money, using offensive terms to convey political messages, and the right not to speak; however, it does not allow for libel, slander, defamation, the incitement of actions that would harm others, making or distributing obscene materials, such as child pornography, and making obscene speeches or advocating illegal drug use at school-sponsored events (“What Does Free Speech Mean?”). A classic example of what does not constitute free speech is shouting “fire” in a crowded theater. The reason this is not considered free speech, particularly when this claim is false and does not reflect a true threat, is that it leads to a call to action and there exists a great potential for the public to act on the claim, thus creating a dangerous environment for all involved.

The purpose of the First Amendment is for Americans to have the ability and right to express any opinion without restraint or censorship from any authority. It has created, as described by Justice Oliver Wendell Holmes Jr., a “marketplace of ideas” wherein superior ideas “sell” better than inferior ideas. This allows for the protection of the voices of minority groups, such as abolitionists during the era of slavery, suffragettes advocating for women’s rights during the early part of the twentieth century and, most notably, the Berkeley Free Speech Movement during the 1960s, which was the result of Berkeley College administrators seeking to regulate students’ political activity. I believe the most important argument that has been made for free speech is the idea that if the Government, or any authority, has the ability to silence one person, it has the ability to stop all people from speaking.

This idea is exemplified in the case of *Snyder v. Phelps*. In this case, a religious organization known as the Westboro Baptist Church protested at the funeral of Albert Snyder’s son, who was a Lance Corporal in the United States Army before passing away. Snyder sued the Phelps family, who runs the Church, for protesting at his son’s funeral with signs that read “God

Hates the USA/Thank God for 9/11,” “Don't Pray for the USA,” and “Thank God for Dead Soldiers” at his son’s funeral. The court ultimately ruled in favor of the Phelps family in an 8-1 decision, citing that “Speech on public issues is entitled to special protection under the First Amendment because it serves ‘the principle that debate on public issues should be uninhibited, robust, and wide-open” (Facts and Case Summary - Snyder v. Phelps). If the Phelps family had lost in court despite being on public land and speaking on matters of “public concern,” the court silencing the speech of this one group, even if it were one individual in that group, would make every individual's right to freedom of speech and expression vulnerable to Government-imposed suppression. Under the philosophy of equal protection, written into the Fourteenth Amendment of the United States Constitution, theoretically, if one person could be silenced by the Government, all can.

With that in mind, I believe an important distinction must be made with respect to this controversial topic. The ability to protect the speech of groups and individuals does not necessarily mean that in protecting said speech one is endorsing it. One’s belief that the members of the Westboro Baptist Church, the Ku Klux Klan, or other groups should have the right to express themselves, given the aforementioned parameters, does not mean one endorses their beliefs or actions.

### **The Stigmatization of Free Speech on College Campuses**

The basis of the stigmatization of free speech on college campuses is best summarized by Pulitzer-Prize winning journalist Nicholas Kristof: “Too often we embrace diversity of all kinds except for ideological . . . We want to be inclusive of people who don’t look like us -- so long as they think like us.” This kind of thinking is very common on college campuses, where in recent years, students have protested notably right-wing commentators, deeming their speech as

“offensive” and going so far as to call it “hate speech.” According to the Foundation for Individual Rights in Education, otherwise known as FIRE, “More than a quarter of institutions in the report (28.5 percent) received FIRE’s poorest, red light rating for maintaining speech codes that both ‘clearly and substantially’ restrict freedom of speech” (“Report: 9 in 10 American Colleges Restrict Free Speech”). Another report by the Knight Foundation found that 41% of college students believe hate speech should not be allowed (“Free Expression on College Campuses”). It is evident from these data that a large portion of students do not see or recognize the value and nuances freedom of speech can offer, particularly in a university setting, where the expectation is to evaluate and critique differing points of view.

Students and college administrators have proposed various methods of protection from what they deem as undesirable speech and other forms of “aggressions,” such as microaggressions, a term describing “a comment or action that subtly and often unconsciously or unintentionally expresses a prejudiced attitude toward a member of a marginalized group” (Merriam-Webster). One way this has been done is through the use of so-called safe spaces, which are described as “place[s] intended to be free of bias, conflict, criticism, or potentially threatening actions, ideas, or conversations” (Merriam-Webster). Colleges have also provided students with trigger warnings, “statement[s] cautioning that content (as in a text, video, or class) may be disturbing or upsetting” (Merriam-Webster), to warn students of topics one could consider harmful, hurtful, or offensive. It has also been common to use intimidation protests as a method to pressure college administrators and the public to dis-invite or cancel speakers on campus, particularly those who are deemed controversial by students.

These actions may come with good intentions, but they are forms of suppression, and studies have shown that they have worsened the environment of free speech on college campuses

and can potentially do the same to the mental state of students. For example, excessive concern about microaggressions may lead to unnecessary self-censorship. A microaggression can be as innocuous as the phrase “Where are you from?” While in and of itself this is a perfectly fine question to ask anybody, particularly at a college that houses students from around the world, the implications of such a phrase, as argued by one attempting to avoid microaggressions, is that these types of questions can lead to someone taking offense and feeling unsafe. An example of this would be asking the prior question to someone who is not in the country legally, thus making them feel unwelcome. The issue of taking offense, in my opinion, is moot as what one deems offensive is entirely up to the individual. The problem is that the inability to ask simple questions for fear of offending someone not only narrows the scope of students’ social interactions with their peers out of fear of being controversial or offending someone, but it also creates a mindset that may prevent students from asking questions in and beyond the classroom. At institutions where students and professors alike are researching and studying to observe what is true, it becomes more difficult to do so when it is the individuals themselves, not necessarily the institution, holding them back from unfettered intellectual inquiry.

Trigger warnings, too, are intended to ensure no one is offended. They are similar to a rating system for movies, with warnings added to show how appropriate or inappropriate the content is based on age or other factors. College-level students, however, should not be deterred from pursuing knowledge by such warnings since seminars and lectures hold much more scholarly weight than movies, unless in a film class. Consider the following possibility: A student who is studying law is required to attend a class on the topic of sexual assault legislation. However, the student is a rape victim, and discussing the topic makes them feel uncomfortable. Should they be exempt from studying this material? Although people with legitimate reasons for

feeling uncomfortable, such as someone with post-traumatic stress disorder, should not intentionally be made uncomfortable, avoidance of these topics is intellectually detrimental and can be a hindrance to recovering from a disorder such as PTSD. Moreover, Harvard University researchers have found that these forms of censorship created a self-fulfilling prophecy for students who have not had a traumatic experience: “trigger warnings seem to decrease the belief in their own and others’ resilience, and increase the belief in their own and others’ post-traumatic vulnerability to developing a mental disorder, being unable to effectively regulate emotions, and generally becoming unable to function” (Paresky). In fact, avoidance of possible triggers is noted in the study as a common symptom of post-traumatic stress disorder. The same study also found that people predisposed to thinking speech can cause trauma tend to believe that trigger warnings serve as a threat confirmation, certifying that “trigger warnings appear to confirm that words can cause harm for people who already believe that they do.” This study demonstrates how the very belief that statements can hurt an individual makes one less resilient and more prone to developing a psychological disorder.

Another concern that has also been common on college campuses deals with the issue of “hate speech.” Hate speech is defined as “speech that is intended to insult, offend, or intimidate a person because of some trait (as race, religion, sexual orientation, national origin, or disability)” (Merriam-Webster). While the main focus regarding hateful speech has been on what actions can be taken to mitigate it, the debate over what hate speech is and, more importantly, if anything should be done about it at all, has been practically non-existent. Hateful speech is indefinable and subjective. No two people can agree on what constitutes hate speech. Furthermore, there is an arbitrary notion that hate speech and free speech are two different subject matters. This would imply that hateful speech could be censored while the philosophy of free speech could remain



intact. Making this argument is the logical equivalent of making the statement: you can watch whatever movie you want, but you cannot watch an “R” rated film. The prior statement runs contrary the first, thus this argument is invalid. Additionally, there are too many logistical questions that would have to be answered, such as who would determine what speech should and should not be used or why any person or authority should have the power to regulate what people say. The latter question of why any authority should be trusted with such power is crucial, especially considering the historical consequences of restricting speech, such as the example of Nazi Germany, where “clauses of the Weimar Constitution guaranteeing personal liberty an[d] freedom of speech, of the press, of association and assembly, were suspended” (“Means Used by the Nazi Conspirators”). While the content of certain speech can be considered hateful by some, the concept of freedom of speech requires protection of all expressions.

On many college campuses, intimidation protests have recently been utilized as a manner of silencing political opponents and disinviting speakers under the pretext of preventing “hate speech.” Milo Yiannopoulos, a gay conservative commentator, for example, was set to speak at the University of California, Berkeley, in February of 2017. Yiannopoulos is known for his outspoken antics and opinions regarding gun control, censorship, and Islam. Before Yiannopoulos was set to speak, protests occurred at the University. Protestors threw fireworks, rocks, and molotov cocktails at law enforcement, smashed windows, and assaulted two Berkeley College Republicans, causing more than \$100,000 in damage and, ultimately, forcing the University to cancel the event “out of concern for public safety” (Park and Lah). Administrators’ inability to use their power and hold these protestors accountable has led to many campuses being controlled by a vocal, loud, and sometimes violent minority.

Another well-known incident occurred at the University of Missouri, colloquially known as Mizzou. In 2015, a student group called “Concerned Student 1950” was created to fight “racial hostility” at Mizzou. At one point, the student group occupied a public space on campus. A video from the event recorded communications professor Melissa Click, in addition to members of the Concerned Student 1950 group, forcibly removing a student reporter out of the area (Schierbecker). In this case, free expression was suppressed as the area being closed off was for public use, and a student journalist was unable to perform their duty by talking with the people who occupied this location to gather information about their cause. Paradoxically, a safe space designed to protest hostility became both hostile and unsafe to all but the protesters themselves.

The most famous incident to have been recorded regarding the stifling of free expression on college campuses was at Yale University. During the Halloween period of October 2015, Yale administrators sent an email advising students to steer clear of certain costumes in hopes that “people would actively avoid those circumstances that threaten our sense of community or disrespects, alienates or ridicules [sic] segments of our population based on race, nationality, religious belief or gender expression” (“Email From The Intercultural Affairs Committee”). Erika Christakis, a lecturer in Early Childhood Studies at Yale, responded to this email, pointing out that “Free speech and the ability to tolerate offense are the hallmarks of a free and open society” (“Email From Erika Christakis”). Subsequently, Professor Christakis’ husband, Nicholas Christakis, a sociologist and physician at Yale as well as the Head of Silliman Residential College, was met by protestors on the courtyard of Silliman. This incident was recorded on video, showing students berating Nicholas Christakis. One famous statement from a student is that college “is not about creating an intellectual space . . . It’s about creating a home

here” (“Yale Students Protest Halloween Costumes”). As a result of these events, Nicholas Christakis resigned from his position as Head of Silliman Residential College, Erika Christakis quit teaching at Yale University, and a \$50 million dollar initiative to increase faculty diversity was launched (“Yale Launches Five-Year, \$50 Million Initiative to Increase Faculty Diversity”). Aside from the large financial toll that could have, arguably, been spent in better, this instance raises concerns about universities’ willingness to encroach on student life. It also illustrates the role students themselves play in stifling American colleges and universities and their insistence on violating the philosophy behind free speech. It is in stark contrast to administrators at Berkeley seeking to impose sanctions against students’ political activities, yet students now seem to freely accept such regulations.

### **The Role of the Administration and Faculty**

While students should be held accountable for their actions, faculty and college administrators are also to blame for the infringement of free expression on college campuses. They have catered too much to the students’ demands. The purpose of a university is to prepare students to challenge their own presuppositions, not cater to them. Putting in place trigger warnings and safe spaces, which have shown to be more harmful than beneficial, makes it more difficult for administrators to make substantive campus reform regarding free expression, which leaves them in a precarious position. If the administration and faculty give in to student demands infringing free expression, students will see this as an opportunity to move the goalpost and demand more. If the college administration and faculty do not respect the wishes of the students, they would be accused of different forms of prejudice, thus allowing for more protests and, in the students’ minds, more reason to impose measures stifling free speech.

One of the other problems administrators and faculty are likely to face is their inability to discern whether or not the students are justified in protesting. Unlike Berkeley protestors, who fought for what is historically considered a noble cause, student groups today frequently frame their protests in subjective terms based on momentary emotions, which incentivizes those in charge of colleges and universities to kneel to student demands. As a result, in recent years students have seen little to no actual consequences because of their violent outrage.

Administrators and faculty have the responsibility to not only allow but protect and foster a diversity of views and ideological positions without being intimidated by any student faction.

### **Possible Solutions**

Bold action has been taken in recent months by various authorities to address the issue of free speech on college campuses. In March of 2019, President Trump signed an executive order stating, “We reject oppressive speech codes, censorship, political correctness, and every other attempt by the hard left to stop people from challenging ridiculous and dangerous ideas. These ideas are dangerous” (“President Donald J. Trump Is Improving Transparency and Promoting Free Speech”). Some institutions themselves have come forward in defense of free expression. The University of Chicago, for example, sent a message to its class of 2020 stating, “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” (Ellison). While these directives are welcome, change has to occur from the bottom up.

It is not until students and faculty alike embrace the First Amendment that real change can materialize. They must cease censoring others and/or censoring themselves. They must

recognize that even if these actions are altruistic in intention, denying people the right to freedom of speech creates more harm than good. To prevent the speech of others from being stifled, students must be willing to engage in open academic discourse, even if said speech is inconsistent with their own beliefs. Institutions must rely on their powers to make sure free speech is protected for all by not bowing to the pressure of noisy groups and ensuring that the curriculum and student life initiatives are not controlled by any political faction. The right way to protect free speech on college campuses is by engaging in substantive debate that invites a plethora of views and opinions.

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