



The War Over Free Speech

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The results of three separate, significant surveys on college students' views of free speech and the First Amendment released last fall demonstrated with notable statistical consistency what has been much examined anecdotally: University students on America's campuses have a concerning understanding of and relationship with freedom of expression.

The studies, published by the libertarian Cato Institute, the left-leaning Brookings Institute and the apolitical Foundation for Individual Rights in Education (FIRE), revealed that about one-third of students think hate speech already is illegal, and nearly half believe it should not be constitutionally protected. Cato reported that a full 55 percent of current college and graduate students agreed that hate speech is an "act of violence."

Yet there is nothing like a student consensus on the definition of "hate speech," with extensive questioning by FIRE and Cato resulting in little clarity about how students identify or seek to punish hateful expression. Sixty-five percent of respondents told Cato that calling a racial minority by a racial slur would be labeled hate speech, but that number drops to 47 percent when questioned about vulgarities aimed at a woman. It bounces back up to 57 percent when the subject morphed into a homosexual individual. And any one of these conclusions may be disrupted if one alters the racial or gender identity of a theoretical speaker, according to FIRE.

In the ideal world of some students, a white male's comment may render him in violent, unconstitutional violation of hate speech statutes, while a Black woman making the same statement would get a pass.

Students have inevitably become fearful of saying something that would breach these opaque rules of decency. According to FIRE, nearly one-third of students have engaged in self-censorship in either the classroom or in social interactions because they worried their views would be deemed offensive or politically incorrect.

This data in action saw outraged protesters at two universities last fall succeed in pressuring their respective administrations to scrap plans to produce plays students deemed bigoted.

Brandeis University killed the premiere of the Lenny Bruce-inspired “Buyer Beware” after students condemned as racist the inclusion of quotes from the comedian, the stalwart free speech defender whose archives are housed at the Massachusetts school.

Leaders of the movement to shut down “Beware” later admitted to not having read the script.

Weeks later, Illinois’ Knox College abandoned a planned staging of Bertolt Brecht’s “The Good Person of Szechwan” because of student indignation over its representation of women and Asian culture.

Stephen Brockmann, a professor of German at Carnegie Mellon University and president of the International Brecht Society, said the students who opposed the play’s production failed to understand its “very progressive message.”

In “Szechwan,” Brecht invented a pseudo-Chinese village struggling with morality and greed. At the center of the piece is a female prostitute who invents a male alter ego to protect herself, stirring questions of identity.

The playwright, who fled the Third Reich, presented identity as “complex, contingent and socially constructed,” Brockmann said — the very argument that some of the protesters were making when resisting the play.

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Zachary Greenberg, FIRE’s Justice Robert H. Jackson legal fellow, expressed disappointment with students who are advocating for the expansion of already pervasive and, as Greenberg sees them, invasive policies regulating campus speech.

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“Students are asking administrators to take away their own rights,” he said.

Universities commonly will write overly broad harassment policies so that offensive behavior takes on more powerful consequences, Greenberg said.

“Harassment has a specific legal definition, as behavior so severe and consistent and objectively offensive that it disrupts a student’s education,” Greenberg said. “These policies reach way beyond protecting against true threats, like intimidation, stalking and actual physical violence, to ban ideas.”

A policy that further exacerbates the anti-expression condition on 10 percent of the 449 campuses FIRE monitors are “speech zones,” the name for a limited strip of campus to which administrators restrict demonstrations, pamphleting or club recruitment. Some of these zones make up less than 1 percent of campuses spanning hundreds of acres.

The strategy is a relic of the Vietnam War, when universities sought to contain antiwar protests, according to FIRE.

Now, students have started taking their schools to court for what they see as a gross infringement on their freedom of expression. Lawsuits brought against Grand Valley State University in Michigan and Citrus College in California led to total or near abolition of those campuses' zones. Multiple similar cases have been filed in the last year, often with FIRE's assistance, with at least one — at Arkansas State University — filed in December.

The U.S. Justice Department has weighed in on the constitutionality of zones, filing briefs earlier this year in support of the plaintiffs in three such cases.

Meanwhile, Colorado, Missouri, Arizona, Virginia, Kentucky and Utah state legislatures have approved bills that banned zones at public universities. Similar bills have been proposed in Texas, California, Louisiana, Michigan and New York.

The lengths to which some administrators may go to monitor and control campus expression was seen in early November, when peaceful student protesters at the University of North Carolina-Chapel Hill allegedly discovered that an undercover police officer had been embedded among them. Students calling for the removal of a Confederate statue on campus welcomed an auto mechanic named "Victor" into their ranks, only later to discover he was a campus cop.

At Rensselaer Polytechnic Institute (RPI) in Troy, N.Y., graduate student Michael Gardner fought multiple allegations last semester of conduct code violations. He received ambiguous, changeable answers from administrators as to what policies he violated, if any at all. He was continuously confused as to what disciplinary actions he may face or how these inquiries might impact his academic record. As a public and frequent critic of administrative policies, Gardner said he believes he has been unjustly targeted for his respectful and calm acts of protest.

FIRE sent three letters to RPI condemning staff for its treatment of Gardner and another student protester. Shortly before the new year, the inquiries were suddenly scrapped. However, the decision came with a warning by the administration that the students would do well to rethink their public expression in the future, cautioning that they follow RPI's free speech rules, deemed unreasonably restrictive by FIRE.

Greenberg said the priorities of schools such as RPI are dangerously off-kilter, zealously punishing a Gardner but giving a slap on the wrist to aggressive protesters.

"When students shut down speakers, sometimes using violence, administrators send the message that it's OK; that it's OK to attack a speaker, to use the heckler's veto, by giving students who engage in these behaviors a minor reprimand," Greenberg said.

He referenced the disciplinary process after a widely reported Middlebury College protest that shut down a speech by controversial social scientist and author Charles Murray at the Vermont school in March, when a faculty member was injured. The consequence for most of the 67 students punished was probation, a mark that is not part of a student's permanent record, according to the college guidelines. No one was held responsible for the attack on the professor.

Some university students are weary with the dramatic altercations initiated by their peers, and frustrated with faculty and staff indulging rather than correcting such behavior.

Matthew Foldi, a student at the University of Chicago, founded Students for Free Expression to organize his peers around “our shared conviction that free expression is critical to our society, in spite of our differing backgrounds, perspectives, and ideologies,” as the group’s mission statement reads.

As of mid-December, eight months after the project’s launch, Foldi had collected 1,634 names of students, and some faculty, affirming their commitment to that liberal ideal.

“We are trying to move a boulder, and some people may not want to be the first person doing that,” Foldi said.

He praised his own school for issuing a staunch, unequivocal pro-free speech promise in 2012 and enshrining the statement in its official disciplinary code in 2017.

“Law school professor Randal Picker spent the last academic year putting the theory of the Chicago statement into practice,” he explained. “So students know, if they are going to violate the code of conduct, these are the spelled-out consequences.”

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Some of Foldi’s supporters are still in high school, a constituency he said demands more attention from free speech advocates and educators.

“We are not coming tabula rasa to the freshman year,” Foldi said. “We have already heard the anti-free speech arguments, and we are coming with preconceptions about what the campus will be like, based on what we’ve seen in the news. If we had an understanding of free speech before we got to our first year of college, about what’s constitutional and what’s spelled out in the rules of private universities, we would be able to say, ‘no’ when people looking to shut down speech come around.”

Scholars, too, are struggling to make sense of an academe some believe has run amok of intelligent and intelligible expression.

A Twitter account named @RealPeerReview posts examples of postmodern scholarship. Recent tweets have unpacked — and mocked — multiple articles obsessed with the cultural significance of pop singer Miley Cyrus and her erstwhile alter ego, “Hannah Montana”; an anthropologist’s consideration of a “sorcery attack in Lima”; a gender, sexuality and feminist studies professor’s confounding elision of 21st-century farming practices with bestiality; invectives against

American “gender tyranny”; and a doctoral dissertation in philosophy consisting of the author’s conversations with her friends about the reality television show “The Bachelor.”

“The current in higher education is that some believe it is perfectly appropriate to teach to social justice, to impose a certain worldview in the classroom,” said Ken Waltzer, the former director of Jewish studies at Michigan State University and the executive director of the Academic Engagement Network (AEN), one of the few organizations representing professorial free speech. “It’s just bad teaching. It’s not helping people to make up their own minds, but imposing a line of thinking, and then punishing or rewarding people to the extent that they accept that line.”

While @RealPeerReview protects the identity of its contributors, many professors have taken to social media to publicly express their personal and political views.

Waltzer urged administrators to err on the side of freedom when considering taking action against professors for extramural comments. Academics should not be punished for remarks that are not reflective of their professional competence, he said, even if their speech was objectively racist, sexist or homophobic.

“You have to see the impact of the teacher’s bigotry in the classroom or in the scholarship,” Waltzer explained. “Outside of your role as a professor, you can say anything you want.”

AEN originally was founded to focus on countering the movement for an academic boycott of Israel, but has lately expanded to cover the full spectrum of faculty free speech issues, as professors from both sides of the political aisle have taken heat for their comments online.

“It’s the stealth political, ideological teaching that administrations should have a problem with,” Waltzer said, not passionate political advocacy or even expressions of bigotry that have no direct relation to the professor’s field of study.

AEN will be taking up the questions of academia’s responsibility in protecting expression at its inaugural free speech symposium this year.

“As academics and administrators, we need to begin to find a more complicated middle ground, where we are not just saying either hate must be allowed to go on or that we must shut it down,” Waltzer said. “We need to facilitate free speech under the best possible conditions, but also to avoid conditions where speech really can threaten others.”

For RPI student Gardner, the academic question of facilitating expression has had frustrating and time-consuming consequences.

He is not a rabble rouser, Gardner said, but a student who loves his school and has tried to push it to improve. He was much disheartened by what he called the staff’s “dishonoring of free speech and the disciplinary process” throughout his ordeal.

As Greenberg, the legal fellow at FIRE, warns, “Next time, it could be me. It could be you.”