

FREEDOM SPEECH ON CAMPUS

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Chapter 2

Inclusive Freedom

The events at Yale during Halloween 2015 started off with a letter from administrators encouraging sensitivity in costume choices, to which a lecturer, Erika Christakis, responded with an email in which she stated:

I know that many decent people have proposed guidelines on Halloween costumes from a spirit of avoiding hurt and offense. I laud those goals, in theory, as most of us do. But in practice, I wonder if we should reflect more transparently, as a community, on the consequences of an institutional (bureaucratic and administrative) exercise of implied control over college students.

I wonder, and I am not trying to be provocative: Is there no room anymore for a child or young person to be a little bit obnoxious . . . a little bit inappropriate or provocative or, yes, offensive? American universities were once a safe space not only for maturation but also for a certain regressive, or even transgressive,

experience; increasingly, it seems, they have become places of censure and prohibition. And the censure and prohibition come from above, not from yourselves! Are we all okay with this transfer of power? Have we lost faith in young people's capacity—in your capacity to exercise self-censure, through social norming, and also in your capacity to ignore or reject things that trouble you?

Christakis lived on campus along with her husband, Nicholas Christakis, a professor. In response to her e-mail, a group of students rallied together to try to have them both removed. In an emotionally charged meeting with Nicholas, students argued that it was his role, as a residential master, not to foster intellectual debate and difficult conversations but rather to create and protect a safe space—a "home" environment—for students.¹

Protests continued on campus in the following weeks, and Yale's president released a new set of campus initiatives, including recruiting a more diverse faculty and expanding institutional support at campus cultural centers. In addition, Nicholas took a year's sabbatical and stepped down from his residential role, while Erika resigned. In an e-mail to the *Washington Post* after her resignation, she wrote, "I worry that the current climate at Yale is not, in my view, conducive to the civil dialogue and open inquiry required to solve our urgent societal problems."²

Erika Christakis was probably right. Civil dialogue is hard to sustain when many feel that they are not equal parties to the dialogue and when the overall atmosphere on campus is not open to dissenting views. While Yale may be in a particularly precarious situation in this regard

with its perennial controversies over speech,³ it seems that speech on college campuses has become embroiled in the current culture wars in the United States. The left is often worried about rampant hate being protected by appeals to free speech, while the right voices concerns about liberal professors limiting expression and indoctrinating students in the name of inclusion and diversity. Thoughtful commentators—and I see Erika Christakis as one—get caught in the middle of this polarized debate. This alone is a reason to rethink the positions expressed today about free speech and to seek a more productive way to reframe the debate, ideally in a less polarizing way. But there are other reasons to focus on free speech on campus specifically, as part of a broader conversation about democracy. Campus free speech deserves its own place within the debate on free speech because of the role that universities and colleges serve in society, because of the population they serve, and also because of some shifts in the social function of campuses.

Colleges and universities are places where knowledge is developed and disseminated. To do their job well, scholars and students require the freedom to inquire, question, and probe established views and new visions without fear of retribution or silencing. The freedom to explore, to express and consider controversial views, and to raise remote options and pursue them is central to research, teaching, and learning. Free speech protections are therefore necessary if researchers and their students are to make the kinds of contributions that society expects them to make, and for which they come to campus in the first place.

In addition, the biggest constituency on campus is young adults, newly minted as full citizens but often not

fully prepared for their civic roles.⁴ While some campuses focus more on research and the generation of knowledge and others focus more on their educational mission, all residential campuses are charged with supervising and supporting the young adults in their charge. It should be expected as a matter of course that large groups of young people would try on their new status by crossing various boundaries, more and less productively. Underage drinking is by no means the only way in which they test their new independence, and the development and testing of new ideas, views, and beliefs is indeed a more common, and more acceptable, expression of budding adulthood.

Moreover, for many students, campus is the most diverse community they have encountered so far in their young lives. Families, neighborhoods, schools, and places of worship tend to be cohesive and relatively monochromatic, either by their very nature and mission or as a result of long processes of social separation. Thus for instance, public schools—despite being seen by many of their advocates and by the families who benefit from them as microcosms of the public—are increasingly segregated by race and class.⁵ Students' new campus community, often more diverse than others they have lived in—even if not as diverse as it aspires to be—invites them to consider their own often unquestioned beliefs, views, and forms of expression as they relate to other individuals and groups.

Colleges now serve a larger number of students from more diverse backgrounds than ever before, and therefore should both respond to their various needs and build on the interests and knowledge that they bring to campus.⁶

The makeup of the campus student body (and staff) should inform the processes of protecting and encouraging speech. Free speech on campus requires a reassessment today not only because of significant changes in the diversity and levels of polarization in American society but also because of how those are reflected on campus. People from a wider array of backgrounds pursue degrees that are now requirements for many careers and predictors of civic participation. Racial diversity among college students has increased, and African Americans' share of undergraduate students now just about reflects their share in society, as it grew from 10 percent in 1976 to 14 percent in 2012. Hispanic enrollment rose from 3 to 14 percent in the last three decades.⁷ A growing number of international students attend American colleges, adding their own interests, needs, and political views into the mix.

Why would changes in demographic makeup require that we rethink the way we delineate and protect free speech? Decades ago, when newly admitted or promoted women on some campuses called for the expansion of the canon to include works and perspectives by women, their point was not just that excluding women authors from syllabi was harmful or offensive (though it surely reflected bias) but also that it reflected laziness of thought and resulted in poor quality research and teaching. Assuming that the university could simply add women without any curricular changes ignored how the university's mission was advanced by widening perspectives. Expectations about campus relations needed—and still need—to change. Women rightly claim, for example, that harassment should not be seen as an inevitable or natural aspect

of workplace and teaching relations but rather should be recognized as a form of discrimination that bars (usually) women from access to learning.

Today, the diversity of the campus community is not merely a result of changing demographics in the country, but in fact reflects an expansion of the university's social mission. While maintaining its commitment to research and inquiry, the university has grown from an institution that serves a small segment of the population deemed eligible to become religious, political, economic, and thought leaders to one that serves as an engine for social mobility and equal opportunity. Contemporary demands that high schools prepare all students to be "career and college ready," a graduation rate that now possibly exceeds 80 percent, and the diverse pool of applicants creates changes well beyond the admissions office. The evolving makeup of the community on campus requires attention to the ways in which members of groups that were excluded either formally or effectively in the past are incorporated into campus. Such incorporation must go well beyond the attention given at the admissions office (in light of evolving Supreme Court and state court rulings on the matter) to gender, race, income level, and other attributes and indicators. It should also take into account the responsiveness of the campus to the needs of these relatively new populations, such as support for first-generation students and cultural student organizations. Many colleges are learning to recognize that a part of the attention that needs to be paid to a diverse student body relates to speech and expression. The needed changes include rethinking the ways diverse views, perspectives, and expressions are welcomed and responded to.

Of course, not all campuses are home to similarly diverse student bodies. Some colleges are open only to women. Historically black colleges and universities are open to all but serve a student population that mostly identifies as African American. Some local and regional colleges are located in geographical areas that are home to mostly one ethnic or racial group, and their student bodies are relatively homogeneous. Some campuses serve "blue" or "red" parts of the United States, and their student populations reflect the ideological inclinations of their region. Some other forms of diversity are less evident but not less important: in some colleges, most students come from affluent households, making first-generation and low-income students a small and sometimes marginalized group; in other colleges, the majority of students are the first in their families to go to college, and many struggle with financial concerns. The opportunity that many college campuses provide to sexual minorities to live openly, as evidenced by the welcome proliferation of relevant student groups and public statements like those in the "It Gets Better" campaign, adds another dimension of expressed diversity to campus. On many campuses, non-traditional students—those who start their studies at a later age than usual—are attending in growing numbers. Since campus demographics affect the type of speech issues the campus deals with—because speech reflects the relationship on campus, and those change with the makeup of the student body, among other things—these differences across different campus communities are significant for the discussion of speech on campus.

While the actual tensions that arise as a result of the demographic makeup of the student body are significant,

two other points also should be kept in mind. First, all campuses are diverse in some way. However, ideology, class background, citizenship status, sexual orientation, and other parameters are not always seen, and with a sense of homogeneity, students who are different might feel compelled to “pass”—to hide their true identities as gay, conservative, Muslim, or undocumented—to avoid the tensions that may arise from an evident minority status. Some young adults might still look to fit in. It is important to create an environment in which students do not find it necessary to hide their identities, because of the harm to their well-being as well as the resultant loss of a valuable opportunity for peers to challenge their own views and to engage with a diverse set of perspectives that they may not have considered.

Second, even a campus community that is relatively homogeneous by some measures and calm in terms of the relational issues that give rise to free speech concerns still resides within the same diverse, polarized country. While the campus may serve as respite or “safe space” for those who come there to study and socialize, part of the campus mission is still to challenge students, to make them think, to expand their intellectual horizons, and to prepare them for their civic roles. To do so, the campus needs to expose students to some of the tensions and disagreements that they might encounter outside of the bubble created by a homogeneous campus social environment. The leadership on campus, as well as some of the faculty, may recoil from this suggestion, fearing the possibility of raising tensions where none exist. Clearly there is no need to generate artificial tensions or clashes, but students deserve the opportunity to grow and expand their perspectives. Preserving

a false sense of security that comes from never having one’s views challenged or encountering diverse peers (or faculty) limits the benefits that college should provide. Addressing issues of speech and expression requires a framework that is aimed at protecting free speech for all members of the campus community in ways that support the development of an inclusive environment.

An inclusive freedom framework for speech on campus takes seriously the importance of a free and open exchange as a necessary condition for the pursuit of knowledge and as a contributing condition to the development of civic and democratic capacities. It lends similar weight to the related demand that all members of the campus community be able to participate in this free and open exchange if it is to accomplish the goals of free inquiry, open-minded research, and equal access to learning and to civic development.

A call for creating an inclusive environment in which all members are respected and where all voices can be heard should be framed and recognized as furthering rather than impeding the realization of a free and open campus. Students sometimes call on campus administrators to support inclusion and diversity by limiting speech,⁸ and they refer to harms caused to them by instances in which open expression allows for hurtful speech to take center stage. But an inclusive and welcoming campus is one that must recognize the necessity of free speech.

To see how inclusion and free speech can coincide rather than stand in opposition, a closer look is needed at what “harm” means in the context of the free speech cases discussed here. In order to bridge the divide between those who seek to protect speech from attacks by advocates of

inclusion and those who seek to protect minority groups from attacks by proponents of free speech, we need to clarify what is the harm that the latter are aiming to avoid.

The notion of harm has been central to the liberal debate at least since it was articulated by John Stuart Mill, who famously noted that “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”⁹ Harm to others is thus to him the only justified reason to limit the freedom of any member in a democratic community, although Mill is sometimes understood to have claimed that you still have a right to speak even if your words harm others.¹⁰ As articulated after the Middlebury events by Cornel West and Robert P. George, two eminent scholars who represent opposing ideological views, “All of us should be willing—even eager—to engage with anyone who is prepared to do business in the currency of truth-seeking discourse by offering reasons, marshaling evidence, and making arguments.”¹¹ By this view, very few instances of speech can constitute harm, if harm even remains a relevant aspect of the debate. There are cases for limiting free speech in the name of preventing harm to others—yelling “fire” in a crowded theater and publicizing libelous statements about another person are famous examples. But for the most part, when views and opinions are expressed as part of an open, democratic exchange, they should be permissible.

However, this expansive view of free speech as rarely causing harm and therefore usually not being subject to censure can reasonably be put into question in the context of the diversifying campus. Harmful speech is discussed in more detail in the next chapter in the context

of identity politics on campus. For now, it will suffice to clarify: recognizing that some forms of speech are harmful and that these harms compound other (historical and current) harms does not mean that speech should be more commonly censored or curtailed. Rather, attention to speech is called for by issues surrounding it, such as the possible motivations of speakers, including “the troll problem”—speakers who intend merely to be provocative rather than to inform, challenge, or generate dialogue.¹² In addition, the possible impact of words can be part of the consideration, both immediately and in the aggregate accumulation of small harms. Again, while the response should not be to shut down or avoid speech, additional steps can reasonably be taken by other student groups and sometimes even by the campus leadership. Forms of expression (and behavior) that were seen as mainstream when the campus was all-male, all-white, or presumed to be all-straight—such as using casual sexist, racist, and antigay language—are being challenged by some as preventing members of newer groups from being recognized as full members of the campus community.

Advocates’ calls to give “no platform” to such speakers miss the mark because they seek to avoid perspectives that deserve or, at the very least, require dialogue—if some or many in society hold certain views, even reprehensible ones, avoiding them does nothing to challenge them. For liberals of different races who hold clear views on racial equality, for example, speaking to Charles Murray would surely provide an opportunity to challenge his views without risking their own intellectual integrity or sense of self-worth. Shortly after the events at Middlebury, Murray was scheduled to speak at the invitation of a professor at Notre

Dame, who wrote, “Notre Dame is one of Charles Murray’s first post-Middlebury campus lectures. It makes our event a referendum on free speech and how universities handle controversial speakers. I didn’t intend for his visit to address these issues, but it now does. Given the trends of cancelled lectures, ever-increasing calls to disinvite speakers, and ideological bullying on college campuses, we must take a stand for civil discourse and reasoned engagement. We must show that universities can host respectful conversations among people who disagree.”¹³ But clearly intellectual exchange is not the focus for everyone. Rather, progressive activists are concerned that voicing what they perceive—possibly correctly—as racially charged or even racist views would harm members of racial minority groups on campus and therefore should be silenced. For them, standing for civil discourse and reasoned engagement, and even more so the commitment to respectful conversation, requires that speakers respect all their audience members, a stance that misogyny, homophobia, and racism preclude.

Like the Yale case, which started off with advice against donning hurtful costumes, many speech cases in recent years have been framed as issues related to causing and avoiding harm or searching for safety in the face of potential or actual harm. For opponents of this view, the demand to avoid harm is tantamount to an attack on a core value of the university, as outlined in the 2016 letter to freshmen from the University of Chicago, which declared that safe spaces and trigger warnings would not be provided. But in fact the collective effort to avoid harm is an important step in constructing a free and equal community of inquiry, which is the shared goal in this debate,

and should thus be taken seriously by those on both sides of the free speech divide.

In response to the attack on Charles Murray at Middlebury, its student government association issued a statement recommending that departments and student organizations “respect the boundaries of the College’s community standards . . . in order to create a better learning environment.”¹⁴ This line of response is typical to the frame of mind that sees free speech mostly through the lens of offense and that presumes an inherent tension between protecting free expression and protecting vulnerable groups from (further) harm. Some progressives and liberals have come to fear that, by hosting speakers like Murray, conservative student groups are invoking free speech to cover up an insidious attempt to promote hate-based and evidence-free speech and to incite anger rather than to create a meaningful opportunity for learning and dialogue. This is a reasonable concern in the context of an educational institution, but nonetheless it should not be used to curtail free speech. Curtailing free speech based on content or—even worse—the presumed motivation of the speaker, raises the risk of creating some version of thought police—namely, a regulatory mechanism for deciding which views and opinions warrant an invitation to campus and which do not. This is not to say that there is no space for response, and some options are suggested below, but it does mean that the liberal concern about hate-based and evidence-free or inciting events, even if justified, should not result in a call for censoring or curtailing events and speakers.

Polarized views on free speech produced the Chicago “no trigger warnings here” letter, assuming that

if professors provide trigger warnings as a way to protect vulnerable students from potential harm, they will be compromising their commitment to open-minded research and the spirit and principles of free expression. On the other side, they produced the call from Middlebury students “to articulate some parameters for which viewpoints are worthy” of the process of free inquiry,¹⁵ asserting that a stricter limitation on permissible speech on campus would give rise to a more inclusive community.

This perceived tension is mostly misguided, and the framework that presumes an opposition between free inquiry on the one hand and inclusion on the other juxtaposes views that could potentially overlap through a shared commitment to protect free and inclusive speech. The presumed tension between free speech and protection from harm is the result of a rigid and inaccurate description of both, and a charitable and close reading of the above statements that articulate both sides shows a commitment to similar values. The University of Chicago seemed to be blindsided by the backlash to their letter, and in response they took pains to clarify their commitment to an open and equitable campus where all are welcome and respected. The Middlebury students who circulated the “Broken Inquiry” statement after the Murray event expressed a sense of dismay at his invitation and perspective, but they still articulated as their first principle the view that “genuine higher learning is possible only where free, reasoned, and civil speech and discussion are respected.”¹⁶ There seems to be an agreement—even if thin, even if only as lip service—that free speech and inquiry are central tenets of university or college life and its mission, and that diversity, equity, and inclusion

need to be respected. Not often enough is it acknowledged that equity and inclusion do not have to stand in the way of free speech and open-minded inquiry and that the two can go hand in hand in promoting the key mission of higher education institutions.

Moreover, both sides fail to take account of how their views can readily become self-defeating. When social justice advocates call for the curtailment of free speech through censoring speakers and canceling events, they neglect to recognize the historical reality that curtailing free speech might harm vulnerable groups. Once censorship based on content is possible, what is to stop people in power—administrators, religious majority groups, or other established centers of power—from limiting speech by dissenters, opponents, or anyone who threatens the status quo?

On the other hand, free speech advocates who insist that unfettered free speech is a necessary condition for the open-minded free inquiry that makes a university worth its name sidestep the fact that when many on campus are effectively silenced, inquiry is in fact neither free nor open-minded. It remains the prerogative of those who have the tools and support to join the conversation and to participate in the main activities on campus, including research, active learning, and established social roles. Many women, racial and sexual minorities, first-generation students, and other individuals who may not see themselves (or be seen by others) as belonging or possess the tools required to hit the ground running remain outside the conversation, impoverishing the conversation and hindering the search for truth and knowledge.

It is commonly said that the only cure for inaccurate or even harmful speech is more and better speech.¹⁷ Inclusive freedom is aligned with this stance in one sense: colleges should not aim to enforce civility or regulate speech but should focus, rather, on providing ample opportunities for students to develop and express their views, question, and even rebel. Curtailing speech to prevent controversy is both unjustified and ineffective; instead, colleges should aim to enable multiple forms of expressive and political speech, guided by no more than broad legal requirements and a thin, flexible commitment to an inclusive atmosphere. The latter should be used not to limit speech but to support students in developing opportunities for further speech and the capacity to productively respond to speech that they find offensive rather than to look for ways to shut it down.

However, this does not mean that colleges should not develop and enforce practices meant to ensure that all can express their views. The University of Chicago report aims to do just that by calling for “consistency across cases” and developing “procedures for event management to reduce the chances that those engaged in disruptive conduct can prevent others from speaking or being heard.”¹⁸ But their focus on disciplinary measures is insufficient and hence regrettable. While students who are acting in inappropriately disruptive ways or preventing speakers from being heard may suffer disciplinary consequences if they fail to act in accordance with the general expectation, couching free speech practices in the context of disciplinary measures is unproductive because the main issues are civic, relational, and educational rather than regulatory.

Along with changes in demographics, the university’s mission has changed from the early days of focusing on leadership preparation to the current emphasis on professional and civic development. A diverse campus requires changes to syllabi, in classroom practices and activities, and in attitudes around campus to reflect broader visions and to provide all members of the campus community with opportunities to learn and work. Listening and responding to these demands can promote the revised social mission of the university—serving a diverse population alongside pursuing truth through honest and open-minded research and teaching. The two are best understood as reinforcing each other rather than standing in tension to each other (though tensions can arise in specific cases). If pedagogy and other campus practices are not expanded in response to a changing student body, many students will feel and be shut out of participating in learning and other activities, which not only is hurtful but also represents a failure to consider new and important forms of experience and knowledge. The suppression of views that occurs when diverse students are not provided with full access to learning and other benefits that the campus offers not only is a social harm but represents a blind side in the search for knowledge. It thus serves as a limitation on the college’s effort to fulfill its research mission and to disseminate knowledge, in addition to indicating a lack of respect.

Increasingly diverse campus communities raise challenges that have recently included demands to change building names and calls to create more inclusive and sensitive social environments in contexts such as holiday celebrations, dining hall menus, and Greek parties to name

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a few. Some of these issues are being framed as demands for safe spaces that would provide students with protection from harm to their well-being, identity, and sense of security, as well as with an affirmation of their belonging.

The next two chapters envision the ways to implement inclusive freedom on campus in light of these challenges—first on the quad (meaning in the public, social, and extracurricular context of campus activities) and then in the classroom.