



SHOULD NEO-NAZIS BE ALLOWED FREE SPEECH?

THANE ROSENBAUM

Over the past several weeks, free speech has gotten costlier—at least in France¹ and Israel.

In France, Dieudonne M'Bala M'Bala, an anti-Semitic stand-up comic² infamous for popularizing the *quenelle*, an inverted Nazi salute, was banned from performing in two cities. M'Bala M'Bala has been repeatedly fined for hate speech, and this was not the first time his act was perceived as a threat to public order.

Meanwhile, Israel's parliament is soon to pass a bill outlawing the word³ Nazi for non-educational purposes. Indeed, any slur against another that invokes the Third Reich could land the speaker in jail for six months with a fine of \$29,000. The Israelis are concerned about both the rise of anti-Semitism globally, and the trivialization of the Holocaust—even locally.

To Americans, these actions in France and Israel seem positively un-⁴ democratic. The First Amendment would never prohibit the *quenelle*, regardless of its symbolic meaning. And any lover of *Seinfeld* would regard banning the "Soup Nazi" episode as scandalously un-American. After all, in 1977 a federal court upheld the right of neo-Nazis to goose-step right through the town of Skokie, Illinois, which had a disproportionately large number of Holocaust survivors as residents. And more recently, the Supreme Court upheld the right of a church group opposed to gays serving in the military to picket the funeral of a dead marine with signs that read, "God Hates Fags."

While what is happening in France and Israel is wholly foreign to Ameri-⁵ cans, perhaps it's time to consider whether these and other countries may be right. Perhaps America's fixation on free speech has gone too far.

Actually, the United States is an outlier among democracies in granting⁶ such generous free speech guarantees. Six European countries, along with Brazil, prohibit the use of Nazi symbols and flags. Many more countries have outlawed Holocaust denial. Indeed, even encouraging racial discrimination in France is a crime. In pluralistic nations like these with clashing cultures and historical tragedies not shared by all, mutual respect and civility helps keep the peace and avoids unnecessary mental trauma.

Yet, even in the United States, free speech is not unlimited. Certain pro-⁷ scribed categories have always existed—libel, slander and defamation, obscenity, "fighting words," and the "incitement of imminent lawlessness"—where the First Amendment does not protect the speaker, where the right to speak is curtailed for reasons of general welfare and public safety. There is no freedom to shout "fire" in a crowded theater. Hate crime statutes exist in many

jurisdictions where bias-motivated crimes are given more severe penalties. In 2003, the Supreme Court held that speech intended to intimidate, such as cross burning, might not receive First Amendment protection.

Yet, the confusion is that in placing limits on speech we privilege physical over emotional harm. Indeed, we have an entire legal system, and an attitude toward speech, that takes its cue from a nursery rhyme: "Sticks and stones can break my bones but names can never hurt me."

All of us know, however, and despite what we tell our children, names do, indeed, hurt. And recent studies in universities such as Purdue, UCLA, Michigan, Toronto, Arizona, Maryland, and Macquarie University in New South Wales show, among other things, through brain scans and controlled studies with participants who were subjected to both physical and emotional pain, that emotional harm is equal in intensity to that experienced by the body, and is even more long-lasting and traumatic. Physical pain subsides; emotional pain, when recalled, is relived.

Pain has a shared circuitry in the human brain, and it makes no distinction between being hit in the face and losing face (or having a broken heart) as a result of bereavement, betrayal, social exclusion, and grave insult. Emotional distress can, in fact, make the body sick. Indeed, research has shown that pain relief medication can work equally well for both physical and emotional injury.

We impose speed limits on driving and regulate food and drugs because we know that the costs of not doing so can lead to accidents and harm. Why should speech be exempt from public welfare concerns when its social costs can be even more injurious?

In the marketplace of ideas, there is a difference between trying to persuade and trying to injure. One can object to gays in the military without ruining the one moment a father has to bury his son;

neo-Nazis can long for the Third Reich without re-traumatizing Hitler's victims; one can oppose Affirmative Action without burning a cross on an African-American's lawn.

Of course, everything is a matter of degree. Juries are faced with similar ambiguities when it comes to physical injury. No one knows for certain whether the plaintiff wearing a neck brace can't actually run the New York Marathon. We tolerate the fake slip and fall, but we feel absolutely helpless in evaluating whether words and gestures intended to harm actually do cause harm. Jurors are as capable of working through these uncertainties in the area of emotional harms as they are in the realm of physical injury.

Free speech should not stand in the way of common decency. No right should be so freely and recklessly exercised that it becomes an impediment to civil society, making it so that others are made to feel less free, their private space and peace invaded, their sensitivities cruelly trampled upon.

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THE UNFREE SPEECH MOVEMENT

SOL STERN

This fall the University of California at Berkeley is celebrating the 50th anniversary of the Free Speech Movement, a student-led protest against campus restrictions on political activities that made headlines and inspired imitators around the country. I played a small part in the Free Speech Movement, and some of those returning for the reunion were once my friends, but I won't be joining them.

Though the movement promised greater intellectual and political freedom on campus, the result has been the opposite. The great irony is that while Berkeley now honors the memory of the Free Speech Movement, it exercises more thought control over students than the hated institution that we rose up against half a century ago.

We early-1960s radicals believed ourselves anointed as a new "tell it like it is" generation. We promised to transcend the "smelly old orthodoxies" (in George Orwell's phrase) of Cold War liberalism and class-based, authoritarian leftism. Leading students into the university administration building for the first mass protest, Mario Savio, the Free Speech Movement's brilliant leader from Queens, New York, famously said: "There's a time when the operation of the machine becomes so odious—makes you so sick at heart—that you can't take part. . . . And you've got to indicate to the people who run it, to the people who own it that unless you're free, the machine will be prevented from working at all."

The Berkeley "machine" now promotes Free Speech Movement kitsch. The steps in front of Sproul Hall, the central administration building where more than 700 students were arrested on Dec. 2, 1964, have been renamed the Mario Savio Steps. One of the campus dining halls is called the Free Speech Movement Cafe, its walls covered with photographs and mementos of the glorious semester of struggle. The university requires freshmen to read an admiring biography of Savio, who died in 1996, written by New York University professor and Berkeley graduate Robert Cohen.

Yet intellectual diversity is hardly embraced. Every undergraduate undergoes a form of indoctrination with a required course on the "theoretical or analytical issues relevant to understanding race, culture, and ethnicity in American society," administered by the university's Division of Equity and Inclusion.

How did this Orwellian inversion occur? It happened in part because the Free Speech Movement's fight for free speech was always a charade. The struggle was really about using the campus as a base for radical politics. I was a

27-year-old New Left graduate student at the time. Savio was a 22-year-old sophomore. He liked to compare the Free Speech Movement to the civil-rights struggle—conflating the essentially liberal Berkeley administration with the Bull Connors of the racist South.

During one demonstration Savio suggested that the campus cops who had arrested a protesting student were “poor policemen” who only “have a job to do.” Another student then shouted out: “Just like Eichmann.” “Yeah. Very good. It’s very, you know, like Adolf Eichmann,” Savio replied. “He had a job to do. He fit into the machinery.”

I realized years later that this moment may have been the beginning of the 1960s radicals’ perversion of ordinary political language, like the spelling “Amerika” or seeing hope and progress in Third World dictatorships.

Before that 1964–65 academic year, most of us radical students could not have imagined a campus rebellion. Why revolt against an institution that until then offered such a pleasant sanctuary? But then Berkeley administrators made an incredibly stupid decision to establish new rules regarding political activities on campus. Student clubs were no longer allowed to set up tables in front of the Bancroft Avenue campus entrance to solicit funds and recruit new members.

The clubs had used this 40-foot strip of sidewalk for years on the assumption that it was the property of the City of Berkeley and thus constitutionally protected against speech restrictions. But the university claimed ownership to justify the new rules. When some students refused to comply, the administration compounded its blunder by resorting to the campus police. Not surprisingly, the students pushed back, using civil-disobedience tactics learned fighting for civil rights in the South.

The Free Speech Movement was born on Oct. 1, 1964, when police tried to arrest a recent Berkeley graduate, Jack Weinberg, who was back on campus after a summer as a civil-rights worker in Mississippi. He had set up a table on the Bancroft strip for the Berkeley chapter of the Congress of Racial Equality (CORE). Dozens of students spontaneously sat down around the police car, preventing it from leaving the campus. A 32-hour standoff ensued, with hundreds of students camped around the car.

Mario Savio, also back from Mississippi, took off his shoes, climbed onto the roof of the police car, and launched into an impromptu speech explaining why the students had to resist the immoral new rules. Thus began months of sporadic protests, the occupation of Sproul Hall on Dec. 2 (ended by mass arrests), national media attention, and Berkeley’s eventual capitulation.

That should have ended the matter. Savio soon left the political arena, saying that he had no interest in becoming a permanent student leader. But others had mastered the new world of political theater, understood the weakness of American liberalism, and soon turned their ire on the Vietnam War.

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Mario Savio at a victory rally on the University of California campus in Berkeley (December 9, 1964)



AP Photo.

The radical movement that the Free Speech Movement spawned eventually descended into violence and mindless anti-Americanism. The movement waned in the 1970s as the war wound down—but by then protesters had begun their infiltration of university faculties and administrations they had once decried. “Tenured radicals,” in *New Criterion* editor Roger Kimball’s phrase, now dominate most professional organizations in the humanities and social studies. Unlike our old liberal professors, who dealt respectfully with the ideas advanced by my generation of New Left students, today’s radical professors insist on ideological conformity and don’t take kindly to dissent by conservative students. Visits by speakers who might not toe the liberal line—recently including former Secretary of State Condoleezza Rice and Islamism critic Ayaan Hirsi Ali—spark protests and letter-writing campaigns by students in tandem with their professors until the speaker withdraws or the invitation is canceled.

On Oct. 1 at Berkeley, by contrast, one of the honored speakers at the Free Speech Movement anniversary rally on Sproul Plaza will be Bettina Aptheker, who is now a feminist-studies professor at the University of California at Santa Cruz.

Writing in the Berkeley alumni magazine about the anniversary, Ms. Aptheker noted that the First Amendment was “written by white, propertied men in the 18th century, who never likely imagined that it might apply to women, and/or people of color, and/or all those who were not propertied, and even, perhaps, not citizens, and/or undocumented immigrants. . . . In other words, freedom of speech is a Constitutional guarantee, but who gets to exer-

cise it without the chilling restraints of censure depends very much on one's location in the political and social cartography. We [Free Speech Movement] veterans were too young and inexperienced in 1964 to know this, but we do now, and we speak with a new awareness, a new consciousness, and a new urgency that the wisdom of a true freedom is inexorably tied to who exercises power and for what ends." Read it and weep—for the Free Speech Movement anniversary, for the ideal of an intellectually open university, and for America.

ON FREEDOM OF EXPRESSION AND CAMPUS SPEECH CODES

AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

Freedom of thought and expression is essential to any institution of higher learning. Universities and colleges exist not only to transmit existing knowledge. Equally, they interpret, explore, and expand that knowledge by testing the old and proposing the new.

This mission guides learning outside the classroom quite as much as in class, and often inspires vigorous debate on those social, economic, and political issues that arouse the strongest passions. In the process, views will be expressed that may seem to many wrong, distasteful, or offensive. Such is the nature of freedom to sift and winnow ideas.

On a campus that is free and open, no idea can be banned or forbidden. No viewpoint or message may be deemed so hateful or disturbing that it may not be expressed.

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Universities and colleges are also communities, often of a residential character. Most campuses have recently sought to become more diverse, and more reflective of the larger community,

by attracting students, faculty, and staff from groups that were historically excluded or underrepresented. Such gains as they have made are recent, modest, and tenuous. The campus climate can profoundly affect an institution's continued diversity. Hostility or intolerance to persons who differ from the majority (especially if seemingly condoned by the institution) may undermine the confidence of new members of the community. Civility is always fragile and can easily be destroyed.

In response to verbal assaults and use of hateful language some campuses have felt it necessary to forbid the expression of racist, sexist, homophobic, or ethnically demeaning speech, along with conduct or behavior that harasses. Several reasons are offered in support of banning such expression. Individuals and groups that have been victims of such expression feel an understandable outrage. They claim that the academic progress of minority and majority alike may suffer if fears, tensions, and conflicts spawned by slurs and insults create an environment inimical to learning. These arguments, grounded in the need to foster an atmosphere respectful of and welcome to all persons, strike a deeply responsive chord in the academy. But, while we can acknowledge both the weight of these concerns and the thoughtfulness of those persuaded of the need for regulation, rules that ban or punish speech based upon its content cannot be justified. An institution of higher learning fails to fulfill its mission if it asserts the power to proscribe ideas—and racial or ethnic slurs, sexist epi-

thets, or homophobic insults almost always express ideas, however repugnant. Indeed, by proscribing any ideas, a university sets an example that profoundly disserves its academic mission. Some may seek to defend a distinction between the regulation of the content of speech and the regulation of the manner (or style) of speech. We find this distinction untenable in practice because offensive style or opprobrious phrases may in fact have been chosen precisely for their expressive power. As the United States Supreme Court has said in the course of rejecting criminal sanctions for offensive words: Words are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive function which, practically speaking, may often be the more important element of the overall message sought to be communicated. The line between substance and style is thus too uncertain to sustain the pressure that will inevitably be brought to bear upon disciplinary rules that attempt to regulate speech. Proponents of speech codes sometimes reply that the value of emotive language of this type is of such a low order that, on balance, suppression is justified by the harm suffered by those who are directly affected, and by the general damage done to the learning environment. Yet a college or university sets a perilous course if it seeks to differentiate between high-value and low-value speech, or to choose which groups are to be protected by curbing the speech of others. A speech code unavoidably implies an institutional competence to distinguish permissible expression of hateful thought from what is proscribed as thoughtless hate. Institutions would also have to justify shielding some, but not other, targets of offensive language—not to political preference, to religious but not to philosophical creed, or perhaps even to some but not to other religious affiliations. Starting down this path creates an even greater risk that groups not originally protected may later demand similar solicitude—demands the institution that began the process of banning some speech is ill equipped to resist.

Distinctions of this type are neither practicable nor principled; their very 6 fragility underscores why institutions devoted to freedom of thought and expression ought not adopt an institutionalized coercion of silence.

Moreover, banning speech often avoids consideration of means more 7 compatible with the mission of an academic institution by which to deal with incivility, intolerance, offensive speech, and harassing behavior:

1. Institutions should adopt and invoke a range of measures that penalize conduct and behavior, rather than speech, such as rules against defacing property, physical intimidation or harassment, or disruption of campus activities. All members of the campus community should be made aware of such rules, and administrators should be ready to use them in preference to speech-directed sanctions.
2. Colleges and universities should stress the means they use best—to educate—including the development of courses and other curricular and co-curricular experiences designed to increase student understanding

and to deter offensive or intolerant speech or conduct. Such institutions should, of course, be free (indeed encouraged) to condemn manifestations of intolerance and discrimination, whether physical or verbal.

3. The governing board and the administration have a special duty not only to set an outstanding example of tolerance, but also to challenge boldly and condemn immediately serious breaches of civility.
4. Members of the faculty, too, have a major role; their voices may be critical in condemning intolerance, and their actions may set examples for understanding, making clear to their students that civility and tolerance are hallmarks of educated men and women.
5. Student personnel administrators have in some ways the most demanding role of all, for hate speech occurs most often in dormitories, locker-rooms, cafeterias, and student centers. Persons who guide this part of campus life should set high standards of their own for tolerance and should make unmistakably clear the harm that uncivil or intolerant speech inflicts.

To some persons who support speech codes, measures like these—relying as they do on suasion rather than sanctions—may seem inadequate. But freedom of expression requires toleration of “ideas we hate,” as Justice Holmes put it. The underlying principle does not change because the demand is to silence a hateful speaker, or because it comes from within the academy. Free speech is not simply an aspect of the educational enterprise to be weighed against other desirable ends. It is the very precondition of the academic enterprise itself.



PROGRESSIVE IDEAS HAVE KILLED FREE SPEECH ON CAMPUS

WENDY KAMINER

Is an academic discussion of free speech potentially traumatic? A recent panel for Smith College alumnae aimed at “challenging the ideological echo chamber” elicited this ominous “trigger/content warning” when a transcript appeared in the campus newspaper: “Racism/racial slurs, ableist slurs, anti-semitic language, anti-Muslim/Islamophobic language, anti-immigrant language, sexist/misogynistic slurs, references to race-based violence, references to antisemitic violence.”

No one on this panel, in which I participated, trafficked in slurs. So what prompted the warning?

Smith President Kathleen McCartney had joked, “We’re just wild and crazy, aren’t we?” In the transcript, “crazy” was replaced by the notation: “[ableist slur].”

One of my fellow panelists mentioned that the State Department had for a time banned the words “jihad,” “Islamist,” and “caliphate”—which the transcript flagged as “anti-Muslim/Islamophobic language.”

I described the case of a Brandeis professor disciplined for saying “wet-back” while explaining its use as a pejorative. The word was replaced in the transcript by “[anti-Latin@/anti-immigrant slur].” Discussing the teaching of *Huckleberry Finn*, I questioned the use of euphemisms such as “the n-word” and, in doing so, uttered that forbidden word. I described what I thought was the obvious difference between quoting a word in the context of discussing language, literature, or prejudice and hurling it as an epithet.

Two of the panelists challenged me. The audience of 300 to 400 people listened to our spirited, friendly debate—and didn’t appear angry or shocked. But back on campus, I was quickly branded a racist, and I was charged in the Huffington Post with committing “an explicit act of racial violence.” McCartney subsequently apologized that “some students and faculty were hurt” and made to “feel unsafe” by my remarks.

Unsafe? These days, when students talk about threats to their safety and demand access to “safe spaces,” they’re often talking about the threat of unwelcome speech and demanding protection from the emotional disturbances sparked by unsettling ideas. It’s not just rape that some women on campus fear: It’s discussions of rape. At Brown University, a scheduled debate between two feminists about rape culture was criticized for, as the *Brown Daily Herald* put it, undermining “the University’s mission to create a safe and supportive environment for survivors.” In a school-wide e-mail, Brown President Christina Paxson emphasized her belief in the existence of rape culture and invited

students to an alternative lecture, to be given at the same time as the debate. And the *Daily Herald* reported that students who feared being “attacked by the viewpoints” offered at the debate could instead “find a safe space” among “sexual assault peer educators, women peer counselors and staff” during the same time slot. Presumably they all shared the same viewpoints and could be trusted not to “attack” anyone with their ideas.

How did we get here? How did a verbal defense of free speech become tantamount to a hate crime and offensive words become the equivalent of physical assaults?

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You can credit—or blame—progressives for this enthusiastic embrace of censorship. It reflects, in part, the influence of three popular movements dating back decades: the feminist anti-porn crusades, the pop-psychology recovery movement, and the emergence of multiculturalism on college campuses.

In the 1980s, law professor Catharine MacKinnon and writer Andrea Dworkin showed the way, popularizing a view of free speech as a barrier to equality. These two impassioned feminists framed pornography—its production, distribution, and consumption—as an assault on women. They devised a novel definition of pornography as a violation of women’s civil rights, and championed a model anti-porn ordinance that would authorize civil actions by any woman “aggrieved” by pornography. In 1984, the city of Indianapolis adopted the measure, defining pornography as a “discriminatory practice,” but it was quickly struck down in federal court as unconstitutional. “Indianapolis justifies the ordinance on the ground that pornography affects thoughts,” the court noted. “This is thought control.”

So MacKinnon and Dworkin lost that battle, but their successors are winning the war. Their view of allegedly offensive or demeaning speech as a civil rights violation, and their conflation of words and actions, have helped shape campus speech and harassment codes and nurtured progressive hostility toward free speech.

The recovery movement, which flourished in the late ’80s and early ’90s, adopted a similarly dire view of unwelcome speech. Words wound, anti-porn feminists and recovering co-dependents agreed. Self-appointed recovery experts, such as the best-selling author John Bradshaw, promoted the belief that most of us are victims of abuse, in one form or another. They broadened the definition of abuse to include a range of common, normal childhood experiences, including being chastised or ignored by your parents on occasion. From this perspective, we are all fragile and easily damaged by presumptively hurtful speech, and censorship looks like a moral necessity.

These ideas were readily absorbed on college campuses embarking on a commendable drive for diversity. Multiculturalists sought to protect histori-

cally disadvantaged students from speech considered racist, sexist, homophobic or otherwise discriminatory. Like abuse, oppression was defined broadly. I remember the first time, in the early '90s, that I heard a Harvard student describe herself as oppressed, as a woman of color. She hadn't been systematically deprived of fundamental rights and liberties. After all, she'd been admitted to Harvard. But she had been offended and unsettled by certain attitudes and remarks. Did she have good reason to take offense? That was an irrelevant question. Popular therapeutic culture defined verbal "assaults" and other forms of discrimination by the subjective, emotional responses of self-proclaimed victims.

This reliance on subjectivity, in the interest of equality, is a recipe for 14 arbitrary, discriminatory enforcement practices, with far-reaching effects on individual liberty. The tendency to take subjective allegations of victimization at face value—instrumental in contemporary censorship campaigns—also leads to the presumption of guilt and disregard for due process in the progressive approach to alleged sexual assaults on campus.

This is a dangerously misguided approach to justice. "Feeling realities" 15 belong in a therapist's office. Incorporated into laws and regulations, they lead to the soft authoritarianism that now governs many American campuses. Instead of advancing equality, it's teaching future generations of leaders the "virtues" of autocracy.

IN COLLEGE AND HIDING FROM SCARY IDEAS

JUDITH SHULEVITZ

Katherine Byron, a senior at Brown University and a member of its Sexual Assault Task Force, considers it her duty to make Brown a safe place for rape victims, free from anything that might prompt memories of trauma.

So when she heard last fall that a student group had organized a debate about campus sexual assault between Jessica Valenti, the founder of *feministing.com*, and Wendy McElroy, a libertarian, and that Ms. McElroy was likely to criticize the term “rape culture,” Ms. Byron was alarmed. “Bringing in a speaker like that could serve to invalidate people’s experiences,” she told me. It could be “damaging.”

Ms. Byron and some fellow task force members secured a meeting with administrators. Not long after, Brown’s president, Christina H. Paxson, announced that the university would hold a simultaneous, competing talk to provide “research and facts” about “the role of culture in sexual assault.” Meanwhile, student volunteers put up posters advertising that a “safe space” would be available for anyone who found the debate too upsetting.

The safe space, Ms. Byron explained, was intended to give people who might find comments “troubling” or “triggering,” a place to recuperate. The room was equipped with cookies, coloring books, bubbles, Play-Doh, calming music, pillows, blankets, and a video of frolicking puppies, as well as students and staff members trained to deal with trauma. Emma Hall, a junior, rape survivor, and “sexual assault peer educator” who helped set up the room and worked in it during the debate, estimates that a couple of dozen people used it. At one point she went to the lecture hall—it was packed—but after a while, she had to return to the safe space. “I was feeling bombarded by a lot of viewpoints that really go against my dearly and closely held beliefs,” Ms. Hall said.

Safe spaces are an expression of the conviction, increasingly prevalent among college students, that their schools should keep them from being “bombarded” by discomfiting or distressing viewpoints. Think of the safe space as the live-action version of the better-known trigger warning, a notice put on top of a syllabus or an assigned reading to alert students to the presence of potentially disturbing material.

Some people trace safe spaces back to the feminist consciousness-raising groups of the 1960s and 1970s, others to the gay and lesbian movement of the early 1990s. In most cases, safe spaces are innocuous gatherings of like-minded people who agree to refrain from ridicule, criticism, or what they term microaggressions—subtle displays of racial or sexual bias—so that everyone can relax enough to explore the nuances of, say, a fluid gender identity. As

long as all parties consent to such restrictions, these little islands of self-restraint seem like a perfectly fine idea.

But the notion that ticklish conversations must be scrubbed clean of controversy has a way of leaking out and spreading. Once you designate some spaces as safe, you imply that the rest are unsafe. It follows that they should be made safer.

This logic clearly informed a campaign undertaken this fall by a Columbia University student group called Everyone Allied Against Homophobia that consisted of slipping a flier under the door of every dorm room on campus. The headline of the flier stated, "I want this space to be a safer space." The text below instructed students to tape the fliers to their windows. The group's vice president then had the flier published in the *Columbia Daily Spectator*, the student newspaper, along with an editorial asserting that "making spaces safer is about learning how to be kind to each other."

A junior named Adam Shapiro decided he didn't want his room to be a safer space. He printed up his own flier calling it a dangerous space and had that, too, published in the *Columbia Daily Spectator*. "Kindness alone won't allow us to gain more insight into truth," he wrote. In an interview, Mr. Shapiro said, "If the point of a safe space is therapy for people who feel victimized by traumatization, that sounds like a great mission." But a safe-space mentality has begun infiltrating classrooms, he said, making both professors and students loath to say anything that might hurt someone's feelings. "I don't see how you can have a therapeutic space that's also an intellectual space," he said.

I'm old enough to remember a time when college students objected to providing a platform to certain speakers because they were deemed politically unacceptable. Now students worry whether acts of speech or pieces of writing may put them in emotional peril. Two weeks ago, students at Northwestern University marched to protest an article by Laura Kipnis, a professor in the university's School of Communication. Professor Kipnis had criticized—O.K., ridiculed—what she called the sexual paranoia pervading campus life.

The protesters carried mattresses and demanded that the administration condemn the essay. One student complained that Professor Kipnis was "erasing the very traumatic experience" of victims who spoke out. An organizer of the demonstration said, "we need to be setting aside spaces to talk" about "victim-blaming." Last Wednesday, Northwestern's president, Morton O. Schapiro, wrote an op-ed article in the *Wall Street Journal* affirming his commitment to academic freedom. But plenty of others at universities are willing to dignify students' fears, citing threats to their stability as reasons to cancel debates, disinvite commencement speakers, and apologize for so-called mistakes.

At Oxford University's Christ Church college in November, the college censors (a "censor" being more or less the Oxford equivalent of an undergraduate dean) canceled a debate on abortion after campus feminists threatened to disrupt

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it because both would-be debaters were men. "I'm relieved the censors have made this decision," said the treasurer of Christ Church's student union, who had pressed for the cancellation. "It clearly makes the most sense for the safety—both physical and mental—of the students who live and work in Christ Church."

A year and a half ago, a Hampshire College student group disinvited an Afrofunk band that had been attacked on social media for having too many white musicians; the vitriolic discussion had made students feel "unsafe."

Last fall, the president of Smith College, Kathleen McCartney, apologized for causing students and faculty to be "hurt" when she failed to object to a racial epithet uttered by a fellow panel member at an alumnae event in New York. The offender was the free-speech advocate Wendy Kaminer, who had been arguing against the use of the euphemism "the n-word" when teaching American history or *The Adventures of Huckleberry Finn*. In the uproar that followed, the Student Government Association wrote a letter declaring that "if Smith is unsafe for one student, it is unsafe for all students."

"It's amazing to me that they can't distinguish between racist speech and speech about racist speech, between racism and discussions of racism," Ms. Kaminer said in an email.

The confusion is telling, though. It shows that while keeping college-level discussions "safe" may feel good to the hypersensitive, it's bad for them and for everyone else. People ought to go to college to sharpen their wits and broaden their field of vision. Shield them from unfamiliar ideas, and they'll never learn the discipline of seeing the world as other people see it. They'll be unprepared for the social and intellectual headwinds that will hit them as soon as they step off the campuses whose climates they have so carefully controlled. What will they do when they hear opinions they've learned to shrink from? If they want to change the world, how will they learn to persuade people to join them?

Only a few of the students want stronger anti-hate-speech codes. Mostly they ask for things like mandatory training sessions and stricter enforcement of existing rules. Still, it's disconcerting to see students clamor for a kind of intrusive supervision that would have outraged students a few generations ago. But those were hardier souls. Now students' needs are anticipated by a small army of service professionals—mental health counselors, student-life deans, and the like. This new bureaucracy may be exacerbating students' "self-infantilization," as Judith Shapiro, the former president of Barnard College, suggested in an essay for *Inside Higher Ed*.

But why are students so eager to self-infantilize? Their parents should probably share the blame. Eric Posner, a professor at the University of Chicago Law School, wrote on *Slate* last month that although universities cosset students more than they used to, that's what they have to do, because today's under-

"Their parents should probably share the blame."

graduates are more puerile than their predecessors. "Perhaps overprogrammed children engineered to the specifications of college admissions offices no longer experience the risks and challenges that

breed maturity," he wrote. But "if college students are children, then they should be protected like children."

Another reason students resort to the quasi-medicalized terminology of 19 trauma is that it forces administrators to respond. Universities are in a double bind. They're required by two civil-rights statutes, Title VII and Title IX, to ensure that their campuses don't create a "hostile environment" for women and other groups subject to harassment. However, universities are not supposed to go too far in suppressing free speech, either. If a university cancels a talk or punishes a professor and a lawsuit ensues, history suggests that the university will lose. But if officials don't censure or don't prevent speech that may inflict psychological damage on a member of a protected class, they risk fostering a hostile environment and prompting an investigation. As a result, students who say they feel unsafe are more likely to be heard than students who demand censorship on other grounds.

The theory that vulnerable students should be guaranteed psychological 20 security has roots in a body of legal thought elaborated in the 1980s and 1990s and still read today. Feminist and anti-racist legal scholars argued that the First Amendment should not safeguard language that inflicted emotional injury through racist or sexist stigmatization. One scholar, Mari J. Matsuda, was particularly insistent that college students not be subjected to "the violence of the word" because many of them "are away from home for the first time and at a vulnerable stage of psychological development." If they're targeted and the university does nothing to help them, they will be "left to their own resources in coping with the damage wrought." That might have, she wrote, "lifelong repercussions."

Perhaps. But Ms. Matsuda doesn't seem to have considered the possibility 21 that insulating students could also make them, well, insular. A few weeks ago, Zineb El Rhazoui, a journalist at *Charlie Hebdo*, spoke at the University of Chicago, protected by the security guards she has traveled with since supporters of the Islamic State issued death threats against her. During the question-and-answer period, a Muslim student stood up to object to the newspaper's apparent disrespect for Muslims and to express her dislike of the phrase "I am Charlie."

Ms. El Rhazoui replied, somewhat irritably, "Being Charlie Hebdo means 22 to die because of a drawing," and not everyone has the guts to do that (although she didn't use the word guts). She lives under constant threat, Ms. El Rhazoui said. The student answered that she felt threatened, too.

A few days later, a guest editorialist in the student newspaper took Ms. El 23 Rhazoui to task. She had failed to ensure "that others felt safe enough to express dissenting opinions." Ms. El Rhazoui's "relative position of power," the writer continued, had granted her a "free pass to make condescending attacks on a member of the university." In a letter to the editor, the president and the vice president of the University of Chicago French Club, which had sponsored the talk, shot back, saying, "El Rhazoui is an immigrant, a woman, Arab, a human-rights activist who has known exile, and a journalist living in very real fear of death. She was invited to speak precisely because her right to do so is, quite literally, under threat."

You'd be hard-pressed to avoid the conclusion that the student and her ²⁴ defender had burrowed so deep inside their cocoons, were so overcome by their own fragility, that they couldn't see that it was Ms. El Rhazoui who was in need of a safer space.



UNIVERSITIES ARE RIGHT TO CRACK DOWN ON SPEECH AND BEHAVIOR

ERIC POSNER

Lately, a moral panic about speech and sexual activity in universities has reached a crescendo. Universities have strengthened rules prohibiting offensive speech typically targeted at racial, ethnic, and sexual minorities; taken it upon themselves to issue “trigger warnings” to students when courses offer content that might upset them; banned sexual acts that fall short of rape under criminal law but are on the borderline of coercion; and limited due process protections of students accused of violating these rules.

Most liberals celebrate these developments, yet with a certain uneasiness. Few of them want to apply these protections to society at large. Conservatives and libertarians are up in arms. They see these rules as an assault on free speech and individual liberty. They think universities are treating students like children. And they are right. But they have also not considered that the justification for these policies may lie hidden in plain sight: that students *are* children. Not in terms of age, but in terms of maturity. Even in college, they must be protected like children while being prepared to be adults.

There is a popular, romantic notion that students receive their university education through free and open debate about the issues of the day. Nothing could be farther from the truth. Students who enter college know hardly anything at all—that’s why they need an education. Classroom teachers know students won’t learn anything if they blab on about their opinions. Teachers are dictators who carefully control what students say to one another. It’s not just that sincere expressions of opinion about same-sex marriage or campaign finance reform are out of place in chemistry and math class. They are out of place even in philosophy and politics classes, where the goal is to educate students (usually about academic texts and theories), not to listen to them spout off. And while professors sometimes believe there is pedagogical value in allowing students to express their political opinions in the context of some text, professors (or at least, good professors) carefully manipulate their students so that the discussion serves pedagogical ends.

That’s why the contretemps about a recent incident at Marquette University is far less alarming than libertarians think. An inexperienced instructor was teaching a class on the philosophy of John Rawls, and a student in the class argued that same-sex marriage was consistent with Rawls’ philosophy. When another student told the teacher outside of class that he disagreed, the teacher responded that she would not permit a student to oppose same-sex marriage in class because that might offend gay students.

While I believe that the teacher mishandled the student's complaint, she was justified in dismissing it. The purpose of the class was to teach Rawls' theory of justice, not to debate the merits of same-sex marriage. The fact that a student injected same-sex marriage into the discussion does not mean that the class was required to discuss it. The professor might reasonably have believed that the students would gain a better understanding of Rawls' theory if they thought about how it applied to issues less divisive and hence less likely to distract students from the academic merits of the theory.

Teaching is tricky. Everyone understands that a class is a failure if students refuse to learn because they feel bullied or intimidated, or if ideological

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arguments break out that have nothing to do with understanding an idea. It is the responsibility of the professor to conduct the class in such a way that maximal learning occurs, not maximal speech. That's why no teacher would permit students to launch into anti-Semitic diatribes in a class about the Holocaust, however sincerely the speaker

might think that Jews were responsible for the Holocaust or the Holocaust did not take place. And even a teacher less scrupulous about avoiding offense to gay people would draw a line if a student in the Rawls class wanted to argue that Jim Crow or legalization of pedophilia is entailed by the principles of justice. While advocates of freedom of speech like to claim that falsehoods get squeezed out in the "marketplace of ideas," in classrooms they just receive an F.

Most of the debate about speech codes, which frequently prohibit students from making offensive comments to one another, concerns speech outside of class. Two points should be made. First, students who are unhappy with the codes and values on campus can take their views to forums outside of campus—to the town square, for example. The campus is an extension of the classroom, and so while the restrictions in the classroom are enforced less vigorously, the underlying pedagogical objective of avoiding intimidation remains intact.

Second, and more important—at least for libertarian partisans of the free market—the universities are simply catering to demand in the marketplace for education. While critics sometimes give the impression that lefty professors and clueless administrators originated the speech and sex codes, the truth is that universities adopted them because that's what most students want. If students want to learn biology and art history in an environment where they needn't worry about being offended or raped, why shouldn't they? As long as universities are free to choose whatever rules they want, students with different views can sort themselves into universities with different rules. Indeed, students who want the greatest speech protections can attend public universities, which (unlike private universities) are governed by the First Amendment.

Libertarians might reflect on the irony that the private market, in which they normally put faith, reflects a preference among students for speech restrictions.

And this brings me to the most important overlooked fact about speech⁹ and sex code debates. Society seems to be moving the age of majority from 18 to 21 or 22. We are increasingly treating college-age students as quasi-children who need protection from some of life's harsh realities while they complete the larval stage of their lives. Many critics of these codes discern this transformation but misinterpret it. They complain that universities are treating adults like children. The problem is that universities have been treating children like adults.

A lot of the controversies about campus life become clearer from this¹⁰ perspective. Youngsters do dumb things. They suffer from lack of impulse control. They fail to say no to a sexual encounter they do not want, or they misinterpret a *no* as *yes*, or in public debate they undermine their own arguments by being needlessly offensive. Scientific research confirms that brain development continues well into a person's 20s. High schools are accustomed to dealing with the cognitive limitations of their charges. They see their mission as advancing the autonomy of students rather than assuming that it is already in place. They socialize as well as educate children to act civilly by punishing them if they don't. Universities have gradually realized that they must take the same approach to college students.

One naturally wonders why this has become necessary. Perhaps over-¹¹ programmed children engineered to the specifications of college admissions offices no longer experience the risks and challenges that breed maturity. Or maybe in our ever-more technologically advanced society, the responsibilities of adulthood must be delayed until the completion of a more extended period of education.

Yet college students have not always enjoyed so much autonomy. The¹² modern freedoms of college students date back only to the 1960s, when a wave of anti-authoritarianism, inspired by the Vietnam War and the civil rights movement, swept away strict campus codes in an era of single-sex dorms. The modern speech and sex codes have surfaced as those waters recede back to sea. What is most interesting is that this reaction comes not from parents and administrators, but from students themselves, who, apparently recognizing that their parents and schools have not fully prepared them for independence, want universities to resume their traditional role *in loco parentis*.

If all this is true, then maybe we can declare a truce in the culture wars¹³ over education. If college students are children, then they should be protected like children. Libertarians should take heart that the market in private education offers students a diverse assortment of ideological cultures in which they can be indoctrinated. Conservatives should rejoice that moral instruction and social control have been reintroduced to the universities after a 40-year drought. Both groups should be pleased that students are kept from harm's way, and kept from doing harm, until they are ready to accept the responsibilities of adults.