Return to Principle

A Conversation on Free Speech at American Universities

by

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The scale of controversy that has consumed American political discourse in recent years illustrates that one side, or both, is refusing to consider a fundamental value of the opposition. We, as Americans, have become increasingly less willing to listen to ideas that we disagree with, and in some cases we aim at shutting it down entirely. Our founders have built a Constitution that have given us the tools to safeguard the expression of our ideas, but we're ignoring a fundamental aspect as to why the expression of ideas is essential to maintaining a free society. We mustn't evaluate the fragility of free speech on the on the legal safety net of the first amendment alone. We express ourselves to achieve goals. These goals may be self fulfillment, or the search for truth and higher meaning. If we, as a nation, ultimately aim at discovering something greater than ourselves, we must rediscover the culture of free speech as it transcends the legal safety net.

A Historical and Philosophical Perspective of Free Speech in the United States

The history of free speech in America is deep rooted. It is a fundamental right granted to us by means of the first amendment to the constitution. The first amendment protects our rights to free speech, religion, access to the press, the right to petition the government, and the right to assemble peacefully. All five dimensions of the first amendment fall in the category of self expression. There are three general principles that explain why free speech is and should be protected.

The first principle comes from the 'inalienable rights' doctrine. Largely advocated by John Locke, a 17th century British Enlightenment thinker, the 'inalienable rights' doctrine

discusses rights that are inherent to humanity (Costly). In other words, inalienable rights are those that are natural and cannot be taken from anyone by means other than force. We are not granted natural rights, rather born with them. Among these are the right to life, liberty, and property. The second of the triad, liberty, encompasses free speech and expression. Thus, the justification for free speech, according to the inalienable rights doctrine comes from the inherent nature of free expression.

The second principle of free speech is known as the marketplace of ideas doctrine. This doctrine states that only through discourse, can we discover meaning and truth. Another British Enlightenment thinker, John Milton, put it this way. He believed that if "Truth be in the field, we do injuriously, by licensing and prohibiting, to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter."(The Areopagitica). Milton advocates that through rigorous debate and exchange of ideas, the truth will reveal itself. John Stuart Mill elaborated on this view in his famous 1859 defense of free opinion in his book *On Liberty:*

> The peculiar evil of silencing the expression of an opinion is that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error (Scruton 8).

Both of these men held the discovery of truth to the highest regard. They demanded a diverse marketplace of ideas in order to more finely tune their perceptions of the world. Our founders

subscribed the marketplace of ideas doctrine which leads us to the third principle. Just as is the case with the inalienable rights doctrine, however, this principle is not absolute. As a nation we have decided that some forms of communication offer little to no value or even have detrimental value and therefore should be expressed. This determination is another grey area in the law where the courts have had to decide.

The third principle that justifies 'free speech' in the United States has largely to do with the structure of the government itself. The above ideals led us to the development of a government that is designed to protect the citizenry and reduce the likelihood of the state becoming tyrannical. The framers of the U.S. Constitution designed a government for and by the people through general elections. Thomas Jefferson famously said that "In a republican nation whose citizens are to be led by reason and persuasion and not by force, the art of reasoning becomes of first importance." In order to reason, and in order to think, the people must have the ability to speak because if they cannot speak they can't discern fact from falsehood. So the third principle requires a populous that is engaged intellectually as they are the ones who decide their representatives. After all, the first three words of the Constitution are "We the people…".

The logic for free speech in the United States goes as follows. Free expression is an inherent quality of humanity. To deny that is to inflict tyrannical rule. We fought a war against the British to void ourselves of that very tyranny, so we must protect it. Further, there is utility in protecting free expression. It is the mechanism we use to figure out what works. Humans are social animals and we can't do everything alone. If we are free to communicate with each other, and problem solve in groups, we're in a much better place. Perhaps not a utopia, but a place where we have the freedom and opportunity to decide what we want. The first amendment of the

U.S. Constitution was written with these principles in mind and the government designed around them. As mentioned above, the ideas that brought us to free speech do not weigh every scenario. How could they? The court systems and legislature are tasked with identifying where to draw the lines. There have been times where the court needs to step in and limit speech for the sake of protecting others, and times where the court needs to step in and protect the rights of a speaker. Theses situations deal with what is known as "protected" and "unprotected" speech.

Unprotected Speech

The dynamic nature of speech calls for nuanced approaches by the State in remedying first amendment conflicts. When the court decides cases involving the first amendment, they begin by determining if the actions in question are considered speech. Remember, speech is broadly defined as self-expression which includes anything from written works to art pieces, and even symbolic speech like flag burning. Next, they identify if the government is censoring or punishing the form of expression (Nott). The first amendment only applies to the government as the opening words clarify "Congress shall make no law…" Private institutions, on the other hand, have leeway in restricting expression. Thirdly, the state determines if the speech is protected or unprotected. Speech would be deemed unprotected if it violates one of the founding principles of free speech. The courts call their rationale for restricting speech a "compelling government interest". There are roughly nine categories of speech that are not protected by the first amendment. The categories, and more importantly, the compelling interests, can be identified more clearly as they're applied to relevant case law.

The first two categories of restricted speech involve obscenity and child pornography. While the layperson wouldn't hesitate to categorize child pornography as obscene, it fails to meet the Supreme Court's test for legal obscenity as described in *Miller v. California (1973)*. The "Miller Test", as the criteria is commonly referred to, is three fold. In order for speech to be deemed obscene "'the average person, applying contemporary community standards' would have to find that the work, 'taken as a whole,' (1) appeals to 'prurient interest'; (2) depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (3) whether the work, 'taken as a whole,' lacks serious literary, artistic, political, or scientific value"(Obscenity). As is the case with any restriction of constitutional rights, the legal threshold is high. Strict scrutiny in cases that threaten inalienable rights mitigates the distance the court can stray from the founding principles of free speech. Child pornography law, on the other hand, has been specifically tailored under *New York v. Ferber, 458 U.S. 747 (1982)* to grant exception to the Miller Test. Under *Ferber*, the court decided the state has a "compelling interest in prosecuting those who promote the sexual exploitation of children," and therefore does not need to demonstrate any one of the three standards for obscenity as it involves the safety of children (Brown 1337-38). For this reason, child pornography is classified adjacent to obscenity on the list of material that does not enjoy first amendment protection. The next four restrictions of free speech in the United States all have to do with words or actions that, according to the courts, directly intend to cause a breach of peace. These forms of speech may or may not also fall under the umbrella of obscenity, but their unique nature has warranted the state to create separate categories of unprotected speech. These include fighting words, incitement to imminent lawless action, solicitation to commit crimes, and true threats.

The fighting words doctrine entered U.S. common law in 1942 during *Chaplinsky v. New Hampshire, 315 U.S. 568*. The Supreme Court ruling in Chaplinsky upheld the New Hampshire statute that provided:

> No person shall address any offensive, derisive, or annoying word to any other person who is lawfully in any street or other public place, nor call him by any offensive or derisive name, nor make any noise or exclamation in his presence and hearing with intent to deride, offend or annoy him, or to prevent him from pursuing his lawful business or occupation (Caine 446).

According to Justice Frank Murphy, the writer of the unanimous opinion, the ruling of *Chaplinsky* "does no more than prohibit the face-to-face words plainly likely to cause a breach of the peace by the addressee" (449). Justice Murphy continued on saying that "any benefit that may be derived from [Chaplinsky's words] is clearly outweighed by the social interest in order and morality" (492). The 77 year old case is the standard for the fighting words doctrine in the United States. The state decided that the compelling interest under *Chaplinsky* was maintaining "order and morality" and that it was the State's responsibility to promote such values by law. The next restriction of free speech deals with actively encouraging a breach of peace as opposed to fighting words where the speaker's very utterance is that breach.

The two pronged test for incitement of imminent lawless action (IILA) was determined during *Brandenburg v. Ohio, 395 U.S. 444 (1969)*. *Brandenburg* was used to overrule the precedent set during *Whitney v. California (1927)*. The Court saw *Whitney* to be overbroad in its rationale that "'advocating violent means to effect political and economic change involves such danger to the security of the state that the state may outlaw it'" (Lynd 153). According to

Harvard Law Review, the overbreadth doctrine deals with statutes or case law that is "so broadly drafted that the range of possible applications violating the first amendment is substantial" and therefore ineffective in achieving its goal (The First Amendment... 844). The decision during *Brandenburg* followed the same principle as Whitney but in efforts to protect the rights of the speaker, they created the two pronged test. To meet the criteria for IILA under *Brandenburg*, the court must show the speakers "(1) advocacy is directed to inciting or producing imminent lawless action and (2) is likely to incite or produce such action" (Lynd 151). It is only then that the State may arrest or convict someone on the grounds of IILA. The general holding allows speech that supports illegal activity or violence unless there is immediate illegal activity that resulted from that speech. The compelling governmental interest in restricting speech under IILA is not to restrict ideas flowing through the marketplace of ideas, rather to maintain safety.

For the remainder of the restrictions on free speech, the U.S. government uses the rationale of maintaining order and safety as their compelling interest. The list of speech not protected by the first amendment goes on to include the solicitation to commit a crime of violence, true threats, defamation, perjury, and blackmail. In the case where the government restricts

Beyond the forms just listed, the State considers employee speech; time, place or manner of the speech; and even viewpoint. All fall under the same compelling governmental interest. Still, the rationale is not absolute. If the courts see a statute or even a previous ruling to be vague or overbroad, as was the case during *Whitney*, they have the right, and even obligation, to revisit it. The preservation of inalienable rights and a diverse marketplace of ideas is at the top of the list of considerations for the judiciary. As it pertains to college campuses, restricted speech is

still in effect, but the Supreme Court and other portions of the Federal Government have made abundantly clear their positions on preserving free thought in public education.

Case Law & Public Universities

We've just discussed the U.S. government's justification for restricting free speech. Now, as we refocus the discussion back to free speech on college campuses, the case law is abundantly clear in favor of protecting speech. Keep in mind, any form of speech that is deemed unprotected remains so on public university campuses. Attempts have been made, however, by numerous public universities to implement policies that restrict speech further on grounds similar to harassment and hate speech. Due to the inconsistency in titling of these restrictive policies, the Foundation for Individual Rights in Education (FIRE), an organization set to protect the rights of students and faculty members at America's colleges and universities, identifies these attempts uniformly as Speech Codes. FIRE defines a speech code as any campus regulation that punishes, forbids, heavily regulates, or restricts a substantial amount of protected speech, or what would be protected speech in society at large (State of the Law).

At schools such as the University of Michigan, the University of Wisconsin, and Temple University, time and time again, federal district and appellate courts have ruled against such speech codes. In 1989, on the grounds of overbreadth, a federal district court ruled a University of Michigan policy to be unconstitutional where as the policy restricted:

> any behavior, verbal or physical, that stigmatizes or victimizes an individual on the basis of race, ethnicity, religion, sex, sexual orientation, creed… and that… creates an

> intimidating, hostile, or demeaning environment for educational pursuits, employment or participation in University[-]sponsored extra-curricular activities (State of the Law).

The opinion of the district court cited Supreme court precedent that "punishing speech or conduct solely on the grounds that they are unseemly or offensive are unconstitutionally overbroad" (*Doe v. University of Michigan*, 721 F. Supp. 852 (E.D. Mich. 1989)). If speech were to be restricted on the grounds of "unseemly or offensive", it would have to meet the criteria of obscenity as seen in the Miller Test. Avoiding overbreadth is the very reason the Miller Test is three-pronged.

At the University of Wisconsin, in 1991, a federal district court ruled against a policy that punished students who were "demean[ing towards others based on their] race, sex, religion, color, creed, disability, sexual orientation, national origin, ancestry or age of the individual or individuals; [and]… creat[ed] an intimidating, hostile or demeaning environment for education, university related work, or other university-authorized activity." This time, the court expressed that "suppress[ing] speech, even where the speech's content appears to have little value and great costs, amounts to governmental thought control"(*UWM Post v. Board of Regents of the University of Wisconsin*, 774 F. Supp. 1163 (E.D. Wis. 1991)).

The case at Temple University, *DeJohn v. Temple University*, 537 F.3d 301, 319 (3d Cir. 2008), had to do with the school's definition of sexual harassment. Temple defined sexual harassment broadly as any:

> expressive, visual, or physical conduct of a sexual or gender-motivated nature, when . . . such conduct has the purpose or effect of unreasonably interfering with an individual's

> work, educational performance, or status; or . . . has the purpose or effect of creating an intimidating, hostile, or offensive environment (State of the Law).

The court took particular issue with the phrase "purpose or effect" in that it doesn't consider the intent of the speaker. It's subjective nature, especially with the terms "offensive and "gender-motivated", according to the court "could include 'core' political and religious speech, such as gender politics and sexual morality"; topics that surely would contribute to robust academic discourse.

At the Supreme Court level, the opinion of *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957), perfectly encompasses the State's view on academic freedom in higher education:

> The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation… Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die (State of the Law).

If the state's views on academic freedom of expression are so clearly defined, then why is there a debate on the fragility of free speech on college campuses, and what are we going to do about it?

Is there a Free Speech "Crisis" on College Campuses

Free speech activists claim societal turmoil is inevitable if academia continues to abandon vital principles of free speech. Activists cite deplatforming campaigns, violent protests, and

tendencies towards ideological isolation as evidence of a crisis. A breach of law is not obvious while conducting an analysis of these claims (except in the case of violent protests) warranting one to question the validity in classifying such claims a crisis. In a 2018 Washington Post article, Jeffrey Adam Sachs reasons the free speech crisis is a myth. Sachs uses three myths to build his case.

The first myth Sachs presents is that "young people in general (and college students in particular) don't support free speech". Sachs sites data determines of Americans aged 18-34, 92% of participants believe homosexuals should have the right to make a speech (Sachs). Sachs concludes that because of young people's willingness to allow a homosexual to engage in discourse, they are pro-free speech. . Free speech activists claim students resist exposure to politics that counter to their own. Sachs' study question is problematic in debunking the myth in that sexuality, at its face, is not a political position. The same study offers a much more appropriate study question. When asked if racists should be allowed to make a speech, 53% of young people said "yes". The findings of this question identify the political tolerance of young people more closely. Sachs identifies two flaws in the study; first, not all individuals ages 18-34 are college students; and second, the study failed to include residents of "institutions and group quarters". This removes college students who live in campus housing from the population. The second flaw in the study weakens the integrity of Sachs claim as a considerable portion of college attendees reside on campus. Contrary to intent, the evidence Sachs provides strengthens the claims made by free speech activists. At 47%, young people believe that a person with a particular political belief, in this case racist beliefs, should be barred from making a speech. This

is a clear violation of the principles advocated by Mill and Milton and evidence of young people abandoning the principles of free speech.

The second myth Sachs claims is that "universities make students less tolerant of offensive or opposing speech." In a study of over 7,000 students from more than 120 schools, when asked how first year students' attitudes changed towards individuals with differing political perspectives than their own, 47.8% had a better attitude towards political liberals while 49.6% had a better attitude towards political conservatives after their first year. Sachs moves to cite a study by the University of California at Los Angeles that reported "college seniors were 6 percentage points less likely to support a campus ban on racist or sexist speech than when those same students were surveyed as freshmen." Sachs concludes that based on these two studies, college attendance perhaps "bolsters" free speech as opposed to "undermine[s] it" (Sachs). What the studies fail to examine however, is the very myth Sachs hopes to debunk. A measurement of how one feels towards an individual does not simultaneously measure ones feeling towards the ideas that same individual holds. Let alone their tolerance towards them. To be friends with an individual who holds differing political positions than oneself does not in itself demonstrate one's knowledge on the positions their friend holds. Sachs fails once again at providing evidence that supports his claim, however, his shortcomings do not provide evidence in favor of a free speech crisis.

The third myth Sachs announces says that "Universities may claim to support free speech, but their actions show otherwise". He clarifies this is as an exaggeration more than myth because he accepts there are cases where academics, students and professors alike, have taken measures to de-platform guest speakers, but writes it off as rare and isolated (Sachs). Citing a

study by FIRE, Sachs acknowledges this phenomena that of the 35 attempts to disinvite a speaker from campuses in 2017, only 19 were successful. Sachs concludes that "[i]n a country with over 4,700 schools, that hardly constitutes a crisis" (Sachs). A deeper look into the disinvitation database through FIRE reveals the more complex nature of the deplatforming phenomena than Sachs presents. Beyond the number of successful versus attempted deplatforming efforts, the database also reveals the political ideology of those attempting to silence speech. From 2016-19, the total attempts tallied at 94 from the left of the speaker, 17 from the right of the speaker, and 9 that were for apolitical reasons. 52 of the total 69 successful deplatforming attempts were perpetrated by those "left of the speaker". Of that, 10 were from the right of the speaker, while 7 were due to apolitical reasons (Disinvitation Database). Sachs fails to mention the overwhelming disproportion of deplatforming attempts by those on the left. Not only that, Sachs didn't see the value in identifying that this is happening at the cutting edge of our Nation's intellectual world. Yale, Harvard, Princeton, Stanford, Columbia are just a few schools from the list. Sachs writes off the categorical classification of the term "crisis" by citing a low ratio between successful deplatforms and total number of schools while ignoring the importance of where these incidents are occuring. In 2018, 35 people were murdered, and 79 injured in school shootings across America (The School Shootings of 2018...). According to Sachs' logic, out of a country with millions enrolled in schools, that number surely wouldn't constitute a crisis. The ridiculous nature of that would-be claim is self evident. The school shooting phenomena is undoubtedly a crisis that requires attention. Perhaps we only apply the term "crisis" to events that have immediate consequences. To reiterate the court's opinion in *Sweezy v. New Hampshire*: "To impose any strait jacket upon the intellectual leaders in our

colleges and universities would imperil the future of our Nation… Teachers and students must always remain free to inquire...otherwise our civilization will stagnate and die" (State of the Law). Classifying the inevitable "stagnation and death of our nation" in the same categorical realm as the loss of life is obviously appropriate.

Mr. Sachs' failed to cast the existence of a free speech crisis to mythology, but luckily he's not the only contributor that offers their perspective on the "myth" of the free speech crisis. A contributor to Forbes, Chris Ladd, offers a slightly different view on the "free speech crisis. In an article titled "There Is No Free Speech Crisis on Campus", Mr. Ladd wrote: "[The Free Speech Crisis] is a phony crisis...Right wing activists and donors are fighting to undermine universities because their values cannot thrive there...In a rich marketplace of ideas, conservatives are failing" (Ladd). While Ladd's identifies that conservative thought is marginalized if not absent from universities, the failure of conservative ideals is not the obvious cause. Consider the political affiliations of Ph.D.-holding professors for example. Statistics from *U.S. News 2017* revealed of 51 of the top 66 liberal arts colleges in the United States, 39% are Republican-free with the remaining to be essentially 0%. The study then identified the ratio between Democrat professors and Republican professors by department. The results vary based by department with a Democrat to Republican ratio in the social sciences to be much higher with 56:0 in Anthropology, and 108:0 in Communications. The hard sciences are more balanced with a ratio of 1.6:1 in Engineering and 5.6:1 in Mathematics (Langbert 187). Still, the severe ideological imbalance of our intellectual leaders in academia is abundantly clear. This fact alone does not prove that conservative values are not failing among professors in universities, in fact, it speaks to the contrary. What the findings do reveal, however, is the ideological bias that students

are exposed to in the classroom. 46% of the students say that professors use the classroom to present their personal political views, according to a study by the American Council of Trustees and Alumni (ACTA) (Malcolm 14). If professors are exposing their political views in the classroom, and they are overwhelmingly Democrat, then bias, in favor of progressive ideals, not conservative ones dominate academia. This fact surely influences the intellectual development of students. Conservatives may not be failing in the universities, perhaps the universities are failing to encourage a environment free of overwhelming political bias.

Free speech activists cite the development of Safe Spaces as a contributor to the encouragement of ideological isolation in universities. The aim of Safe Spaces, according to Diana Ali, a policy analyst at The National Association of Student Personnel Administrators (NASPA), is "centered on increasing the safety and visibility of marginalized or oppressed community members." The feeling of marginalization and oppression throughout our society is one that warrants serious discussion. The importance of creating a society where people feel they will be judged based on the contents of their character and not based on some trivial physical characteristic cannot be overstated. That is an achievement of the highest order for any liberal society, and one that we should strive to attain. Critics of Safe Spaces, however, do not disagree. University of Chicago Dean of Students John Ellison offers a useful perspective on safe spaces characterizing them as places students can "isolate" from those who disagree with them, in turn, "coddling students and meeting them exactly where they are comfortable, without pressing them further" (Ali 3). While safe spaces are well intentioned, the sacrifice of diversity in opinion leads to a confused worldview and inhibits one's ability to discern fact from falsehood properly.

The willingness to use violence to disrupt speakers, is another talking point for Free speech activists. A study published in the Washington Post conducted by John Villasenor, a Brookings Institution senior fellow and UCLA professor discovered that 20% of college students feel it's appropriate to use violence as means to shut down controversial speakers. The same study also discovered that 62% of Democratic students are willing to shout over controversial speakers. This number is compared to the 39% of Republican students willing to do the same thing (Rampell). This perhaps illustrates the impacts of ideological isolation on campuses. If students are not exposed to conservative thought, then they are ill equipped to reconcile their differences in values. It's not surprising that students are so willing to shut down speech they disagree with if all they're hearing in the classroom is why it's wrong. Regardless of the political party, both numbers are far too high. It demonstrates an abandonment to the principles of free speech that allows us to discover the truth. Examples of violent protests can be seen at UC Berkeley, where riots broke out causing $100,000 in property damage; at Middlebury, where violent protests resulted in the cancellation of the event; and at University of Missouri-Kansas City, where a speaker was attacked by protestors (Malcolm 4). All of these instances were in response to conservative speakers coming to campus. Brad Pulcini, Associate Dean for Student Engagement at Ohio Wesleyan University offers an alternative approach of dealing with controversial speakers void of violence.

Potential Resolutions

Mr. Pulcini does not advocate violence nor deplatforming speakers. Pulcini hopes to remedy such incidents by scheduling discussions on campus at the same time as controversial speakers that discuss a recommitment to ideas of "inclusivity and diversity". The Dean cites a

study that “shows that engaging students in conversations about hate speech decreases their perception of the appropriateness of such speech and increases their overt reactions to hate messages” (Pulcini 27). Hate speech is popularly defined as “use of words as weapons that terrorize, humiliate, degrade, abuse, harass, threaten, and discriminate based on race, ethnicity, religion, sexual orientation, national origin, or gender” (Hatfield, Schafer & Stroup 41). What classifies as hate speech is so subjectively determined that a political policy implemented by those whom one disagrees with, just because one disagrees, could feasibly be misconstrued as hate speech. For example, if person “A” were to take the position that there are only two biological genders, and person “B” identifies as non-binary, then “B” could reasonably accuse “A” of perpetuating hate speech whether or not that was “A’s” intention. If hate speech can be subjective, and academia is ideologically homogeneous, then institution-run discussions on instances where hate speech has occurred can feasibly be defined through the prevailing ideological lens. Further, if discussing hate speech increases “overt reactions”, and hate speech can be defined by ideology, then Pulcini’s remedy is just as likely to contribute to the further ideological isolation of American Universities as it is to reduce tendencies towards hate speech. Not only that, refusing to expose oneself to a diverse marketplace of ideas seems self-evidently detrimental to personal growth. Pulcini’s approach alone is not enough to properly address the dilemma regarding free speech on college campuses.

Authors Brian Arao and Kristi Clemens offer a reasonable approach to the turmoil modern universities are experiencing. The two proposes the encouragement by university staff for students to engage in debate in specific “Brave Spaces”. With a similar mission as safe spaces, brave spaces do not isolate individuals to one ideological lens. Rather, they encourage a

respectful, robust exchange of ideas. There are five key elements to brave spaces: “Controversy with civility; Owning Intentions and Impacts; Challenge by choice; Respect; and No Attacks” (Ali 3). Brave spaces offer students the ability to either listen or participate in discussions on difficult topics at their will. This approach follows suit with the guiding principles of free speech in that it encourages a rich marketplace of ideas, and the free exercise of expression.

While some may overstate the free speech debate on college campuses as a crisis, what is clear is that there is something to be said about it. The claim that higher education in the United States has unequivocally remained true to the principles of free speech is a claim of either ignorance or political manipulation. Time and time again, U.S. courts have struck down policies created by public universities in efforts to preserve the ethics of free expression. Consistent with the philosophies of Enlightenment thinkers like John Locke, and John Milton, the court’s have even ruled, with great restraint, against forms of expression that infringe on the rights of others. Legal philosophy in the United States has always said that the law is a reflection of society. Sometimes the law lags behind the rapid modernization of our culture, and other times the law remains true, as it represents a higher value. It is time for us, as Americans, to reembrace free speech beyond the first amendment, and rediscover why we cherish it so.

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