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A SOCIALIST, FEMINIST, AND ANTI-RACIST JOURNAL ON THE THEORY AND PRACTICE OF TEACHING

Free Speech and Academic Freedom in the Era of the Alt-Right

by Robin Hackett and Javier Rivera

IMAGE BY BERMIX STUDIO

The Weaponization of Free Speech

I would rather not call attention to the fact that in November 2016, I commented on a colleague's Facebook post, "it's time for an investigation leading to expulsion." I claim this utterance though and discuss its aftermath because scrutiny of these events clarifies both the nature of current threats facing interdisciplinary programs in women, gender, and sexuality studies, and race and ethnic studies, and the need for faculty and students working in these areas to respond by building upon cultures of resistance and resilience. We also offer an annotated bibliography on the issues of free speech and academic freedom—in the name of which current attacks are being waged—as a resource for those of us involved in efforts to defend ourselves and our programs. We encourage users to consider this a working document; to add annotations and to circulate the material to all members of campus communities as circumstances evolve.

The events leading up to my comment are these: after the November 2016 election, the College Democrats at my university held a rally "in solidarity with all people who are at risk of getting their rights taken away by a Trump presidency, and to ensure that it is known that Trump's hateful rhetoric does not represent our generation" ("Our Power Walk Out and March"). A few counter protesters showed up to this rally, including one in a gorilla suit and another in a Richard Nixon mask—a pair we later identified with the meme *Dicks for Harambe*, though they remained anonymous to the degree that we never knew whether or not they were students or where they were from.

The genealogy of *Dicks for Harambe* begins in May 2016, after a silverback gorilla named Harambe was shot and killed at the Cincinnati zoo to save a child who had fallen into the gorilla enclosure. There was lots of liberal outrage on behalf of Harambe, and against zoo officials, over the shooting. One of the memes produced in the online debate included the phrase "dicks out for Harambe" and a picture of a teenaged boy holding a gun—a.k.a. a "dick" (Hsieh). After the meme went viral, it was, in the words of its creators, "coopted by the racists" (Hsieh). A musical video featuring primate genitalia compared Harambe with Bill Cosby. By the summer before the 2016 election, media by Milo Yiannopoulos among others featured comparisons between Harambe and African Americans in general. At the time of the College Democrat's rally in November, the meme had a solid history of racist and sexist use by right-wing activists. Since then as well, *Dicks for Harambe* has been deployed to harass and threaten: in May of 2017, nooses and bananas with the words "Harambe Bait" inked on them were hung around the campus of American University in Washington D.C. on the same day a black woman took office as the student government president for the first time in the institution's history. The FBI investigated those appearances, which they properly deemed threats (Fortin), though the perpetrators were never caught (Cook).

The racism of *Dicks for Harambe* also builds on the long history of apes as part of Victorian technologies of empire. Britanny Cooper notes that liberal sentiment on behalf of the killed gorilla was grounded in racist ideology about the relative worth of a gorilla and the child, an African American, who had fallen into the gorilla enclosure, and whose African American parents were additionally demonized for their parenting. Even without knowledge of the *Dicks for Harambe* meme, many at the rally in November 2016, as well as those who looked at photos circulated after the fact, recognized the ape incident as a racist slur. The student senate, for instance, responded to Harambe's appearance by unanimously passing a resolution aimed at combating bias incidents (Student Senate Resolution 19).

At the rally, Harambe and Nixon threw pacifiers implying that people in attendance were babies if they took offense to Trump's racist, sexist, and ableist bullying, and they threw bananas amplifying the racist provocation of the ape suit. They also refused to talk to members of the university community who tried to engage them. The silence, the mocking, and the anonymity created by the costumes, especially in the context of school shootings, made people nervous. After the rally, one former Women and Gender Studies faculty member, an African American woman, posted a photograph of the pair with the comment, "somebody knows who these two are," underscoring the threat they represented and suggesting the community should identify and hold them accountable.

In anger and solidarity, I posted my remark and then went about my job as an educator at a mainly white public institution: I wrote to the president of the University asking him to initiate a campus dialog in response to the use of a gorilla suit as racist provocation. The importance for our students of learning about the history of such racist expressions was particularly evident, I noted, during a week that included not only the presence of a person dressed as a gorilla on our campus, but also the firing of public officials in a West Virginia town over a comment comparing Michele Obama to an ape. None of faculty involved in the Facebook exchange took steps to initiate an investigation, false or otherwise, or to get anyone expelled.

Aftermath

Nobody, not even the president, acknowledged the letter I wrote to him or similar letters colleagues wrote. But a screen shot of the Facebook exchange was captured, made into the subject of nearly identical articles in *Campus Reform* (TPUSA's website), *Breitbart*, *The Blaze*, and *True Pundit*. Later, the events as reported by these alt-right sites were repeated by local news outlets both print and radio. The four faculty who had participated in the Facebook exchange—all members of the English department, two also core faculty in WGS--were subjected to a barrage of hateful phone and email messages, including death and rape threats. Fliers that included my picture and the words *Harambe killer* were also posted around the campus accompanied by bananas and pacifiers. A student journalist for the campus newspaper published an interview with Harambe and Nixon, who claimed not to be students at all, but rather community members hiding their identities out of fear of retaliation against themselves and their families.

Student response to these events was overwhelmingly sympathetic to the faculty being targeted. Many expressed

horror at the nature of the attacks and concern for our wellbeing. I assume that on our campus, which includes a mix of conservative and liberal student groups, there was some support for Harambe and Nixon's messaging. But no students I encountered said anything to that effect. Moreover, the strong belief among the faculty who were subjected to attacks is that those who carried them out had planned to provoke, search for, and then disseminate faculty responses to Harambe and Nixon. We discovered later that other universities (Clemson University and University of Massachusetts, Amherst) had already been the subject of reportage about anti-racist responses to appearances by Harambe. Also, the electronic attacks seem to have been carried out by a single non campus-affiliated individual using multiple phone numbers and email addresses. After the police identified and contacted this caller, all electronic threats stopped.

Faculty response was more mixed and more distressing than the student response. The vast majority of my colleagues were sympathetic and helpful. The English department, the Affirmative Action and Equity office, and other university units held forums and panel discussions for faculty and graduate student instructors about how to handle racism, sexism, and homophobia in the classroom. Many of my colleagues also commented that, in the age of social media, my experience could easily have been their own. A few colleagues were angry however. One insisted that Harambe and Nixon, the meme, was not racist. He was also critical about my having brought bad press to the university at a time when the department, and the humanities in general, were already experiencing downward pressure. A few colleagues sent emails chastising me for being ignorant about issues of censorship. A great many of my colleagues, including some who were sympathetic, took the events as reported in *Campus Reform*--specifically the claim that I was trying to get students expelled--as fact, illustrating how vulnerable we all are, even those of us who make careers of reading, writing, and vetting sources of information, to illegitimate news stories. University lawyers treated WGS faculty and staff to a training about the importance of presenting both sides of every issue.

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Beyond campus, I was added to the professor watchlist of faculty considered dangerous by Turning Point USA. This watchlist claims to list faculty who persecute conservative students. Practically, a "dangerous" designation by TPUSA is based on a clear--if capacious--set of criteria, including engagement in scholarship and teaching in women, gender, and sexuality studies, climate science, and/or race and ethnic studies.

TPUSA was founded in 2012 by Charlie Kirk and is funded by big name Republicans including Clarence and Virginia Thomas and the Koch Brothers. The organization holds several national conferences including a young Latino summit and a Young Women's Leadership Summit, which was sponsored by the NRA in 2018. The Women's Summit is advertised as an alternative to a liberal culture of feminism that Republicans characterize as oppressive. In 2018, at a pro Trump event at the Women's Summit, which included chants of "lock her up," Candace Owens was given a standing ovation for saying that the premise of the "#metoo" movement is that women are weak and inconsequential. TPUSA employs student workers to recruit new members and to inform on faculty who show a so-called liberal bias. TPUSA funds conservative candidates in student government elections and, during the 2016 presidential election, paid students to work for conservative candidates. They are pro-military, pro-police, anti-feminist, anti-Muslim, and anti-Black Lives Matter. The Southern Poverty Law center has documented TPUSA's links to white supremacy. TPUSA has chapters on many campuses, including mine, and is tracked by the AAUP, who reports on their activities on the website *One Faculty One Resistance.* TPUSA's revenue was $70 thousand in 2012; in 2016, it was $8.2 million (Lachlan). Progressive or radical student movements on today's campuses exist despite the concerted efforts of TPUSA and other powerful reactionary forces to make them disappear.

In March of 2019, Trump further elevated the stature of TPUSA by announcing his intention to sign an executive order requiring colleges and universities that get federal research funding to support free speech. Repression of free speech is not a real problem on university campuses. Free speech and academic freedom--related but distinct--are core values of research universities. The right to free speech is, however, a rallying cry for TPUSA and other conservative groups, including legislators, who are increasingly focused on reforming higher education. Loud public assertions that colleges are curtailing the free speech rights of conservative students are--specifically and exclusively--efforts to protect the right to express hatred, including white supremacy, transphobia, antifeminism, antisemitism and Islamophobia. It is ours as scholars, educators, and students to anticipate and handle problems with bias and exclusion on campus by involving one another in robust academic inquiry, not only within individual disciplines, but also about the concepts of academic freedom and freedom of speech as they relate to those disciplines and as they relate to social justice. The answer to hate speech isn't obvious or easy to manage in classrooms full of people for whom school is exactly the right place to expose common sense and ignorance as well as insights and wisdom. But hate speech is a problem that is ours to learn and teach about in nuanced and informed ways.

FOIA'd

Complicating the situation, after the rally where Harambe and Nixon showed up, is that the WGS Department and faculty, a large percentage of us also faculty in English, were served a Freedom of Information Act request by *Campus Reform*. The request was made based on another set of posts on the official WGS Facebook page and related to the College Democrat's rally: WGS staff offered the use of the office and supplies for making posters for the event. This use of materials was cast as partisan activity, which is

disallowed by public institutions. The FOIA request is still outstanding and being negotiated by university lawyers. The request is for all emails of all WGS faculty going back 5 years. University lawyers limited the release to emails containing key words, including Harambe, Nixon, and the names of 2016 presidential candidates. The point of the request is to discover partisan comments made using university servers, computers, and email accounts in order to accuse faculty of using public resources to indoctrinate students, which would constitute legal and ethical violations. *Campus Reform* and TPUSA have the clear goal of trying to get people fired, get programs and departments closed, and universities defunded. So far, the university's lawyers have been sympathetic to individual faculty members involved, but their primary goal is to prevent lawsuits against the University. In pursuit of this goal, WGS faculty were invited to a meeting, the point of which was to educate us on how to speak and teach in nonpartisan ways. It fell to the faculty to try to explain to university lawyers that the discipline has an advocacy component about which it is not possible to be even-handed: there is no reasonable opposing viewpoint to the assertion that women, queers, poor people, immigrants, non-English speakers, and people of color are due dignitary rights and equitable access on campus and beyond.

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The events described here, while profoundly miserable, were also quickly over. The first threats came in before the Thanksgiving break. They had stopped completely at the end of the semester in early December. However, the aftereffects, both good and bad, continue. My fear of renewed attack results in self-censorship in the classroom. Colleagues who witnessed the attacks are similarly wary. All of us expect student reporters recruited by TPUSA to surreptitiously record our classes and circulate gaffs or comments that, taken out of context, appear foolish or politically inflected. I routinely warn graduate students with whom I work to be guarded. TPUSA holds occasional events on campus, which elicit calls for civility from the university administration. After explosive confrontations around one such event, faculty, administrators, and students have worked together to limit contact between those attending TPUSA events and would-be protesters: we organize physically distant counter-events that feature pizza, movies, and programing specifically for students of color, women, and LGBTQ students. Academic units have organized lecture series and discussions around the issue of freedom of speech, including a few events meant to generate broad campus-wide conversations about P.E. Moskowitz's 2019 book *The Case Against Free Speech: The First Amendment, Fascism, and the Future of Dissent* culminating in a talk by Moskowitz—an event that has had to be postponed because of shutdowns around Covid-19.

For Feminist Faculty and Students in Particular

The attack on colleges and universities in the name of free speech is ours to fight for a lot of reasons. Rightwing efforts to turn campus culture toward political conservatism has been proceeding for the last twenty years and has gotten a boost from the 2016 election (Fischer). These rightwing efforts are in line with the priorities of white supremacy, nationalism, and patriarchy--all systems of inequity that feminist scholars train to understand and address. Our record of success is uneven and requires constant reinvention and efforts at accountability. But these are the goals around which feminist scholarship is organized. We are, as a result, in the crosshairs of conservative efforts to invigorate commitments to white supremacy, nationalism, and patriarchy on campus and beyond.

In addition, feminist scholars have played a role in creating the beast that identity politics has become: a commonsensical tool for college students working to uphold white supremacy. Women's histories of organizing, albeit inspired by African American agitation for abolition and civil rights, learned and taught by feminists over the last forty years, consolidate the logic behind what is now white identity politics. Groups such as TPUSA, and their argument that white conservative students need protections to speak their truths, follow logics taught by feminists. It is worth reminding each other that those of us who know and build our scholarship on this intellectual history have nevertheless not prevented the weaponization of identity politics on campuses. It's magical thinking to imagine that this intellectual history will interrupt white supremacy going forward if we don't rehearse it often, in detail, as writers and teachers, in the contexts of our separate disciplines.

Finally, feminists are particularly vulnerable to accusations that we violate rights to free expression because we are negatively associated with the prescriptive excesses of a short segment in our long history: women's liberationist philosophies of the late 1970s and early 1980s. This negative association is particularly true for lesbians. In the aftermath of the events on my campus, for instance, I suspect that the assumptions of many of my colleagues, including those who were hostile as well as those who were sympathetic, were products of confirmation bias: as a lesbian, I am likely to be interpolated as anti-free speech. The fact that I alone, the lesbian among us, was added to the professor watchlist points to these biases as well. Moreover, since freedom of expression is a seemingly apolitical core value of higher education and democratic society, it is an especially effective cover for homophobia and a seemingly value-neutral way to phrase the explicit goals of advancing white supremacy and patriarchy. The colleague who was most hostile to me during these events (and whose hostility predated them) could, because I'm a

lesbian, credibly accuse me of treachery around censorship without seeming homophobic. In my colleague's remarks, I see the weaponizing of identity politics from within liberal academe, and hence the need to provide more support and protection, especially in times of crisis, to people and programs that study and advance models of critical thought and resistance against social and economic injustices.

Some Conclusions

Freedom of speech has been weaponized against individuals and departments in women, gender, and sexuality studies, and race and ethnic studies. Faculty and students in these fields need to build expertise in the debates about, and differences between, academic freedom, which usefully constrains speech via disciplinary conventions, as Joan Walloch Scott explains, and freedom of speech in the public square. And we need to use this expertise to lead campus dialogs about if and how limits on hate speech can serve academic freedom, the inclusive missions of colleges and universities, as well as the goals of WGS and race and ethnic studies departments. There are purists on the left who make good points about responding to hate speech with more speech and serving the goals of academic freedom and inclusion by developing an ever more robust marketplace of ideas. There is meaningful skepticism about the efficacy of doling out punishments for violations of speech codes. There are robust practical arguments that speech can be carefully limited in the name of inclusion, prevention of dignitary harms, and the pursuit of knowledge on campuses and beyond. Many allies in the effort to create inclusive campus communities that advance knowledge have well-meaning commitments to free speech that obscure the ways in which it is being used specifically to undermine diversity. Most recently, P.E. Moskowitz suggests that we question the line separating acceptable speech and prohibited violence. These arguments about freedom and expression, represented by the annotations below, are nuanced and complex. They engage history, power, and law. Educating ourselves and others requires the ability to cite and explore these arguments in informed and careful ways that are responsive to specific campus communities. That feminists have long been having conversations about the limits of identity politics does not release us from the responsibility to dismantle what others have made of it; instead, it makes us particularly well-suited to do that work.

Finally, understand that *Campus Reform* reporters, funded by TPUSA, are watching and waiting for language and phrases, including mistakes, that can be taken out of context, in order to launch assaults on individuals they can claim are unfairly punishing conservative students. They are working hard to accuse faculty of being forces of indoctrination rather than academic freedom. WGSS and race and ethnic studies departments and personnel are their specific targets. But white supremacy and patriarchy are neither new nor interesting. More interesting and vital are the cultures of resistance and resilience that feminists, especially black and brown feminists, have developed in response—including mass movements for abolition, civil rights, and black lives, as well as solitary acts that have opened access to education and politics for people coming up behind us. It's ours to facilitate access to education for all by learning and teaching more, and not less, about the histories and logics of free speech and academic freedom. Here we offer an annotated bibliography as one tool among many that feminists and advocates of academic freedom have to work with as we enhance our own cultures of resistance and resilience.

An Annotated Bibliography on Academic Freedom

We offer the following annotated bibliography on the issues of academic freedom and free speech – in the name of which current attacks are being waged – as a resource for teachers and students involved in the effort to defend ourselves and our programs. We encourage users to consider this as a working document; to add annotations and to continue to circulate the material to one another as circumstances evolve. We have opted for a chronological rather than alphabetical arrangement of annotations in order to emphasize that academic freedom exists as a socially situated set of beliefs, institutional practices, and juridical concepts that has evolved through the political correctness debates and culture wars. The chronological arrangement also clarifies consistencies over time. In assaults on academic freedom, scholars of color, women, and/or LGBTQ+ scholars experience academic environments that are disproportionately hostile. Finally, we hope a chronological arrangement of materials can contribute to our ability to anticipate, and thus defend against, assaults on academic freedom and faculty governance that may emerge during the current COVID-19 pandemic and through the growing activism for Black Lives. We offer this annotated bibliography as one tool among many that advocates of academic freedom have to work with as we enhance our own cultures of resistance and resilience.

Lawrence III, Charles R. "If He Hollers Let Him Go: Regulating Racist Speech on Campus." Matsuda, Mari J., Charles R Lawrence III, Richard Delgado, and Kimberlé Williams Crenshaw, eds. *Words that Wound: Critical Race Theory, Assaultive Speech, and the First Amendment*. Boulder, Co.: Westview Press, 1993.

Charles Lawrence III argues that the way in which the discourse on free speech is framed--with the civil libertarian stance on one side, and the anti-racist position on the other--allows space for racists to covertly extoll a moral high ground by shrouding bigotry in the right to free speech. Civil libertarians that protect hate speech mark the distinction between it and injurious speech, claiming protections only for the former. Lawrence holds the position that this distinction is not part of the purpose of the First Amendment. Furthermore, he argues that even when hate speech is experienced in a manner that is not face-to-face, it has the potential to injure members of the entire racial group which the hate speech targets.

Regulations limiting free speech on college campuses are often labeled as thought policing by those who oppose such policies. Yet policies rarely extend protections beyond

those against face-to-face bigotry, which is not protected by the First Amendment. Finally, Lawrence urges for power dynamics to be taken into account when discussing injurious speech. He points to the fact that marginalized people in society often experience injurious speech in connection with violence; thus, protections for hate speech encourage the perpetuation of such violence rather than fostering free speech.

Menand, Luke, Ed. *The Future of Academic Freedom*. Chicago: University of Chicago Press, 1996.

This collection opens with a rejection of the claim that multiculturalism and postmodernism pose outsized threats to academic freedom. Instead, Menand argues, an intellectually cosmopolitan university makes a stronger foundation for academic freedom. The position is taken up again by the last contributor, Edward Said, who argues that a remedy for current pressures on academic freedom is for academics to be what he calls "travelers." A traveler is one that goes beyond the constraints of disciplines, and core texts, ideas, and methods. Those who oppose this act of expansion are often accused of politicization, yet those who adhere to the perpetuation of long-held standards could be similarly accused.

Other chapters in the first section explore the philosophical underpinnings of academic freedom. Richard Rorty takes a skeptical position on the role disciplines have in the university, while Thomas Haskell positions his defense of the disciplines, and the professional norms that develop within them, as what allows for academic freedom.

In the second section, contributors discuss regulating hate speech on university campuses. Cass Sunstein evaluates regulations against hate speech in terms of the educational commitments of the institution, arguing that when such regulations further educational commitments, it is justifiable to extend them beyond state regulations. Henry Louis Gates uses the framework of critical race theory to analyze popular understandings of the First Amendment, including those of absolutists, who make an unsubstantiated claim that offensive speech does no harm. Building on arguments made by the contributors to *Words That Wound*—those of Matusda, Lawrence III, and Delgado in particular—Gates explains that injurious speech is often directed at entire groups of people, not individuals, and that racist speech can be viewed as libel.

The final section begins with a chapter by Joan Scott, who argues against a reinvigoration of "values" in the academy as it signals a closed framework. Instead, Scott pushes for an ethical practice dynamic and open to change. Ronald Dworkin argues for a new interpretation of academic freedom that can be used to differentiate between what is, and what is not, covered in its definition.

Doumani, Beshara, ed. *Academic Freedom after September 11*. New York: Zone Books, 2006.

Contributors to this volume examine the state of academic freedom in the immediate years following the September 11 terrorist attacks of 2001, agreeing that since the attacks, institutions of higher education are under increasing systems of surveillance, intervention and control. Doumani highlights the two greatest threats against academic freedom and civil liberties more broadly: the war on terror and a restructuring of academia under a neoliberal logic. The Patriot Act and subsequent regulations are threats to the future of academic freedom: they represent an increase in surveillance and control on everything from borrowed library books, to publications originating in states against which the United States has embargos. In addition, the managerial class created by the growing commercialization of knowledge has opened the university to influence by private advocacy groups. Doumani characterizes this interference as more complex than that of the government in the Cold War era with points of influence that include legislative efforts, funding sources, and fellowship-granting institutions.

Robert Post details the history of academic freedom in the United States, describing academic freedom as relative to research and writing, teaching, and extramural utterance. For Post, professional academic standards and norms regulate principles of academic freedom. In response to this guiding principle, Judith Butler urges for the historicization of professional norms, and their constant reinterpretation. Additionally, Butler argues that this constant reinterpretation is best practiced on a case-by-case basis rather than with blanket moral logics, and in the historically specific present. As opposed to the first two contributors of this section, Philippa Strum argues that academic freedom should be seen as an individual right protected by the First Amendment. Strum supports this position by tracing the history of Supreme Court cases that have protected the academic freedom of faculty members under the logic of free speech. The right has been held up by the rationale of "social benefit," which has thus far only been extended to those at public institutions. While arguing this position, Strum acknowledges the precarity of placing academic freedom under constitutional law.

Section two describes the ways in which attacks on academic freedom have been practiced. Kathleen Frydl argues that the changes in the structure of the university after World War II have coincided with a shift to viewing academic freedom as an individual right to expression rather than a freedom of inquiry. These changes have corresponded with the acceptance by universities of large amounts of money from government and private corporations, which in turn has led to growing pressure by these entities on academic institutions. Frydl encourages a return to an understanding of academic freedom as freedom of inquiry, rather than freedom from restrictions on extramural speech. Amy Newhall uses the lens of language programs to show the ways in which the government and political advocacy groups have long been at odds with the federal need to fulfill demands for language acquisition programs. Finally, Joel Beinin provides an extensive case study detailing much about what previous contributors have highlighted as the threats to academic freedom in post-September 11 United States. Comparing the attacks on Middle Eastern Studies to McCarthyism, Beinin shows how think tanks with connections to the federal government are

increasingly becoming threats to critical academic work on U.S. foreign policy.

Gerstmann, Evan, and Matthew J. Streb, eds. Academic Freedom at the Dawn of a New Century: How Terrorism, Governments, and Culture Wars Impact Free Speech. Stanford: Stanford University Press, 2006.

This collection contextualizes the topic of academic freedom at the turn of the 21st century in a post-September 11, 2001, United States. In part one, Matthew Streb highlights the increased concern by conservative groups over indoctrination at the hands of "politically correct" faculty. Since the September 11 attacks, Streb argues, these conservative groups have begun to target faculty who criticize U.S. foreign policy. Additionally, Streb argues that increased surveillance afforded to the federal government by the Patriot Act poses as the biggest threat to academic freedom post-September 11. Timothy Shiell argues that a civil libertarian view of academic freedom is the virtuous stance that will allow it to remain a right at academic institutions.

Part Two includes arguments that the status of free speech on campus remains largely protected. Robert O'Neil argues, using unpatriotic speech as the example, that academic freedom has survived post-September 11 assaults due to the experiences fifty years prior during the McCarthy era. In particular, the Supreme Court has defended academic freedom when cases have moved through the judicial system. This optimism is also seen in a chapter by Donald Downs, who argues that academic freedom as free speech has become the norm, and that speech acts seem to be in a position of continued protection. The optimism of both authors remains cautious even as they recognize multiple attempts to undermine academic freedom.

The essays in part three take self-censorship as their lens of analysis. M. Susan Lindee argues that post-September 11 self-censorship is a particular problem in the sciences due to government funding of research. Paul Sniderman discusses two theories about the effectiveness of self-censorship: conformity and authority. Finally, Evan Grestmann addresses less obvious issues of academic freedom such as loyalty oaths, expanding IRBs, and lack of tenure-track positions.

Nelson, Cary. *No University Is an Island: Saving Academic Freedom*. New York: New York University Press, 2010.

Former president of the American Association of University Professors (AAUP), Cary Nelson discusses academic freedom in relation to domains beyond the academy, including the legal system, professional norms, technology, and symbolic meanings. Unlike others in the field, Nelson does not explore the philosophical underpinnings of academic freedom. Rather, he discusses what he sees as political threats to academic freedom. The case studies Nelson provides show the ways in which faculty and the AAUP can best resist those threats.

Nelson emphasizes the idea that academic freedom is most important as an aspirational, rather than attainable, goal, ever-changing, and in constant need of reevaluation and updating. He acknowledges the paradox of disciplines: they are a source of faculty agency over research pursuits; at the same time, they promote conformity. Nelson also tackles the idea that shared governance can sustain academic freedom. In order to do so, he argues, it must be restructured and repaired. Nelson enumerates sixteen threats to academic freedom, many of which come from the political Right. These emerging threats include neoliberal and corporatist interests, intervention from advocacy groups, and managerial administrative oversight. About contingent labor, and the casual dismissal or nonrenewal of nontenured faculty, Nelson argues that these practices threaten the future of academic freedom and make the tenure-track position an even greater priority. In succeeding chapters, Nelson uses the Arab-Israeli conflict to critique what he observes as the self-censorship that occurs in university departments; he cautions against the tendency to allow for the intrusion of identity politics into decision making in departments; he argues for alternatives to emergent neoliberal policies in unions. Finally, he draws on his experience as the president of the AAUP to examine its role in negotiating decisions on the defense of academic freedom.

Tsesis, Alexander. "University Hate speech Codes: Burning Crosses on Campus." *Connecticut Law Review* vol. 43 number 2 Dec. 2010. Pp 617-672.

Alexander Tsesis analyzes First Amendment relevance to hate speech codes and compares U.S. approaches to such measures to international ones. Tsesis argues that measures to curtail harmful speech on university campuses serve as a public good and that such speech, symbols, or statements that function to limit intellectual life in academic contexts are not protected by the First Amendment. By analyzing the Supreme Court decision in *Virginia v. Black*, Tsesis asserts that this court decision established precedent for limitations on hateful messages, particularly those that advocate or instigate violence, isolation, or deteriorate the learning environment. *Virginia v. Black* offers no directions in the nuances of seeking punishment, and so university administration should distinguish between university disciplinary action and criminal prosecution.

Waldron, Jeremy. *The Harm of Hate Speech.* Boston: Harvard UP 2012.

Jeremy Waldron describes hate speech laws as favorable forms of legislation. He argues that hate speech is more than a form of expression; it is a message of exclusion and a threat of potential harm through various means. Waldron makes two primary claims: first, our society should accept the premise that inclusiveness is a public good; second, hate speech laws help to confirm membership, and facilitate a sense of belonging, to historically marginalized groups. Belonging protects human dignity, a property of society Waldron argues is fundamental to full social participation. In service to his argument, Waldron discusses

the logic of hate speech laws in both the United States and Europe. He closes with an analysis of how Enlightenment philosophers navigated religious intolerance.

Bilgrami, Akeel, and Jonathan R. Cole, editors. *Who's Afraid of Academic Freedom?* Columbia University Press, 2015.

Essays in this collection discuss academic freedom relative to institutional review boards, special interest advocacy groups, university donors, the Constitution, political boycotts against Israeli occupation, state power in the university setting, and legislative efforts by the United States government. Additionally, the collection includes a survey of faculty members at Columbia University showing that respondents view academic freedom through the lens of free speech, and that institutions place varying levels of importance on fundamental academic values such as academic freedom.

Lieberwitz, Risa L., Rana Jaleel, Tina Kelleher, Joan Wallach Scott, Donna Young, Henry Reichman, Anne Sisson Runyan, and Anita Levy. "The History, Uses, and Abuses of Title IX."
https://www.aaup.org/file/TitleIXreport.pdf

This report by a joint subcommittee of the AAUP's Committee A on Academic Freedom and Tenure, and of the Committee on Women in the Academic Profession, recounts the history of Title IX of the Education Amendment of 1972 in order to explain current tension between academic freedoms, including freedom of speech, and enforcements against sexual assault and harassment. These tensions, they argue, have resulted from a focus on sexual violations, and from a conflation between conduct and speech. The authors are clear that speech can create a hostile environment, and that not all speech is protected. But they argue, as well, that "matters of speech are difficult to negotiate and always require attention to first amendment guarantees and considerations of Academic Freedom" (70). Moreover, current handling of sexual harassment on campuses has been largely given over to administrators in anti-bias offices. This removes the handling of these issues from processes of faculty governance, and from discussions about the difference between harassing speech and prompts for learning. This makes faculty who teach sensitive and uncomfortable material to do with gender, sexuality, race, and ethnicity, particularly vulnerable to accusations of harassment.

The authors clarify another hazard of conflating speech and conduct: given the history of racist deployment of sexual assault claims, there is every likelihood that administering rules against harassment will involve disproportionate punishment for men of color, and disproportionate demands that women of color tolerate harassment and hostile environments. Also of note in this context, unlike sexual harassment, racial harassment is rarely addressed in relation to Title IX or titles VI or VII.

Ben-Porath, Sigal, R. *Free Speech on Campus.* Philadelphia: University of Pennsylvania Press, 2017.

Ben-Porath identifies as a stalemate the conflict between, on one hand, people who see

free speech as a value-neutral idea that helps those in power preserve their positions, and on the other, an excess of political correctness that stifles views out of step with social justice ideology. In response, she develops a framework for inclusive freedom that supports connection and belonging among all campus members in service to the goals of high-quality research, democracy, and increased diversity. Dignitary harms block access and target people who are already vulnerable, often in the form of refusals to accept a speaker's knowledge and perspective as valid because their identity as a knower is in question. But rather than curtail speech, which can lead to equivalences--protections for students of color lead to calls for protections for white students--faculty and administrators should encourage students to accept being intellectually unsafe while protecting dignitary safety. Practically this means a nuanced relational approach that provides ample opportunities for students to develop and express their views, ask questions, and even be rebellious. Students should be supported to develop opportunities for further speech, and to protect dignitary safety by productively responding to speech they find offensive.

Ben-Porath notes that academic missions are well served by limits on speech, including rules against plagiarism and the mischaracterization of results. It is equally reasonable to reject expressions that undermine the equality and dignity of members of campus communities, especially those who belong to vulnerable minority groups. A commitment to free speech that does not account for the impact of voicing hurtful views does not provide a reasonable response to the educational mission of the university.

About controversial speakers, she reminds readers that universities do not invite them; departments and students do. Giving administrators power to regulate speakers and events is to forgo free speech for the sake of administrative order. Calls for civility are equally unproductive. Civility requires too little in that it is based on norms of respectability rather than on substance. It requires too much in that it further marginalizes those whose anger is deemed uncivil and thus unacceptable. Instead, administrators should show an ongoing commitment to deliberate dialog on the importance of free speech, to the protection of all individuals, and to the establishment of an atmosphere where opinions can be debated openly and honestly. Speech delivered only to harm, or with substantial harm to the dignity of a class, deserves reprimand, not in the name of civility, but in the name of inclusivity.

Chemerinsky, Erwin and Howard Gillman. *Free Speech on Campus*. New Haven: Yale University Press, 2017.

Chemerinsky and Gillman argue that restricting speech is never a productive strategy for advancing social justice.

They frame their argument historically, showing that the supreme court has consistently upheld freedom of expression even when that meant overturning lower courts' decisions. They show that past efforts to restrict even hate speech in the name of mitigating harm to those who have been targeted have always proved regrettable in hindsight. The authors praise students for valuing inclusion and describe concrete steps college and university administrators can and should take to advance inclusion, including addressing the ways in which hate speech and harassment undermine their educational missions. But as knowledge is advanced specifically by the freedom to express unpopular and unfamiliar ideas, campuses must be places where freedom of expression is the highest principle. In response to hate speech, the best response is more speech.

Palfrey, John. Safe Spaces, Brave Spaces: Diversity and Free Expression in Education. Cambridge: The MIT Press, 2017.

Palfrey argues that diversity and free expression are mutually supportive concepts, and that a constrained version of free expression on campus does not run afoul of the First Amendment, which already constrains fighting words, hate speech directed at an individual, libel, and obscenity. In the abolition and suffrage movements, those who advocated free expression sought to create change; those who advocated maintaining the status quo sought to limit expression. This is true of the free speech movement in the 1960s, too. In the current period, conservatives advocate for free expression. Nevertheless, it remains the case that freedom of expression, with careful limits against the most dangerous speech at the margins, moves us toward a more tolerant and democratic society that supports the flourishing of citizens, the search for the truth, and the conditions for sound decision making. Hate speech construed as political expression, such as a Nazi march, must be allowed in a town. But on a campus with stated commitments to diversity, equity, and inclusiveness, it can be stopped, as the burden of tolerating hate speech is borne disproportionately by marginalized members of the community. Thus, there is a paradoxical limit to tolerance: the intolerant should not be allowed to dominate by merely calling on the tolerant to tolerate their intolerance.

Markay, Lachlan.["Exclusive: Pro-Trump Group, Turning Point USA, Has Finances Revealed."](https://www.thedailybeast.com/exclusive-pro-trump-group-turning-point-usa-has-finances-revealed) *Daily Beast*. New York City: IAC. June 28, 2018. https://www.thedailybeast.com/exclusive-pro-trump-group-turning-point-usa-has-finances-revealed

In this article, Markay discusses the conservative group, Turning Point USA, which promotes much of the conservative anxiety about free speech on college campuses. By detailing the group's funding sources during its boom between 2016 and 2017, the article explains how many of the donations come from conservative mega-donor families and GOP politicians. Thus, the article illustrates that GOP intrusion into higher education is not solely legislative: the GOP also contributes to a growing distrust of higher education by bankrolling a group that has access to youth on college and university campuses.

Scott, Joan Wallach. *Knowledge, Power and Academic Freedom.* New York: Columbia University press, 2019.

This collection of essays clarifies the differences between academic freedom and freedom of speech, underlining the importance of the distinction by drawing parallels between the McCarthy and Trump eras. Anti-intellectual sentiment in both eras involves false equivalencies between academic freedom and the First Amendment, resulting in attacks on intellectuals, and research institutions. In these periods, as well, academic critiques from within disciplinary communities have been confounded with political disagreements. These failures erode academic freedom, which she characterizes as an aspirational ideal rather than an achievable goal: disciplinary boundaries and conventions at once protect the production of knowledge from economic and political interests, but also reiterate the biases and inequities of the greater society, including racism, sexism, homophobia, thus limiting the quality and scope of intellectual work. As an ideal, however, academic freedom in service to the production of knowledge for the public good is worth protecting and striving for.

Fischer, Karen. "For a Dissatisfied Public, Colleges' Internal Affairs Become Fair Game. (THE TRENDS REPORT 2019)." *The Chronicle of Higher Education*, vol. 65, no. 23, Chronicle of Higher Education, Inc., 2019, p. B6.

Karen Fischer describes the increased legislative intrusion on university campuses as a

type of micromanagement. The increasing costs of education have decreased public confidence in academia and the perceived value of a degree. This has served to fuel an increase in proposed legislation to eliminate speech codes. This effect is especially prominent in conservative attitudes towards higher education. Fischer argues that academics must find new ways to engage with state legislatures, campuses, and the public at large to demystify university process such as shared governance and tenure.

Mangan, Katherine. "Trump Says He'll Sign Order Requiring Colleges to Protect Free Speech." *Chronicle of Higher Education.* March 2, 2019. https://www.chronicle.com/article/Trump-Says-He-ll-Sign-Order/245812?fbclid=IwAR1k7-CJs9jNOuG5azykUgOrxzfjZIma2qpc0it5J9ihRo_LCkBb79zFh2w

This article discusses the fact that Trump has endorsed the idea, even to the point of threatening executive order, that free speech provisions need to be made on college and university campuses that wish to receive federal research grants. Mangan highlights the support for these ideas, and the general attitudes towards higher education, among pro-Trump voters. Finally, Mangan points out that there is little to no evidence that there is a crisis of free speech in higher education.

Moskowitz, P.E. The Case Against Free Speech: The First Amendment, Fascism, and the Future of Dissent. New York: Bold Type Books, 2019.

Moskowitz enters the discussion about the first amendment by changing the subject from free speech itself, to the concept of free speech, arguing that the most important function of the later is as a propaganda tool that serves people and groups with the power to benefit from wielding it, and with control over the means to be heard. Given material barriers to free speech in an unequal world, he argues, there can be no meaningful definition of free speech. Instead, there is a history of the ways in which free speech is being deployed in the United States, from founding moments, to Charlottesville and Standing Rock. Moskowitz tells this history to illustrate the ways in which the concept of free speech has been used to silence critics of racism and capitalism among protesters on and off campus. Ultimately, Moskowitz proposes that activists seek to move the defining line between action and expression in order to advance equality and true civil liberty.

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