



CAMPUS INTOLERANCE | Then & Now

The Influence of Marcusian Ideology

by Guenter Lewy

Perspectives on Higher Education

American Council of Trustees and Alumni | Institute for Effective Governance™



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About the Author

Guenter Lewy is Professor Emeritus of Political Science at the University of Massachusetts–Amherst. Born in Germany, he came to this country in 1946. He graduated from the City College of New York in 1951 and received his Ph.D. degree from Columbia University in 1957. Professor Lewy taught at Columbia College, Smith College, and the University of Massachusetts. He is the author of 17 books, among them an influential study of the Vietnam War, *America in Vietnam*, and *Religion and Revolution*, a book that was nominated for the National Book Award. Professor Lewy has authored several studies of Nazi Germany—*The Catholic Church and Nazi Germany*, *The Nazi Persecution of the Gypsies* (named the outstanding book on the Third Reich and the Holocaust by the German Studies Association in 2001), and most recently *Perpetrators: The World of the Holocaust Killers*. During the student unrest that accompanied the movement against the Vietnam War, Professor Lewy organized a faculty group at the University of Massachusetts–Amherst that sought to prevent the politicization of the academic enterprise. His interest in the current wave of intolerance derives from his experience in this earlier turbulence.

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The Influence of Marcusean Ideology

Freedom of expression is threatened on today's college campuses. Speakers who challenge what a vocal group considers right and just are too often disinvented or shouted down, creating an atmosphere of harassment and intimidation. At all too many campuses, speech codes, "safe spaces," rules against so-called "micro-aggressions," and "trigger warnings" seek to protect students against ideas they deem offensive. History has repeated itself. When today's students identify speech as violence and feel they can meet it with coercion, they are echoing Herbert Marcuse. This perspective undermines the tradition of free inquiry that used to be the hallmark of higher education. Although the sensitivities of campus activists may often be quite sincere, the embrace of Marcusean ideology is a pathway that can only lead to heightened intolerance. It also harms the general culture, for colleges and universities are ultimately the incubators that nurture future leaders.¹



The Role of Herbert Marcuse's Ideology

While some aspects of the campus assault on free speech are new, the ideological assumptions used to justify this level of intolerance are not. Their philosophical roots can be traced back to similar waves of unrest during the 1960s that emerged in the course of protests against the Vietnam War. A significant component of our current political discourse derives from the ideology of what at the time was known as the New Left. It was called a New Left because its followers considered the traditional Left—not only mainstream political liberals, but even socialists and communists—as having failed to provide the appropriate theoretical and practical leadership for

overthrowing 20th century economic and social institutions and their power structures. Then as now, groups of students and faculty claimed the right to silence ideas considered to be false and reactionary. They saw themselves in the possession of truth and therefore entitled to impose this truth upon the rest of the academic community and eventually upon society as a whole.

Herbert Marcuse, an immigrant from Germany who taught at several American universities, held a key place in formulating the ideology of the New Left. Marcuse had been a member of the neo-Marxist Frankfurt School, also known as the Institute of Social Research. The Institute was established at the University of Frankfurt in 1923 thanks to a donation by Felix Weil whose father had grown wealthy as a grain merchant. Its purpose was to study the labor movement and other topics neglected by German universities, and it became known for originating Critical Theory. Among its leading members were scholars such as Theodor Adorno, Erich Fromm, Max Horkheimer, and Leo Lowenthal. After the Nazis forced the Institute to close, it moved to the United States and was re-established at Columbia University. In 1937, Horkheimer published a series of essays under the title *Traditional and Critical Theory*, a work that can be considered the manifesto of the school.

Critical Theory maintained that under the conditions of advanced industrial society, objectivity in knowledge is a myth and part of what Marx had called “false consciousness.” Hence Critical Theory set itself the task of overcoming naive conceptions of knowledge. Marcuse’s theory of “repressive tolerance” originated in this philosophical framework. In democratic societies, Marcuse argued, tolerance is extended to “policies, conditions, and modes of behavior which should not be tolerated” because they serve the cause of oppression and impede the building of a truly humane society without fear and misery. To defeat “organized repression and indoctrination” may require “apparently undemocratic means.”

They would include the withdrawal of toleration of speech and assembly from groups and movements which promote aggressive policies, armament, chauvinism,

discrimination on the grounds of race and religion, or which oppose the extension of public services, social security, medical care, etc. Moreover, the restoration of freedom of thought may necessitate new and rigid restrictions on teachings and practices in the educational institutions which, by their very methods and concepts, serve to enclose the mind within the established universe of discourse and behavior—thereby precluding a priori a rational evaluation of the alternatives. And to the degree to which freedom of thought involves the struggle against inhumanity, restoration of such freedom would also imply intolerance toward scientific research in the interest of deadly “deterrents,” of abnormal human endurance under inhuman conditions, etc.²

The distinction between human and inhuman teachings, Marcuse maintained, would be made by that small minority of individuals who have learned “to think rationally and autonomously.” For “abstract” or “pure” tolerance, they would substitute “repressive tolerance” and thus strengthen “the oppressed against the oppressors.” Such a radical redressing of a social imbalance, he conceded, is “tantamount to the establishment of a ‘right of resistance’ to the point of subversion,” a “natural right of resistance for oppressed and overpowered minorities to use extralegal means if the legal ones have proved to be inadequate.” In terms of historical function, Marcuse insisted “there is a difference between revolutionary and reactionary violence, between violence practiced by the oppressed and by the oppressors.”

If they [the oppressed] use violence, they do not start a new chain of violence but try to break an established one. Since they will be punished, they know the risk, and when they are willing to take it, no third person, and least of all the educator and intellectual, has the right to preach them abstention.³

Marcuse's teachings had a powerful impact on the student movement of the late 1960s and early 1970s. In the midst of the crisis over civil rights and the world-wide agitation against the American war in Vietnam, Marcuse's defense of the right of oppressed minorities to use extralegal means effectively counteracted the existing liberal taboo against resorting to violence. When Andreas Baader, who was to become a leading member of the Baader-Meinhof gang in Germany, was tried in 1968 for setting fire to a department store, he invoked Marcuse's essay on "Repressive Tolerance." In the United States, radical members of the student movement, led by Students for a Democratic Society (SDS), disrupted classes, occupied administration buildings, seized college officials, threw rocks at police, and eventually burned down buildings. At the University of Wisconsin a bomb was placed in a laboratory and a student was killed. What had begun as a movement for reform of the university and peace in Vietnam eventually degenerated into the mindless rage of the Weathermen in the U.S. and the terrorism of the Baader-Meinhof gang (also known as the Red Army Faction) in West Germany. Shocked by these developments, especially the loss of innocent life, Marcuse then argued that terror was illegitimate as long as there existed legal possibilities of effective resistance.⁴ But by that time, clearly, the sorcerer was no longer in control of his apprentices.



Marcusian Undertones of Today's Activism

During the recent upsurge of campus unrest, Marcuse's defense of revolutionary violence has found new spokespeople. In an essay entitled "The Counterrevolutionary Campus: Herbert Marcuse and the Suppression of the Student Protest Movement" published in 2016 in an academic journal, two political scientists argued that the demand for students to become more tolerant of freedom of expression is nothing but "a call to silence, a call for exclusion of the students' systematic critique, an effort to disrupt localized refusals before they can coalesce into a Great Refusal." They argued that tolerance in the name of great inclusivity has become an instrument of repression in the hands of the counterrevolution. The authors

quoted Marcuse, who had argued that tolerating inhumanity vitiates the goals of every progressive political philosophy, and that the oppressed need not accept the rules of the game devised by their oppressors. In “response to this revolting, nauseating, murderous demand, we must revolt in all the ways we can. . . .” We must build “another New Left, one that succeeds where failures have previously resulted.”⁵

A loose grouping of radical activists, known as “antifa” (a contraction of the word anti-fascist), appears to be the kind of leftist force sought by the supporters of Marcuse. Antifa has fought with Trump supporters at political rallies and with conservative opponents on college campuses. Antifa adherents, sometimes armed with sticks and wearing masks, have scuffled with police, students, and community members attending events of controversial speakers. For example, at Berkeley in September 2017, antifa forces turned out to protest a speech given by conservative radio host and writer Ben Shapiro. In that case, antifa protesters were held at bay by security forces and precautionary measures costing Berkeley an estimated \$600,000.⁶

In the name of protecting the vulnerable, Peter Beinart has written in *The Atlantic*, “antifascists have granted themselves the authority to decide which Americans may publicly assemble and which may not.”⁷ One antifa member, who goes by the name of the famous Spanish anarchist Frank Sabaté, understandably argued that the very existence of the neo-Nazis constitutes a “grave and dangerous threat,” but then proposed that to oppose them by force or violence is necessary and morally justified.⁸ The historian Mark Bray, the author of *Antifa: The Anti-Fascist Handbook*, has argued that the anti-fascist outlook “has no tolerance of intolerance. It will not ‘agree to disagree’.”⁹



The Spirit of Marcuse on Campus

According to data compiled by the Foundation for Individual Rights in Education (FIRE), between 2000 and the spring of 2017 there were 342 successful campaigns launched at U.S. colleges and universities to prevent

public figures from speaking, most of them since 2009. The great majority of these efforts to suppress freedom of expression came from groups associated with the political Left,¹⁰ and they reveal the re-emergence on college campuses of a culture of “discriminating tolerance” in the spirit of Herbert Marcuse.

Rutgers University is a prime example of a breach in tolerance of diverging opinions. Rutgers–New Brunswick had invited Condoleezza Rice, national security official and secretary of state in the administration of George W. Bush, to give the commencement address in May 2014. On February 28, 2014, the faculty council adopted a resolution urging the institution to rescind the invitation. The resolution stated that Rice “played a prominent role in his [Bush’s] administration’s efforts to mislead the American people about the presence of weapons of mass destruction in Iraq” and that “the lies thus promoted led to the second Iraq war, which caused the death of over 100,000 men, women and children, and the displacement of millions of others.”¹¹ On March 12, an overwhelming majority of faculty members at Rutgers University–Newark joined their counterparts at New Brunswick in protesting Rice’s invitation. The professor who introduced the resolution explained that it was unacceptable to have “a commencement speech from someone who is a war criminal.”¹²

In late April, students staged a sit-in outside the office of President Robert L. Barchi, and confronted him on campus with the chant “Cancel Condi.” In a letter to the university community, Barchi defended the invitation: “Whatever your personal feelings or political views about our commencement speaker, there can be no doubt that Condoleezza Rice is one of the most influential intellectual and political figures of the last 50 years.” But this argument did not convince the protesters, and after several weeks of controversy, Rice withdrew from the invitation. In a statement released on May 3, Rice said that the issue had become a distraction for the university community. “I am honored to have served my country,” and she added: “I have defended America’s belief in free speech and the exchange of ideas. These values are essential to the health of our democracy.”¹³

That same year, International Monetary Fund official Christine Lagarde encountered similar problems at Smith College. In the face of protests by

both faculty and students, Lagarde announced that she would withdraw as commencement speaker. Smith President Kathleen McCartney issued a statement on May 12 in which she expressed her concern that the activism that had prompted this withdrawal would hurt the college. Thereupon, 103 students signed an open letter to President McCartney in which they defended their protest. Lagarde, they declared, headed an institution that was “a symbol of imperialism and oppression,” an organization “that causes serious and measurable harm in the world.” Moreover, by inviting Lagarde, Smith had once again prioritized “the words of privileged white women over those of women of color.” On the other hand, 174 faculty members (out of a faculty of 298) signed

a letter to the Smith community in which they voiced their disappointment at Lagarde’s withdrawal. A political test for prospective speakers, they maintained, “would preclude virtually anyone in public office or position of influence. Moreover, such a test would seem anathema to our core values of free thought and diversity of opinion.”¹⁴

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Campaigns to disinvite speakers have markedly increased during the last few years—from six in 2000 to 42 in 2016.¹⁵ Many other such cancellations were brought about by outright, and sometimes violent, disruptions. On October 29, 2013, New York City Police Commissioner Raymond Kelly was scheduled to speak at the List Art Center of Brown University. Kelly was the longest serving commissioner of the New York City Police Department, but he had drawn criticism on account of his stop-and-frisk policy that affected primarily Blacks and Latinos. The lecture was sponsored by the Taubman Center for Public Policy and American Institutions and was part of an endowed lecture series. Student protests against the appearance of Kelly included a petition to disinvite, holding a

vigil in honor of “victims of racial profiling,” and the drawing of swastikas on Kelly’s face on posters promoting the event. Approximately an hour before the lecture, about 100 students and outsiders gathered in front of the List Center chanting phrases such as “Ray Kelly, you can’t hide, we charge you with homicide,” and holding signs reading “Stop police brutality,” “Brown is complicit,” “Ray(cist) Kelly,” and similar slogans. The director of the Taubman Center, Marion Orr, a professor of political science and urban studies and himself black, introduced the speaker. Orr acknowledged the presence of the protesters, and declared that while protest is a necessary and acceptable means of demonstrating at Brown University, interrupting the lecture would be inappropriate and unacceptable. To ensure that students would be able to respond to Kelly, it had been agreed to limit the lecture to 20 minutes to be followed by a question-and-answer period of 60 minutes.

However, this concession did not pacify the protesters. They reacted loudly to any mention of Kelly’s name in the introduction. As soon as Kelly began to speak, many protesters stood up with their fists in the air and began shouting in unison chants such as “No justice, no peace, no racist police.” Two Brown administrators tried to regain control of the situation, but after about a half hour of attempts to continue the lecture, they decided to cancel the event. A report issued later by a faculty/student panel explained that because of the presence of non-students from the area, Brown police officers had not been able to approach the protesters. They also had feared that arrests would lead to more violence. After the event, protesters gathered in front of the List Center and gave speeches celebrating their success in preventing the lecture. Irene Rojas-Carroll, a student and one of the mobilizers of the disruption, told the *Brown Daily Herald* that from the beginning the goal of the protest had been to have the lecture cancelled. Brown President Christina Paxson called the affair “an affront both to civil democratic society and to the University’s values of dialogue and the free exchange of views.”¹⁶

Some of the most egregious incidents of disruption took place in the first half of 2017. On February 1, Milo Yiannopoulos, at the time an editor at *Breitbart News* and widely regarded as a provocateur, was scheduled

to speak at the University of California–Berkeley’s student union at the invitation of the Berkeley College Republicans. Hours before the event, some 1,500 protesters had gathered at Sproul Plaza, chanting and holding signs with slogans such as “No safe space for racists,” and “Hate speech is not free speech.” There is no way of knowing whether the protesting students would have let Yiannopoulos speak. The demonstration was boisterous but peaceful until the arrival of about 150 members of an anarchist group known as the “Black Bloc,” so named for their dark clothing and masks. The black-clad anarchists threw firecrackers and rocks at the police guarding the rally. They also smashed windows at the Student Union and tossed Molotov cocktails that ignited fires near the campus bookstore. Notably, this anarchist group was largely but not entirely composed of outsiders to the campus, non-students, who saw new opportunities for intolerance of free speech and violence. At that point, police determined that they could not guarantee security, cancelled the event, and escorted Yiannopoulos from the building. The university deplored the violence in a statement: “We regret that the threats and unlawful actions of a few have interfered with the exercise of First Amendment rights on a campus that is proud of its history and legacy as home of the Free Speech Movement.”¹⁷

On March 2, 2017, a student group affiliated with the American Enterprise Institute (AEI) invited AEI resident scholar Charles Murray to speak at Middlebury College. Middlebury’s Political Science Department co-sponsored the event. Murray is a well-known social scientist who is the co-author, with Richard Herrnstein, of *The Bell Curve: Intelligence and Class Structure in American Life*, a controversial book that raises issues of race and intelligence. A day before the event, a student newspaper published a letter from some 500 alumni and students who condemned Murray’s visit, calling it “a decision that directly endangers members of the community and stains Middlebury’s reputation by jeopardizing the institution’s claims to intellectual rigor and compassionate inclusivity.” On the following day, as Murray took the stage, some 400 students turned their backs to him and started chants to drown out his remarks. This noisy protest prevented him from speaking from the podium.

Unable to quiet the disrupters, Middlebury officials moved Murray to a video studio set up for the occasion so that Murray could give his talk, followed by questions from the moderator, Allison Stanger, a professor of international politics and economics, who engaged Dr. Murray in vigorous and challenging dialogue. The sounds of demonstrators, inside and outside the studio building, punctuate the video recording, along with fire alarms which the protesters periodically triggered. As Professor Stanger and Murray

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left the building to enter a car, protesters surrounded the car, pounded on it, and tried to prevent them from leaving. A masked person grabbed Professor Stanger’s hair, twisted her neck, and threw her to the ground, causing a concussion. Dr. Stanger was treated and fitted with a neck brace at a nearby hospital emergency room. Middlebury applied light sanctions on some 67 students, but none were suspended or expelled.¹⁸

A month later, on April 6, another demonstration prevented Heather Mac Donald from speaking at Claremont McKenna College in California. Mac Donald is a fellow of the Manhattan Institute and the author of the book *The War on Cops: How the New Attack on Law and Order Makes Everyone Less Safe*. The Rose Institute of State and Local Government, a research institute on the campus of Claremont McKenna, had invited her. A group that defined itself as “students of color at the Claremont Colleges” called Mac Donald a “notorious white supremacist fascist,” and announced “that we cannot and will not allow fascism to have a platform.”¹⁹

On the day of the event, some 250 protesters blocked the entrance to the athenaeum where Mac Donald was scheduled to speak. They were a mix of students and local residents, some of them wearing masks. They

chanted “Black Lives Matter” and “Shut it down.” The Claremont police department concluded that any attempt to clear the entrance by force would have created “unsafe conditions” for all concerned, and Mac Donald spoke before an almost empty auditorium. Her talk was live-streamed and recorded for later viewing. College President Hiram Chodosh reacted forcefully: “The breach of our freedoms to listen to views that challenge us and to engage in dialogue about matters of controversy is a serious, ongoing concern we must address effectively.” In contrast to Middlebury, Claremont suspended three students for one year and two for a semester.²⁰

The Role of Administrators and Faculty in Defending Free Speech

In an interview with *Inside Higher Ed*, Mac Donald declared: “I think this should be a wake-up call to the faculty across the country. They have been given the extraordinary privilege of tenure to protect their own freedom of speech and thought.” But when the free speech of campus visitors is challenged, “the faculty are by and large missing in action.”²¹ In the final analysis, of course, it is only administrators who can set policy and enforce it. They must insist that there be zero tolerance for mob rule and intimidation of speakers.²² Along with Jonathan Haidt’s Heterodox Academy, the American Council of Trustees and Alumni (ACTA) is working to educate the academic community—trustees in particular—on how to adopt principled stands and effective approaches to these egregious free speech violations.

The record of administrators remains mixed. In many cases they have contributed to the narrowing of free speech on college campuses. FIRE surveyed 345 public schools and 104 private schools. According to data compiled in 2017, no less than 178 institutions, or 39.6% of higher learning, maintained speech codes that substantially prohibit constitutionally protected speech. It is an encouraging sign of progress that this figure represents an almost 10% drop from 2016.²³ The Supreme Court has repeatedly ruled that under the First Amendment restrictions on free speech are unconstitutional unless a clear, present, and imminent danger

of lawless action exists.²⁴ Under the First Amendment, neither “offensive” speech nor hate speech are subject to restriction.²⁵ In line with this principle, over the past two decades federal courts have overturned speech codes at public colleges and universities deemed to violate constitutional provisions. Thus in 1999, the Supreme Court in *Davis v. Monroe County Board of Education*, 526 U.S. 629, 633, defined student-on-student harassment as discriminatory, unwelcome conduct “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.” In this case, the conduct found by the court to be harassment was a months-long pattern of conduct, including repeated attempts to touch a victim’s breasts and genitals together with repeated sexually explicit comments directed at and about the victim. Hence, what is prohibited is not simply expression, but rather conduct far

To this day, numerous speech codes exist in violation of the Supreme Court’s clear language, which should be used as a standard for all institutions, public and private.

beyond an off-color joke or an offensive op-ed piece in a student newspaper.

The guarantees of the First Amendment generally do not apply to private institutions. Even when private colleges receive federal funds, compliance with the First

Amendment is not among the obligations that are linked to these grants of money. California is the only state in the union that under the so-called “Leonard Law” (Section 94367 of the Education Law, enacted in 1992 and amended in 2006) prohibits private, non-sectarian institutions of higher education from sanctioning student speech that, when practiced outside the facility, would be protected by the First Amendment.²⁶ Still, even when not legally required by the First Amendment, most private institutions of higher learning arguably do promise by contract freedom of speech, and claim to uphold the free exchange of ideas. Unfortunately, actual practice at both public and private institutions all too often falls short of these commitments. To this day, numerous speech codes exist in violation of the Supreme Court’s clear language, which should be used as a standard for all

institutions, public and private. The situation appears to be worse at liberal arts colleges than at research universities. The smaller size of colleges may create stronger pressures for conformity.²⁷

For example, Bates College in Maine, a highly regarded liberal arts college, has a speech code which transgresses both the letter and spirit of *Davis v. Monroe County Board of Education*. The code prohibits “bias incidents” which are defined as follows:

A bias incident is any event or intolerance or prejudice, not involving violence or other criminal conduct, intended to threaten, offend or intimidate another because of the other’s race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age or physical or mental disability. Examples of bias incidents include hate speech, gay bashing, racist epithets, religious slurs, sexist jokes or cartoons, hate mail, offensive graffiti, or disparaging remarks on social media sites. Such incidents create a socially divisive atmosphere for members of the community targeted and negatively affect the campus climate.²⁸

However well intentioned, this policy cannot but have a chilling effect on discourse on topics such as race, religion, and gender—or even on something as innocent as inappropriate laughter. Instead of appropriately fostering shared values of civility in vigorous debate and dialogue, it creates an environment in which both teachers and students must think twice before speaking up, lest they face charges of insensitivity or aggression. It subjects political expression to investigation and possible punishment simply because a person feels offended. Terms such as “hate speech” or “disparaging remarks” are notoriously subjective. There should be no right to be safe from ideas or words that merely upset, no matter how deeply, unless, according to the standard set by the *Davis* case, the incident “effectively bars the victim’s access to an educational opportunity or benefit.”

Other speech codes seek to protect students against so-called “micro-aggressions.” The term micro-aggressions has been popularized by Professor Derald Wing Sue of Columbia University’s Teachers College. Sue defines micro-aggressions as “verbal, behavioral, and environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, negative racial, gender, sexual orientation, and religious slights and insults to the target person or group.”²⁹ As ACTA Communications Officer Christine Ravold noted in *National Review Online* on May 7, 2015, the unwitting collegian convicted of micro-aggression reminds one of poor Parsons in George Orwell’s *1984* about to be hauled off for yet more torture: “Thought-crime is a dreadful thing, old man . . . It’s insidious. It can get hold of you without your even knowing it.”

A “Bias-Free Language Guide” issued by the University of New Hampshire in 2013 shows how such speech guides enter the realm of the absurd. The guide sought to make the University of New Hampshire community aware of bias in its daily language. Here are some examples of terms that were found to be problematic and their preferred alternatives:

Problematic	Preferred
Seniors, senior citizen, elder	People of advanced age
Rich	Person of material wealth
Obese, overweight people	People of size
American	U.S. citizen
Foreigners	International people
Illegal alien	Undocumented immigrant
Homosexual	Gay, lesbian, same gender
Sex change surgery	Sexual reassignment
Manpower	Workforce
Policeman	Police officer
Opposite sex	Other sex ³⁰

To the uninitiated, the problematic character of these terms may not be obvious. Among those perplexed was the president of the University of New

Hampshire, who for unexplained reasons only found out about the guide two years after it had been issued. In a statement released on July 30, 2015, President Mark W. Huddleston disowned the guide, ordered it removed from the University's website, and declared: "Speech guides or codes have no place at any American university."³¹

Under a program funded by the National Science Foundation in 2001, the University of New Hampshire had previously also sought to prevent gender micro-aggressions. Such micro-aggressions included "sexual objectification," "denial of the reality of sexism," and "sexist humor/jokes." They were said to cause "migraines, heart disease, autoimmune disorders, depression, anxiety, body image dissatisfaction, and eating disorders."³² Recently, a professor of psychology at Northeastern University, Lisa Feldman, lent support to the idea that micro-aggressions can harm our health. In an article entitled "When is Speech Violence?", Feldman argued that words can have a powerful impact on our brains and even kill neurons. "Scientifically speaking," therefore, it is important to "halt speech that bullies and torments. From the perspective of our brain cells, the latter is literally a form of violence."³³ In preparation for the talk by conservative commentator Ben Shapiro at the University of California–Berkeley in September 2017, the dean of students promised "support" and "counseling services." "We recognize these events can engender harm for some."³⁴ The claim that listening to certain speakers will cause harm is of dubious validity, and the alleged scientific nature of these findings is questionable. We do not really know what kind of speech is harmful. More importantly, we do not know whether greater harm is caused by suppressing offensive ideas than by allowing them to be aired and debated.³⁵ What is clear is that the suppression of politically incorrect speech is in line with Marcuse's tenet of "repressive tolerance."

Also suppressing the free flow of ideas and fostering a culture of victimhood are so-called "trigger warnings" that are meant to alert students about books, lectures, speakers, or anything in the curriculum that might cause extreme emotional reactions. The negative consequences of implementing such practices are likely to be vast and destructive. Seven

humanities professors who described themselves as “faculty of color, female, and/or queer faculty,” have pointed out the deleterious consequences of trigger warnings. They described deans and other administrators investigating complaints by students that they have encountered “triggering” material in their courses.³⁶ Professor Jeannie Suk Gersen, who teaches rape law at Harvard University Law School, for example, was asked by students to issue “trigger warnings” to prevent emotional injuries, and some suggested that rape law not be taught at all.³⁷ In a statement issued in August 2014, the American Association of University Professors (AAUP) called trigger warnings a threat to academic freedom. Such practices “suggest that classrooms should offer protection and comfort rather than an intellectually challenging education. . . . The effect is to stifle thought on the part of both teachers and students who fear to raise questions that might make others ‘uncomfortable’.”³⁸



Signs of Hope: The Chicago Principles

The events and policies described above reveal the growing threat of intolerance in today’s American institutions of higher education. And yet there are signs that some educators have become aware of the seriousness of this situation. In a report issued in early 2017, FIRE noted that whereas in 2008, 79% of public colleges and universities had speech codes, nine years later, in 2017, that percentage had declined to under 40%.³⁹ Among private institutions, the University of Chicago has taken the lead in affirming the importance of unfettered freedom of expression, and a growing number of other colleges and universities have endorsed this commitment to open inquiry.

In July 2014, President Robert Zimmer and Provost Eric D. Isaacs of the University of Chicago appointed a Committee on Freedom of Expression. The charge was to draft a statement “articulating the University’s overarching commitment to free, robust, and uninhibited debate and deliberation among all members of the University’s community.” The committee issued its report in January 2015. It noted that already back in

1902, when celebrating its decennial, the University of Chicago had stressed the principle of complete freedom of speech on all subjects. In the following years, other presidents had continued this obligation to discuss any problem that presents itself.

Of course, the ideas of different members of the University community will often and quite naturally conflict. But it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.

The freedom to debate and discuss the merits of competing ideas does not, of course, mean that individuals may say whatever they wish, wherever they wish. The University may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the University. In addition, the University may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities of the University. But these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner that is inconsistent with the University's commitment to a completely free and open discussion of ideas.

In a word, the University’s fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the University community, not for the University as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the University’s educational mission.

As a corollary to the University’s commitment to protect and promote free expression, members of the University community must also act in conformity with the principle of free expression. Although members of the University community are free to criticize and contest the views expressed on campus, and to criticize and contest speakers who are invited to express their views on campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe. To this end, the University has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it. . . . That is our inheritance, and it is our promise to the future.⁴⁰

By January 2018, 34 colleges and universities or university systems had adopted or affirmed the University of Chicago’s principles of free expression, regarded as the gold standard for free speech policy.⁴¹ On May 9, 2017, a “Campus Free Speech Protection Act” became law in Tennessee. Among other provisions, the law prohibits preventing the discussion of ideas

“however offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed those ideas may be to some students or faculty.”⁴² On July 31, 2017, the legislature of North Carolina adopted a law “to restore and preserve free speech” on the campuses of the University of North Carolina. Endorsing the 2015 declaration of the University of Chicago, the law affirmed openness to all speakers, including those whose “ideas and opinions they [students] find unwelcome, disagreeable, or even deeply offensive.” The act also called for disciplinary action against anyone “who substantially disrupts the functioning of the constituent institution or substantially interferes with the protected free expression rights of others.”⁴³ Lawmakers in 22 other states are considering similar legislation.⁴⁴

Others concerned with fostering a climate of free speech and intellectual diversity are exploring whether a less statutory approach from state legislatures would be better. Another related approach, for example, is to deploy legislative resolutions to nurture a culture friendly to First Amendment rights.

The general environment in higher education with respect to freedom of expression remains severely challenged, but there is reason to think that a turnaround is underway. Organizations such as ACTA, FIRE, the National Association of Scholars, and Heterodox Academy have done yeoman work, and many times have been able to persuade colleges and universities to protect free expression and avoid the inevitable embarrassment of violating the core principles of the academy. Such a return to free inquiry will ratify the ideal of a university which Thomas Jefferson affirmed at the founding of the University of Virginia in 1819:

This institution will be based on the illimitable freedom of the human mind. For here we are not afraid to follow truth wherever it may lead, nor to tolerate any error, as long as reason is left free to combat it.



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