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THE REVIEW

What Students Think About Free Speech

By *Erwin Chemerinsky and Howard Gillman*

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CHRONICLE REVIEW PHOTO  BY JULIA SCHMALZ

Although it is foolhardy to generalize about a generation of college students, their understanding and attitude about freedom of speech was strikingly different from what we, two baby-boomers, expected when we began teaching a course on free speech on college campuses to 15 freshmen at the University of California at Irvine.

In the course we studied the basic principles of freedom of speech, including its history through Supreme Court decisions addressing restrictions on speech during World War I, World War II, the McCarthy era, the civil-rights movement, and the Vietnam War. We discussed categories of speech that have been traditionally considered outside of First Amendment protection — such as incitement, fighting words, true threats, harassment, and defamation. We also looked at all of the decisions on student speech and focused a great deal of attention on recent controversies on college campuses.

At the very beginning of the course we discussed [the story](#) of the Sigma Alpha Epsilon fraternity members at the University of Oklahoma who had been videotaped chanting racist slurs aboard a bus. We had the students consider a hypothetical scenario in which one of the expelled students sues the university, claiming a violation of First Amendment rights. When asked to vote whether the student or university should win the lawsuit, our students voted unanimously in favor of the university and against free-speech rights. We concluded the course by polling them again on the same problem, and then the students split almost evenly. The difference in the discussion was remarkable; the instinctive desire to eradicate racist speech was replaced by all of the students seeing the need to strike a balance between free speech and creating a positive learning environment for all on campus.

Still, despite some evolution in their thinking, our students were skeptical of well-established precedents for the protection of offensive or hateful speech. Why? Here's what we learned from them:

This generation has a very strong and persistent instinct to protect others against hateful, discriminatory, or intolerant speech, especially in educational settings.

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The historic link between free speech and the protection of dissenters and vulnerable groups is outside their direct experience of today's students.

This is the first generation of students to be educated, from a young age, not to bully. For as long as they can remember, their schools have organized “tolerance weeks.”

Their teachers and coaches are (thankfully) less likely to mock or shame students for poor performance. Compared to when the two of us were in middle and high school in the 1960s and '70s, there are much greater efforts to avoid making young people feel bad about themselves.

Our students often related personal stories of how bullying at school and on social media had affected people they cared about. They are deeply sensitized to the psychological harm associated with hateful or intolerant speech, and their instinct is to be protective. We realized that common descriptions of this generation of college students too often omits this sense of compassion and the admirable desire to protect their fellow students.

Additionally, arguments about the social value of freedom of speech are very abstract to today's undergraduates because they did not grow up at a time when the act of punishing speech was associated with hurting people and undermining other worthwhile values. Our students knew little about the history of free speech in the United States and had no awareness of how speech often had been directed to helping vulnerable political minorities: anti-imperialists, workers' rights advocates, and progressives in the 1910s and '20s; religious minorities during World War II; leftists during the McCarthy era; civil-rights advocates; anti-war protesters during the Vietnam War; student free-speech advocates.

The two of us grew up during the time of civil-rights and anti-Vietnam War protests. Much of the speech that was considered important to protect was raucous and even profane. Protesters burned draft cards, flags, and bras; cities prosecuted people who wore T-shirts that expressed obscene sentiments about the draft; authors, publishers, and even comedians risked jail by pushing against historic prohibitions against indecency or obscenity. We saw firsthand how officials attempted to stifle or punish protesters by claiming that they were defending community values or responding to threats to the public peace. We also saw how stronger principles of free speech assisted the drive for desegregation, the push to end the war, and the efforts of historically marginalized people to challenge convention and express their identities in new ways. In our experience, speech that was sometimes considered offensive, or that made people uncomfortable, was a good and necessary thing for progress.

For today's students, the historic link between free speech and the protection of dissenters and vulnerable groups is outside their direct experience, and too distant to affect their feelings about freedom of speech. As a result, their initial instinct was to be more trusting of the government and other public institutions, including the university, to regulate speech to protect students and prevent disruptions of the educational environment.

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As the course went on, our students gained a deeper understanding of the potential for the abuse of power when officials are authorized to restrict unpopular speech. However, they continued to be concerned that the court's categories of unprotected speech were not broad enough to deal with certain harms that concerned them. For example, they worried that the definition of "incitement" was not broad enough to allow the government to stop international terrorists from using the Internet to recruit converts and help those recruits plan terrorist attacks.

They supported [the rights](#) of Westboro Baptist Church protesters, known for staging antigay protests at military funerals, among other spectacles, even though that speech was deeply offensive and inflicted emotional harm. But in educational settings, they wanted officials to do all they can to create a supportive learning environment. There was no support among our students for the right of a faculty member to resist a university requirement to include "trigger warnings" on syllabi. They acknowledged the right of a faculty member to criticize such a mandate, but as was the case with their K-12 teachers, they thought the main role of the faculty member was to create a nurturing learning environment, not to be confrontational. They were not used to teachers who believed that learning could take place in an environment where students were made uncomfortable, or were forced to reflect on disturbing topics, or had their views challenged rather than always validated.

Studying free-speech law made them much more nuanced in drawing distinctions as to what speech to allow and what to punish. Some drew a distinction based on whether the hateful speech was directed to others or expressed more generally. This accounts for some of the change in votes regarding the Sigma Alpha Epsilon fraternity example. But they worried that if the university only restricted speech that amounted to "harassment" or "true threats," there would still be too much room for exclusionary, discriminatory, or insulting speech by people on campus.

The students came to recognize that campus officials should not protect people from being made uncomfortable by the expression of strongly-held political or religious views. They agreed that campuses should not be cleansed of all controversial opinions or all expressions that some might consider offensive.

Still, they remained skeptical of the value of defending hateful or discriminatory speech that was not clearly tied to deeply held beliefs about religion or politics. Divisive ideas that were sincerely held seemed like a different thing than being mean, trying to make people feel bad, or other speech acts that seemed to have no social value worth protecting. The on-campus presence of people who had hateful or judgmental opinions — even if those opinions were expressed off campus or online — was a serious matter of concern. Our students acknowledged that one could decide to deal with this problem with more speech rather than restrictions or punishments, but they were not sure this was enough to protect their peers from psychological distress.

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Finally, we realized that current debates about the appropriate boundaries of campus free speech will not be a mere replay of 1990s battles over campus “hate speech” codes.

We found what has recently been reported by the Pew Research Center to be true: Millennials are much more supportive of [censoring offensive statements about minorities](#). They are also much less amenable to being persuaded by countervailing arguments about the need to protect hateful speech. This is not just a matter of not being exposed to pro-speech arguments or not taking them seriously. These were bright and thoughtful students at a leading research university, and they are thinking about these issues in fresh ways.

As debates continue about the appropriate boundaries of free speech on college campuses, strong free-speech advocates — and we consider ourselves in this category — cannot assume that the social benefits of broad free-speech protections will be automatically appreciated by a generation that has not lived through decades-long struggles against censorship and punishment of protesters, dissenters, and iconoclasts. As American history has demonstrated, there is no natural or inevitable instinct to support speech that many people consider disruptive, offensive, or even countercultural. The country has a much longer history of suppressing unpopular speakers than protecting them. The pro-free-speech case needs to be made anew, and

it is not the responsibility of incoming students to have already internalized the arguments.

In making the case, pro-speech advocates will not win any new friends if they are dismissive of this generation's expectation that we care about the psychological impact that hateful and intolerant speech has on its victims. The necessity of creating supportive and nondiscriminatory learning environments must be acknowledged, and advocates will need to be explicit about how broad protections for speech — including offensive and hateful speech — can be reconciled with this commitment.

Source: Chemerinsky, E., & Gillman, H. (2016, April 3). *What Students Think About Free Speech* - The Chronicle Of Higher Education. The Chronicle of Higher Education.
<https://www.chronicle.com/article/what-students-think-about-free-speech/>