

Protests, Free Expression, and College Campuses

Evan Gerstmann

Much has been written about university student protests against conservative speakers on campus, and there has been a great deal of media coverage as well. The bulk of the coverage has been critical, lamenting the lack of respect that today's students have for free speech and meaningful debate. Across the country, legislation is being considered that would mandate punishment for disruptive students and remove university autonomy in dealing with controversial social issues. This legislation will be discussed in greater detail later in the article.

Is this concern overly hyped? Is this legislation really necessary, or even positive? While free speech is a cornerstone of American democracy and is central to the mission of higher education, the coverage of this issue has generally lacked nuance and has failed to pay attention to important distinctions. There is a difference between objecting to regular campus speakers and objecting to commencement speakers who are being honored by the university. There is a distinction between protest and disruption. There is a distinction between cancelling speakers because their views are offensive to some and cancelling speakers because their tactics violate the privacy and safety of students. There is a distinction between how to respond to disruption of campus events by students and disruption by outside groups. Very little of the coverage and writing about these issues take these crucial distinctions into account.

Protesting Campus Speakers vs. Commencement Speakers

Universities should certainly welcome informative speakers of disparate points of view. Students have much to learn from both Ted Cruz and Bernie Sanders; Tucker Carlson and Rachel

Maddow; Clarence Thomas and Ruth Bader Ginsburg. Students have absolutely no right to keep a speaker off of their campus simply because they don't like their point of view. If a professor invites a member of the Nazi Party to campus (and I should mention that not only am I Jewish, but my father was born in Nazi Germany and I lost family in the Holocaust), for example, that should be allowed because it is good for students to see what the face and voice of evil looks and sounds like. Forewarned is forearmed.

Commencement speakers, however, are another matter. Two of the most heavily covered incidents of "political correctness run amok" were the cancellations of the commencement addresses by two very accomplished women, Christine Lagarde and Condoleezza Rice. They are, respectively, the current head of the International Monetary Fund (IMF) and a former secretary of state. They both would make fine speakers at any university, but not necessarily commencement speakers. Both stand for things that students are perfectly entitled to object to, and do. In 2014, Christine Lagarde was invited to be a commencement speaker at Smith College, while Condoleezza Rice was invited to be a

commencement speaker at Rutgers University. At Smith, students and faculty protested Lagarde's invitation because of her representation of IMF policies, which critics argue have not had a positive influence on developing economies. At Rutgers, students protested Rice's invitation based on her support of the Iraq War. It was completely reasonable for students to object to both women as commencement speakers.

Why is commencement different? Many reasons. Serving as a commencement speaker is not just a speaking opportunity—it is a major honor by a university. Commencement addresses are often accompanied by honorary degrees awarded to the speaker. Smiling photographs are taken with the university president, who is generally expected to praise the speaker during an introduction. In short, when a university chooses a commencement speaker, it is saying that he or she represents the values of the university. As accomplished as Secretary Rice is, there is nothing wrong with students arguing that she does not represent their university's values.

Further, few students want to skip their own commencement, so the students are a captive audience. Free speech is generally understood as protecting one's right to reach a *willing* audience, not an unwilling one. It is intolerant to try to stop a speaker from addressing students who want to hear her, but it is legitimate to protest the choice of a speaker you must listen to. The commencement speaker is given the rarest of all platforms—one that reaches all



Conservative commentator Milo Yiannopoulos holds protest signs while speaking at the University of California in Berkeley, California, September 24, 2017.

graduating university students whether they want to hear her or not. In fact, the Supreme Court ruled in *Lee v. Weisman* (1992) that a commencement invocation given by a rabbi at a high school graduation violated the Constitution because graduates were effectively forced to sit through it.

Finally, a commencement address is not a give and take. The speaker delivers a speech and the students are supposed to respectfully listen. In other settings, a controversial speaker can expect tough questions from the students, faculty, and staff. Not a commencement speaker. Protesting the choice of a speaker is therefore the *only* opportunity students have to dissent.

Protest vs. Disruption

No one has a right to block people from going to hear a speaker, or to use violence, or to shout down, or use other

tactics to silence a speaker. That line has been crossed in various instances, such as the injury inflicted upon a professor at Middlebury College in 2017 when she tried to interview libertarian conservative political scientist Charles Murray. The professor suffered whiplash and a concussion after protestors stormed the interview. Middlebury later disciplined 67 students for their role in the protest, citing “acts of disruption and violence, where available means of protest were declined.” Violent riots erupted in 2017 at the University of California, Berkeley, ahead of a scheduled appearance by conservative personality Milo Yiannopoulos. Given that there are thousands of colleges and universities, however, these instances represent a tiny fraction of the responses to controversial speakers on campus. The advocacy group FIRE (Foundation for Individual Rights on Campus) maintains a “disinvitation

database,” which tries to catalog these instances. FIRE does some excellent work and its data base is useful, but the data base does not clearly distinguish between true disruption and legitimate protest. I encourage readers to look at the website and make their own judgments about whether violence and disruption is really an epidemic on university campuses today.

Violent protests and other unacceptable methods get wide coverage, but they often get lumped together with the much larger group of situations where students and faculty are merely exercising their own free speech, giving the impression that violent students are running amok nation-wide. Looking again at the examples of Christine Lagarde and Condoleeza Rice, it should be emphasized that both speakers made their own decision to withdraw after students and faculty peacefully voiced their objec-

tions. That is a very different situation from the violent protests we saw at Berkeley and Middlebury College. Yet the media rarely makes this distinction. Reporting on the cancellation by trans activist Janet Mock, who was supposed to speak at Brown University in 2016, *The Daily Beast's* headline screamed "Brown Students Shut Down Trans Activist's Speech." They did no such thing. In fact, a mere 160 out of nearly 9,000 Brown students signed a petition objecting to her talk. Mock decided to cancel. That's a shame, but students have every right to protest a speaker they don't like, and there was no threat of violence or disruption.

Disinviting Speakers for the Right Reasons, Including Tactics

Various conservative student groups have taken up the strategy of inviting speakers who can be generally described as "provocative." Provocative speakers draw attention and can provoke discus-

sion. But there are lines that should not be crossed, and if a university becomes aware that a speaker regularly crosses those lines, that speaker should be disinvited. A clear example of this would be Milo Yiannopoulos, who was disinvited by the University of California following the protests at Berkeley. While universities should not knuckle under pressure to violent protests, Berkeley was well justified in disinviting Yiannopoulos. This is not because of his views, but because of his tactics. At another university talk, Yiannopoulos put the student ID picture of a transgender student on a large screen, without that student's permission, and told the audience that he would like to "bang him."

This tactic is a violation of student privacy, safety, and university rules against sexual harassment. However, media coverage of this aspect of the Yiannopoulos controversy was minimal. As long as student groups seek provoca-

tive speakers, universities have an obligation to keep speakers who threaten other student's rights off of campus. We should keep this in mind when we debate student free speech and the right to protest.

Protests by Outside Groups

President Trump famously responded to the violence at Berkeley by threatening to revoke that school's federal funds. However, much, perhaps *all* of the violence was perpetrated by outside groups that were not affiliated with the university. It is difficult to know exactly which organizations were involved because many of the violent protesters wore masks. Violent outside protesters coming to campuses is a serious issue and we need to be discussing how best to deal with it. The last thing we should do is to conflate such actions with student protests as President Trump did. As we will see in the next section, some of the proposed legislation sweeping the nation makes a similar mistake.

The Move to "Campus Free Speech" Bills

According to the *Chronicle of Higher Education*, at least 10 different states are considering or have passed some form of campus free speech legislation. Some, such as Virginia's legislation, merely prohibit public universities from violating the First Amendment rights of faculty, students, and invited speakers. Such legislation simply restates what constitutional law already clearly requires. Other bills are remarkably broad, enough to make them ill-considered, especially given the distinctions discussed above. A bill in California forbids administrators from disinviting speakers, yet it makes no distinction between "controversial" speakers and speakers who are likely to violate university harassment policies. A bill in Wisconsin includes mandatory suspension for students who twice engage in "violent, abusive, indecent, profane, boisterous, obscene, unreasonably loud or other disorderly conduct that

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interferes with the free expression of others.” These bills have the effect of undermining the autonomy of universities to deal with their own particular situations, which are often nuanced and require thoughtful responses to a broad variety of situations. Requiring universities to suspend or expel students who are “loud” or “boisterous” is unlikely to be helpful. Is giving a hardy “boo” to a speaker who denigrates minorities now an expellable offense? Are group marches going to be too “boisterous,” leading to suspensions? And these bills do nothing to help universities deal with the problem of outside agitators.

In sum, university free speech is a complex problem with many facets. The trend of sensationalized coverage that mixes together very different kinds of protests and situations generates more heat than light. A march towards one-size-fits-all legislation is not likely to be productive. Universities must look at their student codes of conduct and

make sure that they strike the right balance among free speech, safety, privacy, and respect for the rights of others. They must do a better job coordinating with police to keep violent outside agitators off of campuses. Legislators should support rather than micromanage universities. Finally, the media must do a better job of covering a complex issue without resorting to sensationalism. 🌍

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suggested resources

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

“Know Your Rights: Demonstrations and Protests,” American Civil Liberties Union, 2017 www.aclu.org/know-your-rights/what-do-if-your-rights-are-violated-demonstration-or-protest

Student Press Law Center, www.splc.org

This website includes a section for classrooms, with story ideas for high school journalists; online quizzes on the First Amendment and other topics; presentations and handouts; and information for advisers.

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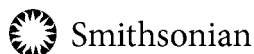
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