Conflicting Opinions: Speech Rights and Student Protests on College Campuses

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Introduction

College students have a widespread history of exercising their rights to free speech through protest as a means of expressing displeasure with the status quo. While some administrators consider it a disruption to academic learning on college campuses, extensive research has found that student activism as a form of involvement on campus lends itself to the development of leadership qualities that contribute to being an agent of social change and higher levels of civic engagement (Biddix, 2014; Chambers & Phelps, 1993; Kezar et al., 2017). In recent years, we have seen an increase in student activism with the influx of Generation Z students (born between 1995 and 2010) on campus, much of it geared toward the subject of the speech itself (NACAC, 2018; Seemiller & Grace, 2016; Selingo, 2018). In the wake of heightened tensions in the country's current political atmosphere, more students are actively participating in activism and protests on campus, especially those geared toward social justice and inclusion (NACAC, 2018). Students' speech rights have gained notoriety as controversial speakers have been shouted down by student groups who classify the messages as hate speech. Some scheduled events have even escalated to violence or canceled in advance to avoid that possibility at all (Darnell, 2018).

In response to these reactions, several institutions are working to balance speech protections while maintaining an inclusive environment for students. Some states and universities, however, have implemented or revised policies to protect freedom of expression regardless of its content in order to uphold students' First Amendment rights. Speech rights are actively debated by college administrators and policymakers across the country in response to the increase in campus demonstrations and have garnered attention from all sides of the political spectrum (Selingo, 2018). Though the First Amendment provides the framework for the right to free speech, there is a divide on where the line, if any, should be when it comes to protecting the freedom of speech on college campuses that is considered hateful or offensive. The purpose of this article is to provide an overview of the conflicting opinions around speech rights on college campuses and offer recommendations to higher education administrators working to maintain a safe environment for students while complying with sanctioned free speech guidelines at their respective institutions.

Protections Under the First Amendment

The concept of free speech seems simple when expressed as one succinct statement in the First Amendment. In practice, it is one of the most intricate and contested rights on college campuses, disputed among university administrators, governments, and even students themselves. Protections under the First Amendment have been in place since the development of the U.S. Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (U.S. Const. Amend I)

It is imperative to first define what is and is not protected under the First Amendment, which broadly defines the right to free speech and protest, as well as peaceful assembly. While it permits

interpretation of time, place, and manner restrictions to speech for matters such as public safety, limitations cannot be made in response to the content of the speech itself (Combs, 2018). For example, this means that an institution can prohibit a demonstration that blocks a public roadway but cannot refuse a speaker on campus based on the content of his or her speech, even if it may be considered hateful (Darnell, 2018).

Legally, very few types of speech are not protected under this amendment: threats, harassment, and the incitement of illegal activity (Chemerinsky, 2018). Outside these restrictions, all speech is protected by the U.S. Constitution. However, within higher education, it is important to note that First Amendment rights are limited to state actors, which include public colleges and universities, but do not include private universities that are not bound to uphold First Amendment rights. This means that a private institution is well within its rights to impose speech codes, ban certain types of speech, and prohibit student activism on their campuses in ways that public institutions cannot (Kaplin & Lee, 2014). For the purposes of this article, discussion will be limited to public institutions unless otherwise noted.

It would be easy to categorize opinions regarding First Amendment rights under two schools of thought: those who agree that free speech should be limited or restricted when it is considered hate speech, and those who do not. Yet even the definition of hate speech is contested. Hate speech is commonly considered as inflammatory or offensive language toward a specific person or group based on identifying features such as race, sexual orientation, or religion (Harris & Ray, 2014). However, because offensive language is subjective, this loose characterization is interpreted differently from person to person. Legally, "hate speech" has no definition, but has repeatedly been upheld as protected speech under the First Amendment, which does not prohibit derogatory language (Hobson, 2017).

A Brief History of Student Activism on Campus

While campus demonstrations shouting down speakers voicing hateful or offensive speech have recently gained visibility, free speech has been a topic of conversation on campus for decades. One of the most prominent examples of student protest was the Free Speech Movement of the 1960s, which began at the University of California (UC), Berkeley in 1964. These protests stemmed from students' disagreement with the UC Berkeley administration closing the free speech zone near campus that students had utilized to recruit students to speak out against civil inequality during the civil rights movement. After students' speech rights were stifled in September, thousands of UC Berkeley students staged a sit-in on campus to protest the administration's decision. Peaceful protests by students continued through December of that year while university leadership failed to compromise on their decision to end the free speech zone. Finally, after more than 800 students had been arrested for non-violent demonstrations on campus, the governing body at UC Berkeley agreed that "the content of speech or advocacy shall not be restricted by the university" on December 8th, 1964 (Cohen, 2015, p. 306).

As the largest act of campus protest at the time, the Berkeley Free Speech Movement was a significant win for the students at UC Berkeley, demonstrating that protest could be utilized to protect students' values and affect change (Cohen, 2015). The events of the movement have inspired college students across the country to exercise their freedom of speech to protest issues from anti-war sentiments, to tuition hikes, to gun violence. During apartheid in South Africa in 1985, students at Columbia University protested the institution's investments in South African companies that supported the country's segregation policies. Over three weeks, hundreds of students staged protests, hunger strikes, and blockades to garner the attention of Columbia's administration and convince them to divest from South Africa. Ultimately, Columbia severed ties with stocks related to apartheid and became the first major university to fully divest from South Africa. Not only was this a win for the student protestors, but it brought attention to apartheid across the country and motivated dozens of other divestment protests at institutions nationwide (Lee, 2016).

Today, students continue to exercise their right to free speech by protesting policies and principles that go against their values. The students of the free speech moments of the 1960s were largely early baby boomers who grew up in the aftermath of World War II when the red scare loomed, and Jim Crow laws were actively upheld. The students of today live in a world with similar social parallels to those of the 1960s and continue to speak out against administrations - and even people - whose values do not align with their own. However, there is a striking difference between this generation of activists and those of the 1960s free speech movements: in some cases, students are even speaking out against the speech itself (Selingo, 2018).

Free Speech Today: The Generation Z Experience

Research shows that there has been a marked generational shift in how the First Amendment, and particularly, hate speech, is viewed (Eagan et al., 2016; Kueppers, 2016; Poushter, 2015). A 2015 poll by the Pew Research Center found that 40 percent of Americans aged 18-34 believe the government should be able to limit offensive speech as compared to their Gen X (27 percent) and baby boomer (24 percent) counterparts (Poushter, 2015). In just one generation, support for restricting hate speech nearly doubled. In their 2016 book, Generation Z Goes to College, Corey Seemiller and Meghan Grace discuss this new generation of students who began entering college around 2013. Generation Z is considered the most racially diverse generation, and soon will be the largest living generation (Seemiller & Grace, 2016).

Generation Z has grown up in a world where significant pieces of legislation like the Civil Rights Act, the Voting Rights Act, and the Americans with Disabilities Act have always existed. They have watched the racial makeup of the country continue to diversify, witnessed the nationwide legalization of marriage equality, and watched more women and minorities advance to leadership roles. Generation Z has been referred to as the "activist generation" who are more engaged with civic service and social justice causes than their earlier peers (Jacoby, 2017). In the wake of a tragic shooting at their high school in 2018, several Parkland High School students spoke out in favor of gun control and garnered international attention around an urgent cause that directly impacted them, all before ever going to college (Beckett, 2019). As digital natives with constant accessibility to news and current events, this generation has grown up seeing how issues like immigration, gun and police violence, and policies that affect marginalized communities impact the world around them. Generation Z is highly socially motivated and cares deeply about equity and inclusion, which can be attributed both to the availability of information about inequality and the diverse makeup of the generation itself (Seemiller & Grace, 2016). This, paired with nearly constant access to information, lends itself to an early introduction to activism.

Politics and Student Speech

With the rise of political tensions in the country, students have become increasingly more divided on the issue of free speech and how it should be protected on college campuses. According to a 2016 survey by the Knight Foundation of over 3,000 college students, 70 percent agree that free speech should be protected, but that margin has narrowed since previous distributions of the survey (2016). Additionally, 73 percent of college students indicate that policies should be put in place restricting the use of intentionally offensive language (Knight Foundation, 2016). The 2016 survey even found that protests regarding matters of diversity and inclusion are more frequent than demonstrations protecting free speech (54 percent versus 22 percent, respectively) (Knight Foundation, 2016).

Students' political leanings have also changed. A 2015 survey of over 140,000 incoming college freshmen analyzed by the Higher Education Research Institute (HERI) at the University of California, Los Angeles found that fewer students categorized their political leanings as "middle of the road" than in the half-century history of the survey (Eagan et al., 2015, p. 4). This apparent political polarization

parallels a surge in student activism. Additional data analyzed by HERI in 2016 notes that 8.5 percent of students plan to participate in campus activism, which was identified as the highest rate of intended activism in decades, outnumbering even the students surveyed in the height of political activism of the late 1960s and 1970s (Eagan et al., 2016, p. 7; Kueppers, 2016). Other data have found similar increases in student activism. The National Association of College Admissions Counselors (NACAC) issued a survey to high school counselors in 2018 and found that over half have seen an increase in activism by their student body (NACAC, 2018). Though there is no definitive evidence that explains this increase, nearly a quarter of students indicated that political engagement was "very important" or "essential" to them (Eagan et al., 2015, p. 9).

This collection of data indicates that not only have we seen an apparent shift in students' values but that we could see an increase in students speaking out against what they consider to be hateful or offensive speech. This generation of students expects more than mere tolerance and fights for inclusion (Seemiller & Grace, 2016). According to Seemiller and Grace (2016), Generation Z "believe[s] that diversity is not only an asset but an essential factor in solving the world's problems and… bringing together different perspectives, experiences, and cultures makes a stronger society" (p. 87). These students' strong desire for equity and diversity may be an influential factor in their desire to speak out against what they feel goes against their values.

Conflicting Attitudes Toward Speech Rights on Campus

A major learning objective of attending college is preparing to engage with democracy and being introduced to opposing views and challenging ideas. College campuses should be designed for open debate and discussion as civil discourse is imperative to the development of critical analysis and the capability to meaningfully argue a position. Faculty and administrators must expose students to difficult material to maximize their understanding of a subject, even if that subject is sensitive or uncomfortable, if they wish to graduate students equipped with the ability to engage with disconcerting concepts (Whittington, 2018). In many cases, students agree. The 2016 Knight Foundation survey found that most college students still acknowledge that colleges should create an open learning environment where students are exposed to all types of speech and viewpoints (2018, p. 9). Despite this, students are standing up against what they consider to be hate speech and many do not agree that it should be protected under the First Amendment (Knight Foundation, 2018). Because of the commitment to social justice and equity by this generation, the rise in student activism geared at shutting down hateful and offensive speech is not that surprising. UC Berkeley remains a key player in campus activism. Today, however, many student demonstrations at the university are aimed at speakers and speech they find offensive rather than for unbridled speech rights. Recently, students have protested the speeches of speakers with whom their values do not align, including conservative commentator Ben Shapiro and right-wing activist Milo Yiannopoulos, whose speech at Berkeley was canceled after violence broke out. Before Yiannopoulos' scheduled speech at UC Berkeley, masked agitators interrupted a group of students protesting Yiannopoulos' appearance, setting fire to campus and throwing fireworks at police officers. The university was then forced to call off the speech to ensure the safety of students and campus guests, though administrators regretted that they were forced to restrict free speech on a campus that aims to uphold First Amendment speech protections for all (UC Berkeley, 2017).

Attitudes toward speech rights have shifted in this generation of college students, but legal protections under the First Amendment have not. Even as students place less value on unrestricted free speech, its place on campus has repeatedly been upheld by administrations and governments and championed by groups founded to protect free speech. Because the First Amendment does not define nor restrict hate speech, and public colleges are bound to uphold constitutional rights, campuses are obligated to maintain speech rights on campus. Apart from the legal implications, there are strong arguments for protecting free speech on campus. In her article on the importance of speech rights on

campus, LaQuasha Combs (2018) argues that restricting free speech, regardless of content, is dangerous because it may deter students from speaking their opinions at all. This may lead to a lack of civil discourse and stifled learning outcomes in college (Combs, 2018).

Some university systems have adopted rules to protect speech regardless of its content. At the University of Wisconsin, students are obliged to follow a "three strike policy" where they can be suspended or expelled for disrupting the free expression of another student or speaker on campus (University of Wisconsin, 2017). The University of North Carolina system, the state of Arizona, and others have also put legislation in place to protect speech on their public college and university campuses (State of Arizona HB 2563, 2018; University of North Carolina, 2017). Interestingly, the University of Chicago, a private institution not subject to comply with the First Amendment, has established one of the most stringent free speech policies in the country, stating that "concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas'' (Stone et al., 2014, p. 1). It is not to say that these policies seek to protect one type of speech over another; after all, protesting a protestor is also a protected speech right. However, advocates of unrestricted free speech on campus claim that disciplining those that disrupt speakers and free expression on campus will decrease the likelihood that a campus demonstration will escalate to violence like at the event at UC Berkeley (Combs, 2018).

In contrast, many colleges have implemented speech codes, or restrictions on speech by location or by content, in order to maintain a safe environment. Proponents of speech codes argue that these restrictions are necessary to protect students' well-being while upholding speech protections (Langford, 2006). Nearly one-tenth of all U.S. institutions have implemented free speech zones that restrict free speech to a specific area on campus (Ceci & Williams, 2018). However, these speech codes are often challenged as being unconstitutional when impeding the content of speech protected by the First Amendment (Harris & Ray, 2014). In an effort to restrict hate speech on campus, the University of Michigan has twice attempted to implement limitations on speech that demeans others on the basis of race, gender, religion, and sexual orientation (Ceci & Williams, 2018). Their efforts were struck down both in 1989 in Doe v. University of Michigan, and more recently, after they were sued by Speech First, a civil liberties watchdog (Ceci & Williams, 2018; Slagter, 2018). The Foundation for Individual Rights in Education (FIRE), an organization whose mission states that they "defend and sustain the individual rights of students and faculty members at America's colleges and universities," publishes a yearly speech code report that reviews the speech rights at more than 400 colleges and universities across the country (FIRE, n.d., para 1). According to their most recent report, 28.3 percent of the 466 colleges analyzed impose speech codes that infringe upon students' rights to free speech, though this number has decreased from the previous year's report by 4 percent (FIRE, 2018-a., para 1). As of 2018, the University of Michigan has earned a "red alert" by FIRE, which claims that the institution has at least one policy that restricts the speech of students on campus (FIRE, 2018-b.).

Recommendations for Higher Education Administrators

Despite the pushback on campus speech codes, there are institutions still working to ensure speech protections while maintaining an inclusive learning environment for students. Many articles offer advice to college administrators and student affairs professionals about this delicate balancing act. For example, Barbara Jacoby (2017) argues for "brave spaces," which she defines as "environments where there [is] trust and belief that students…can take the risks to share their views and explore big complex questions openly and authentically" (p. 5). She claims that brave spaces are lines of communication where meaningful learning occurs, and students are encouraged not only to share but to listen to each other's viewpoints (Jacoby, 2017). True development requires both challenge and support, and too much of either is detrimental to students. According to Jacoby, brave spaces can exist as an equilibrium for challenging opinions and allowing for inclusivity to coexist on campus (2017).

Other suggestions include doing more to teach students about the value of free speech beginning as early as freshman orientation and requiring seminar classes where students role-play or write arguments for multiple sides of a controversial free speech argument to reflect on diverse perspectives (Ceci & Williams, 2018). In their article, Ceci and Williams question why many institutions expect incoming students to take pre-enrollment alcohol and sexual harassment awareness assessments but most fail to touch on issues of racism or discrimination and the meaning of free speech on campus. They argue that bringing speech protections - and their impact - to the forefront of discussion early in a student's college career will enhance speech rights "within the context of an inclusive, diverse community," (Ceci & Williams, 2018, p. 299). While these recommendations will likely not solve the divide on speech protections, they may open a door to constructive communication that enhances, rather than impedes, critical development and learning outcomes.

Campus administrators must recognize that student activism is a healthy, active form of participation on campus. In their seminal 1993 article on student activism, Chambers and Phelps highlight abundant research on the impact participation in extracurricular activities has on students' personal development in college. Using the framework of Astin's theory on student involvement, which states that a student's involvement on campus positively impacts their self-esteem and educational satisfaction, Chambers and Phelps (1993) stress the importance of recognizing that student activism is a form of involvement that supplements a holistic college experience.

In additional research, Klar and Kasser (2009) found that student activists reported higher life satisfaction than non-activists, concluding that activism is positively associated with interpersonal contentment and leads to stronger intrinsic motivation. This penchant for self-motivation found in their study is significant as it reconfirms Astin's theory that students who are actively involved in their own development in college will seek out opportunities that lead to interpersonal growth (Astin, 1984, as cited in Chambers & Phelps, 1993).

As previously stated, colleges should promote open communication where civil discourse can help facilitate critical learning development. Handling hate speech on campus is no exception. Richard Cohen, president of the Southern Poverty Law Center, spoke before the Committee on the Judiciary United States Senate about hate speech in 2017. In his testimony, he agrees that colleges are obligated to uphold First Amendment rights, but they are not bound to silence nor must they compose a neutral response to hate speech on campus. In response to the political polarization on campuses and uptick in student activism against white nationalism and hate speech, Cohen (2017) proposes that it is the responsibility of everyone from campus administrators to elected officials to "repair the social norms that are being frayed" (para 6). He argues that while viewpoints and the right to express them are constitutionally protected, schools can and should take steps to respond against speech that goes against the mission of the institution. He adds this advice for colleges:

> We tell them to speak up, to draw attention to hope rather than hate. We suggest creating an alternative event, to provide an open and accepting space for those who want to promote unity rather than divisiveness. We tell leaders that it is their obligation to communicate to their community that they stand for the values of inclusion, pluralism, and respect. (Cohen, 2017, para 15)

For students that fundamentally defend values promoting inclusivity and social justice, this condemnation of hate speech endorses the safe campus environment they seek. It does not eliminate the existence of protected hate speech on campus, but it supplies a platform for institutions to exercise their rights to free speech to speak out against that which goes against their values. With these findings and recommendations in mind, campus administrators and student affairs professionals must help facilitate positive learning outcomes for students by creating campus climates that encourage civic

engagement and dissent while educating students about the critical impacts of both speech and activism.

Conclusion

Speech protections on college campuses remain a controversial issue as the right to free speech continues to be debated between students, administrators, and policymakers alike. Currently, there are no definitive solutions as to how hate speech should be handled, if at all, on college campuses. The right to practice free speech does not imply that hate speech is not offensive or repugnant. However, because the First Amendment does not legally define nor restrict hate speech, and public colleges are bound to sustain constitutional rights, campuses must uphold free speech on campus. The principles behind free speech are a fundamental part of a university's mission, which, in its most basic form, is to disseminate knowledge (Whittington, 2018). An institution is not upholding its duty to students if it stifles the speech of some, and ultimately, providing a disservice to its graduates if they are unable to engage with difficult ideas.

Based on survey data surrounding students' increased awareness and interest in activism, it is unlikely that we will see a decrease in campus protests in the foreseeable future (NACAC, 2018). We have seen a marked generational shift in how the First Amendment is viewed. Students appear to have less attachment to unrestricted free speech rights, but protections under the U.S. Constitution are still upheld. As speech protections remain an active issue on college campuses across the nation today, it is reasonable that we will continue to see how this generation's commitment to social justice impacts the future of speech rights on campus.

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