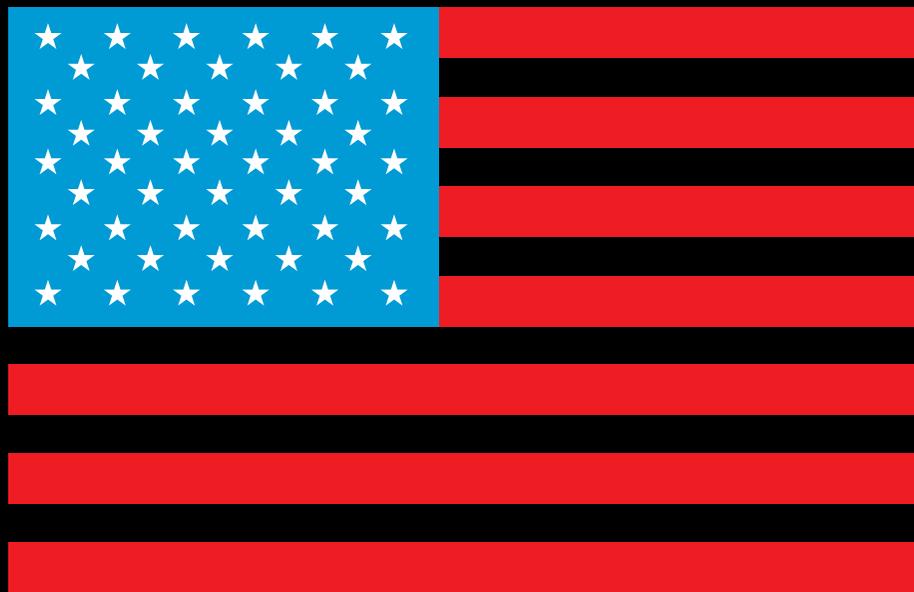


A COMMENTARY SYMPOSIUM

IN APRIL, COMMENTARY ASKED A WIDE VARIETY OF WRITERS, THINKERS, AND BROADCASTERS TO RESPOND TO THIS QUESTION:



*Is free speech
under threat*

IN THE
UNITED STATES?

WE RECEIVED TWENTY-SEVEN RESPONSES.
WE PUBLISH THEM HERE, IN ALPHABETICAL ORDER.

FLOYD ABRAMS

FREE EXPRESSION threatened? By Donald Trump? I guess you could say so.

When a president engages in daily denigration of the press, when he characterizes it as the enemy of the people, when he repeatedly says that the libel laws should be “loosened” so he can personally commence more litigation, when he says that journalists shouldn’t be allowed to use confidential sources, it is difficult even to suggest that he has not threatened free speech. And when he says to the head of the FBI (as former FBI director James Comey has said that he did) that Comey should consider “putting reporters in jail for publishing classified information,” it is difficult not to take those threats seriously.

The harder question, though, is this: How real are the threats? Or, as Michael Gerson put it in the *Washington Post*: Will Trump “go beyond mere Twitter abuse and move against institutions that limit his power?” Some of the president’s threats against the institution of the press, wittingly or not, have been simply preposterous. Surely someone has told him by now that neither he nor Congress can “loosen” libel laws; while each state has its own libel law, there is no federal libel law and thus nothing for him to loosen. What he obviously takes issue with is the impact that the Supreme Court’s 1964 First Amendment opinion in *New York Times v. Sullivan* has had on state libel laws. The case determined that public officials who sue for libel may not prevail unless they demonstrate that the statements made about them were false and were made with actual knowledge or suspicion of that falsity. So his objection to the rules governing libel law is to nothing less than the application of the First Amendment itself.

In other areas, however, the Trump administration has far more power to imperil free speech. We live under an Espionage Act, adopted a century ago, which is both broad in its language and uncommonly vague in its meaning. As such, it remains a half-open door through which an administration that is hostile to free speech might walk. Such an administration could initiate criminal proceedings against journalists who write about defense- or intelligence-related topics on the basis that classified information was leaked to them by present or former government employees. No such action has ever been commenced against a journalist. Press lawyers and civil-liberties advocates have strong arguments that the law may not be read so broadly and

still be consistent with the First Amendment. But the scope of the Espionage Act and the impact of the First Amendment upon its interpretation remain unknown.

A related area in which the attitude of an administration toward the press may affect the latter’s ability to function as a check on government relates to the ability of journalists to protect the identity of their confidential sources. The Obama administration prosecuted more Espionage Act cases against sources of information to journalists than all prior administrations combined. After a good deal of deserved press criticism, it agreed to expand the internal guidelines of the Department of Justice designed to limit the circumstances under which such source revelation is demanded. But the guidelines are none too protective and are, after all, simply guidelines. A new administration is free to change or limit them or, in fact, abandon them altogether. In this area, as in so many others, it is too early to judge the ultimate treatment of free expression by the Trump administration. But the threats are real, and there is good reason to be wary.

FLOYD ABRAMS *is the author of* The Soul of the First Amendment *(Yale University Press, 2017).*

AYAAN HIRSI ALI

FREEDOM OF SPEECH is being threatened in the United States by a nascent culture of hostility to different points of view. As political divisions in America have deepened, a conformist mentality of “right thinking” has spread across the country. Increasingly, American universities, where no intellectual doctrine ought to escape critical scrutiny, are some of the most restrictive domains when it comes to asking open-ended questions on subjects such as Islam.

Legally, speech in the United States is protected to a degree unmatched in almost any industrialized country. The U.S. has avoided unpredictable Canadian-style restrictions on speech, for example. I remain optimistic that as long as we have the First Amendment in the U.S., any attempt at formal *legal* censorship will be vigorously challenged.

Culturally, however, matters are very different in America. The regressive left is the forerunner threatening free speech on any issue that is important to progressives. The current pressure coming from those who call themselves “social-justice warriors” is unlikely to lead to successful legislation to curb the

First Amendment. Instead, censorship is spreading in the cultural realm, particularly at institutions of higher learning.

The way activists of the regressive left achieve silence or censorship is by creating a taboo, and one of the most pernicious taboos in operation today is the word “Islamophobia.” Islamists are similarly motivated to rule any critical scrutiny of Islamic doctrine out of order. There is now a university center (funded by Saudi money) in the U.S. dedicated to monitoring and denouncing incidences of “Islamophobia.”

The term “Islamophobia” is used against critics of political Islam, but also against progressive reformers within Islam. The term implies an irrational fear that is tainted by hatred, and it has had a chilling effect on free speech. In fact, “Islamophobia” is a poorly defined term. Islam is not a race, and it is very often perfectly rational to fear some expressions of Islam. No set of ideas should be beyond critical scrutiny.

To push back in this cultural realm—in our universities, in public discourse—those favoring free speech should focus more on the message of *dawa*, the set of ideas that the Islamists want to promote. If the aims of *dawa* are sufficiently exposed, ordinary Americans and Muslim Americans will reject it. The Islamist message is a message of divisiveness, misogyny, and hatred. It’s anachronistic and wants people to live by tribal norms dating from the seventh century. The best antidote to Islamic extremism is the revelation of what its primary objective is: a society governed by Sharia. This is the opposite of censorship: It is documenting reality. What is life like in Saudi Arabia, Iran, the Northern Nigerian States? What is the true nature of Sharia law?

Islamists want to hide the true meaning of Sharia, Jihad, and the implications for women, gays, religious minorities, and infidels under the veil of “Islamophobia.” Islamists use “Islamophobia” to obfuscate their vision and imply that any scrutiny of political Islam is hatred and bigotry. The antidote to this is more exposure and *more* speech.

As pressure on freedom of speech increases from the regressive left, we must reject the notions that only Muslims can speak about Islam, and that any critical examination of Islamic doctrines is inherently “racist.”

Instead of contorting Western intellectual traditions so as not to offend our Muslim fellow citizens, we need to defend the Muslim dissidents who are risking their lives to promote the human rights we take for granted: equality for women, tolerance of all religions and orientations, our hard-won freedoms of speech and thought.

It is by nurturing and protecting such speech that progressive reforms can emerge within Islam. By accepting the increasingly narrow confines of acceptable discourse on issues such as Islam, we do dissidents and progressive reformers within Islam a grave disservice. For truly progressive reforms within Islam to be possible, full freedom of speech will be required.

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LEE C. BOLLINGER

KNOW IT IS TOO much to expect that political discourse mimic the measured, self-questioning, rational, footnoting standards of the academy, but there is a difference between robust political debate and political debate infected with fear or panic. The latter introduces a state of mind that is visceral and irrational. In the realm of fear, we move beyond the reach of reason and a sense of proportionality. When we fear, we lose the capacity to listen and can become insensitive and mean.

Our Constitution is well aware of this fact about the human mind and of its negative political consequences. In the First Amendment jurisprudence established over the past century, we find many expressions of the problematic state of mind that is produced by fear. Among the most famous and potent is that of Justice Brandeis in *Whitney v. California* in 1927, one of the many cases involving aggravated fears of subversive threats from abroad. “It is the function of (free) speech,” he said, “to free men from the bondage of irrational fears.” “Men feared witches,” Brandeis continued, “and burned women.”

Today, our “witches” are terrorists, and Brandeis’s metaphorical “women” include the refugees (mostly children) and displaced persons, immigrants, and foreigners whose lives have been thrown into suspension and doubt by policies of exclusion.

The same fears of the foreign that take hold of a population inevitably infect our internal interactions and institutions, yielding suppression of unpopular and dissenting voices, victimization of vulnerable groups, attacks on the media, and the rise of demagoguery, with its disdain for facts, reason, expertise, and tolerance.

All of this poses a very special obligation on those of us within universities. Not only must we

make the case in every venue for the values that form the core of who we are and what we do, but we must also live up to our own principles of free inquiry and fearless engagement with all ideas. This is why recent incidents on a handful of college campuses disrupting and effectively censoring speakers is so alarming. Such acts not only betray a basic principle but also inflame a rising prejudice against the academic community, and they feed efforts to delegitimize our work, at the very moment when it's most needed.

I do not for a second support the view that this generation has an unhealthy aversion to engaging differences of opinion. That is a modern trope of polarization, as is the portrayal of universities as hypocritical about academic freedom and political correctness. But now, in this environment especially, universities must be at the forefront of defending the rights of all students and faculty to listen to controversial voices, to engage disagreeable viewpoints, and to make every effort to demonstrate our commitment to the sort of fearless and spirited debate that we are simultaneously asking of the larger society. Anyone with a voice can shout over a speaker; but being able to listen to and then effectively rebut those with whom we disagree—particularly those who themselves peddle intolerance—is one of the greatest skills our education can bestow. And it is something our democracy desperately needs more of. That is why, I say to you now, if speakers who are being denied access to other campuses come here, I will personally volunteer to introduce them, and listen to them, however much I may disagree with them. But I will also never hesitate to make clear why I disagree with them.

LEE C. BOLLINGER is the 19th president of Columbia University and the author of *Uninhibited, Robust, and Wide-Open: A Free Press for a New Century*. This piece has been excerpted from President Bollinger's May 17 commencement address.

RICHARD A. EPSTEIN

TODAY, THE GREATEST threat to the constitutional protection of freedom of speech comes from campus rabble-rousers who invoke this very protection. In their book, the speech of people like Charles Murray and Heather Mac Donald constitutes a form of violence, bordering on genocide, that receives no First Amendment protection. Enlightened protestors are both bound and entitled to shout them

down, by force or other disruptive actions, if their universities are so foolish as to extend them an invitation to speak. Any indignant minority may take the law into its own hands to eradicate the intellectual cancer before it spreads on their own campus.

By such tortured logic, a new generation of vigilantes distorts the First Amendment doctrine: Speech becomes violence, and violence becomes heroic acts of self-defense. The standard First Amendment interpretation emphatically rejects that view. Of course, the First Amendment doesn't let you say what you want when and wherever you want to. Your *freedom* of speech is subject to the same limitations as your freedom of action. So you have no constitutional license to assault other people, to lie to them, or to form cartels to bilk them in the marketplace. But folks such as Murray, Mac Donald, and even Yiannopoulos do not come close to crossing into that forbidden territory. They are not using, for example, "fighting words," rightly limited to words or actions calculated to provoke immediate aggression against a known target. Fighting words are worlds apart from speech that provokes a negative reaction in those who find your speech offensive solely because of the content of its message.

This distinction is central to the First Amendment. Fighting words have to be blocked by well-tailored criminal and civil sanctions lest some people gain license to intimidate others from speaking or peaceably assembling. The remedy for mere offense is to speak one's mind in response. But it never gives anyone the right to block the speech of others, lest everyone be able to unilaterally increase his sphere of action by getting really angry about the beliefs of others. No one has the right to silence others by working himself into a fit of rage.

Obviously, it is intolerable to let mutual animosity generate factional warfare, whereby everyone can use force to silence rivals. To avoid this war of all against all, each side claims that only its actions are privileged. These selective claims quickly degenerate into a form of viewpoint discrimination, which undermines one of the central protections that traditional First Amendment law erects: a wall against each and every group out to destroy the level playing field on which robust political debate rests. Every group should be at risk for having its message fall flat. The new campus radicals want to upend that understanding by shutting down their adversaries if their universities do not. Their aggression must be met, if necessary, by counterforce. Silence in the face of aggression is not an acceptable alternative.

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DAVID FRENCH

WE'RE LIVING IN THE midst of a troubling paradox. At the exact same time that First Amendment jurisprudence has arguably never been stronger and more protective of free expression, millions of Americans feel they simply can't speak freely. Indeed, talk to Americans living and working in the deep-blue confines of the academy, Hollywood, and the tech sector, and you'll get a sense of palpable fear. They'll explain that they can't say what they think and keep their jobs, their friends, and sometimes even their families.

The government isn't cracking down or censoring; instead, Americans are using free speech to destroy free speech. For example, a social-media shaming campaign is an act of free speech. So is an economic boycott. So is turning one's back on a public speaker. So is a private corporation firing a dissenting employee for purely political reasons. Each of these actions is largely protected from government interference, and each one represents an expression of the speaker's ideas and values.

The problem, however, is obvious. The goal of each of these kinds of actions isn't to persuade; it's to intimidate. The goal isn't to foster dialogue but to coerce conformity. The result is a marketplace of ideas that has been emptied of all but the approved ideological vendors—at least in those communities that are dominated by online thugs and corporate bullies. Indeed, this mindset has become so prevalent that in places such as Portland, Berkeley, Middlebury, and elsewhere, the bullies and thugs have crossed the line from protected—albeit abusive—speech into outright shout-downs and mob violence.

But there's something else going on, something that's insidious in its own way. While politically correct shaming still has great power in deep-blue America, its effect in the rest of the country is to trigger a furious backlash, one characterized less by a desire for dialogue and discourse than by its own rage and scorn. So we're moving toward two Americas—one that ruthlessly (and occasionally illegally) suppresses dissenting speech and the other that is dangerously close to believing that the opposite of political correctness isn't a fearless expression of truth but rather the fearless expression of ideas best calculated to enrage your opponents.

The result is a partisan feedback loop where right-wing rage spurs left-wing censorship, which spurs even more right-wing rage. For one side, a true free-speech culture is a threat to feelings, sensitivities, and social justice. The other side waves high the banner of "free speech" to sometimes elevate the worst voices to

the highest platforms—not so much to protect the First Amendment as to infuriate the hated "snowflakes" and trigger the most hysterical overreactions.

The culturally sustainable argument for free speech is something else entirely. It reminds the cultural left of its own debt to free speech while reminding the political right that a movement allegedly centered around constitutional values can't abandon the concept of ordered liberty. The culture of free speech thrives when all sides remember their moral responsibilities—to both protect the right of dissent *and* to engage in ideological combat with a measure of grace and humility.

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PAMELA GELLER

THE REAL QUESTION isn't whether free speech is under threat in the United States, but rather, whether it's irretrievably lost. Can we get it back? Not without war, I suspect, as is evidenced by the violence at colleges whenever there's the shamefully rare event of a conservative speaker on campus.

Free speech is the soul of our nation and the foundation of all our other freedoms. If we can't speak out against injustice and evil, those forces will prevail. Freedom of speech is the foundation of a free society. Without it, a tyrant can wreak havoc unopposed, while his opponents are silenced.

With that principle in mind, I organized a free-speech event in Garland, Texas. The world had recently been rocked by the murder of the *Charlie Hebdo* cartoonists. My version of "Je Suis Charlie" was an event here in America to show that we can still speak freely and draw whatever we like in the Land of the Free. Yet even after jihadists attacked our event, I was blamed—by Donald Trump among others—for provoking Muslims. And if I tried to hold a similar event now, no arena in the country would allow me to do so—not just because of the security risk, but because of the moral cowardice of all intellectual appeasers.

Under what law is it wrong to depict Muhammad? Under Islamic law. But I am not a Muslim, I don't live under Sharia. America isn't under Islamic law, yet for standing for free speech, I've been:

- Prevented from running our advertisements in every major city in this country. We have won free-speech lawsuits all over the country, which officials circumvent by prohibiting all political ads

(while making exceptions for ads from Muslim advocacy groups);

- Shunned by the right, shut out of the Conservative Political Action Conference;
- Shunned by Jewish groups at the behest of terror-linked groups such as the Council on American-Islamic Relations;
- Blacklisted from speaking at universities;
- Prevented from publishing books, for security reasons and because publishers fear shaming from the left;
- Banned from Britain.

A Seattle court accused me of trying to shut down free speech after we merely tried to run an FBI poster on global terrorism, because authorities had banned all political ads in other cities to avoid running ours. Seattle blamed us for that, which was like blaming a woman for being raped because she was wearing a short skirt.

This kind of vilification and shunning is key to the left's plan to shut down all dissent from its agenda—they make legislation restricting speech unnecessary.

The same refusal to allow our point of view to be heard has manifested itself elsewhere. The foundation of my work is individual rights and equality for all before the law. These are the foundational principles of our constitutional republic. That is now considered controversial. Truth is the new hate speech. Truth is going to be criminalized.

The First Amendment doesn't only protect ideas that are sanctioned by the cultural and political elites. If "hate speech" laws are enacted, who would decide what's permissible and what's forbidden? The government? The gunmen in Garland?

There has been an inversion of the founding premise of this nation. No longer is it the subordination of might to right, but right to might. History is repeatedly deformed with the bloody consequences of this transition.

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JONAH GOLDBERG

O F COURSE free speech is under threat in America. Frankly, it's always under threat in America because it's always under threat

everywhere. Ronald Reagan was right when he said in 1961, "Freedom is never more than one generation away from extinction. We didn't pass it on to our children in the bloodstream. It must be fought for, protected, and handed on for them to do the same."

This is more than political boilerplate. Reagan identified the source of the threat: human nature. God may have endowed us with a right to liberty, but he didn't give us all a taste for it. As with most finer things, we must work to acquire a taste for it. That is what civilization—or at least our civilization—is supposed to do: cultivate attachments to certain ideals. "Cultivate" shares the same Latin root as "culture," *cultus*, and properly understood they mean the same thing: to grow, nurture, and sustain through labor.

In the past, threats to free speech have taken many forms—nationalist passion, Comstockery (both good and bad), political suppression, etc.—but the threat to free speech today is different. It is less top-down and more bottom-up. We are cultivating a generation of young people to reject free speech as an important value.

One could mark the beginning of the self-esteem movement with Nathaniel Branden's 1969 paper, "The Psychology of Self-Esteem," which claimed that "feelings of self-esteem were the key to success in life." This understandable idea ran amok in our schools and in our culture. When I was a kid, Saturday-morning cartoons were punctuated with public-service announcements telling kids: "The most important person in the whole wide world is you, and you hardly even know you!"

The self-esteem craze was just part of the cocktail of educational fads. Other ingredients included multiculturalism, the anti-bullying crusade, and, of course, that broad phenomenon known as "political correctness." Combined, they've produced a generation that rejects the old adage "sticks and stones can break my bones but words can never harm me" in favor of the notion that "words hurt." What we call political correctness has been on college campuses for decades. But it lacked a critical mass of young people who were sufficiently receptive to it to make it a fully successful ideology. The campus commissars welcomed the new "snowflakes" with open arms; *truly, these are the ones we've been waiting for.*

"Words hurt" is a fashionable concept in psychology today. (See *Psychology Today*: "Why Words Can Hurt at Least as Much as Sticks and Stones.") But it's actually a much older idea than the "sticks and stones" aphorism. For most of human history, it was a crime to say insulting or "injurious" things about aristocrats, rulers, the Church, etc. That tendency didn't evaporate with the Divine Right of Kings. Jonathan

Haidt has written at book length about our natural capacity to create zones of sanctity, immune from reason.

And that is the threat free speech faces today. Those who inveigh against “hate speech” are in reality fighting “heresy speech”—ideas that do “violence” to sacred notions of self-esteem, racial or gender equality, climate change, and so on. Put whatever label you want on it, contemporary “social justice” progressivism acts as a religion, and it has no patience for blasphemy.

When Napoleon’s forces converted churches into stables, the clergy did not object on the grounds that regulations regarding the proper care and feeding of animals had been violated. They complained of sacrilege and blasphemy. When Charles Murray or Christina Hoff Summers visits college campuses, the protestors are behaving like the zealous acolytes of St. Jerome. Appeals to the First Amendment have as much power over the “antifa” fanatics as appeals to Odin did to champions of the New Faith.

That is the real threat to free speech today.

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KC JOHNSON

IN EARLY MAY, the *Washington Post* urged universities to make clear that “racist signs, symbols, and speech are off-limits.” Given the extraordinarily broad definition of what constitutes “racist” speech at most institutions of higher education, this demand would single out most right-of-center (and, in some cases, even centrist and liberal) discourse on issues of race or ethnicity. The editorial provided the highest-profile example of how hostility to free speech, once confined to the ideological fringe on campus, has migrated to the liberal mainstream.

The last few years have seen periodic college protests—featuring claims that significant amounts of political speech constitute “violence,” thereby justifying censorship—followed by even more troubling attempts to appease the protesters. After the mob scene that greeted Charles Murray upon his visit to Middlebury College, for instance, the student government criticized any punishment for the protesters, and several student leaders wanted to require that future speakers conform to the college’s “community standard” on issues of race, gender, and ethnicity. In the last few months, similar attempts to stifle the free exchange of ideas in the name of promoting diversity

occurred at Wesleyan, Claremont McKenna, and Duke. Offering an extreme interpretation of this point of view, one CUNY professor recently dismissed dialogue as “inherently conservative,” since it reinforced the “relations of power that presently exist.”

It’s easy, of course, to dismiss campus hostility to free speech as affecting only a small segment of American public life—albeit one that trains the next generation of judges, legislators, and voters. But, as Jonathan Chait observed in 2015, denying “the legitimacy of political pluralism on issues of race and gender” has broad appeal on the left. It is only most apparent on campus because “the academy is one of the few bastions of American life where the political left can muster the strength to impose its political hegemony upon others.” During his time in office, Barack Obama generally urged fellow liberals to support open intellectual debate. But the current campus environment previews the position of free speech in a post-Obama Democratic Party, increasingly oriented around identity politics.

Waning support on one end of the ideological spectrum for this bedrock American principle should provide a political opening for the other side. The Trump administration, however, seems poorly suited to make the case. Throughout his public career, Trump has rarely supported free speech, even in the abstract, and has periodically embraced legal changes to facilitate libel lawsuits. Moreover, the right-wing populism that motivates Trump’s base has a long tradition of ideological hostility to civil liberties of all types. Even in campus contexts, conservatives have defended free speech inconsistently, as seen in recent calls that CUNY disinvite anti-Zionist fanatic Linda Sarsour as a commencement speaker.

In a sharply polarized political environment, awash in dubiously-sourced information, free speech is all the more important. Yet this same environment has seen both sides, most blatantly elements of the left on campuses, demand restrictions on their ideological foes’ free speech in the name of promoting a greater good.

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LAURA KIPNIS

FIND MYSELF WITH a strange-bedfellows problem lately. Here I am, a left-wing feminist professor invited onto the pages of COMMENTARY—though I’d be thrilled if it were still 1959—while fielding speaking requests from right-wing think tanks and

libertarians who oppose child-labor laws.

Somehow I've ended up in the middle of the free-speech-on-campus debate. My initial crime was publishing a somewhat contentious essay about campus sexual paranoia that put me on the receiving end of Title IX complaints. Apparently I'd created a "hostile environment" at my university. I was investigated (for 72 days). Then I wrote up what I'd learned about these campus inquisitions in a second essay. Then I wrote about it all some more, in a book exposing the kangaroo-court elements of the Title IX process—and the extra-legal gag orders imposed on everyone caught in its widening snare.

I can't really comment on whether more charges have been filed against me over the book. I'll just say that writing about being a Title IX respondent could easily become a life's work. I learned, shortly after writing this piece, that I and my publisher were being sued for defamation, among other things.

Is free speech under threat on American campuses? Yes. We know all about student activists who wish to shut down talks by people with opposing views. I got smeared with a bit of that myself, after a speaking invitation at Wellesley—some students made a video protesting my visit before I arrived. The talk went fine, though a group of concerned faculty circulated an open letter afterward also protesting the invitation: My views on sexual politics were too heretical, and might have offended students.

I didn't take any of this too seriously, even as right-wing pundits crowed, with Wellesley as their latest outrage bait. It was another opportunity to mock student activists, and the fact that I was myself a feminist rather than a Charles Murray or a Milo Yiannopoulos, made them positively gleeful.

I do find myself wondering where all my new free-speech pals were when another left-wing professor, Steven Salaita, was fired (or if you prefer euphemism, "his job offer was withdrawn") from the University of Illinois after he tweeted criticism of Israel's Gaza policy. Sure the tweets were hyperbolic, but hyperbole and strong opinions are protected speech, too.

I guess free speech is easy to celebrate until it actually challenges something. Funny, I haven't seen Milo around lately—so beloved by my new friends when he was bashing minorities and transgender kids. Then he mistakenly said something authentic (who knew he was capable of it!), reminiscing about an experience a lot of gay men have shared: teenage sex with older men. He tried walking it back—no, no, he'd been a victim, not a participant—but his fan base was shrieking about pedophilia and fleeing in droves. Gee,

they were all so against "political correctness" a few minutes before.

It's easy to be a free-speech fan when your feathers aren't being ruffled. No doubt what makes me palatable to the anti-PC crowd is having thus far failed to ruffle them enough. I'm just going to have to work harder.

LAURA KIPNIS's latest book is *Unwanted Advances: Sexual Paranoia Comes to Campus*.

EUGENE KONTOROVICH

THE FREE AND OPEN exchange of views—especially politically conservative or traditionally religious ones—is being challenged. This is taking place not just at college campuses but throughout our public spaces and cultural institutions. James Watson was fired from the lab he led since 1968 and could not speak at New York University because of petty, censorious students who would not know DNA from LSD. Our nation's founders and heroes are being "disappeared" from public commemoration, like Trotsky from a photograph of Soviet rulers.

These attacks on "free speech" are not the result of government action. They are not what the First Amendment protects against. The current methods—professional and social shaming, exclusion, and employment termination—are more inchoate, and their effects are multiplied by self-censorship. A young conservative legal scholar might find himself thinking: "If the late Justice Antonin Scalia can posthumously be deemed a 'bigot' by many academics, what chance have I?"

Ironically, artists and intellectuals have long prided themselves on being the first defenders of free speech. Today, it is the institutions of both popular and high culture that are the censors. Is there one poet in the country who would speak out for Ann Coulter?

The inhibition of speech at universities is part of a broader social phenomenon of making longstanding, traditional views and practices sinful overnight. Conservatives have not put up much resistance to this. To paraphrase Martin Niemöller's famous dictum: "First they came for Robert E. Lee, and I said nothing, because Robert E. Lee meant nothing to me."

The situation with respect to Israel and expressions of support for it deserves separate discussion. Even as university administrators give political power to favored ideologies by letting them create

“safe spaces” (safe from opposing views), Jews find themselves and their state at the receiving end of claims of apartheid—modern day blood libels. It is not surprising if Jewish students react by demanding that they get a safe space of their own. It is even less surprising if their parents, paying \$65,000 a year, want their children to have a nicer time of it. One hears Jewish groups frequently express concern about Jewish students feeling increasingly isolated and uncomfortable on campus.

But demanding selective protection from the new ideological commissars is unlikely to bring the desired results. First, this new ideology, even if it can be harnessed momentarily to give respite to harassed Jews on campus, is ultimately illiberal and will be controlled by “progressive” forces. Second, it is not so terrible for Jews in the Diaspora to feel a bit uncomfortable. It has been the common condition of Jews throughout the millennia. The social awkwardness that Jews at liberal arts schools might feel in being associated with Israel is of course one of the primary justifications for the Jewish State. Facing the snowflakes incapable of hearing a dissonant view—but who nonetheless, in the grip of intersectional ecstasy, revile Jewish self-determination—Jewish students should toughen up.

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NICHOLAS LEMANN

THERE'S AN OLD Tom Wolfe essay in which he describes being on a panel discussion at Princeton in 1965 and provoking the other panelists by announcing that America, rather than being in crisis, is in the middle of a “happiness explosion.” He was arguing that the mass effects of 20 years of post-World War II prosperity made for a larger phenomenon than the Vietnam War, the racial crisis, and the other primary concerns of intellectuals at the time.

In the same spirit, I'd say that we are in the middle of a free-speech explosion, because of 20-plus years of the Internet and 10-plus years of social media. If one understands speech as disseminated individual opinion, then surely we live in the free-speech-est society in the history of the world. Anybody with access to the unimpeded World Wide Web can say anything to a global audience, and anybody can hear anything, too.

All threats to free speech should be understood in the context of this overwhelmingly reality.

It is a comforting fantasy that a genuine free-speech regime will empower mainly “good,” but previously repressed, speech. Conversely, repressive regimes that are candid enough to explain their anti-free-speech policies usually say that they're not against free speech, just “bad” speech. We have to accept that more free speech probably means, in the aggregate, more bad speech, and also a weakening of the power, authority, and economic support for information professionals such as journalists. Welcome to the United States in 2017.

I am lucky enough to live and work on the campus of a university, Columbia, that has been blessedly free of successful attempts to repress free speech. Just in the last few weeks, Charles Murray and Dinesh D'Souza have spoken here without incident. But, yes, the evidently growing popularity of the idea that “hate speech” shouldn't be permitted on campuses is a problem, especially, it seems, at small private liberal-arts colleges. We should all do our part, and I do, by frequently and publicly endorsing free-speech principles. Opposing the BDS movement falls squarely into that category.

It's not just on campuses that free-speech vigilance is needed, though. The number-one threat to free speech, to my mind, is that the wide-open Web has been replaced by privately owned platforms such as Facebook and Google as the way most people experience the public life of the Internet. These companies are committed to banning “hate speech,” and they are eager to operate freely in countries, like China, that don't permit free political speech. That makes for a far more consequential constrained environment than any campus's speech code.

Also, Donald Trump regularly engages in presidentially unprecedented rhetoric demonizing people who disagree with him. He seems to think this is all in good fun, but, as we have already seen at his rallies, not everybody hears it that way. The place where Trumpism will endanger free speech isn't in the center—the White House press room—but at the periphery, for example in the way that local police handle bumptious protestors and the journalists covering them. This is already happening around the country. If Trump were as disciplined and knowledgeable as Vladimir Putin or Recep Tayyip Erdogan, which so far he seems not to be, then free speech could be in even more serious danger from government, which in most places is its usual main enemy.

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MICHAEL J. LEWIS

FREE SPEECH IS a right but it is also a habit, and where the habit shrivels so will the right. If free speech today is in headlong retreat—everywhere threatened by regulation, organized harassment, and even violence—it is in part because our political culture allowed the practice of persuasive oratory to atrophy. The process began in 1973, an unforeseen side effect of *Roe v. Wade*. Legislators were delighted to learn that by relegating this divisive matter of public policy to the Supreme Court and adopting a merely symbolic position, they could sit all the more safely in their safe seats.

Since then, one crucial question of public policy after another has been punted out of the realm of politics and into the judicial. Issues that might have been debated with all the rhetorical agility of a Lincoln and a Douglas, and then subjected to a process of negotiation, compromise, and voting, have instead been settled by decree: e.g., Chevron, Kelo, Obergefell. The consequences for speech have been pernicious. Since the time of Pericles, deliberative democracy has been predicated on the art of persuasion, which demands the forceful clarity of thought and expression without which no one has ever been persuaded. But a legislature that relegates its authority to judges and regulators will awaken to discover its oratorical culture has been stunted. When politicians, rather than seeking to convince and win over, prefer to project a studied and pleasant vagueness, debate withers into tedious defensive performance. It has been decades since any presidential debate has seen any sustained give and take over a matter of policy. If there is any suspense at all, it is only the possibility that a fatigued or peeved candidate might blurt out that tactless shard of truth known as a gaffe.

A generation accustomed to hearing platitudes smoothly dispensed from behind a teleprompter will find the speech of a fearless extemporaneous speaker to be startling, even disquieting; unfamiliar ideas always are. Unhappily, they have been taught to interpret that disquiet as an injury done to them, rather than as a premise offered to them to consider. All this would not have happened—certainly not to this extent—had not our deliberative democracy decided a generation ago that it preferred the security of incumbency to the risks of unshackled debate. The compul-

sory contraction of free speech on college campuses is but the logical extension of the voluntary contraction of free speech in our political culture.

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HEATHER MAC DONALD

THE ANSWER to the symposium question depends on how powerful the transmission belt is between academia and the rest of the country. On college campuses, violence and brute force are silencing speakers who challenge left-wing campus orthodoxies. These totalitarian outbreaks have been met with listless denunciations by college presidents, followed by... virtually nothing. As of mid-May, the only discipline imposed for 2017's mass attacks on free speech at UC Berkeley, Middlebury, and Claremont McKenna College was a letter of reprimand inserted—sometimes only temporarily—into the files of several dozen Middlebury students, accompanied by a brief period of probation. Previous outbreaks of narcissistic incivility, such as the screaming-girl fit at Yale and the assaults on attendees of Yale's Buckley program, were discreetly ignored by college administrators.

Meanwhile, the professoriate unapologetically defends censorship and violence. After the February 1 riot in Berkeley to prevent Milo Yiannopoulos from speaking, Déborah Blocker, associate professor of French at UC Berkeley, praised the rioters. They were "very well-organized and very efficient," Blocker reported admiringly to her fellow professors. "They attacked property but they attacked it *very sparingly*, destroying just enough University property to obtain the cancellation order for the MY event and making sure no one in the crowd got hurt" (emphasis in original). (In fact, perceived Milo and Donald Trump supporters were sucker-punched and maced; businesses downtown were torched and vandalized.) New York University's vice provost for faculty, arts, humanities, and diversity, Ulrich Baer, displayed Orwellian logic by claiming in a *New York Times* op-ed that shutting down speech "should be understood as an attempt to ensure the conditions of free speech for a greater group of people."

Will non-academic institutions take up this zeal for outright censorship? Other ideological products of

the left-wing academy *have* been fully absorbed and operationalized. Racial victimology, which drives much of the campus censorship, is now standard in government and business. Corporate diversity trainers counsel that bias is responsible for any lack of proportional racial representation in the corporate ranks. Racial disparities in school discipline and incarceration are universally attributed to racism rather than to behavior. Public figures have lost jobs for violating politically correct taboos.

Yet Americans possess an instinctive commitment to the First Amendment. Federal judges, hardly an extension of the Federalist Society, have overwhelmingly struck down campus speech codes. It is hard to imagine that they would be any more tolerant of the hate-speech legislation so prevalent in Europe. So the question becomes: At what point does the pressure to conform to the elite worldview curtail freedom of thought and expression, even without explicit bans on speech?

Social stigma against conservative viewpoints is not the same as actual censorship. But the line can blur. The Obama administration used regulatory power to impose a behavioral conformity on public and private entities. School administrators may have technically still possessed the right to dissent from novel theories of gender, but they had to behave as if they were fully on board with the transgender revolution when it came to allowing boys to use girls' bathrooms and locker rooms.

Had Hillary Clinton had been elected president, the federal bureaucracy would have mimicked campus diversocrats with even greater zeal. That threat, at least, has been avoided. Heresies against left-wing dogma may still enter the public arena, if only by the back door. The mainstream media have lurched even further left in the Trump era, but the conservative media, however mocked and marginalized, are expanding (though Twitter and Facebook's censorship of conservative speakers could be a harbinger of more official silencing).

Outside the academy, free speech is still legally protected, but its exercise requires ever greater determination.

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JOHN MCWHORTER

THERE IS A CERTAIN mendacity, as Brick put it in *Cat on a Hot Tin Roof*, in our discussion of free speech on college campuses. Namely, none

of us genuinely wish that absolutely all issues be aired in the name of education and open-mindedness. To insist so is to pretend that civilized humanity makes nothing we could call advancement in philosophical consensus.

I doubt we need "free speech" on issues such as whether slavery and genocide are okay, whether it has been a mistake to view women as men's equals, or to banish as antique the idea that whites are a master race while other peoples represent a lower rung on the Darwinian scale. With all due reverence of John Stuart Mill's advocacy for the regular airing of even noxious views in order to reinforce clarity on why they were rejected, we are also human beings with limited time. A commitment to the Enlightenment justifiably will decree that certain views are, indeed, no longer in need of discussion.

However, our modern social-justice warriors are claiming that this no-fly zone of discussion is vaster than any conception of logic or morality justifies. We are being told that questions regarding the modern proposals about cultural appropriation, about whether even passing infelicitous statements constitute racism in the way that formalized segregation and racist disparagement did, or about whether social disparities can be due to cultural legacies rather than structural impediments, are as indisputably egregious, backwards, and abusive as the benighted views of the increasingly distant past.

That is, the new idea is not only that discrimination and inequality still exist, but that to even question the left's utopian expectation on such matters justifies the same furious, sloganistic and even physically violent resistance that was once levelled against those designated heretics by a Christian hegemony.

Of course the protesters in question do not recognize themselves in a portrait as opponents of something called heresy. They suppose that Galileo's opponents were clearly wrong but that they, today, are actually correct in a way that no intellectual or moral argument could coherently deny.

As such, we have students allowed to decree college campuses as "racist" when they are the least racist spaces on the planet—because they are, predictably given the imperfection of humans, not perfectly free of passingly unsavory interactions. Thinkers invited to talk for a portion of an hour from the right rather than the left and then have dinner with a few people and fly home are treated as if they were reanimated Hitlers. The student of color who hears a few white students venturing polite questions about the leftist orthodoxy is supported in fashioning these questions as "racist" rhetoric.

The people on college campuses who openly and

aggressively spout this new version of Christian (or even Islamist) crusading—ironically justifying it as a barricade against “fascist” muzzling of freedom when the term applies ominously well to the regime they are fostering—are a minority. However, the sawmill spinning blade of their rhetoric has succeeded in rendering opposition as risky as espousing pedophilia, such that only those natively open to violent criticism dare speak out. The latter group is small. The campus consensus thereby becomes, if only at moralistic gunpoint à la the ISIS victim video, a strangled hard-leftism.

Hence freedom of speech is indeed threatened on today’s college campuses. I have lost count of how many of my students, despite being liberal Democrats (many of whom sobbed at Hillary Clinton’s loss last November), have told me that they are afraid to express their opinions about issues that matter, despite the fact that their opinions are ones that any liberal or even leftist person circa 1960 would have considered perfectly acceptable.

Something has shifted of late, and not in a direction we can legitimately consider forwards.

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KATE BACHELDER ODELL

IT’S 2021, and Harvard Square has devolved into riots: Some 120 people are injured in protests, and the carnage includes fire-consumed cop cars and smashed-in windows. The police discharge canisters of tear gas, and, after apprehending dozens of protesters, enforce a 1:45 A.M. curfew. Anyone roaming the streets after hours is subject to arrest. About 2,000 National Guardsmen are prepared to intervene. Such violence and disorder is also roiling Berkeley and other elite and educated areas.

Oh, that’s 1970. The details are from the Harvard *Crimson’s* account of “anti-war” riots that spring. The episode is instructive in considering whether free speech is under threat in the United States. Almost daily, there’s a new YouTube installment of students melting down over viewpoints of speakers invited to one campus or another. Even amid speech threats from government—for example, the IRS’s targeting of political opponents—nothing has captured the public’s

attention like the end of free expression at America’s institutions of higher learning.

Yet disruption, confusion, and even violence are not new campus phenomena. And it’s hard to imagine that young adults who deployed brute force in the 1960s and ’70s were deeply committed to the open and peaceful exchange of ideas.

There may also be reason for optimism. The rough and tumble on campus in the 1960s and ’70s produced a more even-tempered ’80s and ’90s, and colleges are probably heading for another course correction. In covering the ruckuses at Yale, Missouri, and elsewhere, I’ve talked to professors and students who are figuring out how to respond to the illiberalism, even if the reaction is delayed. The University of Chicago put out a set of free-speech principles last year, and others schools such as Princeton and Purdue have endorsed them.

The NARPs—Non-Athletic Regular People, as they are sometimes known on campus—still outnumber the social-justice warriors, who appear to be overplaying their hand. Case in point is the University of Missouri, which experienced a precipitous drop in enrollment after instructor Melissa Click and her ilk stoked racial tensions last spring. The college has closed dorms and trimmed budgets. Which brings us to another silver lining: The economic model of higher education (exorbitant tuition to pay ever more administrators) may blow up traditional college before the fascists can.

Note also that the anti-speech movement is run by rich kids. A Brookings Institution analysis from earlier this year discovered that “the average enrollee at a college where students have attempted to restrict free speech comes from a family with an annual income \$32,000 higher than that of the average student in America.” Few rank higher in average income than those at Middlebury College, where students evicted scholar Charles Murray in a particularly ugly scene. (The report notes that Murray was received respectfully at Saint Louis University, “where the median income of students’ families is half Middlebury’s.”) The impulses of over-adulated 20-year-olds may soon be tempered by the tyranny of having to show up for work on a daily basis.

None of this is to suggest that free speech is enjoying some renaissance either on campus or in America. But perhaps as the late *Wall Street Journal* editorial-page editor Robert Bartley put it in his valedictory address: “Things could be worse. Indeed, they have been worse.”

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JONATHAN RAUCH

IS FREE SPEECH under threat? The one-syllable answer is “yes.” The three-syllable answer is: “Yes, of course.” Free speech is always under threat, because it is not only the single most successful social idea in all of human history, it is also the single most counterintuitive. “You mean to say that speech that is offensive, untruthful, malicious, seditious, antisocial, blasphemous, heretical, misguided, or all of the above deserves government *protection*?” That seemingly bizarre proposition is defensible only on the grounds that the marketplace of ideas turns out to be the most powerful engine of knowledge, prosperity, liberty, social peace, and moral advancement that our species has had the good fortune to discover.

Every new generation of free-speech advocates will need to get up every morning and re-explain the case for free speech and open inquiry—today, tomorrow, and forever. That is our lot in life, and we just need to be cheerful about it. At discouraging moments, it is helpful to remember that the country has made great strides toward free speech since 1798, when the Adams administration arrested and jailed its political critics; and since the 1920s, when the U.S. government banned and burned James Joyce’s great novel *Ulysses*; and since 1954, when the government banned *ONE*, a pioneering gay journal. (The cover article was a critique of the government’s indecency censors, who censored it.) None of those things could happen today.

I suppose, then, the interesting question is: *What kind* of threat is free speech under today? In the present age, direct censorship by government bodies is rare. Instead, two more subtle challenges hold sway, especially, although not only, on college campuses. The first is a version of what I called, in my book *Kindly Inquisitors*, the humanitarian challenge: the idea that speech that is hateful or hurtful (in someone’s estimation) causes pain and thus violates others’ rights, much as physical violence does. The other is a version of what I called the egalitarian challenge: the idea that speech that denigrates minorities (again, in someone’s estimation) perpetuates social inequality and oppression and thus also is a rights violation. Both arguments call upon administrators and other bureaucrats to defend human rights by regulating speech rights.

Both doctrines are flawed to the core. Censorship harms minorities by enforcing conformity and entrenching majority power, and it no more ameliorates hatred and injustice than smashing thermometers ameliorates global warming. If unwelcome words

are the equivalent of bludgeons or bullets, then the free exchange of criticism—science, in other words—is a crime. I could go on, but suffice it to say that the current challenges are new variations on ancient themes—and they will be followed, in decades and centuries to come, by many, many other variations. Memo to free-speech advocates: Our work is never done, but the really amazing thing, given the proposition we are tasked to defend, is how well we are doing.

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NICHOLAS QUINN ROSENKRANZ

SPEECH IS UNDER threat on American campuses as never before. Censorship in various forms is on the rise. And this year, the threat to free speech on campus took an even darker turn, toward actual violence. The prospect of Milo Yiannopoulos speaking at Berkeley provoked riots that caused more than \$100,000 worth of property damage on the campus. The prospect of Charles Murray speaking at Middlebury led to a riot that put a liberal professor in the hospital with a concussion. Ann Coulter’s speech at Berkeley was cancelled after the university determined that none of the appropriate venues could be protected from “known security threats” on the date in question.

The free-speech crisis on campus is caused, at least in part, by a more insidious campus pathology: the almost complete lack of intellectual diversity on elite university faculties. At Yale, for example, the number of registered Republicans in the economics department is zero; in the psychology department, there is one. Overall, there are 4,410 faculty members at Yale, and the total number of those who donated to a Republican candidate during the 2016 primaries was three.

So when today’s students purport to feel “unsafe” at the mere prospect of a conservative speaker on campus, it may be easy to mock them as “delicate snowflakes,” but in one sense, their reaction is understandable: If students are shocked at the prospect of a Republican behind a university podium, perhaps it is because many of them have never before laid eyes on one.

To see the connection between free speech and intellectual diversity, consider the recent commencement speech of Harvard President Drew Gilpin Faust:

Universities must be places open to the kind of debate that can change ideas....Silencing ideas or basking in intellectual orthodoxy independent of facts and evidence impedes our access to new and better ideas, and it inhibits a full and considered rejection of bad ones....We must work to ensure that universities do not become bubbles isolated from the concerns and discourse of the society that surrounds them. Universities must model a commitment to the notion that truth cannot simply be claimed, but must be established—established through reasoned argument, assessment, and even sometimes uncomfortable challenges that provide the foundation for truth.

Faust is exactly right. But, alas, her commencement audience might be forgiven a certain skepticism. After all, the number of registered Republicans in several departments at Harvard—e.g., history and psychology—is exactly zero. In those departments, the professors themselves may be “basking in intellectual orthodoxy” without ever facing “uncomfortable challenges.” This may help explain why some students will do everything in their power to keep conservative speakers off campus: They notice that faculty hiring committees seem to do exactly the same thing.

In short, it is a promising sign that true liberal academics like Faust have started speaking eloquently about the crucial importance of civil, reasoned disagreement. But they will be more convincing on this point when they hire a few colleagues with whom they actually disagree.

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BEN SHAPIRO

IN FEBRUARY, I spoke at California State University in Los Angeles. Before my arrival, professors informed students that a white supremacist would be

descending on the school to preach hate; threats of violence soon prompted the administration to cancel the event. I vowed to show up anyway. One hour before the event, the administration backed down and promised to guarantee that the event could go forward, but police officers were told not to stop the 300 students, faculty, and outside protesters who blocked and assaulted those who attempted to attend the lecture. We ended up trapped in the auditorium, with the authorities telling students not to leave for fear of physical violence. I was rushed from campus under armed police guard.

Is free speech under assault?

Of course it is.

On campus, free speech is under assault thanks to a perverse ideology of intersectionality that claims victim identity is of primary value and that views are a merely secondary concern. As a corollary, if your views offend someone who outranks you on the intersectional hierarchy, your views are treated as violence—threats to identity itself. On campus, statements that offend an individual’s identity have been treated as “microaggressions”—actual *aggressions* against another, ostensibly worthy of violence. Words, students have been told, may not break bones, but they will prompt sticks and stones, and rightly so.

Thus, protesters around the country—leftists who see verbiage as violence—have, in turn, used violence in response to ideas they hate. Leftist local authorities then use the threat of violence as an excuse to ideologically discriminate against conservatives. This means public intellectuals like Charles Murray being run off of campus and his leftist professorial cohort viciously assaulted; it means Ann Coulter being targeted for violence at Berkeley; it means universities preemptively banning me and Ayaan Hirsi Ali and Condoleezza Rice and even Jason Riley.

The campus attacks on free speech are merely the most extreme iteration of an ideology that spans from left to right: the notion that your right to free speech ends where my feelings begin. Even Democrats who say that Ann Coulter should be allowed to speak at Berkeley say that nobody should be allowed to contribute to a super PAC (unless you’re a union member, naturally).

Meanwhile, on the right, the president’s attacks on the press have convinced many Republicans that restrictions on the press wouldn’t be altogether bad. A *Vanity Fair/60 Minutes* poll in late April found that 36 percent of Americans thought freedom of the press “does more harm than good.” Undoubtedly, some of that is due to the media’s obvious bias. CNN’s Jeff Zucker has targeted the Trump administration for

supposedly quashing journalism, but he was silent when the Obama administration's Department of Justice cracked down on reporters from the Associated Press and Fox News, and when hacks like Deputy National Security Adviser Ben Rhodes openly sold lies regarding Iran. But for some on the right, the response to press falsities hasn't been to call for truth, but to instead echo Trumpian falsehoods in the hopes of damaging the media. Free speech is only important when people seek the truth. Leftists traded truth for tribalism long ago; in response, many on the right seem willing to do the same. Until we return to a common standard under which facts matter, free speech will continue to rest on tenuous grounds.

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JUDITH SHULEVITZ

IT'S TEMPTING to blame college and university administrators for the decline of free speech in America, and for years I did just that. If the guardians of higher education won't inculcate the habits of mind required for serious thinking, I thought, who will? The unfettered but civil exchange of ideas is the basic operation of education, just as addition is the basic operation of arithmetic. And universities have to teach both the unfettered part and the civil part, because arguing in a respectful manner isn't something anyone does instinctively.

So why change my mind now? Schools still cling to speech codes, and there still aren't enough deans like the one at the University of Chicago who declared his school a safe-space-free zone. My alma mater just handed out prizes for "enhancing race and/or ethnic relations" to two students caught on video harassing the dean of their residential college, one screaming at him that he'd created "a space for violence to happen," the other placing his face inches away from the dean's and demanding, "Look at me." All this because they deemed a thoughtful if ill-timed letter about Halloween costumes written by the dean's wife to be an act of racist aggression. Yale should discipline students who behave like that, even if they're right on the merits (I don't think they were, but that's not the point). They certainly don't deserve awards. I can't believe I had to write that sentence.

But in abdicating their responsibilities, the universities have enabled something even worse than an attack on free speech. They've unleashed an assault on themselves. There's plenty of free speech around; we know that because so much bad speech—low-minded nonsense—tests our constitutional tolerance daily, and that's holding up pretty well. (As Nicholas Lemann observes elsewhere in this symposium, Facebook and Google represent bigger threats to free speech than students and administrators.) What's endangered is *good* speech.

Universities were setting themselves up to be used. Provocateurs exploit the atmosphere on campus to goad overwrought students, then gleefully trash the most important bastion of our crumbling civil society. Higher education and everything it stands for—logical argument, the scientific method, epistemological rigor—start to look illegitimate. Voters perceive tenure and research and higher education itself as hopelessly partisan and unworthy of taxpayers' money.

The press is a secondary victim of this process of delegitimization. If serious inquiry can be waved off as ideology, then facts won't be facts and reporting can't be trusted. All journalism will be equal to all other journalism, and all journalists will be reduced to pests you can slam to the ground with near impunity. Politicians will be able to say anything and do just about anything and there will be no countervailing authority to challenge them. I'm pretty sure that that way lies Putinism and Erdoganism. And when we get to that point, I'm going to start worrying about free speech again.

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HARVEY SILVERGLATE

FREE SPEECH IS, and has always been, threatened. The title of Nat Hentoff's 1993 book *Free Speech for Me – but Not for Thee* is no less true today than at any time, even as the Supreme Court has accorded free speech a more absolute degree of protection than in any previous era.

Since the 1980s, the high court has decided most major free-speech cases in favor of speech, with most of the major decisions being unanimous or nearly so.

Women's-rights advocates were turned back by the high court in 1986 when they sought to ban the

sale of printed materials that, because deemed pornographic by some, were alleged to promote violence against women. Censorship in the name of gender-based protection thus failed to gain traction.

Despite the demands of civil-rights activists, the Supreme Court in 1992 declared cross-burning to be a protected form of expression in *R.A.V. v. City of St. Paul*, a decision later refined to strengthen a narrow exception for when cross-burning occurs primarily as a physical threat rather than merely an expression of hatred.

Other attempts at First Amendment circumvention have been met with equally decisive rebuff. When the Reverend Jerry Falwell sued *Hustler* magazine publisher Larry Flynt for defamation growing out of a parody depicting Falwell's first sexual encounter as a drunken tryst with his mother in an outhouse, a unanimous Supreme Court lectured on the history of parody as a constitutionally protected, even if cruel, form of social and political criticism.

When the South Boston Allied War Veterans, sponsor of Boston's Saint Patrick's Day parade, sought to exclude a gay veterans' group from marching under its own banner, the high court unanimously held that as a private entity, even though marching in public streets, the Veterans could exclude any group marching under a banner conflicting with the parade's socially conservative message, notwithstanding public-accommodations laws. The gay group could have its own parade but could not rain on that of the conservatives.

Despite such legal clarity, today's most potent attacks on speech are coming, ironically, from liberal-arts colleges. Ubiquitous "speech codes" limit speech that might insult, embarrass, or "harass," in particular, members of "historically disadvantaged" groups. "Safe spaces" and "trigger warnings" protect purportedly vulnerable students from hearing words and ideas they might find upsetting. Student demonstrators and threats of violence have forced the cancellation of controversial speakers, left and right.

It remains unclear how much campus censorship results from politically correct faculty, control-obsessed student-life administrators, or students socialized and indoctrinated into intolerance. My experience suggests that the bureaucrats are primarily, although not entirely, to blame. When sued, colleges either lose or settle, pay a modest amount, and then return to their censorious ways.

This trend threatens the heart and soul of liberal education. Eventually it could infect the entire society as these students graduate and assume influential positions. Whether a resulting flood of censorship ul-

timately overcomes legal protections and weakens democracy remains to be seen.

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CHRISTINA HOFF SOMMERS

WHEN HEATHER MAC DONALD'S "blue lives matter" talk was shut down by a mob at Claremont McKenna College, the president of neighboring Pomona College sent out an email defending free speech. Twenty-five students shot back a response: "Heather Mac Donald is a fascist, a white supremacist... classist, and ignorant of interlocking systems of domination that produce the lethal conditions under which oppressed peoples are forced to live."

Some blame the new campus intolerance on hypersensitive, over-trophied millennials. But the students who signed that letter don't appear to be fragile. Nor do those who recently shut down lectures at Berkeley, Middlebury, DePaul, and Cal State LA. What they are is impassioned. And their passion is driven by a theory known as intersectionality.

Intersectionality is the source of the new preoccupation with microaggressions, cultural appropriation, and privilege-checking. It's the reason more than 200 colleges and universities have set up Bias Response Teams. Students who overhear potentially "otherizing" comments or jokes are encouraged to make anonymous reports to their campus BRTs. A growing number of professors and administrators have built their careers around intersectionality. What is it exactly?

Intersectionality is a neo-Marxist doctrine that views racism, sexism, ableism, heterosexism, and all forms of "oppression" as interconnected and mutually reinforcing. Together these "isms" form a complex arrangement of advantages and burdens. A white woman is disadvantaged by her gender but advantaged by her race. A Latino is burdened by his

ethnicity but privileged by his gender. According to intersectionality, American society is a “matrix of domination,” with affluent white males in control. Not only do they enjoy most of the advantages, they also determine what counts as “truth” and “knowledge.”

But marginalized identities are not without resources. According to one of intersectionality’s leading theorists, Patricia Collins (former president of the American Sociology Association), disadvantaged groups have access to deeper, more liberating truths. To find their voice, and to enlighten others to the true nature of reality, they require a safe space—free of microaggressive put-downs and imperious cultural appropriations. Here they may speak openly about their “lived experience.” Lived experience, according to intersectional theory, is a better guide to the truth than self-serving Western and masculine styles of thinking. So don’t try to refute intersectionality with logic or evidence: That only proves that you are part of the problem it seeks to overcome.

How could comfortably ensconced college students be open to a convoluted theory that describes their world as a matrix of misery? Don’t they flinch when they hear intersectional scholars like bell hooks refer to the U.S. as an “imperialist, white-supremacist, capitalist patriarchy”? Most take it in stride because such views are now commonplace in high-school history and social studies texts. And the idea that knowledge comes from lived experience rather than painstaking study and argument is catnip to many undergrads.

Silencing speech and forbidding debate is not an unfortunate by-product of intersectionality—it is a primary goal. How else do you dismantle a lethal system of oppression? As the protesting students at Claremont McKenna explained in their letter: “Free speech... has given those who seek to perpetuate systems of domination a platform to project their bigotry.” To the student activists, thinkers like Heather MacDonald and Charles Murray are agents of the dominant narrative, and their speech is “a form of violence.”

It is hard to know how our institutions of higher learning will find their way back to academic freedom, open inquiry, and mutual understanding. But as long as intersectional theory goes unchallenged, campus fanaticism will intensify.

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JOHN STOSSEL

YES, SOME COLLEGE students do insane things. Some called police when they saw “Trump 2016” chalked on sidewalks. The vandals at Berkeley and the thugs who assaulted Charles Murray are disgusting. But they are a minority. And these days people fight back.

Someone usually videotapes the craziness. Yale’s “Halloween costume incident” drove away two sensible instructors, but videos mocking Yale’s snowflakes, like “Silence U,” make such abuse less likely. Groups like Young America’s Foundation (YAF) publicize censorship, and the Foundation for Individual Rights in Education (FIRE) sues schools that restrict speech.

Consciousness has been raised. On campus, the worst is over. Free speech has always been fragile. I once took cameras to Seton Hall law school right after a professor gave a lecture on free speech. Students seemed to get the concept. Sean, now a lawyer, said, “Protect freedom for thought we hate; otherwise you never have a society where ideas clash, and we come up with the best idea.” So I asked, “Should there be *any* limits?” Students listed “fighting words,” “shouting fire in a theater,” malicious libel, etc.—reasonable court-approved exceptions. But then they went further. Several wanted bans on “hate” speech, “No value comes out of hate speech,” said Javier. “It inevitably leads to violence.”

No it doesn’t, I argued, “Also, doesn’t hate speech bring ideas into the open, so you can better argue about them, bringing you to the truth?”

“No,” replied Floyd, “With hate speech, more speech is just violence.”

So I pulled out a big copy of the First Amendment and wrote, “exception: hate speech.”

Two students wanted a ban on flag desecration “to respect those who died to protect it.”

One wanted bans on blasphemy:

“Look at the gravity of the harm versus the value in blasphemy—the harm outweighs the value.”

Several wanted a ban on political speech by corporations because of “the potential for large corporations to improperly influence politicians.”

Finally, Jillian, also now a lawyer, wanted hunting videos banned.

“It encourages harm down the road.”

I asked her, incredulously, “you’re comfortable locking up people who make a hunting film?”

“Oh, yeah,” she said. “It’s unnecessary cruelty to feeling and sentient beings.”

So, I picked up my copy of the Bill of Rights again. After “no law . . . abridging freedom of speech,” I added: “Except hate speech, flag burning, blasphemy, corporate political speech, depictions of hunting . . .”

That embarrassed them. “We may have gone too far,” said Sean. Others agreed. One said, “Cross out the exceptions.” Free speech survived, but it was a close call. Respect for unpleasant speech will always be thin. Then-Senator Hillary Clinton wanted violent video games banned. John McCain and Russ Feingold tried to ban political speech. Donald Trump wants new libel laws, and if you burn a flag, he tweeted, consequences might be “loss of citizenship or a year in jail!” Courts or popular opinion killed those bad ideas.

Free speech will survive, assuming those of us who appreciate it use it to fight those who would smother it.

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WARREN TREADGOLD

EVEN CITIZENS of dictatorships are free to praise the regime and to talk about the weather. The only speech likely to be threatened anywhere is the sort that offends an important and intolerant group. What is new in America today is a leftist ideology that threatens speech precisely because it offends certain important and intolerant groups: feminists and supposedly oppressed minorities.

So far this new ideology is clearly dominant only in colleges and universities, where it has become so strong that most controversies concern outside speakers invited by students, not faculty speakers or speakers invited by administrators. Most academic administrators and professors are either leftists or have learned not to oppose leftism; otherwise they would probably never have been hired. Administrators treat even violent leftist protestors with respect and are ready to prevent conservative and moderate outsiders from speaking rather than provoke protests. Most professors who defend conservative or moderate speakers argue that the speakers’ views are indeed noxious but say that students should be exposed to them to learn how to refute them. This is very different from encouraging a free exchange of ideas.

Although the new ideology began on campuses

in the ’60s, it gained authority outside them largely by means of several majority decisions of the Supreme Court, from *Roe* (1973) to *Obergefell* (2015). The Supreme Court decisions that endanger free speech are based on a presumed consensus of enlightened opinion that certain rights favored by activists have the same legitimacy as rights explicitly guaranteed by the Constitution—or even more legitimacy, because the rights favored by activists are assumed to be so fundamental that they need no grounding in specific constitutional language. The Court majorities found restricting abortion rights or homosexual marriage, as large numbers of Americans wish to do, to be constitutionally equivalent to restricting black voting rights or interracial marriage. Any denial of such equivalence therefore opposes fundamental constitutional rights and can be considered hate speech, advocating psychological and possibly physical harm to groups like women seeking abortions or homosexuals seeking approval. Such speech may still be constitutionally protected, but acting upon it is not.

This ideology of forbidding allegedly offensive speech has spread to most of the Democratic Party and the progressive movement. Rather than seeing themselves as taking one side in a free debate, progressives increasingly argue (for example) that opposing abortion is offensive to women and supporting the police is offensive to blacks. Some politicians object so strongly to such speech that despite their interest in winning votes, they attack voters who disagree with them as racists or sexists. Expressing views that allegedly discriminate against women, blacks, homosexuals, and various other minorities can now be grounds for a lawsuit.

Speech that supposedly offends women or minorities has already cost some people their careers, their businesses, and their opportunities to deliver or hear speeches. Such intimidation is the intended result of an ideology that threatens free speech.

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MATT WELCH

LIKE A SULLEN ZOO elephant rocking back and forth from leg to leg, there is an oversized paradox we’d prefer not to see standing smack in the sightlines of most our policy debates. Day by day, even minute by minute, America simultaneously gets less free in the laboratory, but more free in the field. Indi-

viduals are constantly expanding the limits and applications of their own autonomy, even as government transcends prior restraints on how far it can reach into our intimate business.

So it is that the Internal Revenue Service can charge foreign banks with collecting taxes on U.S. citizens (therefore causing global financial institutions to shun many of the estimated 6 million-plus Americans who live abroad), even while block-chain virtuosos make illegal transactions wholly undetectable to authorities. It has never been easier for Americans to travel abroad, and it's never been harder to enter the U.S. without showing passports, fingerprints, retinal scans, and even social-media passwords.

What's true for banking and tourism is doubly true for free speech. Social media has given everyone not just a platform but a megaphone (as unreadable as our Facebook timelines have all become since last November). At the same time, the federal government during this unhappy 21st century has continuously ratcheted up prosecutorial pressure against leakers, whistleblowers, investigative reporters, and technology companies.

A hopeful bulwark against government encroachment unique to the free-speech field is the Supreme Court's very strong First Amendment jurisprudence in the past decade or two. Donald Trump, like Hillary Clinton before him, may prattle on about locking up flag-burners, but Antonin Scalia and the rest of SCOTUS protected such expression back in 1990. Barack Obama and John McCain (and Hillary Clinton—she's as bad as any recent national politician on free speech) may lament the *Citizens United* decision, but it's now firmly legal to broadcast unfriendly documentaries about politicians without fear of punishment, no matter the electoral calendar.

But in this very strength lies what might be the First Amendment's most worrying vulnerability. Barry Friedman, in his 2009 book *The Will of the People*, made the persuasive argument that the Supreme Court typically ratifies, post facto, where public opinion has already shifted. Today's culture of free speech could be tomorrow's legal framework. If so, we're in trouble.

For evidence of free-speech slippage, just read around you. When both major-party presidential nominees react to terrorist attacks by calling to shut down corners of the Internet, and when their respective supporters are actually debating the propriety of sucker punching protesters they disagree with, it's hard to escape the conclusion that our increasingly shrill partisan sorting is turning the very foundation of post-1800 global prosperity into just another club to be swung in

our national street fight.

In the eternal cat-and-mouse game between private initiative and government control, the former is always advantaged by the latter's fundamental incompetence. But what if the public willingly hands government the power to muzzle? It may take a counter-cultural reformation to protect this most noble of American experiments.

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ADAM J. WHITE

FREE SPEECH IS INDEED under threat on our university campuses, but the threat did not begin there and it will not end there. Rather, the campus free-speech crisis is a particularly visible symptom of a much more fundamental crisis in American culture.

The problem is not that some students, teachers, and administrators reject traditional American values and institutions, or even that they are willing to menace or censor others who defend those values and institutions. Such critics have always existed, and they can be expected to use the tools and weapons at their disposal. The problem is that our country seems to produce too few students, teachers, and administrators who are willing or able to respond to them.

American families produce children who arrive on campus unprepared for, or uninterested in, defending our values and institutions. For our students who are focused primarily on their career prospects (if on anything at all), “[c]ollege is just one step on the continual stairway of advancement,” as David Brooks observed 16 years ago. “They’re not trying to buck the system; they’re trying to climb it, and they are streamlined for ascent. Hence they are not a disputatious group.”

Meanwhile, parents bear incomprehensible financial burdens to get their kids through college, without a clear sense of precisely what their kids will get out of these institutions in terms of character formation or civic virtue. With so much money at stake, few can afford for their kids to pursue more than career prospects.

Those problems are not created on campus, but they are exacerbated there, as too few college professors and administrators see their institutions as cultivators of American culture and republicanism. Confronted with activists' rage, they offer no competing vision of higher education—let alone a compelling one.

Ironically, we might borrow a solution from the Left. Where progressives would leverage state power in service of their health-care agenda, we could do the same for education. State legislatures and governors, recognizing the present crisis, should begin to reform and renegotiate the fundamental nature of state universities. By making state universities more affordable, more productive, and more reflective of mainstream American values, they will attract students—and create incentives for competing private universities to follow suit.

Let's hope they do it soon, for what's at stake is much more than just free speech on campus, or even free speech writ large. In our time, as in Tocqueville's, "the instruction of the people powerfully contributes to the support of a democratic republic," especially "where instruction which awakens the understanding is not separated from moral education which amends the heart." We need our colleges to cultivate—not cut down—civic virtue and our capacity for self-government. "Republican government presupposes the existence of these qualities in a higher degree than any other form," Madison wrote in *Federalist 55*. If "there is not sufficient virtue among men for self-government," then "nothing less than the chains of despotism" can restrain us "from destroying and devouring one another."

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CATHY YOUNG

A WRITER GETS EXPELLED from the World Science Fiction Convention for criticizing the sci-fi community's preoccupation with racial and gender "inclusivity" while moderating a panel. An assault on free speech, or an exercise of free association? How about when students demand the disinvitation of a speaker—or disrupt the speech? When a critic of feminism gets banned from a social-media platform for unspecified "abuse"?

Such questions are at the heart of many recent free-speech controversies. There is no censorship by government; but how concerned should we be when private actors effectively suppress unpopular speech? Even in the freest society, some speech will—and should—be considered odious and banished to unsavory fringes. No one weeps for ostracized Holocaust deniers or pedophilia apologists.

But shunned speech needs to remain a nar-

row exception—or acceptable speech will inexorably shrink. As current Federal Communications Commission chairman Ajit Pai cautioned last year, First Amendment protections will be hollowed out unless undergirded by cultural values that support a free marketplace of ideas.

Sometimes, attacks on speech come from the right. In 2003, an Iraq War critic, reporter Chris Hedges, was silenced at Rockford College in Illinois by hecklers who unplugged the microphone and rushed the stage; some conservative pundits defended this as robust protest. Yet the current climate on the left—in universities, on social media, in "progressive" journalism, in intellectual circles—is particularly hostile to free expression. The identity-politics left, fixated on subtle oppressions embedded in everyday attitudes and language, sees speech-policing as the solution.

Is hostility to free-speech values on the rise? *New York* magazine columnist Jesse Singal argues that support for restrictions on public speech offensive to minorities has remained steady, and fairly high, since the 1970s. Perhaps. But the range of what qualifies as offensive—and which groups are to be shielded—has expanded dramatically. In our time, a leading liberal magazine, the *New Republic*, can defend calls to destroy a painting of lynching victim Emmett Till because the artist is white and guilty of "cultural appropriation," and a feminist academic journal can be bullied into apologizing for an article on transgender issues that dares to mention "male genitalia."

There is also a distinct trend of "bad" speech being squelched by coercion, not just disapproval. That includes the incidents at Middlebury College in Vermont and at Claremont McKenna in California, where mobs not only prevented conservative speakers—Charles Murray and Heather Mac Donald—from addressing audiences but physically threatened them as well. It also includes the use of civil-rights legislation to enforce goodthink in the workplace: Businesses may face stiff fines if they don't force employees to call a "non-binary" co-worker by the singular "they," even when talking among themselves.

These trends make a mockery of liberalism and enable the kind of backlash we have seen with Donald Trump's election. But the backlash can bring its own brand of authoritarianism. It's time to start rebuilding the culture of free speech across political divisions—a project that demands, above all, genuine openness and intellectual consistency. Otherwise it will remain, as the late, great Nat Hentoff put it, a call for "free speech for me, but not for thee."

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ROBERT J. ZIMMER

FREE SPEECH IS NOT a natural feature of human society. Many people are comfortable with free expression for views they agree with but would withhold this privilege for those they deem offensive. People justify such restrictions by various means: the appeal to moral certainty, political agendas, demand for change, opposing change, retaining power, resisting authority, or, more recently, not wanting to feel uncomfortable. Moral certainty about one's views or a willingness to indulge one's emotions makes it easy to assert that others are doing true damage or creating unacceptable offense simply by presenting a fundamentally different perspective.

The resulting challenges to free expression may come in the form of laws, threats, pressure (whether societal, group, or organizational), or self-censorship in the face of a prevailing consensus. Specific forms of challenge may be more or less pronounced as circumstances vary. But the widespread temptation to consider the silencing of "objectionable" viewpoints as acceptable implies that the challenge to free expression is always present.

The United States today is no exception. We benefit from the First Amendment, which asserts that the government shall make no law abridging the freedom of speech. However, fostering a society supporting free expression involves matters far beyond the law. The ongoing and increasing demonization of one group by another creates a political and social environment conducive to suppressing speech. Even violent acts opposing speech can become acceptable or encouraged. Such behavior is evident at both political rallies and university events. Our greatest current threat to free expression is the emergence of a national culture that accepts the legitimacy of

suppression of speech deemed objectionable by a segment of the population.

University and college campuses present a particularly vivid instance of this cultural shift. There have been many well-publicized episodes of speakers being disinvited or prevented from speaking because of their views. However, the problem is much deeper, as there is significant self-censorship on many campuses. Both faculty and students sometimes find themselves silenced by social and institutional pressures to conform to "acceptable" views. Ironically, the very mission of universities and colleges to provide a powerful and deeply enriching education for their students demands that they embrace and protect free expression and open discourse. Failing to do so significantly diminishes the quality of the education they provide.

My own institution, the University of Chicago, through the words and actions of its faculty and leaders since its founding, has asserted the importance of free expression and its essential role in embracing intellectual challenge. We continue to do so today as articulated by the Chicago Principles, which strongly affirm that "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 only in such an environment that universities can fulfill their own highest aspirations and provide leadership by demonstrating the value of free speech within society more broadly. A number of universities have joined us in reinforcing these values. But it remains to be seen whether the faculty and leaders of many institutions will truly stand up for these values, and in doing so provide a model for society as a whole. 🐦

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