

## ***What Causes Campus Censorship and How to Combat it***

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When I say that censorship on campus has become more pervasive and intrusive and focused on increasingly trivial offenses, I don't mean to suggest that campus speech was unrestricted in the past. Censorship is a perennial problem; the urge to restrict speech you fear or dislike seems almost primal – especially to people in power, on all points in the political spectrum. In recent years, the drive to repress individual rights on campus has generally emanated from the left, but sometimes it simply represents an apolitical, bureaucratic mind-set; and, historically, for every example of left wing repression, you can find a counter-example of right wing repression. Consider mid 20<sup>th</sup> century red scares, when colleges and universities grievously betrayed their stated commitments to academic freedom by imposing loyalty oaths on faculty and collaborating in purging suspected communists or communist sympathizers from their ranks. (For a history of that period, I recommend *No Ivory Tower*, by Ellen Schrecker.) We've also passed through periods when free speech and some would say anarchy practically flourished on campus.

Like most opposing ideals, censorship and free speech are locked in perpetual battle; sometimes freedom is ascendant, more or less, and sometimes censorship prevails. For the past two decades, campus censorship has been increasing, along with disregard for students' due process rights.

How did this happen? Why did your generation have the misfortune to enter college at a time when the exercise of liberty was apt to be mindlessly equated with abusiveness? Here's a little historical context for the moment in which you find yourselves.

First, the new wave of repression is partly the result of breathtaking technological changes and the creation of cyberspace – a realm that most of us could not imagine 30 years ago. (I know that 30 years is a lifetime and a half for you, but it's a relatively recent memory for some of us.) New technologies that speed and facilitate the dissemination of information and opinion inevitably inspire new efforts to restrict speech. Second, the repression you're apt to encounter on campus is partly a product of pop psychology and fashions in nurturing self-esteem, which have perversely encouraged super-sensitivity to criticism or insults. (You can measure the failure of the self-esteem movement by all the thin skins it has produced and all the censorship it has encouraged.) Third, campus censorship is partly an unfortunate, unintended consequence of long delayed progress toward equality for racial minorities, women, and gay people. Or perhaps I should say it's an overreaction to a history of discrimination; but I hope you can appreciate that history, even as you fight the censorious responses to it of some fellow students whose own brushes with discrimination may be greatly exaggerated or merely vicarious.

I think I can remember the first time I heard a Harvard student complain that she was oppressed, as a woman and a member of a racial minority, back in the early 1990s. Of course, she may have encountered some discrimination, although it would probably have been much more subtle and much less socially respectable than the discrimination that confronted her counter-parts a generation earlier. Indeed, like most elite schools, Harvard didn't even admit woman on an equal basis until it was forced to do so by law, in 1972, with passage of Title IX of the Civil Rights Act. But, by the 1990s, the kind of discrimination a student might encounter in the Ivy League, relatively subtle and occasional, was not "oppression." It did not systematically deprive people of basic civil rights and liberties and was not generally sanctioned by the administration. Never mind that even a female student of color at Harvard or any other elite university enjoyed many more advantages than a working-class white male attending a community college.

So how did this young woman come to view herself as oppressed? I think you can trace her sense of oppression to the confluence of three movements – the feminist crusade against pornography; multi-culturalism; and popular therapeutic notions of dysfunction and abuse. In the late 1980s feminist anti-pornography crusaders Catherine MacKinnon and Andrea Dworkin re-framed porn as actual assaults against women. Obliterating the line between words and action, MacKinnon came up with the novel idea of defining pornography as a violation of women’s civil rights. (The city of Indianapolis tried adopting this definition of pornography in a local ordinance that was struck down by the 7<sup>th</sup> Circuit Court of Appeals in *American Booksellers Association v Hudnut*.) “Words wound” was a mantra of anti-porn feminists, and they meant it literally, describing porn as virtual rape – with an emphasis on rape and not its virtuality. Some years ago I debated a rabid anti-porn, feminist academic who likened the production of pornography to the manufacture of unsafe cars, like some infamous old fords with exploding gas tanks.

Meanwhile, by the late 1980s, the personal development movement was focused on recovery from a wide array of supposed abuses and addictions. Virtually all of us were said to require the support of a 12 step group modeled after Alcoholics Anonymous because virtually all of us were said to be addicted to something or other – food, sex, running, gossiping – whatever. In the late 1980s and into the 90s stories of recovery and codependency filled daytime talk shows, the way reality shows fill prime time today. Oprah was enormously important in popularizing the recovery movement and the idealization of victimhood, which is what helped create a culture of censorship: Self-appointed recovery experts declared that we all suffered from the disease of codependency, transmitted by our supposedly dysfunctional families and our histories of child abuse: we were all said to have been victims of abuse, in one form or another. And, abuse was defined very broadly, virtually open-endedly, to include a range of common, normal childhood experiences, like being chastised on occasion or treated insensitively by your parents, along with being

beaten or sexually molested. This meant that practically all of us were fragile, vulnerable and easily damaged – by words as well as actions. As anti-porn feminists insisted, “words wound.”

Words were said to be especially wounding when directed against members of historically disadvantaged groups or women. Multi-culturalists focused on nurturing but not assimilating minority students and eradicating racism, sexism and various other isms from the hearts and minds of students from historically advantaged groups – mainly white males. Free speech came to be commonly and even reflexively regarded as an instrument of oppression; censorship became essential to a supposedly progressive vision of equality. Words wound.

So, the anti-porn movement, popular therapies, and multiculturalism combined into a powerful force for censorship. All of these movements – and the rigid political correctness they fostered -- were sharply critiqued and satirized throughout the 1990s. Mockery of campus speech and harassment codes was conventional; still they prospered on college and university campuses. In fact, over the past 10 years, repression on campus has only gotten worse, as a quick look at FIRE’s website confirms.

“I’m not in favor of censorship, but...” people say. “But hate speech isn’t free speech,” or “free speech isn’t the right to offend,” they insist rather stupidly, as if we’d need free speech rights to protect the right not to give offense. And the term hate speech has become rather meaningless, because like “codependency” or “child abuse,” it has been defined so broadly and applied so promiscuously: criticism, petty insults, arguments, jokes, and political talking points are all apt to be labeled hateful in this culture where people revel in taking offence -- and finding excuses for censorship.

Broad restrictions on allegedly offensive speech are particularly rampant on campus, because campuses are little fiefdoms of sorts, where college administrators rule; and in private institutions, they’re unrestrained by constitutional guarantees of liberty. But keep in mind that off campus, similar

ideas about the limits of free speech and similar notions of hate speech prevail. Criticize or mock a politician and you're liable to be accused of trafficking in hate speech, as a recent debate in the opinion section of the *Boston Globe* showed. An op ed that mocked Sarah Palin was condemned in a letter to the editor as "following the worst tradition of liberal media hate speech. Just like the pieces on SNL, and on Jon Stewart's and Bill Maher's show, (the op ed) is ugly ridicule, not serious criticism."

True, the op ed in question was ridicule, not serious criticism (although in my view, it was not all that ugly, and sometimes ridicule, or satire, does constitute serious and very effective criticism.) But, in any case, why label mundane mockery of a politician hate speech? Why not simply dismiss the op ed as childish if you consider it so? Why not just point to its failings as "serious criticism?" Condemning it as "hate speech" is a mindless, reflexive way of saying you're offended or simply that you disagree; and when you label speech hateful, you justify, or even demand, its censorship.

So fighting for individual rights on campus will prepare you for what you'll encounter when you graduate. The pitfall for you, I think, is not losing – you'll win some and lose some campus battles over liberty. The pitfall is self-righteousness – the same sort of self-righteousness or dogmatism that will define your most unreasonable opponents.

What do I mean by that? I mean that you can oppose all efforts to censor what would be constitutionally protected speech or should be protected on campus without assuming that all efforts to censor are equal. I mean that some speech we seek to protect is vicious, malevolent, and not conducive to reasoned debate. You can and should attack assumptions about direct relationships between serious harms and offensive or hateful speech, without denying that speech can conceivably contribute to harm and arguing forcefully that it must be protected nonetheless. I'm not suggesting this is easy; simultaneously condemning the content of speech while defending the rights of the speaker is not much of an intellectual challenge, but it is a formidable

political one. When you criticize speech as hateful, abusive, or otherwise unwelcome, you risk encouraging its restriction; but when you avoid acknowledging cruelty or hatefulness you risk losing your credibility and maybe even a little humanity.

Consider cyber-bullying or the spread of seriously libelous speech over the Internet. It's hard for me to imagine how nasty, abusive or libelous online speech might be regulated effectively without substantially infringing important speech rights, so, in general, I accept it as something we have to tolerate. (I'm not absolutely opposed to libel lawsuits, but libel laws drawn narrowly with respect for First Amendment rights provide plaintiffs few practical remedies anyway.) Still, tolerating bullying or libelous online speech shouldn't stop us from empathizing with its victims.

For example, as FIRE has stressed, Facebook and MySpace are free speech battleground on campus, as administrators try to restrict students' online speech. (For high school students, the situation is dire: administrations have even more power and students fewer rights.) While I support FIRE's efforts to defend online speech, even or especially when it's deemed offensive, I also understand the anxiety of administrators. Maybe it's generational, maybe it's my own personal distaste for social networking sites and my nostalgia about the privacy we've all lost, but I understand why the migration to the Internet of speech that once existed only on bathroom walls makes administrators crazy, and why they fear its effects.

Consider the recent case of Lori Drew, prosecuted for her role in posing as a teenage boy on MySpace in order to taunt a troubled teenage girl, who subsequently killed herself. This was a horrendous case, and Drew's behavior was despicable, hard to comprehend. But how, in a free society, could it be controlled? Well, a federal prosecutor got creative, as federal prosecutors are wont to do, and indicted her under an anti-hacking statute – based on her provision of false information to MySpace in establishing an account for a fictitious boy. She was convicted of three misdemeanors and her sentence is

pending, along with a motion to dismiss. This was a frightening exercise of abusive prosecutorial overreach, which made everyone who provides inaccurate personal information when registering on a website potentially vulnerable to federal indictment.

The Drew case was a dramatic example of a bad case making terrible law; but while condemning the prosecution of Lori Drew, you can also condemn her actions and understand the desire to see her punished. The temptation to regulate gratuitous cruelty, especially when its harmful effects are clear, is always strong; it's a temptation that you have to understand and respect, especially if you're going to be successful in persuading people to resist it.

Liberty is often sacrificed when laws or regulations attempt to control the problem of human malevolence, because it's a problem the law can't solve. Laws can't change what's in people's hearts, Lyndon Johnson reportedly remarked, in pressing for landmark, civil rights legislation in the 1960s -- legislation that regulated behavior, not thought, but, in doing so, helped changed the way we think, as well as behave. Laws prohibiting employment discrimination against women, for example, didn't only expand career opportunities and extend new financial independence to women, they helped change social relationships between the sexes, for the better, in my view, by creating workplaces in which men and women interacted as colleagues. These relationships are better hedges against subtler forms of sexual harassment than any number of rules and regulations.

But in recent years we've seen a drive to use civil rights laws to regulate thought as well as behavior; you're seeing the effects on campus. Remember the efforts of anti-porn feminists to define pornography as a civil rights violation. Consider the efforts to interpret sexual harassment laws to include prohibitions on offensive speech or the use of anti-discrimination policies to deny conservative Christian groups on campus the right to exclude gay people and others who don't agree to abide by their articles of faith.

In combating these efforts to restrict offensive speech or subject fundamental associational rights to discrimination policies, it's important, I think to stand up for the moral right to think, speak and associate freely – especially when the majority considers the speech and associations at issue reprehensible. Advocates of free speech and association often speak as if the value of these rights is primarily instrumental: they oppose censoring what they might agree is “bad” speech because of the impossibility of fairly drawing lines between good speech and bad and because of the danger inherent in giving anyone the power to try. But they tend not to focus on the moral value of the rights being attacked. It's not politic to point out that bigots have a moral right to indulge in what many of us might agree is hate speech, but they do; the saints and sinners among us have the same moral rights to individual autonomy, to the freedom of conscience that is at the heart of a free society.

So this battle asks a lot of us. It asks us to sympathize with the some of the concerns of those who want to regulate human nature – and the inevitable, occasional ugliness of human relations – while, at the same time standing up for the moral rights of the ugliest among us, the moral rights of everyone one to liberty.