

FREE SPEECH **ON** CAMPUS

Martin P. Golding

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Preface

I was a student at the University of California at Los Angeles during the heyday of the “loyalty oath” controversy. The Cold War was at its beginnings, and the fidelity of some academics to the United States was questioned. Employees of the university, including faculty, were required to take an oath that they were not members of so-called subversive organizations. As far as I could tell, none of my teachers was a supporter of the Soviet Union or communism (well, maybe a few), but I knew some students who were. My own attitude toward communism, however, had been negative since my high school days. I had had a teacher who was a fellow traveler, if not a member of the Communist Party, and he often lectured us callow youth on the virtues of that system. He never converted anyone, and I developed an antipathy toward the Soviet system. (In other respects he was the best high school teacher I had.) So I might have been expected to be a supporter of the loyalty oath. But I was not.

It seemed to me then, as it seems to me now, that universities are hallowed ground, as it were: the free expression of ideas and opinions, and their critical examination, are central to the work of the university. This faith, I admit, was put into question during the student disruptions in 1968 at Columbia University, where I was then teaching. I was shocked by students who wanted to “bring the university to its knees” and who thought they could thereby force a radical transformation of society. I was even more shocked by their faculty supporters who were willing to foul their own nests and risk destroying the institution. Yet, though we now live in the wake of these events, I still retain a belief in campus free speech.

However, I am not a free speech “absolutist.” Free speech is a value that must be weighed against other values and that could be overridden by them. There are circumstances in which the freedom of speech may be curtailed, but these circumstances are always special. Thus, to take an extreme case, an argument can be made that it is legitimate in today’s Germany to curb the verbal activities of neo-Nazi organizations, given the special history of the country. (Currently,

Hitler's *Mein Kampf* cannot be published there, though the Internet makes it fully available.) It may, however, be unwise to do so. Much depends on context.

On the other hand, though free speech is not an absolute value, it may have a special weight in certain circumstances. Any move to curtail it would then have a hard burden to overcome. This, I believe, is the case in universities.

This book is concerned with free speech on campus, but it is not about the First Amendment to the U.S. Constitution. It is, rather, a study in "institutional ethics." To be sure, public universities and colleges are bound by the First Amendment's guarantees of the freedom of speech, and perhaps private institutions are too, to some extent. There are, however, many excellent studies on the constitutional right of free speech. Instead, this book examines arguments, pro and con, concerning standards of discourse and expression that are particularly germane to the campus context, public or private, whether or not they are constitutionally enforceable. It will, nevertheless, be impossible to avoid some discussion of the First Amendment guarantees. Many of the arguments regarding campus discourse and expression turn on the question of how these guarantees are to be understood.

This book is also not a survey of the speech code literature. I take up what seem to me to be the best arguments for speech codes, try to present them sympathetically, and evaluate them. I come out, in the end, against speech codes. But this conclusion doesn't make me happy, for I think that it is not necessarily right to do something simply because it is legally or institutionally unpunishable: civility and concern for the feelings of others do not lose their importance whether or not there are speech codes. It also doesn't make me happy to support, as I do, the freedom of expression for the many silly and repellent theoretical ideas and opinions that the American campus is so full of today, though some might be excludable on academic grounds. As is emphasized throughout, the issue is not just the unitary one of whether there should be speech codes. There in fact is a complex of campus speech issues, connected with each other in greater or lesser degree.

We should not leave this preface without taking notice of what has been happening on campuses in recent years: an increase in the number of reported incidents of racial conflict; pressure for a more "multicultural" curriculum and revision of the "canon" (the fields, subjects, and books that hitherto have been standardly taught); affirmative action programs in admissions and faculty recruitment; regulations dealing with sexual harassment; regulations governing dating between students and between students and faculty (the Duke University law school has adopted regulations against dating between law students and faculty); "consciousness raising" sessions and sensitivity training, and so on. Around these various incidents, pressures, programs, regulations, and activities, there has grown up a veritable industry of administrators and "facilitators."

How are these phenomena connected to the campus speech issue? Does a stand on the speech question commit one to a particular stand vis-à-vis any one or other of these matters? For instance, does a pro-regulation stand commit one to a program of affirmative action or multicultural education? The rhetoric surrounding the free speech issue, from parties on both sides of the debate, the pro-regulators and the anti-regulators, often suggests that there may be a connection. But a con-

nection of what sort? Is there some conceptual link that ties them together? Do they flow together from some social ideology or agenda? Or is it merely accidental that proponents and opponents of speech regulation also tend to take contrary stances on these other phenomena?

These are difficult questions, and we cannot pretend to answer them in this book. Each side to the debate tends to see the other in stark terms: one side is right wing, conservative, homophobic, sexist; the other side is leftist, "progressive activist," nihilistic, anarchical, totalitarian. Issues of freedom of expression, faculty hiring, tenure standards, admissions, course content, and so on, are indicative of rifts in the culture of the university.

Because this little book has been written at Duke University, I think it appropriate to mention that one of the country's first academic freedom cases arose in 1903 at Trinity College, Duke's predecessor. History professor John Spencer Bassett called Booker T. Washington the greatest man in recent Southern history next to Robert E. Lee. Demands were made that Bassett be dismissed. The trustees of the college, however, voted 18–7 in Bassett's favor. Speaking to a large crowd near the campus, President Theodore Roosevelt said: "You stand for Academic Freedom, for the right of [a scholar] . . . to tell the truth as he sees it, . . . and to give others the largest liberty in seeking after the truth." The future of academic freedom depends on how the rifts in the culture of the university are resolved.

I offer my thanks, first of all, to Professor Steven Cahn, the editor of the series in which this book appears, for his patience. He has been waiting for this book for too long a time. I express my appreciation to my colleague Professor William Van Alstyne for the many discussions we have had. I also thank James O'Doherty, my research assistant at an early stage, and Ann McCloskey, my secretary. Finally, to my wife, Naomi—as always—for her intellectual and loving companionship.

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Chapter One

Campus Speech Issues

From time to time, the Congress of the United States has considered an amendment to the Constitution that would allow Congress and the states to prohibit the physical desecration of the American flag. Were the amendment to be approved (it would need the vote of two-thirds of each House and three-fourths of the states), it would have the effect of reversing the decision of the Supreme Court in the case of *Texas v. Johnson* (491 U.S. 397 (1989)), which held that a statute designed to protect the flag violated the free speech provision of the First Amendment: "Congress shall make no law . . . abridging the freedom of speech or of the press. . . ." Gregory Johnson had burned a flag in protest at the 1984 Republican National Convention. Yet as Justice William J. Brennan wrote:

If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.

The Court's decision was met with a great deal of outrage, for as the Court itself recognized, the flag is the "unique" symbol of national unity. Hence the move by Congress to reverse the decision.

This so far unsuccessful move has been met by opposition, much of it coming from people who revere the flag and deplore its desecration. They see the proposal as contrary to the "bedrock principle," perhaps just the thin edge of the wedge toward eroding an essential American freedom. It is somewhat ironic, though, that a number of these same people have no hesitation in supporting campus speech codes. While there may be a difference between a government's restriction of the expression of an idea and a college's or university's imposition of a speech code (a difference that evaporates in the case of a public institution), there clearly is some dissonance here. A double standard seems to be at work. But there are complications. Many people may be more resentful of the government's attempts to restrict free speech than a university's.

A university is more of a special-purpose institution, and restrictions on expression, it is sometimes argued, fit in with its aims: restrictions on speech are necessary to promote a "comfortable learning environment." The airing of certain ideas is therefore acceptable, while airing others that are offensive to one or another group is not. Some proponents of speech codes insist that it is not the ideas in the abstract that are of concern so much as "verbal behavior" that may cause hurt. The simplistic old adage, "Sticks and stones may break my bones, but names will never harm me," is rejected. The proscription of certain offensive and disagreeable ideas, or the mode of their expression, is therefore appropriate. Or so it is maintained.

While speech codes have varied in details, these interrelated arguments or sentiments seem to be basic considerations. Another related claim is that punishing "hate speech" teaches people that racism or other prejudice is unacceptable and can bring about tolerance and sensitivity.¹ A school's failure to institute a speech code, it is sometimes said, is tantamount to an endorsement of bigotry and racism. It has also been claimed that the Fourteenth Amendment ("nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws") mandates that students be protected from demeaning and denigrating speech if they are to be—and feel—equal on campus.² At perhaps a lesser level, it has been argued that some Supreme Court opinions legitimize prohibition of certain forms of offensive speech.³ Whether arguments for speech codes can be sustained is something we examine later.

In line with the above considerations and claims, three basic models of codes have been noted: the fighting words approach, the emotional distress theory, and the nondiscrimination/harassment option.⁴ (1) "Fighting words" were forbidden as student misconduct by a University of California code. These are defined as personally abusive epithets inherently likely to provoke a violent reaction whether or not they actually do so, and they constitute harassment when they create a hostile and intimidating educational environment. (2) A University of Texas at Austin code made it a university offense to engage in racial harassment, defined as "extreme or outrageous acts or communications that are intended to harass, intimidate or humiliate a student or students on account of race, color or national origin and that reasonably cause them to suffer severe emotional stress." (3) A third type of code emphasizes "discriminatory harassment." Thus, a proposed code at the University of Massachusetts would have made it a violation for any member of the university community to engage in verbal or physical conduct that the targeted individual or group "would find discriminatorily alters the conditions" for participation in the activities of the university, on the basis of race, color, and national or ethnic origin. The third approach seems the most commonly used, but they all overlap in extent.

Of course, a public college or university, as an agency of government, is required to conform to the provisions of the First Amendment. It is to such an institution that Justice Brennan's bedrock principle applies. In a number of important instances campus speech codes have been struck down by the courts.⁵ Private institutions are in a different situation, however. They have more leeway

in enacting speech codes.⁶ Furthermore, one can easily imagine a church-connected college imposing a speech and conduct code that prohibits on-campus expressions that do not conform to its official beliefs and practices (e.g., opposition to abortion). The courts probably could not disallow such a code, for that may interfere with another First Amendment right, the school's right of "free exercise" of religion.

The similarities and differences that obtain among public, private, and church-connected colleges and universities suggest a broad topic for analysis: the aims of institutions of higher learning. For it is in the context of these aims that arguments for and against campus speech codes take place. Obviously, the topic is too large for full treatment here, but it cannot be avoided entirely. For we are concerned, as it were, with the "constitution" of institutions of higher learning and the extent to which it does contain, or ought to contain, something like Justice Brennan's bedrock principle. In chapter 2, we explore the general rationale of the university's own constitutional free speech provision, namely, the university as a marketplace of ideas.

Also, although the bedrock principle of the First Amendment applies head-on only to public institutions, there is much to be gleaned from some of the debate over how far it reaches. The fact is that not all kinds of speech are constitutionally protected, for instance, obscene speech and terrorist threats. Analogies to free speech jurisprudence are frequently found in the speech code literature, even in the case of nonpublic colleges and universities, many of which proclaim their commitment to principles of freedom of expression and inquiry. That they are found is hardly surprising. While George Washington did not receive the Ten Amendments on Mount Vernon, they nevertheless are as close to being our civil religion as anything. So although the First Amendment applies only to governments and their agencies, we often encounter the complaint of people who have been suspended from a private institution, because of an opinion they have expressed, that their right of free speech has been violated.

The issue of free speech on campus is broader than that of speech codes alone. Speech codes are typically directed at students. Academic freedom, on the other hand, is a concept that applies, first of all, to the corporate, institutional autonomy of a university or college, its freedom to determine who shall teach, who shall be admitted, and what shall be taught. Most importantly, however, it refers to the freedom of the individual faculty member to express his or her views (however unpopular with the trustees or college administration) on extramural matters, e.g., on questions of general or local politics, and freedom from reprisal for positions taken.⁷ In this respect, the term refers to free speech "off campus," as it were, though such expression might occur on the campus. The status of tenure is regarded as vital to protect this aspect of academic freedom. In fact, many faculty members do not have tenure, and their protection derives from the respect for academic freedom maintained by the intellectual culture of the university.⁸

In another sense of the term, "academic freedom" is associated with the university as a marketplace of ideas and the free speech provision of the university's constitution, which we discuss in chapter 2. In this sense the term refers to polit-

ical positions and ideological assertions “on campus,” positions and assertions expressed in the course of teaching and class discussion or debate. An instructor in economics might be a proponent of the free market or of Marxism and teach from one or the other perspective, and a student might take a contrary position. With regard to an instructor, the term also covers the freedom (*jus docens*, the right to teach) of a qualified faculty member to control the contents of his or her courses and research, subject to the limits of professional ethics. Academic freedom in this sense may come into conflict with the institutional autonomy of the university, its freedom to determine what shall be taught. Although trustees and administration should not interfere with academic freedom, that doesn’t mean “anything goes.” Trustees and administration have the responsibility of seeing that standards of scholarship are not eroded; “academic freedom” shouldn’t become a mindless device for avoiding this responsibility.⁹

All these aspects of academic freedom border on the battle being fought over the curriculum and “multicultural education.” Although some of the arguments voiced in this encounter are germane to the issue of free speech on campus, they will only be glanced at here.¹⁰ In trying to understand the scope of the university as a marketplace of ideas, we shall, however, consider whether there are grounds for *excluding* a subject or field from the university.

Because of the campus disturbances that were common in the 1960s and ’70s, “academic freedom” was extended to include the right of students to attend classes and invited lectures free from disruption by students who disapprove of the ideas being expressed therein. Instances of such disruption have occurred in recent years, as well as in the 1980s. On many campuses, conduct codes forbid disruption of classes and lectures, but these provisions seem to be selectively enforced.

The freedom of qualified faculty members to control the content of their courses can raise a free speech issue in another way, as is illustrated by an item in the *New York Times* (May 11, 1994). Under the headline “A Sexual Harassment Case to Test Academic Freedom,” there is a report on events that allegedly took place in a class at the Chicago Theological Seminary. The professor, Gordon Snyder, told a story, from the Babylonian Talmud, regarding a man who falls off a roof and accidentally “penetrates” a woman. The point of the story, presumably, was that in the opinion of the Talmud the man is free from sin because his act was unintentional. (Examination of the source will show that the story has nothing at all to do with sin but rather with whether the man is civilly liable for degradation.) A female student believed that the story justified brutality toward women, and she charged the professor with “creating an intimidating, hostile or offensive environment”—he had engaged “in verbal conduct of a sexual nature.” The upshot of the incident was that the professor was severely censured by the seminary and had his course placed under strict supervision.

While it is impossible to comment on this incident without having more information, it is easy to see that the outcome could have a “chilling effect” on the conduct of this course and other courses taught at the school. The ethics of teaching does place limits on professors, and the control that they may have over their

courses should not be the same thing as professorial whim. Still, it is plain that sexual harassment regulations can raise campus free speech concerns. And they can raise them for students, too. In fact, there appears to be a trend to use anti-harassment regulations as a way of restricting speech, analogous with prohibitions in Employment Law.¹¹

By the beginning of 1995 more than 350 American colleges adopted or tried to adopt a speech code. Although, as noted, the speech-restrictive provisions of codes at several public institutions have been invalidated by the courts, many of them remain on the books unchanged, perhaps for public relations or “feel good” reasons. While some codes appear to be merely aspirational, others designate punishments for violations, anything from censure to expulsion. Offenders (faculty or student) may sometimes also be required to undergo a process of sensitivity training. Sensitivity and diversity training is one of the growth industries on American campuses, bringing with it a corps of (often high-priced) so-called sensitivity and diversity consultants and facilitators. On many campuses such training is a mandatory part of freshman orientation. Some of the practices that have been reported strike me as bizarre; for instance, requiring students to sit quietly while all sorts of slurs are thrown at them. Certain techniques strike me as ethically questionable, to say the least, such as embarrassing or shaming students to the point of tears. If speech codes forbid anything, it should be these sorts of practices.

As objectionable as sensitivity training may be, it raises an important general question: Is moral education part of the university’s function, and if so, what shape should it take? More specifically for our purposes, do speech codes have a role to play in the process? The former question raises the large issue of curriculum, which is beyond the scope of this book. The latter question is dealt with indirectly in other chapters. We should keep in mind, of course, that the issue of speech codes is only part of the subject of free speech on campus.

At this point it will be useful to list a number of examples of incidents that are used to raise campus free speech issues. Except for one, all are given here more or less as they are reported in the literature. Almost all of them have occurred in the past ten years. It is sometimes said that the campus speech debate has largely consisted of a rehashing of the same few alleged horror stories whose existence is attested to by anecdotal evidence at best. While a lot of rehashing has occurred, it is my distinct sense that the “alleged horror stories,” i.e., incidents of successful or attempted suppression or regulation of speech, are many and not few. But, in an important respect, whether they are many or few really doesn’t matter. The incidents raise questions of principle and underlying rationale, which merit discussion in their own right. These questions are the subject matter of this book. Although I shall be looking at real-world incidents, it is not intended as a work of reportage.

(1) A group of students hangs a banner reading “Homophobia Sucks” across the entrance to a building.

(2) A male student wears a sweatshirt with the words “Fuck Women.”

(3) One student calls a student who is of Asian descent a “Gook” and says that there are too many of his kind at the university.

(4) In a class on race relations in the United States the lecturer refers to a group as Indians rather than Native Americans. As a result the class is disrupted.

(5) In order to prevent its circulation, a black student takes copies of an independent campus newspaper; a previous issue contained an article about blacks that he found offensive and “full of lies.”

(6) A university adopts a rule that prescribes punishment for “derogatory names, inappropriately directed laughter, inconsiderate jokes, and conspicuous exclusion from conversation.”

(7) In the campus newspaper, an advertisement is published that denies the occurrence of the Holocaust.

(8) A black student association withdraws its invitation to a speaker who reportedly gave an anti-Semitic speech on another college campus.

(9) A new course proposed by a professor is turned down by the college curriculum committee on the grounds that it is ethnocentric and its syllabus is not sufficiently multicultural. When the instructor objected to such “thought control,” her dean declared the objection a threat to academic freedom.

(10) In a legal studies class on the Thirteenth Amendment the instructor refers to the black students as ex-slaves. He is required to make a public apology and attend a “sensitivity and racial awareness” session.

(11) A mathematics professor writes a letter to the student newspaper about date rape; he states that female students who accept invitations to male students’ dormitory rooms must bear some responsibility for such alleged rapes. The professor is temporarily suspended.

(12) A professor of biology writes a letter to the student newspaper condoning premarital intercourse between consenting students. The professor is dismissed from his position.

(13) A student newspaper runs a cartoon making fun of affirmative action, for which one of the editors is suspended. A student editor at another school writes an article that criticizes the suspension; he, too, is suspended.

(14) In a project for a course on contemporary issues in feminist art, some women students distribute posters around the university with the names of fifty men chosen at random from the directory, under the heading “Notice: These Men Are Potential Rapists.”

(15) A fraternity stages an “Ugly Woman” contest in which one member dresses as a black woman: he wears stringy black hair in curlers, uses pillows to pad his chest and buttocks, and speaks in slang that parodies blacks. As a result, various sanctions are imposed by the university on the fraternity.

Except for one case, the second, these incidents, or incidents like them, are reported to have occurred on North American college or university campuses in the past few years.¹² I used the second case as an example in an undergraduate course. We were discussing John Stuart Mill’s defense of free speech in his famous essay *On Liberty*, and I brought up the 1971 Supreme Court case of *Cohen v. California* (403 U.S. 15). Cohen had been convicted in a California court of violating a disturbing-the-peace statute by “offensive conduct.” He had worn a jacket bearing the words “Fuck the Draft” in a Los Angeles courthouse

corridor. He testified that he did so as a means of informing the public of the depth of his feeling against the Vietnam War and the draft. A majority of the U.S. Supreme Court decided that Cohen's right to freedom of expression had been violated and reversed his conviction.¹³

My class (thirty or so students, mostly seniors, about ten of them women) readily agreed with the result in *Cohen*. Well, I asked, suppose a student wore a sweatshirt emblazoned "Fuck NAFTA" around the Duke campus (the North American Free Trade Agreement was being debated in Congress at the time). Again, my students had no difficulty in saying it should be allowed—a clear case of "political" speech, they said. Well, then, what about a sweatshirt with "Fuck Women"? A brief moment of disquiet could be sensed. Well, what about it? Somewhat to my surprise, given the line being broadcast in many quarters of the campus regarding male-female relations, there was general agreement that this sort of speech or conduct should not be punishable. Even the ten women who were present agreed with that view; at least none of them openly dissented. Unfortunately, I did not pursue the issue. I could at least have inquired whether they thought their view was widely shared by Duke undergraduates. (I think that the general reaction would be quite vocal and negative.) But I was too diffident to press the example. I rarely use the mentioned four-letter word in my own speech, even less in a class, and in more than thirty years of teaching I don't think that I ever uttered it as many times as that day. I did suggest that a generation used to cable television and R-rated movies may have become inured to such language, but that universities and colleges, students and faculty both, perhaps should be held to higher standards of speech and conduct than the rest of society. Because of my diffidence, however, I moved on to other, less discomforting examples. (The concern with single words may seem rather old-fashioned, the sort of thing for which kids would get their mouth washed out with soap. In fact, many speech codes focus on single words, so-called derogatory names.)

Because of my diffidence I also failed to take up a related topic, the possible "chilling" effect on freedom of expression—was my diffidence due in part to that chilling effect? was I committing a verbal sexual assault? will I use this example again in a class? I would not venture to predict whether the students' reaction would be the same, next time.

In order to elicit some of the issues inherent to our subject, it will be useful to look at a few of our opening examples. It will not be necessary to expound each of them with the same degree of detail. Some of them overlap, anyway.

Example (1) is reported as an actual incident at a college in the northeast. A father visiting his son there asked the president of the college whether it would be all right if a group of students hung a banner with the slogan "Homosexuality Sucks" on a college building. "That could never be tolerated," he answered.¹⁴ (As stated, it is not important whether any of this occurred exactly as reported.) Why it couldn't be tolerated isn't clear to me. Perhaps the president merely wanted to avoid dealing with the ruckus that would be aroused. But *shouldn't* it be tolerated? If one banner is the expression of an idea, isn't the other (its opposite) also the expression of an idea? And if it is permissible to express one idea, shouldn't

it be permissible to express the other? Various observers of campus goings-on have said that a “double standard” often operates in cases of this kind.¹⁵ Suppose, in example (7) for instance, there is a move to forbid, punish, or (as has been done) severely censure the publication of Holocaust-denying advertisements. Should it matter that they contain blatant falsehoods, as long as they are an expression of ideas? How should such cases be handled?

More fundamentally, though, we need to consider whether there is a principled basis for distinguishing acceptable from unacceptable speech. This is no easy matter, and in the end we may not be able to formulate such a principle, which could be a point of great consequence. Is “Sucks” acceptable on a campus banner, no matter what it is that is supposed to “suck”? The fact is that there may well be levels of unacceptable speech, ranging, as it were, from felonies to misdemeanors. A form of speech may be unacceptable yet not something that should be punishable, as some members of my class seemed to believe in example (2). Is “inappropriately directed laughter,” example (6), the sort of thing that should be punished? On one campus a student was suspended after laughing when someone called another student a “faggot” in his presence.

Moreover, much may depend on the context. In the late 1960s and early ’70s, expletives and vulgarities were uttered in classrooms in order to cause a disruption; they now are frequently used in student newspapers, and even by some faculty in classes, as a matter of course. But what about “derogatory names”? In example (3), it will be noticed, a derogatory name was directed against a specific person, while in example (10), as described above, the name was used in reference to a group. Should that make a difference to whether a name is acceptable? Of course, regarding these two examples, it could be argued that there isn’t much if any difference between them, for in (10), calling the black students “ex-slaves,” the name was used in reference to a *present* group. But suppose someone announces more generally that there are too many “Gooks” at the university? Should that be regarded as the expression of an “idea” and hence tolerable, however unacceptable the mode of expression? Suppose the student had merely said that there were too many Asians at the university? The poster with the fifty names, example (14), seems to be the expression of an idea, but does that make it tolerable? If it had said “Notice: All men are potential rapists,” would that make it more tolerable?

What makes a name a “derogatory name” anyway? Various kinds of speech (e.g., false accusations) plainly have the capacity to cause harm in a given context. But if, as the old adage has it, “names will never harm me,” perhaps what makes a name derogatory and unacceptable is that the recipient of the name finds it *offensive*—it hurts in a way, even if it doesn’t harm. Sometimes, however, the recipient may find a name to be offensive while the deliverer does not. Apparently this was the case in example (10); the instructor did not think it offensive to call the black students “ex-slaves,” and he did not *intend* to give offense. (In the actual incident, he initially spoke the word to a particular black student who couldn’t recite the Thirteenth Amendment to the U.S. Constitution; as an ex-slave, the instructor said, he and all the other blacks should know the amend-

ment's contents. As a Jew, the instructor later explained, he didn't mind being called an ex-slave, for as the annual Passover service states: "We were slaves in Egypt. . . ." If certain words or forms of expression are to be deemed unacceptable and possibly punishable—but only if uttered with an intention to offend—it has seemed crucial to many commentators that there be some standard of offensiveness that is not dependent exclusively on the feelings of those people to whom the remark is directed. For example, some students at a major state university, which had a speech code, complained that they were offended when they were called "rednecks." Some administrators decided that the word itself is not offensive, but were they the right judges?

Examples (10) and (4) should be compared. A number of students in the classroom were upset because the lecturer used the word "Indian" instead of "Native American," and they made it difficult for him to finish out the course. Assuming that there were no Native Americans in the audience who might have taken offense (in fact, I've met Native Americans who prefer to be called Indians), and assuming that no offense was intended, there would seem to have been no wrong committed.

On the other hand, certain words in our language are recognized as intrinsically derogatory names or deprecatory words, e.g., "stupid." Should we say, instead, "cognitively challenged"? These words have negative connotations and express "con" rather than "pro" or neutral attitudes. It is easy to compile a list of them. But the status of many words is far from clear. Perhaps "Indian" falls into the unclear or neutral category, though there are some people who strongly prefer to be called Native Americans, just as there are some people who prefer to be called African Americans rather than blacks. Whether a name has an intrinsically derogatory status will often be controversial, and it might be argued that the recipient, in such a case, just has to tolerate any offense he or she feels. Some words are generally recognized as derogatory and yet do not always cause offense. It is imaginable that someone might not be offended by being called a "nerd." "Zero tolerance" of *anything* that *anybody* finds offensive, which is a principle found in a few campus speech-regulation policies, clearly creates havoc with free speech.

Aside from the problems raised by offensive words and derogatory names, there are perhaps more important free speech issues raised by "ideas" that offend or are unacceptable at least in some sense. For the notion that certain ideas are unacceptable has as its complement the notion that only certain ideas are acceptable. In effect, this duality was noted regarding the banner in example (1), assuming that the expression of an idea was involved. But it is also present in other examples: taking copies of a newspaper (5), the Holocaust-denying advertisement (7), withdrawing an invitation to speak (8), the letters about date rape and premarital sex (11), (12), and the cartoon (13). Though each of these cases probably raises a particular free speech issue, there is in each one an implicit reference to a complementary pair of acceptable and unacceptable ideas.

Consider, for instance, example (13). A student editor was suspended after writing an article criticizing the suspension of a student editor at another school