



# UNLEARNING LIBERTY

CAMPUS CENSORSHIP AND  
THE END OF AMERICAN DEBATE

**GREG LUKIANOFF**

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American Debate*

Greg Lukianoff



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***For Michelle***

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## INTRODUCTION

# *The Dangerous Collage*

IN THE SPRING OF 2007, Valdosta State University took vigorous action against an undergraduate student it believed was a “clear and present danger” to campus. What had Hayden Barnes, a decorated paramedic in his early twenties, done to terrify the VSU community? He had publicly protested the decision by the university’s president, Ronald Zaccari, to build two parking garages on campus. Believing that the \$30 million price tag was an exorbitant expenditure (\$15,000 per parking space) and that more environmentally friendly parking options were available, he had written a letter to the editor of the student newspaper and contacted members of the board of regents to voice his objections, politely, by all accounts.<sup>1</sup>

One of his protests—and a very broad definition of *protest* is necessary—was a collage depicting the dangers he believed the parking garages posed: smog, a bulldozer, an asthma inhaler, and the words to the classic liberal fight song “No Blood for Oil.” On April 13, Barnes posted this collage on Facebook under the headline “S.A.V.E. – Zaccari Memorial Parking Garage.”<sup>2</sup> S.A.V.E. referred to Students Against Violating the Environment, the VSU environmental group that Hayden believed should be opposing the garage. “Memorial” referenced Zaccari’s claim that the garage was to be part of his legacy.

On May 7, Hayden found an official notice slipped under his door, telling him that he had been “administratively withdrawn,” effective immediately.<sup>3</sup> Stapled to the note was the only evidence offered for this decision: the

collage, which President Zaccari claimed was an “indirect” threat against his life because it used the word “memorial.” Within a few days, Hayden was locked out of his dorm room and ordered to leave campus. The notice’s promise of an appeal if he received a “certificate of mental health” from a psychiatrist proved a false hope. Not only did Hayden provide the certificate and letters verifying his mental health from both a psychiatrist and a psychologist, but he also wrote a detailed and impassioned appeal, arguing that his sudden expulsion because of political speech without so much as a hearing, formal charges, or a chance to respond was a violation of his constitutional rights to due process and free speech, not to mention the university’s own policies. Despite the fact that the law was overwhelmingly on his side and that he had done everything the university asked him to do, his appeal was denied.<sup>4</sup> The euphemistic term “administrative withdrawal” was revealed for what it was: permanent expulsion.

The punishment of Hayden Barnes for a collage on Facebook may seem like an extreme case, but it isn’t all that exceptional. A popular misconception is that battles for free speech on campus were fought and won in the 1960s, and that free speech emerged victorious again after a challenge by politically correct speech codes in the 1990s. I am sorry to report that this is not the case. The VSU president’s attitude towards dissent is replicated by administrators both high and low at too many colleges across the country, where differences of opinion are not viewed as opportunities to learn or to think through ideas. Instead, dissent is regarded as a nuisance at best, and sometimes as an outright threat—even when it’s only about a parking garage.

That’s why there is plenty of work to do at my organization, the Foundation for Individual Rights in Education (FIRE), which defends free speech rights and other student rights on campuses around the country. FIRE learned about the troubles of Hayden Barnes in fall 2007 through an article in a Georgia newspaper. When I first met Hayden in the winter of 2008, I felt like I was being reacquainted with an old friend from college. He was mellow, with a scruffy hippie beard, and lived with his irresistibly lovable girlfriend in a small apartment in southern Georgia. We liked the same music, we were both Democrats and environmentalists, and we even studied the same kind of Buddhism. His understated and calm manner made it all the more impressive to me that he was an EMT—and all the more strange that Valdosta State University had called him a “clear and present danger” to the campus. For First Amendment lawyers, students of history, and fans of Tom Clancy, “clear

and present danger” is a legal doctrine arising from World War I that refers to grave threats to the nation itself, such as encouraging sabotage, espionage, outright revolt, or other forms of terrorism and treason.

FIRE researched the case thoroughly and wrote a letter to the university demanding an explanation.<sup>5</sup> After VSU failed to adequately respond to our letters, we started issuing press releases, our standard weapon in fighting abuses on campus. FIRE’s unofficial motto is that colleges cannot defend in public the rights violations they commit in private, and as president of FIRE, I have seen hundreds of colleges and universities back down in the face of public embarrassment. But VSU would not budge.<sup>6</sup> Finally, we enlisted the help of Robert Corn-Revere, an eminent First Amendment attorney, and after he filed suit in January 2008, the VSU Board of Regents finally reversed the university’s decision against Hayden and offered him readmission.<sup>7</sup> Hayden—who was by then completing his education at another college—understandably declined.

The court’s opinion revealed a number of previously hidden facts that made the case even worse than we at FIRE had known. Internal documents and testimony showed it was Hayden’s opposition to the parking garage, not fear of mortal danger, that led the VSU president to expel him.<sup>8</sup> Zaccari even called Hayden into an hour-long meeting to harangue him about the parking garage, asking him, “Who do you think you are?” and stating that he “could not forgive” him. This attempt to browbeat and guilt-trip a student out of a strongly held position is fairly typical in my experience, and if it fails, campus administrators have a toolkit of policies and rationales they can use to punish students who do not back down.

Over the course of just a few weeks in the spring of 2007, Zaccari held meeting after meeting with his administration on what to do about Hayden, despite being told repeatedly by his staff that Hayden was not a threat, that Hayden deserved due process if Zaccari planned to punish him, and that the president couldn’t just kick a student out of school over a disagreement. According to the court’s opinion, Zaccari even ordered staff to look “into Barnes’s academic records, his medical history, his religion, and his registration with the VSU Access Office.”<sup>9</sup>

The VSU Access Office is the university’s department for students with disabilities. Zaccari learned that Hayden had sought counseling for depression and anxiety, which he tried to use as justification for ruling him a threat. He talked to a campus counselor and to Hayden’s psychologist, both of whom told

him in no uncertain terms that Hayden was not a danger to himself or anyone else. Indeed, for all the prying Zaccari did, it would have been difficult for him to miss that Hayden was a decorated EMT and a believer in nonviolence.

Finally, Zaccari seemed to give up trying to convince anyone that Hayden was a threat and instead announced that he would exercise his presidential authority to expel him unilaterally, without a hearing or even prior notice, both of which are required by Valdosta State policy and by the Bill of Rights.

In light of this evidence, the court ruled that President Zaccari had violated Hayden's due process rights so clearly and brazenly that he should be held personally and financially liable for damages. This is a severe penalty, as government employees are usually protected by "qualified immunity." The ruling showed that the judge believed Zaccari knew, or at least should have known, he was violating Hayden's constitutional rights by kicking him out of college. Zaccari appealed the ruling, but in February 2012 the Eleventh Circuit Court of Appeals upheld the finding against Zaccari.<sup>10</sup> At this writing, Hayden is poised to graduate from law school (inspired to attend because of his experiences in this case) and that lovable girlfriend is now his wife.

But while things are working out for Hayden, it took an aggressive campaign by FIRE and a federal lawsuit to vindicate his rights—rights that were firmly established by the Supreme Court even at the time he was punished in 2007.

## Campus Censorship: Alive and Thriving

On college campuses today, students are punished for everything from mild satire, to writing politically incorrect short stories, to having the "wrong" opinion on virtually every hot button issue, and, increasingly, simply for criticizing the college administration just as Hayden Barnes was. In the coming pages, you will see a student punished for publicly reading a book; a professor labeled a deadly threat to campus for posting a pop-culture quote on his door; students required to lobby the government for political causes they disagreed with in order to graduate; a student government that passed a "Sedition Act" empowering them to bring legal action against students who criticized them; and students across the country being forced to limit their "free speech activities" to tiny, isolated corners of campus creepily dubbed "free speech zones." You will see Christian students being banned from watching *The Passion of the*

*Christ*, while another college financially sponsored an angry mob's censorship of a play making fun of *The Passion of the Christ*. Meanwhile, schools as venerated as Yale and Harvard have gotten into the censorship act for things as seemingly inoffensive as quoting F. Scott Fitzgerald. And all of this is happening at the very institutions that rely most on free speech, open exchange, and candor to fulfill their mission. At the same time, we are paying more and more for higher education, which, perversely, expands the very campus bureaucracy that fosters this anti-free-speech environment.

Most campuses still cling to speech codes and other restrictions on expression that violate First Amendment principles, seemingly without understanding that these policies not only chill speech but also teach students that an open exchange of ideas might not really be such a good thing. Administrators have been able to convince well-meaning students to accept outright censorship by creating the impression that freedom of speech is somehow the enemy of social progress. When students began leaving college with that lesson under their belts, it was only a matter of time before the cultivation of bad intellectual habits on campus started harming the dialogue of our entire country. The tactics and attitudes that shut down speech on campus are bleeding into the larger society and wreaking havoc on the way we talk among ourselves. As I will expand on throughout this book, the punishment of dissenting opinions or even raucous parodies and satire has surprising downstream effects, encouraging the human tendency to live within our own echo chambers. It turns out the one institution that could be helping elevate the national discussion may actually be making it worse. To put it bluntly, I believe that three decades of campus censorship has made us all just a little bit dumber.

This book grew out of my experience reviewing thousands of instances of campus censorship and defending faculty and students at hundreds of colleges across the country over the last eleven years. The overwhelming majority of accounts here are based on primary documents ranging from police reports, to letters from campus administrators and judicial boards, to university policies, contracts, and student handbooks that FIRE has collected and posted online.

Over the past two decades, the topic of censorship on campus has often been treated as a "conservative issue," because the fact is that socially conservative opinions are the ones most likely to be stifled at colleges and universities today. While many attempts at censorship are apolitical, you are far more likely to get in trouble on campus for opposing, for example, affirmative action, gay marriage, and abortion rights than you are for supporting them.

Political correctness has become part of the nervous system of the modern university and it accounts for a large number of the rights violations I have seen over the years. For decades, our universities have been teaching students that speech with a chance of offending someone should be immediately silenced; but the slope for offensiveness has proven remarkably slippery, and the concept of hurtful speech is often invoked by campus administrators in the most self-serving ways. The press has gotten so used to such cases that they are often shrugged off as the same old “political correctness” on campus. But the problem is much more serious than that dismissive definition. When students risk punishment for speaking their minds, something has gone very wrong in the college environment.

One thing that makes this book a little different than one might expect is that I am not your stereotypical social-conservative critic of “political correctness run amok.” I am a lifelong Democrat and have something of a liberal pedigree. I have never voted for a Republican, nor do I plan to. I am one of only a few dozen people honored by the Playboy Foundation for a commitment to free speech; others include Bill Maher, Molly Ivins, and Michael Moore. In March 2010, I received the Ford Hall Forum Louis P. and Evelyn Smith First Amendment Award on behalf of FIRE, which has also been bestowed on Ted Turner, Maya Angelou, and Anita Hill. I have worked at the ACLU and for EnvironMentors, which is an environmental justice mentoring program for inner-city high school kids in Washington, D.C. I have worked on behalf of refugees in Eastern Europe and volunteered for a program educating incarcerated teens in California about the law. I believe passionately in gay marriage, abortion rights, legalizing marijuana, and universal health care. Playing even more into the liberal stereotype, I am a board member of an edgy Philadelphia theater company, I belong to the notoriously politically correct Park Slope Food Co-op in Brooklyn, and I have been a regular blogger for the *Huffington Post* since 2007.<sup>11</sup>

Why is it odd that a liberal should fight for free speech rights? Isn’t freedom of speech a quintessentially liberal issue? Some members of the baby boomer generation may be horrified to learn that campus administrators and the media alike often dismiss those of us who defend free speech for all on campus as members of the conservative fringe. While I was once hissed at during a libertarian student conference for being a Democrat, it is far more common that I am vilified as an evil conservative for defending free speech on campus. I remember telling a New York University film student that I

worked for free speech on campus and being shocked by his response: “Oh, so you’re like the people who want the KKK on campus.” In his mind, protecting free speech was apparently synonymous with advocating hatred. He somehow missed the glaring fact that the content of his student film could have been banned from public display if not for the progress of the free speech movement.

The transformation of free speech on campus to a conservative niche issue is a method of dismissing its importance. Sadly, we live in a society where simply labeling something an evil conservative idea (or, for that matter, an evil liberal one) is accepted by far too many people as a legitimate reason to dismiss it. This is just one of the many cheap tactics for shutting down debate that have been perfected on our campuses and are now a common part of everyday life.

## How Campus Censorship Harms Us All

What happens on campus doesn’t stay on campus. After all, colleges and universities are grooming schools for future leaders and training grounds for the great national debate; and higher education, more than ever, shapes our general culture. Never before in our history have so many Americans held or pursued a college degree.<sup>12</sup> Our national discussion is dominated by people with a college education. So, if we assume that colleges and universities are supposed to make us deeper, more creative and nuanced thinkers, we should be enjoying a golden age of American discourse. But I doubt that anyone believes this is the case. Indeed, critics as various as the *New York Times* columnists David Brooks and Paul Krugman, the comedian Jon Stewart, the *Washington Post* columnist Kathleen Parker, the media icon Tom Brokaw, and even former and current presidents of the United States have lamented the sorry state of American dialogue.<sup>13</sup>

A corollary of this failure of dialogue is that our country’s polarization across political lines has gone from controversial conjecture to a fact documented by research. Bill Bishop’s *The Big Sort* (2008) laid out extensive data to demonstrate America’s growing political polarization and showed that the problem extended beyond our relatively new ability to live in cyber environments where likeminded people confirm our pre-existing opinions (something dubbed by MIT’s Nicholas Negroponte as “the daily me”).<sup>14</sup> Since the 1970s,

there has even been a trend of physical separation, as people move to communities that are more and more ideologically homogeneous. Charles Murray cited a dizzying number of statistics in his 2012 book *Coming Apart* to show that affluent and highly educated people in particular are sequestering themselves into likeminded communities and social circles, and thus becoming both physically and culturally isolated from their fellow citizens.<sup>15</sup>

Like most Americans, I have seen the results of this hyperpolarization and groupthink in my own life. Take, for example, the shooting of Congresswoman Gabrielle Giffords and eighteen others by a psychopath on January 8, 2011. I was on Twitter as the events unfolded, and I was stunned at how many friends—people I follow for their opinions on art, science, and politics—started ranting, before any meaningful information was known about the case, that the shooting was the result of right-wing rhetoric. One Tweeter whom I had never before seen resort to all-caps asserted, “There is NO DOUBT WHATSOEVER that Palin/Tea Party created this political climate.” Some of us on Twitter tried to remind everyone to take a minute to just be sad and recognize the human tragedy rather than twist it into a weapon to bash the “ignorant masses.” But our comments had little impact. Conservatives soon joined the fray, using bits and pieces of information that they had uncovered about the shooter, Jared Loughner, to argue that he was a “left-wing nut job.” It was as if the primary significance of the shooting for countless people was the justification of their hatred for everyone who disagreed with them.

As the days passed after the Tucson massacre, the evidence began to show that Jared Loughner was mentally ill and had political beliefs that didn’t neatly fit anyone’s preconceptions. Some of those who had been so quick to blame the shooting on Glenn Beck and Sarah Palin started to back off. The truth, however, did nothing to stop the chancellor of UC Berkeley, Robert J. Birgeneau, from blaming the tragedy on “xenophobia” and the climate of “hateful speech” in our nation. As key evidence of this climate, he cited the failure of the “DREAM Act,” a bill that would have opened up citizenship for illegal aliens who were enrolled in college or had served in the military and lived in the United States since the age of sixteen.<sup>16</sup> While I also support the DREAM Act, there is no indication of even the slightest connection between the shooting and the failure of that legislation. Chancellor Birgeneau used his position as a respected educator to transform a tragedy perpetrated by a madman into an excuse to vilify those who disagreed with him, rather than using it as an opportunity to have meaningful discussions about a relevant



topic, like our failure to effectively identify and care for the mentally ill. What was even more worrisome was how many students and politicians agreed with the chancellor.

The response to the Tucson tragedy was just another in a long line of knee-jerk reactions I have seen over the past decade. And this typical rush to judgment is an indication that, in truth, we live in *certain* times. I know the saying is that we live in *uncertain* times, but that is not the case today. America's metaphorical culture war increasingly feels like a religious war, with too many crusaders and high priests and too few heretics on each side. And I believe that an unsung culprit in this expansion of unwarranted certainty and group polarization is thirty years of college censorship.

How, you might ask, would censorship on campus contribute to political polarization and the failure of the Golden Age of American Dialogue to blossom? It may seem like a paradox, but an environment that squelches debate and punishes the expression of opinions, in the very institution that is supposed to make us better thinkers, can lead quickly to the formation of polarized groups in which people harbor a comfortable, uncritical certainty that they are right.

The potential for this damage to open and free-flowing dialogue does not require that every citizen experience censorship personally. Even a single conspicuous case of punishing speech can have dramatic consequences. This is what we lawyers call "the chilling effect." If people believe there is *any* risk of punishment for stating an opinion, most will not bother opening their mouths; and in time, the rules that create this silence become molded into the culture. While few outside the university setting know the reality and scale of campus censorship, students are quite aware of the risks. A study of 24,000 students conducted by the Association of American Colleges and Universities in 2010 revealed that only around 30 percent of college seniors strongly agreed with the statement that "It is safe to have unpopular views on campus."<sup>17</sup> (The numbers are even worse for faculty, the people who know campus the best: only 16.7 percent of them strongly agreed with the statement.) Meanwhile, the fact that this generation of students is more reticent about sharing their opinions than previous ones has been a subject of scholarly research for over a decade now.<sup>18</sup>

So what happens when students get the message that saying the wrong thing can get you in trouble? They do what one would expect: they talk to people they already agree with, keep their mouths shut about important topics