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Free Speech and the American University: A Proposal

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A late friend of mine, a notable figure in the neural sciences, once told me that a light held to the retina can reveal a vast amount of information about the state of the organism. For this country, for our politics, for our professional associations, and our academic institutions, the light held to the retina was the eruption of demonstrations celebrating the attack on Israeli civilians by Hamas on October 7th.. We were suddenly told, with high passion and orchestrated conviction, that the killing of parents in front of their children and the beheading of babies was somehow amply *justified* for the sake of ridding Palestine of the Jews who were "occupying" the land by living there.

Exactly what the nature of the "wrong" done by Jews who settled in this land before the formation of a Jewish state, or in the years since, was never exactly outlined in public declarations and exposed to a serious review and challenge. In the meantime, we have seen the presidents of major universities embarrass themselves in congressional hearings as they sought to explain how they understood the attacks on Israel and Jews on their campuses. They were able to rely on their testimony, on the advice given to them by lawyers at leading law firms, as those lawyers relied in turn on the doctrines settled in the courts and law schools regarding the regulation of public speech. And yet, as they sought to explain those doctrines to congressmen, or to members of the public, they suddenly exposed the moral emptiness, the radical want of moral coherence, in what has been given to us by the leading lights in the law schools and the courts.

What has broken upon us now is a moral crisis, straining our institutions. What is needed is a new regime for the regulation of highly charged speech in our public settings. But the cure will not require anything novel. It could be accomplished by the recall and restoration of those doctrines, grounded in the precepts of common sense and natural law, that used to prevail in our courts and public life. They had prevailed, that is, until doctrines of cleverness and novelty displaced them, untethered from any understanding of the properties of "ordinary language," or the anchoring grounds of moral judgment. What is needed is the restoration of a moral framework for the regulation of speech, a framework that we, as a people, once had no trouble in understanding. But the recall of that framework may come to unfold itself to us more clearly if we take the time to understand what has been so novel and poisonous in these recent disruptions that have made life on the campuses for the first time unwelcoming and threatening to Jewish students. And then also radiating outward, spreading disruptions to airports and the highways that ordinary people depend on for their daily lives.

What Is New Here

Let us begin, then, with what we know about the ends that define and drive the Palestinian protests. On September 8th, 2001, a meeting of the United Nations in Durban, South Africa, proclaimed the "inalienable" right of the Palestinian people to a homeland. That had the ring of the Declaration of Independence of 1776. But the "unalienable" rights in that Declaration began with the natural right of human beings to a government based on "the consent of the governed," in free elections. And yet that could not have been the meaning of such a Declaration emanating from the United Nations. For a declaration of those principles would have called into question the legitimacy of a third or more of the governments represented in the United Nations. A closer reading made it clear that this proclamation must be closer to the Declaration of the Confederate States of 1861, seceding from the Union and its anchoring premises of natural rights. It was the claim of a right of people to secure and hold control of a territory on terms *quite indifferent to the nature of the regime they would put in place.* It could be a monarchy or a regime of slavery. As Lincoln called them out: "[T]hey omit 'We the People,' and substitute 'We the deputies of the sovereign and independent States.' Why? Why this deliberate pressing out of view, the rights of men, and the authority of the people?" [Message to Congress, July 4, 1861, Works, IV, at 438] The call for a homeland for the Palestinian people did not insist on a government founded on "the consent of the governed." The call was simply for a land filled with Palestinian people and governed by Palestinians without any emphatic insistence on the character of the regime.

And so, it is today: when we find protests on the campuses, objecting to the occupation of Palestine by the Israelis, these are not arguments for establishing a scheme of free elections, for the Palestinians have not found their chief complaint in living without free elections in Gaza or the Palestinian Authority. But that point seems to have made little impression on students smart enough to get into Ivy League colleges, for what they find themselves affirming, without quite grasping it all, is that the killing of Jews without moral restraint is thoroughly justified for the sake of allowing Palestinians to live in this land without the presence of Jews. Stripped to its essentials, it is an argument for genocide with hardly a thin façade.

In notable and dramaticcontrast, it is virtually unthinkable that the burning of crosses would be permitted on any campus of the United States. Justice Antonin Scalia wrote a famous case to sustain the freedom to burn crosses [*R.A.V. v St. Paul 1992*]. His colleagues were caustic and biting in their commentary, but they finally agreed to go along

out of a concern that the statute might have been overly broad. But the burning of crosses would not be suffered for a moment on the campuses today. A wave of contempt would cover anyone associated with such a thing; he would be hit with a severe penalty or expelled outright. In that event, it is hard to see how the campuses could ever be more tolerant, in the name of free speech, of students proclaiming the deep rightness of killing Jews, even in a brutal way, if that's what it takes to purge them from the land of Israel.

Recalling a Truth that Dares Not Speak Its Name

This may be as good a moment as any, then, to brace ourselves for a truth that seems hardly thinkable any longer: that "demonstrations" have no fitting place at a university; and beyond that, they have the feeblest moral claim to be treated as a high flexing of the freedoms of the First Amendment. It was hard to find anyone more "absolutist" in defense of "free speech" under the First Amendment than Justice Hugo Black, and yet he insisted that there may not be demonstrations in front of a courthouse: there should be no suspicion that any judgment reached in a court will be affected by the massing of people on the street. In *Cox v. Louisiana* [1965], Black thought his colleagues were too quick to overturn convictions of people massing in front of the courthouse in Baton Rouge. He would sustain the legislation aimed:

> *to protect courts and court officials from the intimidation and dangers that inhere in huge gatherings at courthouse doors and jail doors to protest arrests and to influence court officials in performing their duties. The very purpose of a court system is to adjudicate controversies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures. Justice cannot be rightly administered, nor are the lives and safety of prisoners secure, where throngs of people clamor against the processes of justice right outside the courthouse or jailhouse doors. The streets are not now and never have been the proper place to administer justice. [379 U.S 559, at 583]*

A moral conviction may sweep people into the street, but a massing of people on the campus is not a "discussion," nor is it the making of a substantive argument. Thomas Hobbes grasped the problem long ago with an unsettling directness. It was one thing, he said, when people assembled in large numbers in the usual meeting of men at church or at a public show," but when people come into the public streets in numbers "extraordinarily great," one had to ask them to give an account of why they were there:

> *It may be lawful for a thousand men to join to a petition to be delivered to a judge, or magistrate; yet if a thousand men come to present it, it is a tumultuous assembly; because there needs but one or two for that purpose… When an unusual number of men, assemble against a man they accuse; the assembly is an unlawful tumult; because they may deliver their accusation to the magistrate by a few, or by one man …. [Leviathan, Part 2, ch 22]*

It took Thomas Hobbes to express the unlovely truth here: that the point of massing people in the street is to convey a sense of how powerful and rightful their position must be, which is to say it is simply another form of the "rule of the strong" or "might makes right."

And so, as we begin to take seriously a moral framework for the preservation of civil speech on the campus, we begin by withdrawing the presumption that the mere massing of a crowd on the campus or the streets comes to us as a dramatic or stylish flexing of "First Amendment rights."

Restoring the Classic Teaching

My longtime and dear friend Robert George sounded the note of liberal confidence when he declared that the regime in the universities must encompass "the right to examine and defend or criticize any idea, including ideas we judge to be extreme and even evil." But we must be clear at the same time that nothing in that search for the truth entails that we recede in any way from the surety that we have with us, now as ever, the standards for judging evil ends to be truly evil. There is no need to slip into a kind of soft relativism in which we are willing to pretend to ourselves that the case for Nazism and Auschwitz has a claim to be regarded as legitimate as any other ends that are on offer in our politics and civic life. But that distinction was far clearer in the classic teaching on the moral framework of free speech that came out of the classic Chaplinsky case in 1942. [*Chaplinsky v. New Hampshire*] It was a teaching that was quite in line with what we have understood about linguistics, about the way that words are used in our ordinary language. But it offered the "common sense" understanding of the moral boundaries that are at work in "speech" as in every other dimension of our personal freedom. The drift away from that teaching has brought us to the moral emptiness of those cliches uttered by the presidents of three universities when Congress called them in to give an account of themselves. If we connect again seriously with that common sense teaching, we see that there is something seriously awry in the conventional formulas we have been offered now in the hope of securing at least some enclaves of free speech on the campus.

The upshot now is that the cliches offered in defense of free speech on the campus have left the universities morally mute, utterly bereft of judgment, in confronting the scariest assault on our civic life

that I have seen in my lifetime. When I was born in July 1940, France had fallen and a murderous Nazi regime was moving with a growing dynamism. When the war had ended, as Victor Davis Hanson once noted, every notable Nazi was fleeing for his life or under arrest. The antisemitism after the war would be acted out in those forms of discreetly barring Jews from hotels and private clubs, from prestigious law firms and boards. But there were no more sights of public demonstrations calling for the killing of Jews. Those kinds of displays were now widely regarded in our culture as *disreputable*. The Supreme Court sustained in 1952, in *Beauharnais* v. *Illinois*, a statute that barred racial defamation, or the inciting of hatred based on race or religion. The statute was framed with language far more careful and precise than the language we've seen in statutes so casually struck down in our own day. The statute in *Illinois* was directed at those who presented to the public any lithograph, plays, publication, movie that:

> *portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots.*

That statute was adopted after the famous race riots in Chicago in 1919. But in the aftermath of the Holocaust, those statutes were taken ever more seriously again and strengthened all over Europe. As the late Philip Kurland observed, the decision on that statute in Beauharnais has never been overruled. But now we have seen a dramatic moral inversion, with the eruptions on the campuses and in the cities. It is no longer disreputable to come out in public places to justify and celebrate the killing of Jews as a tenable way of making a territory in the Middle East *Judenrein.*

It was the deep virtue of Justice Frank Murphy's opinion in the *Chaplinsky* case to show us that we can indeed have a serious framework of moral judgment to sustain a robust defense of speech. Among other things, that understanding had the cardinal attribute of reminding us that "assault," in the law, has never strictly required a laying on of hands and a material harm. One can hold an unloaded gun near someone's head and click the trigger; one can make sadistic and threatening phone calls in the night; and yes, one can burn crosses outside the home of a black family. Human beings, as "moral agents," are naturally given to arguments and complaints about the things that are right or wrong, just or unjust. They will bring forth, in the language, the words and gestures that bear the moral functions of commending or condemning, praising or blaming. And at the very edge of things will be those words with the function of insulting and attacking. Hence those lines from Justice Murphy's opinion in *Chaplinsky*:

There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words — those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. [315 U.S., 568, at 571-72]

There were two critical components here. First, the words and gestures established as assaults are known in everyday usage in ordinary language. You don't need an academic degree for this; truck drivers and construction workers can be as savvy as lawyers in noticing when they are being "dissed" or treated with disrespect. The clearest test comes with any jury: we tell the jury to hold back and not convict if there is any hint of uncertainty about the offensiveness of the words. We may give the jury a list: the [N-word], kike bastard, wop, urologist, meter maid, saint. Most people have no trouble picking out the terms that would be commonly understood as terms of attack — just as most people would have no problem in telling the difference between a burning shoe box and a burning cross.

But then the second, decisive point: that the sharp, practical distinction would be drawn between the words that assault and the words that make a substantive argument. The most telling examples in making Murphy's point have been given to us in the cases of David Rosenfeld and Seth Waxman:

Rosenfeld, speaking at a meeting of a school board in New Jersey, had one adjective threading through his harangue, "mother f…ing." He was asked to stop. As Justice Murphy would explain, this language had nothing to do with the "exposition of ideas." To bar Rosenfeld from destroying the climate of discussion in that way did not deprive him of making the most searing substantive attack on the school board's performance.

Seth Waxman--the distinguished Washington lawyer and former Solicitor General was defending the Fox Network against the Federal Communications Commission, defending the freedom of performers on television to use such expressions as "sh.." and "f…ing." [FCC v. *Fox Television Stations*, 2012] And yet during that finely spun argument, he never used those very words he was seeking to defend as words legitimate for public broadcasting. He offered then one of the most elegant confirmations of Justice Murphy's key point in the *Chaplinsky* case: Foregoing those words did nothing to impair his substantive

argument, and he won his case.

And this remains the clearest distinction accessible to the common sense of ordinary people: the distinction between words and gestures of assault, set against the words that make a substantive argument. That is why, as Professor George says, we can fully protect the freedom of Professor Peter Singer to make his arguments in speeches and writings, the arguments, as Professor George recalls, that "[defend] the moral permissibility not only of elective abortion…but even the intentional killing of infants for some period of time after they are born." That is also why we can discuss in class *Hitler's Mein Kampf*, even as we restrain a bunch of self-styled Nazis from parading in communities containing survivors of the Holocaust and their families. This was the deliberate staging of an act to provoke, to stir alarm by scaring and triggering nightmares among people who had seen the real Nazis. This is what the ACLU prided itself in protecting as the highest defense of the First Amendment. But nothing fits the formula for an act of pure assault and malice more precisely.

In the life of a University, the reliance on the testing of "substantive argument" bears the moral force of the very meaning of a university since its origin in Paris in the thirteenth century. If we are dealing with a university that takes itself seriously as a university and not an academic theme park, the Administration and faculty can insist now that we can be far more demanding: massing people on the campus is not a "discussion," but a real university lives through the challenge and testing of arguments. We might, out of prudence or tolerance, accommodate this occasional flare-up of a demonstration. But the people who choreograph these protests should be alert that, in staging the demonstration, they are now called upon to defend their position and open themselves to a searching critique. The students defending Hamas should come before us and tell us why these attacks by Hamas are things they call "morally justified." What "wrong," say, has been done to the Palestinian people that finds it an apt and proportionate response in killing parents in front of their children and beheading babies? Of all things, those should be the most natural questions that ordinary folks will ask as they try to talk about the rights and wrongs of the matter. And yet the striking thing is that there has been no sign of that question being posed among the students, in these demonstrations. And indeed, it might be taken as a sign of the fact that this mode of discourse and moral questions may have just fallen out of practice in the courses offered in the colleges these days.

However, if there are meetings on campus aimed at posing these questions — and addressing these challenges — there could be professors on both sides ready to step in and engage in the debate. Have we forgotten that this is exactly what took place at Harvard and other universities in "teach-ins" over the war in Vietnam? In fact, something like this has been played out recently at Dartmouth, and so we know that it can be done. What is missing simply is an Administration—and perhaps a faculty—with the imagination and nerve to insist that it should be done.

But if demonstrations carry the claim to making a serious, substantive argument, then the organizers or the choreographers will have the responsibility of showing up on a chosen evening, when there are no classes to be canceled. They can be invited to present their arguments and deal with the challenges to those arguments. There should be a moderator to help ensure a fair allocation of time and preserve a climate of civility. The meeting should be compulsory only for the people who have demanded public attention on the campus. And they could now get to see whether they have persuaded other students and faculty to hear what they have to say. The meetings may run, say, one to three hours, and if the arguments are crackling enough, they may go on into the late morning, perhaps reminding us that we are starting to resemble what life in a college was thought to be about.

None of this—we should be clear—would require the genius and expense of a Broadway production. These kinds of events have been organized often on the campuses, and in many cases by the students themselves. It would be a telling mark on the character of any college that it would not bring forth a professor who could speak with knowledge of the events leading for the formation of Israel as a State; of the settlement of the lands by Jews and Arabs long in advance of 1948; and the series of wars that began at the beginning, when an amalgam of Arab armies sought to crush the new State at birth. But if that kind of academic expertise is truly wanting on the campus, many informed speakers can be brought from the outside and other colleges.

But at the same time, we should be clear that this one meeting or set of meetings on the campus should not be expected to have either side confess that it had been deeply uninformed and mistaken. The object of the discussion is to dissolve the slogans and challenge the defenders of Hamas to claim their right name by getting coldly clear on the ends they are seeking and the methods they are holding up as justified: They are not interested in having a disinterested forum establish the historical record of the settlements of these lands; they are not interested, as their foremost concern, in having a Palestinian land governed by free elections. Their object is to end the "occupation" of Israel by the brute fact of forcibly removing the Jewish population living there, if necessary,or even preferably, with lethal force

bounded by no moral or legal restraints.

It will not take any special genius to bring out these points clearly enough because the partisans of Hamas have not shown the least reluctance or embarrassment in making their position brutally clear. One protestor brought out the meaning when he taunted Jewish students, shouting that October 7th, would take place "10,000 times over."

But once these points are brought forth, there would be no need or rationale for renewing these theatrics every day or week to come. The Administration can make clear, to use an old line from a love affair gone awry, that "we've enjoyed about as much of this as we can stand." Any further demonstration can be limited in place and time. The organizers, who are the choreographers and suppliers here can be required to put their names down to apply for permission to stage these encores, which may no longer thought to be needed. Their names can be put on the public record to be read by parents, donors, and potential employers. It may be comparable to insisting on putting on the public record the names of students who would burn crosses on the campus—and compelled to remove their masks.

The Levers of Authority

However, the events of April and May have brought home to even the most obtuse college administrators the precise range of levers they can use — if they can summon the nerve to see what is before them. The police have begun removing protestors from the campuses all through the country, from Columbia to UCLA. (The glaring exception has come in Washington, D.C., where the Mayor refused the plea from the President of George Washington University to do what civil authorities are expected to do in protecting institutions from assault and disorder) We have seen now at Columbia a replay of 1968 with students occupying buildings and declaring to the world that they will not budge until the University negotiates seriously with them. What seems to have fled past the imagination and wit of these college students, denizens of prestigious academic places, is that their demands are so imbecilic, or so patently unjust, that any Administration that took them seriously would be confessing its own unfitness for the authority it bears.

The mobs have been emboldened by the fact that the Administrations have not seen, or pretended not to see, what is imbecilic in the demands. The Presidents or Chancellors have been altogether too willing to treat these "protests" with gestures of respect, even when the students could explain nothing of the substantive wrongs they are affecting to protest. A "demonstration" may be treated as theater, which should not be allowed to damage the furniture or "scare the horses." Nor should they unsettle the lives of bystanders, with disruptions and noise that make it hard for other people to get on with their own lives. The disruptions may move along a scale of disorder, and the penalties should be aptly tuned from the forgiving to the severe. The "taking of a building" is a breach of the civic order, the breaking of any moral tie to the community, and with that breaking must come a departure, a separation from the community.

The Administrators have curiously failed to summon the wit of grown-ups to see how "demoralizing" has been their waffling, their want of resolution. That unsteadiness betrays to the students a want of real conviction. As for the campus police, they are demoralized by the sense that they're being asked to enforce regulations that are not taken with moral seriousness by the authorities who are ordering their enforcement.

But a problem even deeper reveals itself now among those administrators who have actually been firmer in standing up to protect their campuses from disorder. For the most part, they seem able to say even now that the decisive point lies in the "respect for the rules," that the critical boundary is marked by the spilling over into violence. Ben Sasse, the former Senator from Nebraska and now the President of the University of Florida, has never been exactly laconic in broadcasting his views. He came out with one of the most quotable lines when he said that "we're a university, not a day care. We don't coddle emotions…" He said that the university had

> *repeatedly and patiently explained two things to protestors: we will always defend your rights to free speech and free assembly—but if you cross the line on clearly prohibited activities, you will be thrown off the campus and suspended. In Gainesville, that means a three-year prohibition from campus. That's serious. We said it. We meant it. We enforced it.*

That is the highest form that the posturing has taken. And yet there has been no whiff of recognition that this adamant "enforcing of the rules" has missed the central point that has been staring the authoritiesand slapping themin the face. For Administrations, and almost all of the media, it is a happy example of "taking the low door under the wall." Things may quiet down. Students may simply gather quietly, wearing masks, engaging in low chants, with signs proclaiming "October 7th—yes—"10,000 times over"; that Jews are colonial rulers, that Zionists are racists, that the killing and mutilating and slaughter of October 7th is amply rightful and justified to rid Palestine of the Jews. The Jewish students, faced with this ongoing spectacle, and with the taunts they produce every day, may be driven from Harvard, Columbia, and Yale, long after the Jewish quotas were abandoned with embarrassment. But in the style of

good pragmatism, the Administrators and the media will pronounce this a fine work of prudence, for the vexing moral question at the heart of the matter will have been put off for another day.

But again, everyone knows that nothing of this sort would be tolerated for a moment if students had peaceful, controlled fires, burning crosses, without too much hoopla. Or if they railed against black students admitted to the colleges with board scores that would admit no white student. That state of affairs would be regarded instantly as insufferable. And so, the only question is: what holds the colleges and universities back from recognizing the cognate or worse evil being proclaimed now so loudly and visibly within their sight? At a certain point, believe it or not, Administrators have it in their hands to say of the Palestinians what they would say of the cross-burners without looking over their shoulders: that "we will just not have this—here, or anywhere else."

Again, my case has been that just the recognition of that point on the campus that stamps these "protests" as despicable, as disreputable at the core on the part of the Administration, or a notable wing of the Faculty, would itself make a profound difference. It could make it far less necessary to call in the auxiliary aid of police, to put students into vans and threaten punishment ever grander.

I can see the anxiety arising: Do we want to have cliques of the faculty taking rival positions on the politics of the day, whether abortion, same sex marriage, or demonstrations against Israel? But then, why not?:- For don't we have this already and strongly tilted to one side? There has been no want of passionate declarations in favor of "reproductive rights" on the part of faculty, and no want of invective against conservative nominees such as Brett Kavanaugh and Clarence Thomas. In striking contrast, few faculty have been willing to make themselves targets of inflammatory attacks because of signing letters in opposition to abortion and same sex marriage. (I can list myself as one of the targets of such an attack, and I can offer the name of gifted professor who was driven from his campus through a poisonous campaign over the matter of gay rights.)

[If we want any notable example under that head, it would be hard to exceed the nerve and shamelessness of 16 members of the Amherst faculty, in February 2004. These leading figures on the campus offered a joint letter announcing that they would not dignify the presence of Justice Antonin Scalia by attending his public lecture. They would not, as they said, affirm his legitimate standing to appear on the Amherst campus. Nothing in that gesture was taken to mark the diminution of free speech on the campus. After all, other members of the faculty were still free to write letters of their own of a different tenor and substance. I chose that route and, in replying sharply, sharpened new lines of enmity. But at the same time, it was clear as to just who was in a dominant position on the campus to declare what speakers were not welcome. One former president of the college remarked to me that if Clarence Thomas were invited to the campus, they would need a "food taster" for him. Which is to say: do not bother to invite him. He is not welcome here, and his presence will do nothing but trigger turmoil. The signing of that letter was a telling mark to the world of what the character of Amherst was becoming. And by the same measure, if members of a faculty could summon the will to explain why the killing of Jews without restraint cannot be reconciled with the moral premises of a university, that too would send a telling sign to the rest of the world.] cut this section?

But the Ever Present Fear: That These Principles May be Turned Against Us

The sweeping claim of the protestors, stripped of pretense, is the claim to the rightness of genocide unconstrained. Well, of course, if we take that argument seriously, it is not a leap to point out that a license to kill small human beings in wombs, at numbers rising to a million a year for 50 years, is a palpable exercise in genocide. The protections of the law were removed from a whole class of human beings, whose lives could be taken without the need to render a justification. Why would it not be legitimate for Catholic schools, or other schools, to forbid the presence on campus of Planned Parenthood or the organizations making the most impassioned case for abortion rights? In 1979, I was part of an "Abortion Parley" organized at the University of Notre Dame to bring together, for arguments and discussions, the people on both sides of that divisive question. The meeting sprang from the mind of the late Fr James Burtchaell, when he was Provost of the University. The very holding of that conference was condemned by no less a figure than the beloved John Noonan. He asked, "Why not hold, at this famously Catholic University, a conference on Papacide" that is, the case for or against the killing of Popes. But Fr. Burtchaell thought that the Catholic position in opposition to abortion could be defended in a compelling way against the people who would challenge it. And he thought it important to show that a Catholic University was not afraid to stage that serious encounter with substantive arguments. But at the same time, a Catholic University showing that confidence, could be perfectly warranted in refusing to cast the legitimacy of recognition on a Notre Dame Pro-Choice group or a Transgendered Outreach.

It is easy to anticipate the response: the elite schools may as confidently declare that it is illegitimate to hold forth in the classroom, or in any group in

the college, a teaching that would deny the deep "reproductive rights" of women. But that nightmare is hardly a hypothetical. It is very near the established, orthodox system right now at the leading colleges. It is virtually unthinkable that I could teach at Amherst any longer my signature course on Political Obligations, aka "First Things." The principles unfolded in that course led by the end to a powerful argument in opposition to abortion. That course would now be seen as objectionable to women, a course in which women would feel unsafe as they experienced the unfolding of that argument.

And so, part of the response is that this state of affairs is already upon us. It takes no wild conjecture to forecast people using our arguments and extracting from them the most perverse conclusions. But to this enduring fear, it is long past the time to state the counter objection: there is no argument to be made for anything rightful that cannot be turned and used to command or compel, policies we find repugnant. It cannot be an "argument stopper" to learn–gasp!–that other people are in sharp disagreement. Surely, it is deeply untenable to hold back from making the most compelling argument we can put forth,and hold back by conjuring up how skewed reasoning may bring forth monstrous conclusions from even good principles. If we are faced with the misuse of our arguments, the proper response, as ever, is to challenge those arguments and show that they are specious. But what should not be admitted is that the very prospect of adversaries turning good principles against us must ever count as a practical bar to making the most morally coherent argument we think we can make.

It is time to stop distracting ourselves from what is novel and evil in what has suddenly burst upon us in our public life. And to shake loose of the hobgoblins that would bid us hold back from making the judgments we know to be true.

Hadley Arkes has been a member of the Amherst College faculty since 1966, and since 1987 he has been the Edward Ney Professor of Jurisprudence. He has written five books with Princeton University Press: Bureaucracy, The Marshall Plan and the National Interest (1972), The Philosopher in the City (1981), First Things (1986), Beyond the Constitution (1990), and The Return of George Sutherland (1994). His more recent books have been with Cambridge University Press, including Natural Rights and the Right to Choose (2002), and Constitutional Illusions and Anchoring Truths: The Touchstone of the Natural Law (2010). His newest book is Mere Natural Law (2023) from Regnery.

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Speech on Campus Must Build the Academic Community

Larry Arnn

I agree with my old friend Hadley Arkes that a college or university can only serve its high purpose if it understands the principle of free speech as America's founders understood it—as a moral and political principle—and not in an absolutist way or as an end in itself.

Indeed, as president of Hillsdale College, I have had the recent occasion to address this issue because the Foundation for Individual Rights and Expression (FIRE)—an organization that shows no understanding of the purpose of education—has seen fit to issue public warnings about freedom of speech at Hillsdale.

FIRE has acknowledged that Hillsdale deserves high marks for "tolerance for speakers" of diverse opinions, "student comfort in expressing ideas," "administration support for free speech," and campus "openness" to discussing challenging topics. It admits that Hillsdale has never punished scholars for their speech or disinvited speakers from campus.

What then does it see as Hillsdale's sin, such that prospective students need to be warned? It is that Hillsdale's "policies clearly and consistently state that it prioritizes other values over a commitment to freedom of speech."

We plead guilty. A college's purpose, after all, is not merely to sponsor speech. A college's purpose, through speaking and thinking—the two go together and distinguish the human being from the beast—is to teach students to think and speak better in search of knowledge.

How does a college go about that? The very word "college" means partnership or community. College is a place where people come together to use their capacities for speech and thought to understand ultimate things. It is part of human nature that we do this better as a group. But we cannot do it if we are screaming, if we are hostile, or if we babble.

Disagreements at a college are not only inevitable, they are standard. But learning is not combat or any form of lobbying or demonstration. Every time we learn we change our minds. But we must do so cooperatively. To the utmost extent possible, we must do so as friends.

Our speech code at Hillsdale College—so objectionable to FIRE—derives from these points. Members of the Hillsdale community may assert and defend any argument they conceive, as long as they do so in a way that is civil, academic, and conducive to thought and deliberation. This rule is old, proven by time and thought.

All the people who study and work at Hillsdale choose it knowingly. At the point of becoming a student, faculty, or staff member, each acknowledges the age-old purposes of the College and agrees to assist rather than obstruct the College in pursuing them. They learn in advance about Hillsdale's speech code and every other fundamental practice of the College.

This does not mean that we at the College may not argue about these things. That too is both inevitable and standard. How does one come to understand a thing except by thinking and talking about it? But this must not turn into chaos—although sometimes it seems mildly and happily chaotic—because all here understand that the condition of our learning together is to have a common mission.

Hillsdale's purposes as described in its founding document are learning, character, faith, and freedom. We often argue about the meaning of these things. But we consider them transcendent goods—a sin in FIRE's book, where freedom of speech is the only transcendent "value."

The error in FIRE's way of thinking—and the way of thinking of the morally incoherent university presidents Hadley refers to—was thrown into stark relief by the outbreak of campus demonstrations celebrating the carnage of October 7, 2023.

We do not regulate speech at Hillsdale College. We distinguish it from non-speech. Incoming students sign a two-sentence Honor Code: "A Hillsdale College student is honorable in conduct, honest in word and deed, dutiful in study and service, and respectful of the rights of others. Through education the student rises to self-government."

Understanding these words, our students easily recognize that demonstrations calling for the destruction of Israel are the antithesis of speaking in a way that is conducive to thought and deliberation. They are destructive of the purpose of a college or a university—and of the purpose of America as defined by the principles of the Declaration of Independence, the semi-quincentennial of which we celebrate next year.

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Free Speech and Common Sense Need New Champions

Mark Bauerlein

Near the beginning of his proposal, Hadley Arkes states that the proper regulation of speech on campus isn't complicated. We have a model at hand, if we look backwards. The answer is "the recall and restoration of those doctrines, grounded in the precepts of common sense and natural law, that used to prevail in our courts and public life." Those doctrines, he adds, aren't obscure or academic. They form a "moral framework . . . that we, as a people, had no trouble understanding." It's an obvious solution, and practical, too, no extra bureaucracy or procedures needed. If you are more than 50 years old, you remember your own time as an undergraduate when, apart from those few years of anti-War protests, rules, honor codes, and common sense expectations kept things under control. If it were 1977 and students surrounded and harangued a professor the way Yale kids in 2015 did to Professor Christakis, nobody would doubt whether they and their f-words hadn't crossed a line and deserved punishment.

But to campus officials in charge of those very speech policies and assumptions in need of revision, and to professors who, through "doctrines of cleverness and novelty," have displaced common sense and ordinary language, the call to go back means nothing. Worse, it amounts to turning back the clock, a crime against Progress. Political correctness demands that we look ahead, not behind. The course of history is an advancement of tolerance, it says, which only a hidebound outlook seeks to reverse. Progressives shore up that judgment with an intellectual objection to proposals such as Arkes': it begs the question of what constitutes common sense. He repeats the term later—"the 'common sense' understanding of the moral boundaries . . . common sense teaching . . . the common sense of ordinary people"—but none of those additions, in their eyes, gets around the problem of clarification.

Judith Butler articulated the challenge neatly in a New York Times op-ed in 1999 ("A 'Bad Writer' Bites Back," 20 Mar). Having been named that year's winner of the Bad Writing contest, which gave the mock honor to humanities theorists who wrote sentences thick with jargon, pretentiously declamatory, and far from common sense, Butler took to the Times to defend her clotted prose by disputing the yardstick of common sense itself. "Many quite nefarious ideologies pass for common sense," she stated, citing slavery as, at one time, a common-sense belief. Not infrequently, she continued, common sense is but a rationalization of unjust social conditions, a way of discouraging alternative thinking. If you call a rule or custom a matter of common sense, the argument goes, you free it from skepticism and adjustment. Reform is stalled. The term masks modes of power and dominance, casts them as natural and renders them "invisible." Common sense appeals aren't just complacent—they're complicit. A figure who invokes it is guilty of upholding a status quo that ought to be interrogated.

It's a daunting argument, certainly so within academia. I've seen it wielded in seminars and conferences, where the last thing an academic wants to have happen is to be labelled an enemy of forward movement. To challenge, to problematize, to deconstruct, to queer . . . radical skepticism of the normative and normal, the natural and natural law . . . mistrust of traditional social codes . . . analysis of commonplace words that (putatively) uncovers their "sedimented" values . . . that's the going etiquette.

Gender's theory's first target was heteronormativity. What is a woman? This breakdown of the common, the ordinary, and the normal is, paradoxically, a professional norm. One learns it early in graduate school. It sinks into an aspiring academic's soul and becomes a reflex. So, when Professor Arkes calls for a common sense recognition that a "massing of a crowd on the campus" is not a legitimate exercise of First Amendment rights, I can hear campus officials and radical professors asking the problematizing queries: At what point does a gathering become a "massing"? Why aren't such gatherings a proper expression of social justice? What is an administrative rule compared to righteous causes such as children in Gaza? What is common sense if it stifles the moral scruples of the young?

Professor Arkes acknowledges the "substantive argument" point—that is, that the people massing on the quad could express their opinion in no other way than by massing on the quad. Then he dispenses with it: we can convene a forum in which the leaders may voice their position and others may respond according to the rules of assembly at the college (a moderator, an approved location, no classes cancelled, etc.). That is, of course, a sensible decision, and if protesters object, well, they can do their massing somewhere else. Professors and intellectuals may deploy their "cleverness and novelty" all they want to undermine the policy of orderly gatherings, but they're the only ones who buy the objections. Common sense wins, and when the eggheads ask, "Whose common sense?" the rest of us answer, "Everyone's."

The issue comes down to one of courage and will. Can college administrators "summon the nerve to

see what is before them" and enforce common sense rules of behavior? Courage, however, isn't enough, nor are codes of conduct. To take Arkes' example, is it acceptable for campus dwellers to celebrate October 7 th as long as they do it in lawful assembly, without disrupting classes and study time? If so, then we have procedures but no decent moral framework. Say anything you want, just do so in a civil fashion and all is well. This is, in fact, the favored option of college presidents today, who pronounce their disagreement with the radicals but pledge to uphold rights of free speech. They offer it as a principled stand, a core tenet of higher education. It doesn't much impress people off-campus, though, as the testimony of the Ivy League presidents two years ago amply demonstrated.

I think this is more than the weakness of the managerial personality at work. There's an intellectual ingredient as well, namely, the ideology of critique I noted above, the commitment to nonstop interrogation of traditional values. College leaders don't cite Foucault or Nietzsche, but the disposition away from old ideals of decency, propriety, normalcy, and custom they have internalized. It helped them climb the administrative ladder. But it's an institutional posture, not an intellectual one" The dogma goes back many decades and has become synonymous with academic thinking. One must test all assumptions, examine one's beliefs, listen to dissenters . . . The fact that it is only traditional beliefs that undergo critique, not postmodern and radical ones, doesn't curb its force. When Justice Jackson did not provide in her Senate testimony an answer to the question, "What is a woman?" she baffled ordinary Americans, but academics were entirely comfortable with her diffidence. To rely on the "precepts of common sense," which Professor Arkes affirms, would have put her at risk.

We have two tasks before us, then, if we wish to reform the speech policies of higher education. One, we must embolden college leaders to enforce the rules; and two, we must persuade them of the dead end of critique. In the 1970s, a wave of critical theory swept over the humanities, raising radical interpretation to the highest value. The tendency spread to other fields in the 80s and 90s and took on a political mission, giving identity politics a deep philosophical warrant ("As Adorno says . . ."). We need now a strong presentation of the damage it has done, the evidence of which is everywhere, from an inability to define the sexes to odious concepts such as "white fragility" to the dithering performance of college leaders in settings calling for candid, forthright exposition and leadership. Administrators are too often intimidated by the apostles of critical theory, however indirectly. The gadflies poking at traditionalways of thinking and speaking do play a part in a healthy society, but only when they stay at the margins. When critique becomes dominant, paralysis begins, judgment slackens, and the public square opens to troublemakers and discontents. The public has had enough; approval ratings are down, and common sense needs new champions.

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The Telos of Free Speech and the University

Justin Dyer

Late one winter night in 2010, two students strolled past the University of Missouri's Gaines/Oldham Black Culture Center and spread cotton balls across the lawn. Soon after, I learned that one of those students would not be returning to my large Introduction to American Government class. The University suspended both students while police investigated. Prosecutors initially pursued felony charges of tampering with an enhanced penalty under Missouri's hate crimes statute. Eventually, the students pleaded guilty to a lesser misdemeanor of littering.

Yet everyone knew that littering was not the real offense. Had they tossed out a Taco Bell bag, the students would not have been punished – at least not like this. Their true offense was bigotry and cruelty, the targeting of people for their race, and the callous indifference to the pain they would cause. Our First Amendment jurisprudence, however, makes such content-based distinctions constitutionally suspect. In a majority opinion for the Supreme Court in R.A.V. v. City of St. Paul (1992), Justice Antonin Scalia had written that the state could not ban graffiti, symbols, and objects (such as burning crosses) which one "knows or has reasonable grounds to know arouses anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender." There is no right to burn a cross in someone's yard or paint a Swastika on their door, of course. One can still be punished for tampering, arson, trespassing, or vandalism, but Scalia insisted that the state cannot create a subclassification of criminal conduct that is proscribed solely on account of the viewpoint the conduct expresses. As he wrote, in his own memorable way, the city of "St. Paul has no authority to license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules."

When the Harvard president testified in Congress that whether an on-campus call for the genocide of Jews was protected speech depends on the "context," she probably accurately reflected her lawyers' advice. In cases dealing with obnoxious mid-century marches and rallies of Nazis and Klan members, the Supreme Court held that the First Amendment protects even the most offensive and hateful speech so long as that speech does not incite others to imminent lawless action. Is a student holding a sign that says "Globalize the Intifada" inciting others to violence? Even if we were to assume that the hoped-for global intifada encompasses the murder, rape, and torture of innocents such as happened on October 7, 2023, the jurisprudential question, based on the Supreme Court's 20th-century free-speech precedents, would depend on context – how imminent is the intifada?

This regime of content neutrality is never really applied in content-neutral ways, however. As Hadley Arkes points out in his essay, no one believes that analogous speech targeting other minority groups on campus would have been tolerated in the same way. Selective enforcement and selective outrage belie the lip service to content neutrality. A recent complaint against Harvard filed by Students Against Antisemitism alleged "a double standard invidious to Jews" when it comes to the enforcement of Harvard's harassment and free speech policies. After failing in its motion to dismiss the case, Harvard settled and promised that in the future it would treat complaints of harassment against Jewish and Israeli students "in the same manner and with the same urgency as all protected groups."

Even as our campuses operate with the trappings of a legal regime of content neutrality, administrators are inevitably drawn into the practice of making moral judgments about speech. These judgments are all over our student handbooks, orientation sessions, syllabi, and honor codes – and they are evident in the way we enforce statutes against such things as littering. What is the alternative to our current blend of moralism and relativism? An earlier jurisprudential framework laid out by Justice Frank Murphy in Chaplinsky v. New Hampshire (1942) insisted that some forms of expression – fighting words, obscenity, and libel – never warranted First Amendment protection. Murphy's analysis begins with the premise that the purpose of speech is to communicate what is true, and this telos of speech implies its limits. Of those words "by which their very utterance inflict injury or tend to incite an immediate breach of the peace," Murphy says they "are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."

Chaplinsky is consistent with strong protections for academic freedom and free speech. The case for freedom on campus mirrors the case for freedom in society. So long as human beings remain fallible, they will come to different conclusions when they are reasoning freely. The resulting conflict of opinion and outlook must be managed rather than suppressed. At the university, this means insisting on a culture of open, honest, and serious debate and argument, and insisting on the conditions that allow such a culture to flourish. But some aspects of campus protest culture – marches, bullhorns, and encampments, for example – make little contribution to the exposition of ideas, and universities may ban obscenity, harassment and threats while limiting other disruptions through neutral time, place, and manner restrictions.

Prudence is a moral virtue, and it is worth noting what is good in our free speech jurisprudence. What Scalia seemed to think is that a regime of content neutrality serves as a bulwark against censorship and coercion, a protection from "omnipotent moral busybodies," to use a phrase from C.S. Lewis. When one faction can silence another by law, it will. Better for the law to be neutral about the content of speech, Scalia insisted, than for the state to impose the Marquis of Queensberry rules on only one side of a debate.

The application of law, however, often hinges on judgments that are not content neutral. The examples are too numerous to list, but consider Shaare Tefila Congregation v. Cobb (1986), a case involving vandals who spray painted antisemitic slogans, phrases, and symbols on the walls of a Maryland synagogue. The congregation brought suit against the perpetrators under §1982 of the Civil Rights Act. As Arkes has pointed out elsewhere, there would have been no suit under the Civil Rights Act had the vandals spray painted the words of the Declaration of Independence on the walls of the synagogue. The case hinged ultimately on the content of the speech.

In the first line of his House Divided Speech, Abraham Lincoln told the delegates to his party's state convention that if "we could first know where we are, and whither we are tending, we could then better judge what to do, and how to do it." Given where we are, and whither we are tending, what should we do about the governance of speech on our campuses? In the short term, states may rewrite statutes to protect the free-speech rights of students and professors while also preventing people unaffiliated with the university from sowing chaos and intentionally disrupting campus operations, as the state of Texas recently did. In the long term, however, we must recommit to the truth-seeking purpose of the university and rediscover the moral case for academic freedom that flows from that purpose.

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inaugural dean of UT Austin's School of Civic Leadership. Dyer writes and teaches in the fields of American political thought, jurisprudence and constitutionalism, with an emphasis on the perennial philosophical tradition of natural law.

Truth and the University,

David Forte

Following a 20-day pro-Palestinian encampment, the resignation of President Claudine Gay, and reports of endemic anti-Semitism on campus, Harvard University issued a Report on the Institutional Voice of the University. "The purpose of the University is to pursue truth," the Report began. Well and good. But Hadley Arkes retorts, "We must be clear that nothing in the search for truth entails that we recede in any way from the surety that we have with us, now as ever, the standards for judging evil ends to be truly evil."

Harvard's Report declares that the University "should not issue official statements about public matters that do not directly affect the university's core function." But Professor Arkes warns that such moral neutrality will slip "into a kind of soft relativism."

Harvard also issued "New Rules for Campus Use," strictly limiting the time and place and manner of on campus demonstrations, but declared, "The University must affirm, assure and protect the rights of its members to organize and join political associations, convene and conduct public meetings, publicly demonstrate and picket in orderly fashion, advocate and publicize opinion by print, sign, and voice."

But Arkes argues that a mass protest on campus is, by its nature, adverse to the university's mission. A protest is not a "discussion." It is not even "the making of a substantive argument."

Putting aside practical difficulties for the moment, the underlying principles of Professor Arkes' position have weight. His rightly focused term is "discussion," for the nature of free speech is not, as so often has been asserted, in individual self-expression. The heart of the right of free expression is the right of the listener to hear, to consider, to deliberate, and to decide. When a campus "cancels" a speaker, the university has not only struck at the speaker's right to speak, but it has denied the right of hundreds of listeners to search for the truth. At best, a campus demonstration makes a statement. Too often, it is a form of bullying, physical or emotional. It has no room for a counter position.

When John Milton famously objected to the licensing of the press in England, he noted that "Who kills a man kills a reasonable creature, God's image; but he who destroys a good book, kills reason itself, kills the image of God, as it were in the eye. … [A] good book is the precious life-blood of a master spirit, embalmed and treasured up on purpose to a life beyond life.""

If a university preserves "a good book" so that generations later can read and learn from it, what does a political mass demonstration do but seek to shut down speech, to declare there is only one point of view to consider? Arkes concedes that such demonstrations may be "tolerated" for good reason, but we should not conflate such mass expressions with the university's search for truth.

Arkes may be speaking in a more ancient voice than he knows.

From the time when the universities were organized in the late Middle Ages, they were places of research into ancient sources and places of vigorous debate and discourse. By Papal decree, universities were to be independent and self-governing. What might have passed as heresy in the public square were propositions or objections within the university. As Hadley Arkes would insist, the university is universe enough to contain the debate, discussion, and consideration of the most contested intellectual and political issues.

But history also informs us that mass demonstrations and even riots have been part of the university world from the start. In 1229, a student riot arose when a student did not pay his bill at a local tavern. The authorities responded with force resulting in the deaths of several students. The students went on strike for two years, after which the Papal Bull insulating the university from secular authority was issued. Things were quieter in 1245 when Thomas Aquinas arrived, and the debates began in earnest. Like Paris, most demonstrations were about local grievances. In 1766, the Great Butter Rebellion arose at Harvard. The butter "stinketh" claimed the protestors. Things grew riotous, and half the student body was suspended. History records dozens of instances of student-organized unrest at college campuses over the next century. In the twentieth century, political protests found their way onto college campuses, culminating in the Free Speech Movement and Vietnam War protests of the 1960s.

Professor Arkes proposes that universities bring the subjects driving the protests "indoors," so to speak, where they can be the subject of serious debate. Unfortunately, he uses the inapt example

of “teach-ins” during the Vietnam era. In fact, teach-ins were not just the civilizing of the Vietnam debate. They were part of shutting the university down and were often substitutes for classes that had been cancelled under duress.

But what of the “Institutional Voice of the University?” Arkes asks, if the university would not be silent about the evil of students burning crosses on campus, why should it be shy about condemning calls for genocide even under disingenuous slogan of freedom for Palestine “from the river to the sea?”

Conservatives may retort that there was no university moral neutrality when presidents and faculty across the country accused everyone who was not anti-racist of being racist, and they meant transparently, white men, and they instituted policies in recruitment and in classroom teaching for that objective. Maybe Harvard’s promise of institutional neutrality is a real gain. But Arkes may answer, because a university was wrong in the past, does not prevent it from being right now.

But how to get to “being right now?”

The problem in enacting Hadley Arkes’s well-founded arguments is that, for some decades now, universities have been a hostile place to expressions of mutual respect and understandings of the good. As Pope St. John Paul II understood, it is ultimately the culture that drives morals. To move to a better place, the university culture must be changed. The surge of new university civic centers is the first sign of real hope for reform in a very long time. We must count favorably also Washington’s campaign against DEI and hypocrisy in university administration and faculty.

Until the university’s culture changes, we may have to channel and contain the inevitable political demonstrations as Harvard has done and be satisfied with “institutional neutrality” rather than hostility to good and valuable ideas.

Yet, at bottom, to search for the good, to debate the good, and to proclaim the good is what the university’s aspiration should be, and nothing less. As Harvard would put it, VERITAS.

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It Begins With Courage

Mark Helprin

It is hard to stress enough the necessity of reinstating in American life both the ability to make distinctions and the courage to stand by the moral dictates that flow from them. Given the vast variety of immaterial pressures that can be brought to bear, good judgment requires courage. I learned this very early on, probably as a child, inchoately, from witnessing cruelty and injustice. It grew less and less inchoate as I aged.

One formative experience was being present as thirty or so uniformed, jack-booted Black Panthers marched through Harvard Yard in 1969, invaded the classroom of a visiting Swiss professor of city planning, and then assaulted, imprisoned, and forced him to return to Switzerland because they said that his work on medieval urban streetscapes presented a template for the genocide of black people in America. These were blackshirts, their offense blatant and obvious. I waited for the Harvard administration to take action. They did nothing, as they appeared divided between those who envied the courage of radicals (this is all too familiar) and those without the courage to act upon their opposition (familiar as well).

Advocating both the ability to make distinctions and the necessity of courage in following through requires the ability to make distinctions and the courage in following through. This no doubt explains the dearth of practitioners. But the interrelated questions of identity politics, abortion, and the sanctity of the individual are sufficiently electric and dangerous that to be answered justly, they require just that.

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Regaining Our Principles and Institutions

Michael Poliakoff

The purpose of a university is the discovery of truth and its application in instruction, whether that be in matters pragmatic or intellectual. It is the defining goal and reason for the existence of the lecture hall, the seminar room, the laboratory, and the library. Although sports, campus activities, social gatherings, and political rallies can and should be educative experiences, they are ultimately serendipitous adjuncts to the telos of the truth-seeking mission. Although the formation of character is an extremely important aspect of the collegiate experience, that, too, is a contingent benefit. The disciplined, academic pursuit of truth alone is the unique role that justifies supporting higher education. And it should not be forgotten that the hard and exacting work of a rigorous academic curriculum is character training, actually quite excellent character training.

Freedom of inquiry, freedom of speech, and freedom of expression represent the necessary and indispensable conditions for that truth-seeking. In the words of the C. Vann Woodward Committee report of 1975, "The history of intellectual growth and discovery clearly demonstrates the need for unfettered freedom, the right to think the unthinkable, discuss the unmentionable, and challenge the unchallengeable." That is also the rationale for academic freedom, *Lehrfreiheit*, and *Lernfreiheit*. It is a special privilege, as Edward Shils observed, neither a constitutional right nor a natural right. But it is essential to the mission of the university. This respondent to Professor Arkes's important and challenging proposal would also add that learning to listen patiently to and thoughtfully answer positions and arguments that appear, in the words of the Chicago Principles on Freedom of Expression, "offensive, unwise, immoral, or wrong-headed," is one of those elements of both academic and character training.

Professor Arkes provides an important example of the ethic that must shape citizens of the academy when he recounts the University of Notre Dame's forum on abortion. However outrageous we may find a position, in the words of Justice Oliver Wendell Holmes, Jr., in his landmark dissent in *Abrams v. United States*, however much it represents "opinions that we loathe and believe to be fraught with death," freedom of inquiry and discussion represent the true, indispensable ethic of the scholar and teacher. Given its religious mission, Notre Dame has no more obligation to support a hypothetical Students for Planned Parenthood club than Brigham Young University does to permit a Starbucks concession on campus. But the freedom of inquiry and freedom of discussion will be key to the intellectual growth of the academic community.

Professor Arkes's cri de coeur is against the cacophony of ignorance and barbarism that misuses and abuses core freedoms on campus. This respondent shares Professor Arkes's horror and disgust at what has happened to American higher education, but proposes that the problem is embedded far less in freedom of speech than in lax and feckless student (and faculty) disciplinary codes and an egregiously flawed and prejudicial system of faculty and administrator recruitment and hiring.

The latter is a matrix for ideology's triumph over wisdom and knowledge. Less than 3% of Harvard University's faculty self-reported as conservative or very conservative in a *Harvard Crimson survey*. That contrasts with 32 percent identifying as very liberal and 45 percent as liberal. Harvard's own 500-page report on campus antisemitism is a scalding indictment of the university, which reports, inter alia, the cardinal breach of professional ethics: the willful misuse of the classroom to advance the instructor's political beliefs. In a remarkable *New York Times* op-ed that brought him vilification and vandalism on the Sarah Lawrence College campus, Professor Samuel Abrams demonstrated that, nationwide, liberal university administrators outnumber self-identifying conservatives 12-1. At New England institutions, that ratio soars to 25-1. Are we surprised to read in the excellent studies of DEI staff that Jay Greene and James Paul published that 96 percent of the Twitter (now X.com) posts made by these administrators were critical of Israel, but 62percent were favorable to China, where the Uighurs were suffering atrocious persecution?

The students chanting, "From the river to the sea, Palestine will be free," and worse could be grouped into two categories. One is comprised of activists, mostly from the Middle East, who should never have received student visas. There is a direct line from administrators who are sympathetic to these students or simply incompetent to the organization and virulence of the encampments and demonstrations.

The second category is comprised of the ignorant and ideology-addled, and it is here that the institution, and particularly the faculty, has failed. University of California–Berkeley Professor of Political Science Ron Hassner discovered in a national survey that 86 percent of the students supported the anti-Israel chant, but only 47% of them could name the river and the sea. This author, who has for years overseen the

American Council of Trustees and Alumni's (ACTA) core curriculum survey, What Will They Learn?®, is not surprised that the majority of American liberal arts institutions are reaping the fruit of their arrogant dismissal of the need for core requirements, evident as students guessed everything from the Caribbean to the Dead Sea to the Euphrates to the Atlantic.

The fingerpost here is that we do not need to step onto a slippery slope of limiting speech and expression to address what we have seen since October 7. It will be challenging work to address a chronically flawed system of recruiting and hiring faculty and administrators. The settlement between Columbia University and the federal government offers a possible template: Put bad departments into receivership and, under the watchful eye of a monitor, make thoughtful hires that address intellectual gaps in the various departments. (The Trump administration might find this a better tactic in lieu of the punitive $200 million fine.) Professor Arkes is correct that giving campus protests and demonstrations a special, honored status reflects a deep misunderstanding of the core purpose of colleges and universities. Wesleyan University President Michael Roth's celebration of campus protest is fatuous: He is a reductio ad absurdum when juxtaposed with the clear vision of the University of Florida's past president Ben Sasse, who memorably warned students in the tumultuous spring of 2024: "We are a university, not a daycare. We don't coddle emotions."

Professor Arkes properly contrasts the limited educative value of a protest with an extended debate and discussion. No protest or demonstration should be allowed to delay or compromise the academic business of the university. Paper due dates, quizzes, and exams must proceed as scheduled, and faculty who comply with student demands for time to protest or address their emotional traumas should face appropriate sanctions. But as we advance, the student code of conduct and the faculty handbook need to make the bright lines ineluctably clear as well as the stern penalties for crossing them. Time, manner, place. The library, the classroom, and the laboratory are sanctuaries for learning, not demonstrations. Those who wish to protest a scheduled speaker may do so, but only if they are far enough away from the venue itself that they will not disturb the duly scheduled event. Most importantly, they should have the opportunity and the obligation, in Professor Arkes's formula, to make their case in debate and discussion in a way that advances understanding. The right of peaceable assembly enshrined in the First Amendment should sit comfortably with the assertion of institutional rules that protect students' opportunity to pursue the education for which they, their families, and state and local governments devote their resources.

Finally, and with apologies for this extended response, "moral clarity on the great questions of their time," to use the phrase of Lawrence Summers, is the responsibility of leadership. It does not violate institutional neutrality to condemn terrorism, antisemitism, or racism, or to stand for the freedom to practice a religion or to practice no religion at all. Universities are too often mired in quasi-official statements on everything from the Dobbs decision to the two-state solution. What they miss are the foundational, nonpartisan moral truths that separate civilization from barbarism.

For this author, the most devastating moment in Professor Arkes's proposal is his reflection that he could not teach his First Things course, which ends with a powerful argument for the sanctity of life, at Amherst College today. Here we see the moral failure of leadership—administrative cowardice—and the retreat from academe's pursuit of truth and character training in presenting students with new ideas, and in our times, challenging the progressive ideologies in which they have grown up.

Higher education, whether legally bound by the First Amendment or conditioned by its vision, must not erode core freedoms. But by embracing academic purpose and enforcing the discipline the academy needs to thrive, we can recover and rebuild the institutions on which the future of our nation depends.

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Our Civilization Depends on Serious Universities

Peter Wood

The direst moment seems to have passed. The unwillingness of college and university administrators to take action against campus takeovers, demonstrations, murderous threats, vandalism, and efforts to drive Jews out of higher education has subsided. This is partly because the Trump administration has come down hard on some of the universities that indulged the transgressors. It is also partly because fads come and go. And it is because an element of moral common sense survives in the American character despite outbreaks of "collective effervescence" of madness that condone and

perhaps even commit acts of the utmost evil.

During the encampments and other campus demonstrations orchestrated by supporters of Hamas in fall 2023 and spring 2024, when some students were asked what they were protesting, they gave answers that showed faint knowledge of what Hamas had done and little understanding of the broader conflict between Israel and various Palestinian groups. They chanted "from the river to the sea" without being able to identify either body of water. They mouthed the word "genocide" with no grasp of its literal meaning.

In other words, the size of the demonstrations reflected the skill of the organizers in rousing among ignorant and confused students a sense of excitement at being part of a larger cause that they were ready to believe had something to do with fighting against injustice.

This in no way extenuates the culpability of the universities. Their job includes both curing their students of such profound ignorance and creating an orderly society (on campus and elsewhere) in which important ideas can be debated seriously. The college presidents, provosts, deans, and academics singularly failed at both these essential tasks.

Hadley Arkes' essay demolishes the excuse that college authorities most commonly gave (and still give) for their nonfeasance. Those authorities profess to have acted out of deep regard for "free speech." Arkes says less about a second excuse that has increasingly come into play. Those same authorities say they acted out of the need to protect their institutions' "autonomy." They regard their colleges and universities as rightfully conducting their affairs in a manner that sets them apart from broader societal concerns and especially from the interference of civil authority.
Arkes makes the compelling argument that freedom of speech has never meant an exemption from natural law and common sense. Inciting race riots, summoning genocide, or whistling up mob rule are not legitimate uses of free speech. Mostly, the courts have agreed with this and, as Arkes reminds us, citing Hobbes, we have a long tradition of prohibiting "tumultuous assembly."

Why then were so many college presidents caught flat-footed when some of their students tumultuously assembled to praise the gruesome murders of Israelis on October 7, 2023? And why did they have even more difficulty in making compelling responses to students and faculty members who—with no tumult at all—explain forthrightly that their goal is the elimination of the Jewish state?

These are questions about the behavior of the college authorities, not the motives of the Hamas sympathizers who have been abundantly clear about what they want. The college authorities do not endorse genocide (at least not openly). Rather, they endorse a version of First Amendment freedom that Arkes calls "moral emptiness" or muteness. This is a species of relativism, albeit a hypocritical one. They would not stand mute if the attacks were focused on American blacks. Or for that matter, on communists, environmental activists, illegal immigrants, or Native Americans. It seems that a Jewish or Israeli exceptionalism shapes their toleration of homicidal rhetoric. That probably isn't the only exception, but it is the paradigm. Assaults on conservative activists on campus, such as the members of Turning Point USA, for example, receive a similar acquittal.

"A university that takes itself seriously as a university and not an academic theme park," to quote Arkes's pungent phrase, would have a very long way to go to repair the ideological predicates that led to the anemic responses to the campus activists who celebrated the October 7 massacre. Achieving moral clarity is not just the first step, but probably the first ten steps. We don't accomplish that clarity without replacing the leadership of our colleges and universities; without teaching children long before they matriculate to college that free speech doesn't abrogate moral responsibility; that the privilege of higher education is rooted in due respect for law and order; but that such respect is merely preliminary to the more profound respect that is due to what is right and good.

I am under no illusions about how hard this will be. American pragmatism stands in the way. 'The kids will settle down and get good jobs. Let them have their fun as pretend rebels fighting against settler colonialism.' American libertarians stand in the way. 'The eternally radical idea of free speech is all that we need to thrive despite our disagreements.' Fatuous liberals stand in the way. 'Kindness is the path to peace.'

A serious university is devoutly to be wished for. Our civilization depends on it. But to establish that "new regime," we need to bring in demolition crews and a fleet of heavy loaders. I'm grateful that Arkes has begun to clear the path.

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