

Philosophy Ripped From The Headlines!



Issue #2, October 2017

Compiled & Edited by *Philosophy Without Borders*

TABLE OF CONTENTS

Free Speech Wars: NINE Articles, FIVE Follow-Ups, and TWO Links

- **ARTICLE 1 “On Firing Nazis” (p. 3)**
- **ARTICLE 2 “How ‘Doxxing’ Became a Mainstream Tool in the Culture Wars” (p. 8)**
- **ARTICLE 3 “Roger Waters: Congress Shouldn’t Silence Human Rights Advocates” (p. 12)**
- **ARTICLE 4 “The Free Speech-Hate Speech Trade-Off” (p. 15)**
- **ARTICLE 5 “Harvard Disinvites Chelsea Manning, and the Feeling Is Mutual” (p. 20)**
- **ARTICLE 6 “Chelsea Manning Has a Lot to Teach. Harvard Doesn’t Agree.” (p. 24)**
- **ARTICLE 7 “Don’t Shun Conservative Professors” (p. 27)**
- **ARTICLE 8 “Cake Is His ‘Art.’ So Can He Deny One to a Gay Couple?” (p. 30)**
- **ARTICLE 9 “Defying Trump, Athletes Intensify Debate on Race and Protest” (p. 36)**
- **FIVE follow-ups and TWO links (p. 41)**

1. “On Firing Nazis”

By MICHAEL TRACEY

The Young Turks/Medium, 18 AUGUST 2017

URL = <https://medium.com/theyoungturks/on-firing-nazis-c2af272979f9>



The firing of several individuals for their participation in last weekend's white nationalist rally in Charlottesville has raised some interesting, yet fraught, questions about employment law, free speech, and related issues. At the outset it should be clarified, with unyielding insistence, that to examine these questions is in no way to make excuses for or "defend" Nazis, white nationalists, or anyone else of their kin. Such people espouse beliefs which are very obviously repugnant and worthy of unqualified condemnation.

That being said, The Atlantic's Gillian B. White explored some of these uncomfortable issues in an August 14 [post](#) entitled: "Is Being a White Supremacist Grounds for Firing?" Commenting on the social media campaign which culminated in several rally-goers getting terminated, White writes:

Of course, the consequence of this dynamic is that taboo political ideas of all stripes can lead to workplace sanctions. **While many on the political left are now lauding firings as a way to hold white supremacists accountable, it's also worth remembering that pressuring employers to sever ties based on political activities, or social and racial beliefs, has historically been targeted in the other direction.** McCarthyism involved reporting Communists and Communist sympathizers and pushing them out of the workforce, and Hollywood in particular. And as Walter Greason, a historian and professor at Monmouth University said in an interview, "Historically it's more dangerous as an employee to be associated with racial justice and the NAACP, than it was to be affiliated with the KKK."

The point, obviously, is not to suggest that the rally-goers should evade censure. To the contrary, they deserve forceful censure for taking part in that shameful event and for holding views which are inherently dehumanizing. But the rejoicing on the part of liberals and leftists in response to their termination glosses over deeper issues: do we wish to empower employers—especially, in this case, large corporate employers like [Uno pizzeria](#) and [Lucky supermarket](#)—to be the ones doing the censoring?

Here's the crux: the fact is that these employees were apparently terminated on the basis of legal political activity. As repugnant as their activity was, and as morally blameworthy, it was still legal (hence the ACLU's advocacy for them in court). If we are going to cheer employers' willingness to terminate employees for engaging in legal political speech, we should be aware of the wider implications, and be cognizant of how such a principle might be used against people with whom we share political affinity.

In making these points I've been frequently rebuffed by people claiming that at-will employment has been a "thing" for ages, and if these disreputable losers should suffer for it, so be it. I agree that at-will employment has been a thing for ages, and if anyone is going to suffer for it, better it be white nationalists and/or Nazis than people with less odious politics. But organized labor [objects](#) to at-will employment for a reason: it vastly strengthens the hand of employers in the employee/employer power dynamic.

The reason to raise concerns when this power dynamic is wielded to penalize Nazis is thus: if even the most vile workers, such as Nazis, are due free speech safeguards, an arbitration process, and attendant protections, then that *strengthens and universalizes the underlying principle* that

all workers are owed such protections. Including pro-Palestine ralliers, Occupy ralliers, or even Stalinist ralliers. All workers: irrespective of the political beliefs they're espousing.

To reiterate, if even these Nazi scumbags were to have been afforded basic worker protections—again, the kind that organized labor advocates for as a central premise of its existence—then that would strengthen and universalize the underlying principle: that workers should be judged on the basis of what they do while they are on the job, and that employers don't have total domain over what they do in the rest of their lives.

Also at The Atlantic, Conor Friedersdorf [proposes](#) several criteria for when it might be warranted to fire workers on the basis of their legal political speech. Friedersdorf is correct to note that the firings of the white nationalist rally-goers bring to bear two norms which are, potentially, in friction with one another. The first norm is that workers ought to be able to engage in off-hours political speech without fear of punishment from their employers. The second norm is that societal resources ought to be marshaled to discourage people from embracing repugnant beliefs, such as Nazism. Both norms are products of reasonable moral intuition.

A norm it would be prudent to protect is that workers—especially workers under the thumb of large, profitable corporations—should be judged for their workplace, on-hours activity rather than their off-hours, legal activity. That way, a Palestine liberation activist couldn't be terminated because her ardently pro-Israel manager finds her views repugnant and/or sees his "safety" as being jeopardized, even though she hasn't tangibly done anything on-the-job to jeopardize his safety. Per this norm, individuals are afforded maximum liberty to express political views, even repugnant views, so long as those views don't translate into physical violence.

As Friedersdorf's colleague pointed out, had these white nationalist losers been federal government employees, it would've likely been *illegal* to fire them on the grounds they were fired on by Uno and Lucky. That's because they apparently didn't do anything illegal, and federal government workers enjoy much greater protections which allow them to engage in political activity without having to fear workplace retribution. That's the fundamental tension here. Had the kind of protections, which organized labor has been advocating for eons, been in effect at these men's workplaces, it would've been much harder to terminate them so quickly.

I've often been asked: how can you expect workers of color, Jews, or others to tolerate working alongside people who espouse such dehumanizing views? My answer: you shouldn't expect that. Workers of color would be more than justified in finding this situation intolerable. But let's say a worker of color in the public sector found out that her colleague was a bonafide Nazi. If the colleague didn't engage in any intimidating, racist, or otherwise harmful behaviors while actually on-the-job, it's unclear what recourse she would have to seek the colleague's termination (I'm open to being educated more here on the specifics, as I'm not an expert on employment law).

Again, it's worth adding an additional qualifier—because there can never be enough—that the people who attended this rally, and were eager to find common cause with avowed Nazis, were shameful. But the operative question here pertains to the employee/employer power dynamic, which in these circumstances were weighted so heavily in favor of the employer that the

employees had little or no opportunity to contest their firings. And that opportunity should be available, ideally, to all workers, especially low-wage workers, even if they are vile people. Because if you give protections even to vile people, you enshrine the principle that these protections are universal, rather than contingent on someone's personal character or political views.

Friedersdorf suggests several criteria for when the “off-hours political speech ought not to result in termination” norm might be worth violating. The first is, “is this person hateful”—as in, if the person's political beliefs are expressed especially hatefully, it might be justified to fire him on that ground. But there's a distinction to be drawn here. If we are talking about whether an individual expresses overt hatefulness—aggressively upbraiding others, speaking vulgarly and/or confrontationally—that could be put in a different category than someone who harbors “hateful” ideology. For instance, a person might have the most uncontroversial political views imaginable—let's say, for the sake of argument, that the person is a generic, milquetoast liberal—and yet expresses those views in a way that is vulgar, confrontational, or even hateful: “You didn't vote for Hillary? You sack of shit, sub-human lowlife prick.”

Whereas, on the other hand, a person who harbors political views which are themselves intrinsically hateful—such as Nazism or some other view which advocates the forced expulsion of minority groups—might communicate those views in a manner which is decidedly *non-confrontational* or not overtly aggressive/hostile. In fact, the most successful proponents of repugnant ideologies are frequently those who can maintain an air of decorum about themselves, who don't run around spewing outwardly brash hatefulness—even if their beliefs are themselves fundamentally hateful. If we're talking about how to dole out employment penalties, it's not clear how these categories could be distinguished, even if they are patently distinguishable categories.

The next criterion Friedersdorf suggests for when it's proper to terminate a person for their political views is when the person espouses views which are “inseparable from violence.” But again, this category is inherently hazy, and would invariably come down to the subjective whim of the employer. Suppose a worker takes the view that Israel should not be a Jewish state. The worker believes that non-Jews should be forcibly integrated into Israeli society so as to eliminate the society's Jewish character. There are plenty of Israelis who might regard a view such as this as “inseparable from violence” because, by their lights, it compromises their safety. Couldn't such a view be grounds for termination, under this criterion?

Take another example: a worker is staunchly pro-war, and wants the United States government to invade, say, Iran. The worker has a set of political beliefs that view a US invasion of Iran as a moral necessity. How could that belief be regarded as anything other than “inseparable from violence,” if the explicit aim of the view is to call for violence? Are we not putting state violence in the same category as ‘regular’ violence? If so, why not? That would beget yet another long discussion. Which goes to show the ultimate subjectivity of these categories.

Another factor that Friedersdorf suggests be taken into account is “persuadability”—that is, if a person is persuadable, and demonstrates a potential to be talked out of their repugnant beliefs, then perhaps this should be taken into consideration by an employer when contemplating

whether to fire the person. But yet again, this gets to the problem of subjectivity. Why should it be within an employer's charter to persuade an employee out of repugnant beliefs? First of all, couldn't the employee simply present a facade in order to save his job, and insist to the employer that he has in fact abandoned the repugnant beliefs, even though deep down he has not? Do we really want employers probing the deepest, darkest interior thoughts of an employee, or is that perhaps not the proper role of a corporate managerial bureaucrat?

This is not to say that people who harbor repugnant beliefs can't be persuaded out of them, or as Friedersdorf puts it, "deprogrammed." It's simply to say that asking employers, or managers, or other superiors on the corporate hierarchical ladder to engage in "deprogramming" opens all kind of questionable doors. Would we want the ardently pro-Israel manager to try his hand at "deprogramming" his pro-Palestine subordinate? After all, the pro-Israel manager may well view the subordinate's beliefs as "violent."

These reservations should *not* be construed as a belief that firing avowed Nazis from their jobs is somehow impermissible under all circumstances. I can imagine cases where the firing of Nazis is not just permissible but morally compulsory. It's just to say that firing people for engaging in off-hours, legally-protected speech raises serious questions about the employee-employer power dynamic that people should be cognizant of—and further, that if organized labor's preferred employment laws were on the books, such firings would be much harder to carry out so quickly, and may in fact be illegal. These are questions worth considering, and to raise the questions is no defense of Nazis who—for the umpteenth time—are repugnant.

2. “How ‘Doxxing’ Became a Mainstream Tool in the Culture Wars”

By NELLIE BOWLES

The New York Times 30 AUGUST 2017

URL = <https://www.nytimes.com/2017/08/30/technology/doxxing-protests.html>



Protesters fill streets near San Francisco’s Alamo Square to counter a planned rally by far-right demonstrators. Credit Jim Wilson/The New York Times

SAN FRANCISCO — Riding a motorized pony and strumming a cigar box ukulele, Dana Cory led a singalong to the tune of “If you’re happy and you know it clap your hands.”

“You’re a Nazi and you’re fired, it’s your fault,” she sang. “You were spotted in a mob, now you lost your freaking job. You’re a Nazi and you’re fired, it’s your fault.”

“All together now!” Ms. Cory, 48, shouted to a cheering crowd in San Francisco’s Castro neighborhood on Saturday. They were protesting a rally planned by far-right organizers about a mile away.

“Dox a Nazi all day, every day,” she said.

Online vigilantism has been around since the early days of the internet. So has “doxxing” — originally a slang term among hackers for obtaining and posting private documents about an individual, usually a rival or enemy. To hackers, who prized their anonymity, it was considered a cruel attack.

But doxxing has emerged from subculture websites like 4Chan and Reddit to become something of a mainstream phenomenon since a white supremacist march on Charlottesville, Va., earlier this month.

“Originally it was little black-hat hacker crews who were at war with each other — they would take docs, like documents, from a competing group and then claim they had ‘dox’ on them,” said Gabriella Coleman, a professor at McGill University who wrote a book about the hacker vigilante group Anonymous. “There was this idea that you were veiled and then uncovered.”

Now the online hunt to reveal extremists has raised concerns about unintended consequences, or even collateral damage. A [few individuals have been misidentified](#) in recent weeks, including a professor from Arkansas who was wrongly accused of participating in the neo-Nazi march. And some worry that the stigma of being outed as a political extremist can only reinforce that behavior in people who could still be talked out of it.

Doxxing was on the minds of a number of protesters on the streets of San Francisco on Saturday. In the Castro and Mission neighborhoods and Alamo Square, the home of the famous row of houses known as the Painted Ladies, thousands participated in counter-demonstrations to the right-wing rally. There was the energy of a street party — children and dogs joined in, protesters shared baked goods, and the bars nearby were full.

Marla Wilson, 35, of San Francisco, said she was appalled when she saw white supremacists marching so brazenly in Charlottesville. Doxxing, she believed, was an effective way to make people think twice about being so bold with their racism.

“Some of what is happening now will make these white supremacists realize why their grandparents wore hoods,” Ms. Wilson said. “At least then there was shame.”

The ethics — and even the definition — of doxxing is murky. It is the dissemination of often publicly available information. And, some at the protest asked, are you really doxxing a person if he or she is marching on a public street, face revealed and apparently proud? It is not as though they are hiding their identities.



White supremacists marched with torches during a rally in Charlottesville, Va. Credit Edu Bayer for The New York Times

But Tony McAleer, a former white supremacist leader who now runs Life After Hate, a rehabilitation program for neo-Nazis, called doxxing a “passive aggressive violence.” He said publicizing the names and workplaces of neo-Nazis may offer some level of solace to people outraged by them, but it makes his job more difficult.

“For us, it slows things down. We try to integrate people back to humanity,” Mr. McAleer said. “If isolation and shame is the driver for people joining these types of groups, doxxing certainly isn’t the answer.”

In short, once someone is labeled a Nazi on the internet, that person stays a Nazi on the internet.

Internet vigilantism has a checkered history. In April 2013, amateur detectives on Reddit used screen shots of security camera footage to identify two men as being connected to the Boston Marathon bombing. The New York Post put the image on the cover under the headline “Bag Men.”

But [the two young men pictured were not the bombers](#). At one point, Reddit sleuths even set their sights on a student from Brown University, about 60 miles away in Providence, R.I., who was missing. He had nothing to do with the bombing; he [had committed suicide](#).

The next year, doxxing became a tool by in the [“GamerGate” controversy](#), an online dispute purportedly about ethics in video game journalism that became a foundational moment for some of today’s fringe far right. Mostly male video-game players began to publish personal information — including home address and phone numbers — for women in their community, typically journalists and game designers who they said were unfairly politicizing gaming culture.

For Ms. Coleman, the real mainstream moment for online vigilantism was in 2015, when an image of a dentist standing over a lion he had shot swiftly spread on social media. The lion was Cecil, a well-known conservation icon. Animal lovers seethed. The actress Mia Farrow even posted the dentist’s home address on Twitter.

“People went berserk,” Ms. Coleman said. “That, to me, was this interesting turning point where it showed the general public would be willing to jump into the fray.”

Charlottesville has made doxxing even more commonplace.

“For a long time it was only a certain quarter of people on the internet who would be willing to do this,” Ms. Coleman said. “It was very much hinged on certain geek cultures, but there was an extraordinary quality to the Charlottesville protest. It was such a strong public display I think it just opened the gates.”

The right-wing rally ultimately fizzled on Saturday, but counter-protesters were still on the lookout.

“It’s important to dox Nazis,” said Andrea Grimes, 33, of Alameda, Calif. She held a sign that read: “White people pick one: Be the problem. Be the solution.” She said she had “outed” white supremacists to their parents, which she said often worked well to stop bad behavior online.

Ms. Cory, the ukulele player moving by electric pony, said that she had posted that morning a picture of a man she thought was a white-pride agitator. He was at a local train station wearing camouflage and smoking a cigarette near a car with Oregon license plates.

“They’re here, ” she said. Then she started the next song: “Tiki Torch Nazis,” set to “Beauty School Dropout” from the musical “Grease.”

Nearby, Jim Alexander, 55, a software engineer, was carrying high a sign with the words, “Hug an Extremist.”

Asked about the message, he lowered the placard and looked at it again.

“Unfortunately, I think this might not work,” Mr. Alexander said.

3. “Roger Waters: Congress Shouldn’t Silence Human Rights Advocates”

By ROGER WATERS

The New York Times 7 SEPTEMBER 2017

URL = <https://www.nytimes.com/2017/09/07/opinion/roger-waters-congress-silencing-advocates.html>

Members of Congress are currently considering a bill that threatens to silence the growing support for the boycott, divestment and sanctions movement for Palestinian freedom and human rights, known as B.D.S. This draconian bill, the [Israel Anti-Boycott Act](#), threatens individuals and businesses who actively participate in boycott campaigns in support of Palestinian rights conducted by international governmental organizations with up to 20 years in prison and a \$1,000,000 fine.

By endorsing this McCarthyite bill, senators would take away Americans’ First Amendment rights in order to protect Israel from nonviolent pressure to end its 50-year-old occupation of Palestinian territory and other abuses of Palestinian rights.

The American Civil Liberties Union has [condemned](#) the bill, which the [American Israel Public Affairs Committee](#) is lobbying for, as a threat to the constitutional right to free speech.

All Americans — regardless of their views on Israel-Palestine — should understand that potentially targeting and blacklisting fellow citizens who support Palestinian rights could turn out to be the thin end of a thick authoritarian wedge.

This is not new. Some two dozen [anti-B.D.S. bills](#) have been introduced in Congress and state legislatures across the country as part of an insidious effort to silence supporters of Palestinian human rights — some have already passed. In most cases, these bills bar states and the federal government from doing business with, or investing in, companies that abide by boycott or divestment campaigns related to Israel’s violations of international law. None of these laws has been tested in court yet.



People marching in support of B.D.S. in California in August 2016. Credit Robyn Beck/Agence France-Presse — Getty Images

This criminalization of support for B.D.S. in the United States mirrors similar efforts in Israel. In 2011, the Knesset passed a law that permits Israeli citizens or organizations who publicly endorse B.D.S. to be sued by anyone who has been affected by the boycott call. And earlier this year, it passed a law that allows Israel to deny entry to foreigners who have publicly supported boycotts. It was under this law that [Alissa Wise](#), an American rabbi who was part of an interfaith delegation to the Holy Land, was recently prevented from boarding a flight to Tel Aviv.

Criminalizing boycotts is un-American and anti-democratic. Boycotts have always been accepted as a legitimate form of nonviolent protest in the United States. In 1955 and 1956, a bus boycott in Montgomery, Ala., incited by the protest of Rosa Parks and others, became one of the foremost civil rights struggles against segregation in the South.

More recently, the National Collegiate Athletic Association refused to hold championship events in North Carolina after state legislators there passed a law that curbed legal protections for lesbian, gay, bisexual and transgender people and set discriminatory rules regarding transgender bathroom use in public buildings. Numerous artists, including Bruce Springsteen, refused to perform in the state; major corporations canceled investments in North Carolina. The voice of boycott in support of civil rights was heard and the bill was repealed, albeit as part of a problematic compromise.

In these cases, progressives lauded these boycotters as champions of equality. So why do national lawmakers — including supposedly progressive Democrats — want to make an exception for those who support equal rights for Palestinians?

When the cause is just, boycott has shown itself to be an effective method of shining light on human rights abuses and the flouting of international law. That is why the Israeli government and its supporters are so determined to silence those who support B.D.S.

Pro-Israel groups have for years attempted to demonize supporters of B.D.S. — trust me, I know. I am currently in the middle of a 63-date tour of the United States and Canada. Audiences of tens of thousands are coming together at our “Us + Them” shows, which embrace love, compassion, cooperation and coexistence and encourage resistance to authoritarianism and proto-fascism. These appearances have been greeted by a few sporadic protests by right-wing supporters of Israel.

These protests would be of no consequence, if they did not occasionally have truly negative consequences. For instance, the city of Miami Beach prevented a group of school children from appearing onstage with me after pressure from the [Greater Miami Jewish Federation](#). I understand that city officials have a democratic right to disagree with my opinions, but I was shocked that they were willing to take it out on kids.

These attacks are routine and relatively minor. But the Israel Anti-Boycott Act is serious “lawfare.” Officials in Nassau County in Long Island are [threatening](#) to take legal action to shut down two shows I have scheduled there next week, using a [local anti-B.D.S. law](#) passed in 2016. If the Nassau County attorney proceeds against the operators of the Nassau Coliseum, we will have our day in court and argue on behalf of all those who believe in universal human rights and the First Amendment.

Polls show that nearly half of all Americans, and a majority of Democrats, would support sanctions against Israel because of its construction of illegal settlements on occupied Palestinian land. Indeed, more and more churches, student groups, artists, academics and labor organizations are backing the tactics of boycott and divestment as a means to pressure Israel to end its abuses of Palestinians. If passed, the Israel Anti-Boycott Act could put them all, from archbishops to altar boys, artists to artisans, at risk of arrest on felony charges.

Those who are attempting to silence me understand the power of art and culture. They know the role artists played in the civil rights struggle in the United States and against apartheid in South Africa. They want to make an example of us to discourage others from speaking out.

Instead of working to undermine B.D.S., Congress should defend the First Amendment right of all Americans and stand on the right side of history by supporting equal civil and human rights for all people, irrespective of ethnicity or religion.

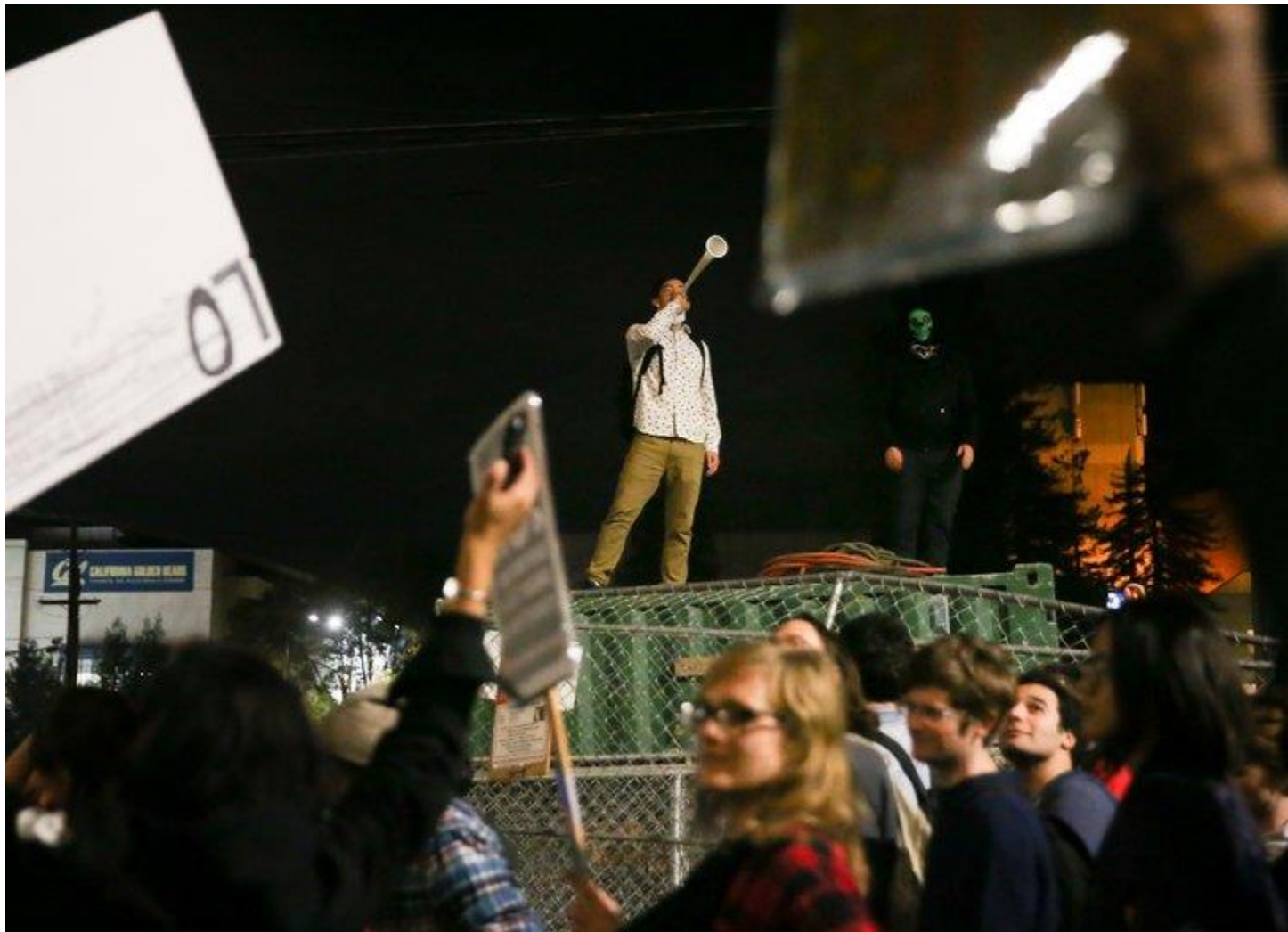
Roger Waters, a musician and singer-songwriter, is a co-founder of the band Pink Floyd.

4. “The Free Speech-Hate Speech Trade-Off”

By ERWIN CHEMERISNSKY and NATALIE SHUTLER

The New York Times 13 SEPTEMBER 2017

URL = <https://www.nytimes.com/2017/09/13/opinion/berkeley-dean-erwin-chemerinsky.html>



Students protesting a speech by Milo Yiannopoulos at Berkeley in February. Credit Elijah Nouvelage/Getty Images

“Controversies over freedom of speech on college campuses have existed as long as there have been college campuses. But the specific issues vary with each generation.”

That is the first line of Erwin Chemerinsky’s new book, “Free Speech on Campus,” written with Howard Gillman. Mr. Chemerinsky is not only one of the foremost legal scholars on the First Amendment but also a firsthand witness to the free speech debates of today as the new dean of the University of California Berkeley School of Law.

Here he talks with Natalie Shutler, the editor of the [On Campus](#) column, about hate speech, censorship and what campuses can and can't do. This interview has been edited and condensed.

Natalie Shutler: Hi, Professor! I have spent the past year talking with college students about free speech and, as you know all too well, it's a contentious topic for them. In this loud internet age, in which provocative opinions are hitting us constantly and from all sides, plenty of students don't see value in hosting more of the same on their campuses. One thing I appreciate about your new book is that you are thoughtful about these students' concerns, even if you disagree with their conclusions.

Erwin Chemerinsky: I think we have to be attentive to the fact that many students want to restrict speech because of very laudable instincts. They want to protect other students from hate speech. They want to create an inclusive community for all. But the response to hate speech can't be to prohibit and punish it. It's unconstitutional. We have to find other ways to create inclusive communities.

Natalie: For many students, it's not just about hate speech, but the kind of speech that creates harm. This term is agonizingly broad and open to wildly different interpretations. But students aren't wrong in thinking that speech can be a weapon.

Erwin: Students are quite right. We protect speech *because* of its effects. If speech had no effects, it wouldn't be a fundamental right. Those effects can be positive but they can also be very negative. Speech can cause enormous harm. It can be hurtful, it can cause people to be excluded, and it can interfere with education or employment. Especially in colleges and universities, we have to be attentive to that.

Natalie: But you do take a hard line in your book that even hate speech must be protected.

Erwin: The law under the First Amendment is clear: Hate speech is protected speech. Over 300 colleges and universities adopted hate speech codes in the early 1990s. Every one to be challenged in court was ruled unconstitutional. And there are good reasons for that.

After some really ugly incidents at the University of Michigan in the late 1980s, the school adopted a hate speech code that was undoubtedly well intentioned. But a federal court declared it unconstitutional, in part, because it was so vague. It said that there could not be speech that "demeans or stigmatizes" anyone based on race or gender. But what does that mean? A sociology student who challenged the law said, "I want to study whether there are inherent differences between women and men. What if my conclusions are deemed stigmatizing on the basis of gender?" And during the years Michigan's speech code was on the books, more than 20 black students were charged with racist speech by white students. There wasn't a single instance of a white student being punished for racist speech, even though that was what had prompted the drafting of the Michigan speech code in the first place.

That's part of a much bigger historical pattern: As we saw in Michigan, when hate speech codes or laws are adopted, they are most often directed at the very groups they are meant to protect.

Natalie: You make the distinction in your new book that this doesn't mean that the First Amendment is absolute. For example, there is no constitutional protection for a ["true threat"](#) or for harassment. Campuses can protect students against that kind of speech. But before you address unprotected speech, maybe we should talk a bit about the history of free speech, which you lay out in your book.

Erwin: It is hard to imagine social progress anywhere that wasn't dependent on freedom of speech. The civil rights protests of the 1960s — the lunch counter sit-ins, the marches and demonstrations — were essential to federal civil rights acts and the end of Jim Crow laws that segregated every aspect of the South. The anti-Vietnam War protests were crucial for the end of that war. This has been true throughout American history. The 19th Amendment that gave women the right to vote was the product of demonstrations and speech.

Natalie: Now, as you point out, many students associate free speech with the vitriol of the internet more than they do with the civil rights movement. I feel for them. The internet is terrible. But how do you see things turning around? How do you think students could begin to associate free speech as something for the vulnerable?

Erwin: Some of this is about a lack of education about the history of freedom of speech. I do worry that students today may equate free speech more with cruel or racist posts on Yik Yak than with the civil rights protests of the 1960s. But even when students talk about harm and safety, they need to remember how malleable those terms are. There is no doubt that the civil rights protests deeply offended many Southerners, however objectionable that may sound to us today. An example like that illustrates why offensiveness to an audience can't justify stopping speech.

Natalie: Identity is important to nearly every college student I talk to, regardless of their background or political persuasion. You make the case that free speech is the basis for asserting identities and, in particular, was necessary for the expansion in public of countercultural identities — including, and I'm reading straight from the book here, "forms of expression that challenge traditional religion, prevailing social mores, familiar lifestyle choices, inherited views about sexuality, or historic gender roles." But of course, some identities are much more vulnerable to intimidation than others.

You argue that college administrations need not ignore that. An administration can't bar a campus speaker, but it can engage in its own speech by reaffirming the social standards of the community and reaching out to students who might be offended or hurt. Campuses don't need to stand behind offensive speakers; they just need to allow them the opportunity to speak.

Erwin: I think it's so important for campus officials to respond to and condemn hate speech. Just because the First Amendment protects a right to say something, that doesn't mean it *should* be said.

Campus officials can describe the type of community they want to create and denounce hate speech as inconsistent with it. Many years ago, when I was teaching at the University of Southern California Law School, someone wrote a very offensive homophobic slur on a

chalkboard. The dean did not try to find out who did it or threaten punishment. Instead, he wrote a very powerful statement about why what happened was inconsistent with the community we aspired to be. His message had an enormously positive effect.

Also, it is very important that the students themselves respond to offensive speech. They can hold counter-demonstrations, teach-ins and protests. All of that is protected speech. They just can't protest in a way that interferes with the ability of others to speak.

The law is clear that even in places that are open to speech, there can be time, place and manner restrictions, so long as there are adequate places for free speech. There is a right to speak on the campus, but there is no right to come into my classroom and shout me down. There is a right to use public streets and sidewalks, but a city can prevent trucks with sound amplification equipment from playing music in the middle of the night. Dormitories are also a very special place of repose for students. It's their home, and the Supreme Court has recognized the protection of privacy of people in their homes. So there can be much greater restrictions in dormitories — but it always has to be content neutral. It can't be based on content or message.

Natalie: Right, so you could say that no one is allowed to hang flags from their window, but not that no one is allowed to hang Confederate flags from their window.

Erwin: Exactly.

Natalie: Obviously violence — like what we saw in Charlottesville and could presumably expect near other college towns in the coming year — is not protected by the Constitution. But I have heard from many students that they are frustrated with the idea that people of color and other vulnerable demographic groups are responsible for staying nonviolent and peaceful when aggressive demonstrators march on their colleges. It's not that they want violence, but that they feel that they are being told to respond to aggression with passivity. Could you comment on that? I certainly understand where they are coming from.

Erwin: There is no right to engage in violence. Campuses can take steps to prevent violence — such as preventing weapons at demonstrations, having speakers be in areas where safety can best be assured, and moving counter-demonstrations to another area. Also, if speech is a true threat — causing a person to reasonably fear imminent physical harm — it is not protected by the First Amendment.

Natalie: What about the argument that some inflammatory speakers come to campus with the express aim of creating a hostile environment?

Erwin: It is important to recognize that a public university has no choice but to allow speakers on campus even if their message is regarded as hateful or racist. If the campus tried to exclude such a speaker, it would get sued and the speaker would win and likely would be made a martyr for the First Amendment in the process. Nothing can be gained by exclusion. But the campus must ensure safety for its students, staff and faculty. This might include regulating where the controversial speaker is allowed to be present and, likely, it will include more of a police presence. I am sympathetic to the concerns of students who are wary about more police coming

to campus, but not having law enforcement present in the face of a danger to public safety risks even greater harms.

The central principle of the First Amendment — and of academic freedom — is that all ideas and views can be expressed. Sometimes they are ideas and views that we might consider noble, that advance equality. Sometimes they might be ideas that we abhor. But there is no way to empower a government or campus administration to restrict speech without allowing for the possibility that tomorrow, it will be our speech that is restricted.

5. “Harvard Disinvites Chelsea Manning, and the Feeling Is Mutual”

By [MATTHEW HAAG](#) and [JONAH ENGEL BROMWICH](#)

The New York Times 14 SEPTEMBER 2017

URL = <https://www.nytimes.com/2017/09/14/us/chelsea-manning-harvard-fellow-cia.html>



Harvard Kennedy School rescinded its invitation to Chelsea Manning to be a visiting fellow this academic year.

Chelsea Manning has declined an offer to speak at Harvard after a dean at the university revoked his invitation for her to be a visiting fellow there.

Douglas W. Elmendorf, the dean of the Kennedy School of Government at Harvard, told Ms. Manning in a phone call at about 12:30 a.m. on Friday that the school was no longer offering her the fellowship, according to a source familiar with the conversation. The decision was made public shortly afterward.

Harvard had faced harsh criticism for including Ms. Manning, a former Army private convicted of leaking classified information, in the visiting fellows program at the school's Institute of Politics. Ms. Manning was [named to the group](#) on Wednesday, joining Sean Spicer, the former White House press secretary, and Corey Lewandowski, a former campaign manager for President Trump, among others. Fellows travel to Harvard to meet with students and discuss politics and other topics.

Mr. Elmendorf told Ms. Manning, who was sentenced to 35 years in prison for providing classified information to WikiLeaks, that she was still invited to speak at Harvard. But he said that the school could no longer give her the title of visiting fellow. The school was concerned that the title implied an endorsement and did not want to come across as endorsing Ms. Manning and her views, he said.

When asked by a member of Ms. Manning's team why Mr. Spicer and Mr. Lewandowski were being endorsed, Mr. Elmendorf said that they had something to bring to the table, the source said.



Douglas W. Elmendorf, the dean of the Harvard Kennedy School, in August 2014, when he was the director of the Congressional Budget Office. Credit Alex Wong/Getty Images

The call lasted about 10 minutes; Ms. Manning's team left the conversation stunned and insulted.

The sudden turnabout by the school came after a day of intense backlash over the university's announcement that Ms. Manning had been included. Mr. Elmendorf said that while the university encouraged a diversity of opinions and did not shy away from controversy, naming Ms. Manning a fellow was a mistake for which he accepted responsibility.

"I see more clearly now that many people view a visiting fellow title as an honorific, so we should weigh that consideration when offering invitations," he wrote in [a letter posted on the Harvard Kennedy School website](#) early Friday morning, shortly after the phone call with Ms.

Manning. “I apologize to her and to the many concerned people from whom I have heard today for not recognizing upfront the full implications of our original invitation.”

In his statement, Mr. Elmendorf said the university had extended the fellowship to Ms. Manning because she fit the school’s tradition of asking influential people to address students.

After news that the invitation had been revoked became public, Ms. Manning tweeted that she was “honored” to be disinvited and that the institution was chilling “marginalized voices under C.I.A. pressure.”

In another tweet, she contrasted herself with Mr. Spicer and Mr. Lewandowski.

Chase Strangio, a lawyer for Ms. Manning, [wrote in a statement](#) that the decision to withdraw the invitation “in the middle of the night without coherent explanation is disgraceful even for Harvard.” He also accused the school of being beholden to the C.I.A.

The decision by the Kennedy School followed forceful denunciations by a former top official at the C.I.A. and the current director at the agency.

Michael J. Morell, a deputy director at the intelligence agency under President Barack Obama, resigned as a fellow on Thursday, calling the invitation to Ms. Manning “wholly inappropriate.” He said it “honors a convicted felon and leaker of classified information.”

“It is my right, indeed my duty, to argue that the school’s decision is wholly inappropriate and to protest it by resigning from the Kennedy School,” Mr. Morell wrote to Mr. Elmendorf. The letter was obtained and [reported on by CBS News](#), where Mr. Morell is a national security contributor.

Mr. Morell did not respond to an email Thursday night, and the Kennedy School did not respond to a request for comment.

Later on Thursday, the director of the C.I.A., Mike Pompeo, withdrew from a Harvard forum he was scheduled to participate in that night, citing Ms. Manning’s fellowship as the reason.



Michael Morell, a former deputy director at the C.I.A., resigned as a fellow at Harvard on Thursday, calling the invitation to Ms. Manning “wholly inappropriate.” Credit Manuel Balce Ceneta/Associated Press

“Ms. Manning betrayed her country,” Mr. Pompeo, who graduated from Harvard Law School, wrote in a letter to a Kennedy School official, adding that he commended Mr. Morell’s decision to resign.

He said that his withdrawal “has everything to do with her identity as a traitor to the United States of America and my loyalty to the officers of the C.I.A.”

Ms. Manning was convicted in 2010 for giving WikiLeaks hundreds of thousands of classified diplomatic cables and military reports from the wars in Afghanistan and Iraq. Mr. Obama commuted her sentence in January as one of his final acts as president, and she was released in May.

Since 2013, Mr. Morell had served as a nonresident senior fellow at the Belfer Center for Science and International Affairs, which is also part of the Kennedy School. In his letter, Mr. Morell said he worried that Ms. Manning’s actions would “encourage others to leak classified information as well.”

“I have an obligation to my conscience,” he wrote.

6. “Chelsea Manning Has a Lot to Teach. Harvard Doesn’t Agree.”

By TREVOR TIMM

The New York Times 15 SEPTEMBER 2017

URL = <https://www.nytimes.com/2017/09/15/opinion/chelsea-manning-harvard-michael-morell.html>

On Wednesday, Harvard’s Kennedy School announced that Chelsea Manning, the former Army intelligence analyst and whistle-blower, would be a visiting fellow this fall. The reaction was swift: A day later, Michael Morell, a former acting director of the C.I.A. and also a visiting

fellow at the school, resigned from his own fellowship in protest. His resignation was quickly followed by the current director of the C.I.A., Mike Pompeo, canceling a speech scheduled at the school. In a statement, Mr. Pompeo unilaterally declared Ms. Manning a “traitor.”

On Friday morning, the school folded, disinviting Ms. Manning in a cowardly act that does immense disservice to its students and the public debate around government secrecy.

It’s remarkable that one of the country’s premier educational institutions would bow to C.I.A. pressure and reject a person who has arguably done more to contribute to the public’s understanding of world diplomacy than anyone else in modern times. In early 2010, Ms. Manning leaked a trove of hundreds of thousands of State Department and Defense Department documents, an archive that opened an unparalleled window into American foreign policy. Its documents have been referenced by major news organizations [so many times](#) that it’s impossible to count them.



Michael Morell, a former acting director of the C.I.A., resigned his fellowship at Harvard's Kennedy School after learning that Chelsea Manning would be a visiting fellow this fall. Credit Julia Schmalz/Bloomberg

The important revelations in the Manning documents — originally leaked to WikiLeaks and published in conjunction with The New York Times and other newspapers — are also too numerous to name, but they include the fact that the United States [had killed far more people](#) in Iraq than the government had admitted publicly, that United States soldiers [turned a blind eye to torture by Iraqi soldiers](#) and that the United States [covered up the killing of civilians](#) by American soldiers.

Ms. Manning was convicted of violating the Espionage Act and other offenses in 2013, and was sentenced to 35 years in prison. (My organization helped raise money for her legal defense.) In January, President Barack Obama, in one of his last acts in office, commuted her sentence. Altogether, she spent seven years in prison — more time behind bars than any other leaker in American history. She was also subject to deplorable treatment while in custody that the [United Nations special rapporteur on torture said](#) at the time constituted cruel, inhuman and degrading treatment and that more than 250 law professors [said amounted to unconstitutional torture](#). Whatever your opinion on the value of her disclosures, it should be clear to everyone that Ms. Manning was unduly punished for her supposed crime, and she deserves the opportunity to re-enter the public debate without worrying about the C.I.A. bullying private institutions to disavow her at every turn.

Mr. Morrell, in his resignation letter, quoted unnamed officials claiming Ms. Manning “put the lives of U.S. soldiers at risk,” without citing any specific examples. This is a common charge against her, and an unfounded one: The evidence of “damage” from Ms. Manning’s leaks has been grossly exaggerated from the start. During her trial, the government could not point to anyone, soldier or otherwise, who was physically harmed by WikiLeaks’ publications. Even at the time of the leaks, State Department officials were privately admitting that [administration officials were exaggerating](#) the harm the leaks caused to bolster their case.

Harvard’s decision to rescind Ms. Manning’s invitation is about more than academic spinelessness. In [his statement](#) defending the decision, Douglas W. Elmendorf, the dean of the Kennedy School, said, “I think we should weigh, for each potential visitor, what members of the Kennedy School community could learn from that person’s visit against the extent to which that person’s conduct fulfills the values of public service to which we aspire.”

If that’s the Kennedy School’s new policy, let’s take a look. Mr. Morell, for example, [has steadfastly refused to admit](#) that the C.I.A. engaged in torture, even in the face of the Senate’s damning torture report released in 2014. When asked about the agency’s decision to conduct forced “rectal feeding” on a detainee, he refused to answer whether that amounted to torture. Mr. Morell [has also been an outspoken cheerleader](#) for indiscriminate C.I.A. drone strikes that have killed at least hundreds of civilians. He most [recently made headlines](#) when he told Charlie Rose the United States should be “killing Russians and Iranians” — two countries the United States is not at war with — in Syria.

Other 2017 visiting fellows include Sean Spicer, President Trump’s first press secretary, who was [accused of lying](#) to the public on almost a daily basis by reporters, and the former Trump campaign manager Corey Lewandowski, who [was arrested for committing battery](#) against a journalist during the 2016 campaign.

What Mr. Elmendorf and the Kennedy School are saying, essentially, is that no issue or action is off topic for visiting fellows except, apparently, giving information to journalists and informing the public about what its government is doing behind closed doors.

Excessive government secrecy, the worship of “national security” above all else and the C.I.A.’s disrupting presence overseas are exactly the sorts of issues that the Kennedy School should be questioning and challenging, given the myriad C.I.A. and Pentagon scandals and our country’s constant state of war since Sept. 11. Chelsea Manning’s act of whistle-blowing was a powerful, influential and important contribution to that debate.

7. “Don’t Shun Conservative Professors”

By [Arthur C. Brooks](#)

The New York Times 15 SEPTEMBER 2017

URL = <https://www.nytimes.com/2017/09/15/opinion/conservative-professors.html>



Credit Sam Rowe

These days, the news is full of sensational stories of violent campus mobs shutting down conservative speakers and freaked-out college administrators treating rioters with kid gloves.

Such stories offer excellent fodder for critics who are eager to condemn university culture. But I believe they distract from a deeper, subtler intellectual problem on the modern campus: the profound alienation of professors who don't hold the mainstream political views and are treated as outsiders as a result.

This is the argument of an important book titled "Passing on the Right: Conservative Professors in the Progressive University." Written by the political scientists Jon A. Shields and Joshua M. Dunn Sr., it gives a glimpse into the lonely lives of ideological strangers on the modern campus. While conservatives represent America's largest ideological group, at 36 percent of the population, they constitute less than 10 percent of faculty in the social sciences and humanities — and a small fraction of that at elite private schools. Many report feeling like oddballs who never quite fit in.

Generally, these professors fear they have little hope for advancement to leadership roles. Research backs up this fear, suggesting that intellectual conformity is still a key driver of personal success in academic communities. In a study published in 2012 in the *Journal of Experimental Social Psychology*, researchers asked students to evaluate candidates vying to represent them with the faculty. In some cases, the candidate identified him- or herself as a "typical student at this college"; other subjects were given a candidate who was "a relatively untypical student at this college." Even though both pledged to represent the students faithfully, in the same language, the untypical student consistently received significantly less support.

Some might argue that it doesn't matter — or is even a good thing — that conservatives on campus are marginalized. After all, there are many organizations in which philosophical differences are legitimately disqualifying. No one believes that there is anything strange about a Christian church seeking as clergy members only those who share the congregation's faith and theology. Buddhists may be wonderful people, but they still need not apply for the job.

But such discrimination is legitimate only when it pertains to the core mission of an organization. It would be less sensible and acceptable for a congregation to reject the best-qualified theologian and preacher because of how he or she voted in a presidential election. That church would be prioritizing ephemeral political battles ahead of its deepest spiritual concerns. That's a pretty bad trade.

Similarly, academia is right to rank candidates based on their expertise and intellectual commitment. But should professors' political philosophies factor into how welcome they are or the likelihood of their leading departments and institutions? Only if the fundamental goal of the university is more political than scholarly.

So which is the primary goal of universities today? They are in the process of deciding. If they decide the answer is scholarship, they must work harder to form communities that do not just tolerate conservatives but actively embrace ideological diversity. They must be willing to see conservative faculty members not as interlopers to be tolerated but as valued colleagues, worthy of promotion and appointments to leadership roles when merited.

Fortunately, this problem is not insoluble. It wasn't that long ago that women were similarly isolated in academia, that it was unusual in many departments to have a female professor and practically unthinkable that a woman be a university president. To be sure, there is still gender discrimination, but a huge amount of headway has been made in integrating departments and elevating women to positions of academic leadership. Why? Because the community has come to see that gender discrimination is inconsistent with a good university's mission. That's true progress.

There are nascent efforts underway to do the same with ideology. Several top-tier private universities — notably Princeton, Harvard, Stanford and Chicago — have made important commitments to protect intellectual diversity on campus. And a new coalition of academics called Heterodox Academy, directed by the New York University psychologist Jonathan Haidt, has formed to foster this movement.

Notably, more than 40 percent of the members of Heterodox Academy are liberals or centrists. And this brings me to a point I want to make to progressive academics: It is up to you to make campuses more open to debate and the unconstrained pursuit of truth. This is partly because liberals are in an overwhelming majority on campus. But more important, the task fits perfectly the progressive movement's ethical patrimony. American liberalism has always insisted it is the duty of the majority to fight for the minority, whether or not it suits one's own private interests.

Welcoming the stranger is arguably the greatest moral tradition that liberals have. As we start a new school year, there is a golden opportunity to demonstrate this.

8. “Cake Is His ‘Art.’ So Can He Deny One to a Gay Couple?”

By ADAM LIPTAK

The New York Times 16 SEPTEMBER 2017

URL = <https://www.nytimes.com/2017/09/16/us/supreme-court-baker-same-sex-marriage.html>

LAKEWOOD, Colo. — Jack Phillips bakes beautiful cakes, and it is not a stretch to call him an artist. Five years ago, in a decision that has led to a Supreme Court showdown, he refused to use his skills to make a wedding cake to celebrate a same-sex marriage, saying it would violate his Christian faith and hijack his right to express himself.

“It’s more than just a cake,” he said at his bakery one recent morning. “It’s a piece of art in so many ways.”

The couple he refused to serve, David Mullins and Charlie Craig, filed civil rights charges. They said they had been demeaned and humiliated as they sought to celebrate their union.

“We asked for a cake,” Mr. Craig said. “We didn’t ask for a piece of art or for him to make a statement for us. He simply turned us away because of who we are.”

At first blush, the case looked like a conflict between a state law banning discrimination and the First Amendment’s protection of religious freedom. But when the Supreme Court hears the case this fall, the arguments will mostly center on a different part of the First Amendment: its protection of free speech.

The government, Mr. Phillips contends, should not be allowed to compel him to endorse a message at odds with his beliefs.

“I’m being forced to use my creativity, my talents and my art for an event — a significant religious event — that violates my religious faith,” Mr. Phillips said.

Gay rights groups regard the case as a potent threat to the equality promised by the Supreme Court in 2015 when it said the Constitution guaranteed the right to same-sex marriage. A ruling in favor of Mr. Phillips, they said, would mark the marriages of gay couples as second-class unions unworthy of legal protection.



Charlie Craig, left, and David Mullins at their home in Denver. “It’s not about the cake,” Mr. Craig said. “It is about discrimination. Credit Nick Cote for The New York Times

After losing the court fight on same-sex marriage, opponents regrouped and reframed their legal arguments, focusing on the rights of religious people. They say, for instance, that many businesses run on religious principles have a free speech right to violate laws that forbid discrimination against gay men and lesbians.

The argument has met with little success in the lower courts. But the Supreme Court has in recent years been exceptionally receptive to free speech arguments, whether pressed by [churches](#), [corporations](#), [pharmaceutical companies](#), [musicians](#) or [funeral protesters](#). And [it has ruled](#) that the government may not compel people to convey messages that they do not believe.

It takes the votes of four justices to add a case to the Supreme Court’s docket, meaning at least that many thought Mr. Phillips’s case worthy of review. Earlier opinions suggest that the court will be closely divided in the case. The Trump administration, for its part, filed [a brief](#) urging the court to rule for Mr. Phillips on free speech grounds.

Mr. Craig said the free speech argument was a smoke screen. “It’s not about the cake,” he said. “It is about discrimination.”

If a bakery has a free speech right to discriminate, gay groups contend, then so do all businesses that may be said to engage in expression, including florists, photographers, tailors, choreographers, hair salons, restaurants, jewelers, architects and lawyers. A ruling for Mr. Phillips, they say, would amount to a broad mandate for discrimination.

The case, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, No. 16-111, will be argued in the late fall and is likely to turn on the vote of Justice Anthony M. Kennedy, who is simultaneously the court's most prominent defender of gay rights and its most ardent supporter of free speech.

His majority opinion in [Obergefell v. Hodges](#), the 2015 decision establishing a constitutional right to same-sex marriage, seemed to anticipate clashes like this one. Justice Kennedy called for "an open and searching debate" between those who opposed same-sex marriage on religious grounds and those who considered such unions "proper or indeed essential."

But the debate has instead turned into another battle in the culture wars, with sharp-edged litigation taking the place of the civil discussion Justice Kennedy had invited. On one side are religious people who say the government should not force them to violate their principles in order to make a living. On the other are same-sex couples who say they are entitled to equal treatment from businesses open to the public.

Mr. Mullins and Mr. Craig have so far prevailed, winning before the Colorado civil rights commission and in the courts.

The Colorado Court of Appeals ruled that Mr. Phillips's free speech rights had not been violated, noting that the couple had not discussed the cake's design before Mr. Phillips turned them down. The court added that people seeing the cake would not understand Mr. Phillips to be making a statement and that he remained free to say what he liked about same-sex marriage in other settings.

The Alliance Defending Freedom, a conservative Christian group that represents Mr. Phillips, said in a brief that the Supreme Court has long recognized a First Amendment right not to be forced to speak. In 1977, for instance, the court [ruled](#) that New Hampshire could not require people to display license plates bearing the state's motto, "Live Free or Die."

A wedding cake created by Mr. Phillips, [the group said](#), is "the iconic centerpiece of the marriage celebration" and "announces through Phillips's voice that a marriage has occurred and should be celebrated."

"The government can no more force Phillips to speak those messages with his lips than to express them through his art," the brief said.

The couple's meeting with Mr. Phillips five years ago was, both sides agree, short and unpleasant. The excited couple had a binder full of possible designs, but they never got to open it. Mr. Craig's mother had tagged along to give advice, but she never got to offer it.

Mr. Phillips shut down the conversation as soon as he heard that a gay couple was getting married.

“I’ll make you birthday cakes, shower cakes, cookies, brownies,” Mr. Phillips recalled saying. “I just can’t make a cake for a same-sex wedding.”

Mr. Mullins remembered being stunned.

“What followed was a horrible pregnant pause as what was happening really sunk in,” he said. “We were mortified and just felt degraded, and it was all the worse to have Charlie’s mom sitting there with us. You don’t want your mom to see something like that happen to you.”

Mr. Phillips’s bakery is in a modest strip mall, but it is homey and colorful, with a children’s play area, a desk bearing several Bibles and lots of fancy baked goods. One cake looked like a basket of flowers. Another was covered in a moonlit winter landscape rendered in frosting. A third bore a likeness of the Rev. Dr. Martin Luther King Jr.

Mr. Phillips, 61, grew emotional as he talked about the case.

“I have no problem serving anybody — gay, straight, Muslim, Hindu,” he said. “Everybody that comes in my door is welcome here, and any of the products I normally sell I’m glad to sell to anybody.”



“Because of my faith, I believe the Bible teaches clearly that it’s a man and a woman,” Jack Phillips said. Making a cake to celebrate something different, he said, “causes me to use the talents that I have to create an artistic expression that violates that faith.” Credit Nick Cote for The New York Times

But a custom-made wedding cake is another matter, he said.

“Because of my faith, I believe the Bible teaches clearly that it’s a man and a woman,” he said. Making a cake to celebrate something different, he said, “causes me to use the talents that I have to create an artistic expression that violates that faith.”

Mr. Mullins and Mr. Craig, speaking in the kitchen in their Denver home, rejected the distinctions Mr. Phillips drew.

“Our story is about us being turned away and discriminated against by a public business,” said Mr. Mullins, 33, an office manager, poet, musician and photographer.

Mr. Craig, 37, who works in interior design, said the episode at the bakery still haunted them. “To this day, we still question whether talking about our relationship when we go in somewhere, we could be discriminated against again,” he said.

They were formally married in 2012 in Provincetown, Mass., because same-sex marriage was not yet lawful in Colorado. But the wedding reception was back home. After Mr. Phillips turned them down, another baker supplied the cake.

“The point isn’t that we could get a cake elsewhere,” Mr. Mullins said. “Of course we could get a cake somewhere else. This was about us being turned away from and denied service at a business because of who we are and who we love.”

Mr. Phillips, who calls his bakery Masterpiece Cakeshop, said he chose the name with care. It was partly to emphasize the creativity that informs his craft, he said.

“It says ‘masterpiece,’” he said, “which hopefully indicates painting and art.”

The name is also a nod to Jesus Christ, Mr. Phillips said. “It’s not just the art,” he said. “It’s not just the cakes. It’s not just the baking. It’s my faith.”

The case has taken a financial toll, Mr. Phillips said. A judge ordered him to create custom wedding cakes for same-sex marriages if he did so for opposite-sex ones. He instead stopped making custom wedding cakes entirely.

“The civil rights commission says you have to violate your faith,” he said. “Use your talents and make cakes for religious events you don’t agree with. The only way I can avoid disobeying the ruling of the court is to not make wedding cakes, period.”

9. “Defying Trump, Athletes Intensify Debate on Race and Protest”

By [ALEXANDER BURNS](#)

The New York Times 24 SEPTEMBER 2017

URL = <https://www.nytimes.com/2017/09/24/us/trump-nfl-protest-kaepernick.html>



President Trump at a rally in Huntsville, Ala., on Friday. Credit Tom Brenner/The New York Times

It began as a crowd-pleasing tirade from President Trump to an overwhelmingly white, conservative crowd in Alabama. But even before dozens of N.F.L. players knelt in silent protest on Sunday, Mr. Trump’s remarks had spiraled into a national uproar over race, patriotism and free speech, with an unpredictable political trajectory.

It is not yet clear whether most Americans are likely to sympathize with Mr. Trump, and his caustic scolding of the athletes, overwhelmingly black, who engage in certain forms of dissent, or with players who have pushed back against Mr. Trump and called his criticism inappropriate and demeaning.

But by savaging individual athletes — including Colin Kaepernick, the former quarterback of the San Francisco 49ers, and Stephen Curry of the Golden State Warriors — and calling for the firing of those who bring protest onto the field, Mr. Trump created a larger moment of choosing sides that brought sports uncomfortably and unavoidably into the nation's political divide.

Little more than a month after the furor around [Mr. Trump's reaction to a white supremacist march](#) in Virginia, the president has set off, deliberately or not, a new debate on race and protest, one far blunter and less sanitized than the earnest conversations sometimes moderated by television hosts, or the unity-exalting speeches favored by mainstream politicians.

Instead, the clash that erupted over the weekend took the form of unfiltered indignation from a largely black community of players, tortured expressions of discomfort from white franchise owners — and an ongoing stream of anger from the president and his supporters, venting on social media or in the stands.

By Sunday, the sports-watching world was [confronted with a display of politics](#) in the athletic arena with no recent precedent in the United States — from images of two football squads declining to take the field in Nashville; to a New York Giants star, Odell Beckham Jr., celebrating a touchdown by raising his fist to the air; to a procession of football executives, including some personal friends of Mr. Trump, expressing unease with his remarks.

The Rev. Jesse L. Jackson said Mr. Trump had effectively challenged athletes of all races to rise against him, by using language Mr. Jackson described as displaying a “slave-master-servant mentality.” Mr. Jackson said it was incumbent on athletes, irrespective of their race, to show Mr. Trump they could not be belittled or stripped of their right to free speech.

“They should all kneel, not against the flag, but against the interference by Mr. Trump with their First Amendment rights,” Mr. Jackson said, urging players not to underestimate their power: “If the cotton pickers don't pick cotton, the industry doesn't move; the N.F.L. and N.B.A. players don't play the game, it doesn't move.”

Mayor Bill Peduto of Pittsburgh, whose city saw its beloved Steelers football team stay in the locker room during the national anthem at a game in Chicago on Sunday, described Mr. Trump's remarks as alarming. Mr. Peduto, who said he supported the Steelers' protest, said he planned to hold discussions on the local level with residents who feel personally wounded by the controversy.

[Why N.F.L. Players Started Taking a Knee During the Anthem](#)

[Few police officers have been convicted in recent high-profile cases in which blacks were killed.](#)

	CASE	TRIAL STATUS	SETTLEMENT
2016	Terence Crutcher	NO CONVICTION	NO
	Philando Castile	NO CONVICTION	YES
2015	Samuel DuBose	NO CONVICTION	YES
	Sandra Bland	NO CONVICTION	YES
	Freddie Gray	NO CONVICTION	YES
	Walter L. Scott	PLEADED GUILTY	YES
2014	Akai Gurley	CONVICTED	YES
	Laquan McDonald	No trial yet	YES

“If you’re a gold star mom, the idea of kneeling through the national anthem is beyond disgraceful and is a cause of emotional harm,” Mr. Peduto said. “But if you’re a mom who lost their child in the streets of America, the idea of kneeling is saying to you that your voice is being heard.”

In his city, Mr. Peduto said, “there are two distinct sides that need to have a conversation, not a president who chooses sides.”

Mr. Trump is unlikely to back down in the face of criticism. He has [intensified his statements repeatedly](#) since declaring Friday in Huntsville, Ala. that N.F.L. owners should fire any “son of a bitch” who fails to join displays of patriotism, a clear allusion to Mr. Kaepernick’s practice of kneeling during the national anthem to protest police brutality.

The president followed up on Saturday by disinviting Mr. Curry’s entire team to the White House, after Mr. Curry said he would not visit the presidential residence to celebrate the Warriors’ basketball championship. And Mr. Trump suggested on Twitter on Sunday that football fans might “refuse to go to games until players stop disrespecting our Flag & Country.”

Speaking to reporters on Sunday, Mr. Trump said his criticism had “nothing to do with race.”

Mr. Trump has a long record of wielding racial and cultural divisions to his political advantage, as well as making inflammatory comments that distract from his policy agenda or from problems he’d prefer the news media not cover. His statements this weekend, for instance, drew attention away from a flagging effort by Senate Republicans to repeal the Affordable Care Act.

He has been applauded by some elected Republicans, enthusiastically so by many in the conservative news media. Laura Ingraham, a radio and television host who is closely aligned with Mr. Trump, [cheered his rebuke of Mr. Curry](#) on Twitter: “Pro-athletes who can’t set aside

politics” to visit the White House, Ms. Ingraham said, should “be treated like the spoiled children they are.”

But Mr. Trump may also have risked a more complicated backlash than he is accustomed to. The episode follows close on the heels of Mr. Trump’s comments in August equating anti-racism protesters with neo-Nazis, a moment that threatened to destabilize his presidency. And professional athletes are not a traditional punching bag for Republicans, like Hollywood actors or the news media.

With the advent of Twitter and other social media, admired athletes like Mr. Curry and LeBron James — who chastised Mr. Trump on Saturday — have vast personal followings with whom they can communicate directly, bypassing owners and the news media, unlike sports heroes of the past.

Former Senator Bill Bradley, a Democrat and retired New York Knicks star, urged athletes to do just that on Sunday, calling in a statement for “everyone who has ever been a fan or a player, as a kid or as an adult” to reject Mr. Trump’s comments.

Perhaps the most significant warning sign for Mr. Trump was the sometimes-strained criticism from football team owners, a largely white and Republican-leaning group that includes several personal associates of the president. Mr. Trump collected support during the 2016 campaign from an array of sports executives and athletes, despite the racially divisive nature of his campaign.

But by Sunday, several owners who have been prolific donors to Mr. Trump and the Republican Party had spoken out against him in cautious language, including Robert C. McNair, owner of the Houston Texans, and [Robert K. Kraft of the New England Patriots](#), a close friend of Mr. Trump.

“The comments made by the President were divisive and counterproductive to what our country needs right now,” Mr. McNair said in a statement.

Ari Fleischer, a former White House press secretary who advises athletes and sports teams on public relations, said Mr. Trump’s acidic language and calls for retribution may have undermined public sympathy for his most basic demand — that athletes stand for the national anthem.

Public opinion polls, Mr. Fleischer noted, have found Americans generally unfriendly to the idea of protesting during the anthem.

“He has created more kneelers today, which I regret,” Mr. Fleischer said of the president. “Trump went too far, but the overwhelming majority of Americans do not want to see football players disrespect the national anthem.”

Still, for all the immediate blowback against Mr. Trump, it remains to be seen whether the tumultuous weekend might herald a more lasting cultural shift in sports toward more overt

acknowledgment of racial and political issues. Most athletes and team owners have typically avoided explicit political involvement, fearing that they might alienate fans who hold a range of views.

The sudden rallying around Mr. Kaepernick, several activists noted, came well after the quarterback came under ferocious criticism last year for his form of protest. Mr. Kaepernick is currently unsigned and [appears not to have been hired](#) by any team due to the controversy surrounding him.

Invoking Baltimore's football team, Benjamin T. Jealous, a former president of the N.A.A.C.P., who is running for governor of Maryland as a Democrat, said, "I'd be very proud if the Ravens chose to give Kaepernick another shot." He said Mr. Trump's attacks had forced a more forthright reckoning with the rights of athletes to speak their minds.

"He ultimately challenged each of us to stand up and be very clear about what our flag stands for and what we believe," Mr. Jealous said.

FIVE Follow-Ups:

1. Assuming a maximally broad construal of “speech” as “self-expression” or “symbolic expression,” what is the precise difference between acts that are “expressive” and those that are not?

2. Clearly, at least in the USA, there is a political right to freedom of speech, as encoded in the First Amendment to the US Constitution:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

But is there a *moral* right to freedom of speech that would obtain everywhere? If so, what then what constitutes *the moral goodness* of freedom of speech? Is it good for its own sake, or only because of its good consequences?

3. What are *the moral limits* of free speech? What about speech that triggers violence, true threats, personal attacks or slander, hate speech, racially offensive speech, religiously offensive speech, sexually offensive speech, politically offensive speech, treasonous speech, and whistle-blowing? If any of these are morally impermissible, then what is the rational justification for restricting or suppressing them?

4. Supposing that at least *some* kinds of offensive speech are morally permissible, then is it morally permissible for those who are offended to punish the offensive speakers? If so, then what is the rational justification for doing so? But if not, why not?

5. Do institutions of higher education—whether private or public—have a special moral interest in, or a morally privileged role to play, with respect to freedom of speech? Do famous people—e.g., movie stars or professional athletes—have a special moral interest in, or a morally

privileged role to play, with respect to free speech? Does the national government—e.g., the US Congress— have a special moral interest in, or a morally privileged role to play, with respect to freedom of speech? Does the national leader—e.g., the US President—have a special moral interest in, or a morally privileged role to play, with respect to freedom of speech? If so, what rationally justifies any of these special moral interests or morally privileged roles? But if not, then why not?

TWO Links:

1. “Freedom of Speech,” *Stanford Encyclopedia of Philosophy*, URL = <https://plato.stanford.edu/entries/freedom-speech/>
2. “Report of the Committee on Freedom of Expression at Yale, 1974,” URL = <http://yalecollege.yale.edu/deans-office/reports/report-committee-freedom-expression-yale>
