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Is academic freedom under siege? University and free speech

Abstract. *Freedom of speech is an essential dimension of academic freedom. Without free speech, a university's mission, which includes innovative research and high-quality teaching, cannot succeed. However, in recent years, the foundation of free speech on campus has been compromised. There are not only an increasing number of ideas and practices that challenge the liberal conception of free speech (e.g., political correctness, safe space, trigger warnings, verbal purification, and disinviting) but also theoretical justifications for such ideas and practices. This article focuses on the current discussion in the United States, where the debate on academic freedom is the most heated. The situation in the United States is important because it influences academic life in other developed countries. It can be argued that free speech does not exclude building a safe and inclusive campus environment. However, because of its central role in the university's mission, freedom of speech cannot be traded against other values regardless of their importance.*

Keywords: *frees speech, university, campus, safe space, trigger warning*

University freedom is the cornerstone of academic life and a prerequisite for effective study and research. Compared with most other public institutions, universities have a high degree of autonomy and freedom. However, in recent decades, a growing number of intellectuals, including academics, have claimed that academic freedom has been attacked and should be protected. It is not only that there are new cases of freedom infringement and postulates of setting limits to

academic freedom. As advocates of academic freedom point out, there have also been considerable changes in the mindset and attitudes of members of academia – students, academics, and university administrators. Some argue that universities are no longer bastions of freedom but institutions that restrict freedom of speech in many different ways. Frank Furedi argues that "the university has become subject to the imperative of censorship and cultural practices that demand levels of conformism that are usually associated with closed-minded authoritarian institutions."[1] The list of disinvited speakers, tenured professors dismissed for their utterances, and attempts to silence individuals and groups on campuses in the United States show that this opinion is not unfounded. University has always been a place where free speech had to be defended. However, in recent years, the battle for freedom of speech has taken a new form.

This article focuses on the current discussion carried out in the United States. This country is important not only because the debate on academic freedom is most heated there but also because American academic culture influences universities in other Western countries and sets trends that are followed in many academic communities outside the US. The situation in Europe is in many respects different from that in the US. The European academic culture varies according to various national patterns. However, some trends in academic culture are observed worldwide, especially in European universities. One is a change in the perception of academic freedom and the limits of free speech in academia. Another is changing the cultural climate, both within and outside academia. Yet another trend is a set of new ideas and practices that are particularly visible on campuses, such as political correctness, safe space, trigger warnings, verbal purification, and disinvitation.

Discussions on academic freedom, particularly freedom of expression in academia, have been highly politicized. The politicization of debate is a consequence of the politicization of academia. However, this process cannot be fully understood without considering the social, cultural, and political worlds outside academia. Identity politics has been particularly influential in the politicization of academic debates. As Joanna Williams points out, "political judgments about the identity of the speaker rather than the content of what was being said were used to determine who had the right to speak."[2] It seems that the debates on academic freedom, and particularly free speech on campus, are part of a broader problem related to the crisis of the American political and social order.[3]

[1] F. Furedi, *What's Happened to the University? A Sociological Exploration of Its Infantilization*, Routledge, Landon and New York 2017, p. vi.

[2] J. Williams, *Teaching Students to Censor: How Academics Betrayed Free Speech*, in: *Unsafe Space: The Crisis of Free Speech on Campus*, ed. T. Slater, Palgrave Macmillan, London, 2016, p. 53.

[3] S. Davies, *The Threat to Freedom of Speech in Universities is a Symptom of a Wider Problem*, in: *Having Your Say: Threats to Free Speech in the 21st Century*, ed. J.R. Shackleton, The Institute of Economic Affairs, London 2021, p. 193.

Academic freedom is not a monolithic concept. There are several ways of understanding this kind of freedom and different views of its nature. Freedom of speech is only one of many dimensions of academic freedom. Still, it comes to the fore as fundamental liberty without which research and teaching in modern universities cannot be carried out properly. Apart from freedom of speech, academic freedom refers to the autonomy of a university and some form of self-governance.[4] According to Stanley Fish, there are two opposing views of academic freedom. In the first view, there is no specific academic freedom.[5] The latter is an exemplification of general freedom, and the university is one of many places where freedom should be exercised. In the second view, academic freedom is peculiar to the academic profession and is related to typical academic duties. According to this view, members of academia are granted specific rights only within the academia's framework and for actions related to the pursuit of academic aims. There are several different views or schools of academic freedom between these two extreme positions. Fish distinguishes five schools which he calls: (1) The "It's just a job" school, (2) The "For the common good" school, (3) The "Academic exceptionalism or uncommon beings" school, (4) The "Academic freedom as critique" school, and (5) The "Academic freedom as revolution" school.

Throughout the 20th century, students and academics were committed to fighting for free speech at university. Today, students take freedom of speech for granted and perceive it not as a fundamental value. They seldom ask a question about the role of free speech in research and teaching. The answer to why free speech is essential should take into account a broader perspective, including the academia's role in a democratic society. Erwin Chemerinsky and Howard Gillman point out several reasons for the broad protection of free speech.[6] First, freedom of speech is necessary for developing freedom of thought. Before a person develops an independent view of the world, she must be exposed to different ideas and participate in debates on different beliefs. Cultivating free thought requires a suitable environment in which the free flow and exchange of ideas are possible. Second, free speech is indispensable for democracy, which can function properly only if people can freely receive information about public matters. The third reason for the protection of free speech is historical. Our knowledge of the past shows that the consequences of censorship and the control of ideas are disastrous for society.

Free speech protection on campuses is not limited to activities related to research and teaching. Academic freedom and free speech are important because of the function of the university in a broader society, such as popularizing knowledge,

[4] T.G. Ash, *Free Speech: Ten Principles for a Connected World*, Yale University Press, New Haven and London 2016, p. 154.

[5] S. Fish, *Versions of Academic Freedom: From Professionalism to Revolution*, The University of Chicago Press, Chicago and London 2014, p. 6.

[6] E. Chemerinsky, H. Gillman, *Free Speech on Campus*, Yale University Press, New Haven and London 2017, p. 23.

providing expert knowledge for policymakers, and moderating public debate. However, research and teaching have always been key activities defining the mission of the university. Free speech is of critical importance for the advancement and dissemination of knowledge. "Intellectual and scientific progress requires a culture that is disposed to open debate and the spirit of experimentation. Academic scholars and scientists must have the freedom to follow their research in whatever direction it takes them."[7]

According to Frank Furedi, while free speech is losing its practical relevance to an increasing number of academic members, it is still affirmed in theory.[8] This does not mean, however, that there are no theoretical attempts to undermine the idea of free speech. On the contrary, various conceptions of free speech developed in recent decades argue that free speech is either useless and impossible or should be subordinated to other values. Skepticism about free speech is becoming increasingly influential at universities in the United States.[9] In an extreme form, skepticism toward the idea of free speech results in the deflationary conception of free speech: "there's no such thing as free speech." The latter sentence is the title of a book by Stanley Fish, an American literary theorist and legal scholar, who argues that "freedom of speech is a conceptual impossibility because the conditions of speech's being free in the first place is unrealizable."[10] It is simply a name referring to behavior that serves our interests and aims. As for academic freedom of speech, Fish claims that free speech is not an academic value because it is not directly related to the main goal of the academic inquiry, i.e., "getting a matter of fact right."[11] The free exchange of ideas is important for democracy, but it has little to do with the freedom of inquiry, which is instead based on meritocracy rather than democracy.

Other researchers have been skeptical about the possibility of justifying free-speech principles. Larry Alexander and Paul Hotron doubt whether it is possible to justify free speech because justifications of free speech appeal to principles that apply to activities that go beyond speech and do not apply to some forms of speech.[12] The authors showed that speech is not defined as a distinct form of human activity in such a justification. In a free speech debate, "speech" refers to different forms of activity that obtain different levels of protection. Alexander argues that

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[7] F. Furedi, *Academic Freedom: The Threat from Within, in: Unsafe Space: The Crisis of Free Speech on Campus*, ed. T. Slater, Palgrave Macmillan, London 2016, p. 119.

[8] F. Furedi, *What's Happened to the University? A Sociological Exploration...*, p. vi.

[9] D. Jacobson, *The Academic Betrayal of Free Speech*, "Social Philosophy and Policy" 2004, no. 21(2), p. 48.

[10] S. Fish, *There's No Such Thing as Free Speech, and It's a Good Thing, Too*, Oxford University Press, New York 1994, p. 115.

[11] S. Fish, *Free Speech Is Not an Academic Value*, "Chronicle of Higher Education" Mar. 20, 2017.

[12] L. Alexander, P. Horton, *The Impossibility of a Free Speech Principle*, "Northwestern Law Review" 1984, no. 78(5).

freedom of expression is not a human right.[13] Moreover, free speech cannot exist because it requires evaluative neutrality for the government while the government is always partisan.

The critique of free speech and tolerance was given by representatives of the New Left, including the philosopher from the Frankfurt School, Herbert Marcuse. In his essay on "Repressive Tolerance," Marcuse argues that social division and domination under capitalism make free expression impossible because the oppressed are manipulated, and their voices are stifled.[14] Free expression is good and useful for the privileged and becomes a part of the system of class domination. The institutionalized inequality of modern capitalist states determines the conditions of tolerance in such a way that some opinions and views cannot be heard in a public space. Marcuse postulated the promotion of the interests of the oppressed, even at the cost of free speech. Those who support the repressive status quo should not be tolerated. A similar understanding of tolerance and free speech appears in the educational context. What Marcuse sees as a "real freedom of thought" can be established through "new and rigid restrictions on teaching and practices in the educational institutions which, by their very methods and concepts, serve to enclose the mind within the established universe of discourse and behavior."[15] It seems that the arguments presented by Marcuse are still used on today's university campuses to stifle the free expression of views incompatible with one or another version of leftist ideology.

As the above skepticism towards free speech shows, various forms of the limitation of free speech on campus are not only spontaneous reactions of ideologically oriented groups who try to silence other groups by censoring speech. There are theoretical justifications for most practical actions that regulate and restrict free speech on campus. According to Jacobson, "skepticism about free speech flourishes at universities in the United States and is especially well represented among professors at the country's most prestigious law schools.[16]

Policing speech on campus often takes more subtle forms and develops under the influence of cultural practices in other areas of social life. The best example of such a subtle form is trigger warnings, that is, statements made before the presentation of a given material, saying that the presented content can be harmful to some receivers. There are many examples of trigger warnings outside of academia. They have been used on the Internet and TV to warn audiences about content that can be harmful to some groups of people. For instance, violent images can be det-

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[13] L. Alexander, *Is There a Right of Freedom of Expression?*, Cambridge University Press, New York 2005, p. 185.

[14] H. Marcuse, *Repressive Tolerance*, in: R.P. Wolff, B. Moore, H. Marcuse, *A Critique of Pure Tolerance*, Beacon Press, Coston 1965.

[15] Ibidem, pp. 101–102.

[16] D. Jacobson, *The Academic Betrayal of Free Speech*, p. 48.

rimental to children and people with PTSD. Such use of trigger warnings is both widespread and uncontroversial. It is reasonable to think that trigger warnings, understood as a means of protecting vulnerable students, can be helpful in academia. Indeed, the primary justification for using trigger warnings at universities seems to be a belief, supported by a body of psychological research, that warnings protect vulnerable students from psychological harm. The problem is that the reasonable idea has been abused in many American universities.[17] Students demand trigger warnings to appear in teaching content that was previously considered neutral and unproblematic. As Timothy G. Ash observes, "candidates for trigger warnings have included Shakespeare's Merchant of Venice (anti-Semitism) and Virginia Woolf's Mrs. Dalloway (suicide), while African American students objected to a professor of literature teaching Joseph Conrad's Heart of Darkness (portrayal of black people)."[18]

Proponents of the trigger warning policy are usually students who want to be protected from potentially harmful teaching content. For example, students who are victims of racial hatred or sexual abuse may find some racist or sexist content to trigger discomfort or worsen the symptoms of psychological trauma. However, the therapeutic discourse behind trigger warnings is sometimes extended to ideological discourse. In the latter case, the victims are not only psychologically vulnerable people but also those exposed to opinions and views that differ from their own opinions and views. In this case, alternative ideas are considered harmful. However, if a student in a classroom calls for protection from some sets of ideas, fulfilling his request is tantamount to restricting freedom of speech.

Safe spaces on American campuses are a relatively new phenomenon. Broadly speaking, a safe space is a place where vulnerable people can feel safe and confident. The concept of safe space was initially used in a therapeutic context, but then it permeated the broader culture and the education sector.[19] Soon, the concept appeared useful in the campus environment. In higher education institutions, safe spaces are perceived as spaces where students can feel protected from various psychological threats. But protecting the vulnerable from psychological damage can mean different things. It is not surprising that most students want to be protected from hate speech and other forms of verbal aggression. However, if they seek protection from being exposed to different opinions and worldviews, their behavior becomes highly problematic because the clash of different views remains the essence of academic debate.

Safe spaces were first organized by women's rights and LGBT activists. They were construed as places in which people belonging to minority groups could be free from the fear of discrimination and judgment. However, on many university

[17] K.E. Whittington, *Speak Freely: Why Universities Must Defend Free Speech*, Princeton University Press, Princeton and Oxford 2018, p. 57.

[18] T.G. Ash, *Free Speech…*, p. 156.

[19] K.E. Whittington, *Speak Freely*…, p. 67.

campuses, safe spaces have evolved into the means of sexual, racial, and ethnic segregation. In that case, the members of the majority lost access to some areas on campus.[20] Moreover, some advocates of safe spaces insist that these spaces should be extended to the entire campus. "As demand for safe spaces grows, student activists have begun to argue that their entire college or university should be a safe space where students can exist without emotional discomfort."[21] Transforming the whole university into a safe space means that not only people from minorities but all university students should be protected from discomfort. Taking into account the growing number of things that may cause discomfort, there are an increasing number of situations in which additional regulations imposed on speech and behavior are required.

Being safe and feeling safe are key parameters defining contemporary Western culture. Frank Furedi claims that we live in a culture of fear in which existential insecurity is combined with risk aversion.[22] The culture of fear is not a result of objective threats but a consequence of a radical redefinition of the meaning of harm. Although the world has become overall more secure in recent decades, changes in the perception of threats have made people more fearful and vulnerable. Safety has become a fundamental moral value and an important goal that needs to be pursued. New perceptions of harm, risk aversion, and the need for safety are evident in the current generation of students. For many students, a campus is a dangerous place. This is not because they face dangerous situations on campus but because they have internalized precaution and safety as positive virtues.[23]

According to Greg Lukianoff and Jonathan Haidt (2018), the call for safe spaces and trigger warnings at American universities says much not only about the psychological condition of today's young generation but also about the cultural changes that started in the second decade of the 21st century.[24] A new generation of students, the so-called Generation Z, differs considerably from the previous generations. Compared to previous generations, young people from Generation Z have higher anxiety, depression, and suicide rates. For this generation, promoting "safetyism," e.g., creating safe spaces and using trigger warnings, seems to be the way they deal with perceived threats. Lukianoff and Haidt define "safetyism" as "a culture or belief system in which safety has become a sacred value, which means that people become unwilling to make trade-offs demanded by other prac-

[20] B. Campbell, J. Manning, *The Rise of Victimhood Culture: Microaggressions, Safe Spaces, and the New Culture Wars*, Palgrave Macmillan, Cham 2018, p. 80.

[21] Ibidem, p. 81.

[22] F. Furedi, *How Fear Works: Culture of Fear in the Twenty-First Century*, Bloomsbury, London 2018, p. 7.

[23] F. Furedi, *What's Happened to the University? A Sociological Exploration...*, p. 10.

[24] G. Lukianoff, J. Haidt, *The Coddling of the American Mind: How Good Intentions and Bad Ideas are Setting Up a Generation for Failure*, Penguin Press, New York 2018.

tical and moral concerns."[25] Indeed, some cases of censorship and silencing on campus demonstrate that safety is understood as an unnegotiable value to which other values may be subordinated.

As Lukianoff and Haidt argue, the cultural shift that has occurred during the last decade is the shift from dignity culture to victimhood culture.[26] Although dignity culture is still dominant in most parts of the United States, a new moral order has emerged in some areas of social life. Universities are places where this new moral order finds strong support from the present generation of students. Dignity culture is based on the assumption that people have dignity regardless of what others think of them. Disagreements, slight, and insults are not perceived as threats to people's dignity. The culture of victimhood is quite different in that respect: not only are people sensitive to disagreement and slight, not to mention insult, but they also call for the intervention of the third parties and define themselves as victims.[27]

A linguistic policy implemented by American universities in the last several decades constitutes another problematic area where freedom of speech is in conflict with formal regulations of speech and writing. Language policy rarely consists in censoring words and expressions. Since the formal rules of speech are internalized by the participants of academic debates, there is usually no need for censorship. Instead, self-censorship, or watching one's own words, plays a crucial role in practicing linguistic policy on campus. Most universities in the United States have speech codes that regulate verbal behavior. This does not mean that most universities impose strict restrictions on free speech. On the contrary, a considerable number of university speech codes seek to "walk a fine line between serious speech harms and mere offenses." Some institutions reject censorship and self-censorship and grant academics considerable freedom of speech. One of the best-known statements made by American universities is a report "Free Speech on Campus," delivered by the University of Chicago in 2015.[28] Many other American universities endorsed this statement. The authors of the statement agree that academic debate should be based on civility and mutual respect, but "concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive and disagreeable those ideas may be to some members of our community."[29] Although there are no explicit references to the concepts of trigger warning and safe space, it is clear that the statement opposes excessively

[25] Ibidem, p. 30.

[26] The terms "dignity culture" and "victimhood culture" were coined by Bradley Campbell and Jason Manning in their article *Microaggression and moral cultures*, "Comparative Sociology" 2014, no. 13, pp. 692–726.

[27] Ibidem, p. 695.

[28] *Free Speech on Campus: A Report from the University Faculty Committee*, 2015, https://www.law.uchicago.edu/news/free-speech-campus-report-university-faculty-committee [accessed: 7.09.2022].

[29] Ibidem.

protectionist practices that suppress freedom of speech. "It is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive."[30] The Chicago report states that offensive, immoral, or unwise speech provides no sufficient reason to limit the freedom of the academic debate. However, even here, one finds the belief that expression may be restricted in cases such as violation of law, defamatory speech, harassment, and invasion of privacy.

Justification for language policy is rarely explicit. Of course, using some words is considered inappropriate, but as Furedi notes, it is difficult to find an explanation for why some words or behaviors are inappropriate. "Without being explicit about what the problem is, terms like 'inappropriate behavior,' 'inappropriate pressure,' 'inappropriate content' or 'inappropriate touch' condemn and pathologize." And indeed, according to Furedi, some uses of language are medicalized, e.g., offensive words or so-called toxic words are "represented as vehicles of a psychological disease." As a result, the regulation of language can be seen as care for public health. Of course, words can indeed harm, and some uses of language can have damaging consequences for both individuals and groups. However, extending the catalog of harms created by speech and including more previously neutral speech acts continuously narrows the sphere in which academic debate can be freely exercised.

The situation of free speech in Anglo-American universities may cause serious concern, but the profoundly pessimistic attitude towards the situation is unjustified. For most of human history, free speech was heresy, while in most developed countries today, it is taken for granted.[31] Perhaps the attempts to restrict free speech on campus can be seen not as a step back to the times when freedom of speech was generally limited but as a continuation of the discussion about the role and limits of free speech in academia. The debate is not about whether freedom of speech is necessary for the advancement of knowledge but about where the line of acceptable speech should be drawn. And even if some ideologically radical groups try to push the boundaries of free speech to silence some voices, it seems unlikely they will succeed on a broader scale. They do not succeed because too many opposing groups have sufficient resources to counterbalance attempts to censor speech. As Stephen Davies points out, "If any single intellectual faction seems to be gaining the upper hand, it will provoke organized dissent and the creation of rival institutions (news networks, journals, think tanks, educational institutions) on the part of its opponents."[32] Such a reaction of organized groups is visible today in the United States. Among the foundations dedicated to the protection of free speech is the Foundation for Individual Rights and Expression (FIRE), before 2022 known as the Foundation for Individual Rights in Education. FIRE is a non-partisan organi-

[30] Ibidem.

[31] S. Davies, *The Threat to Freedom of Speech…*, pp. 180–181.

[32] Ibidem, p. 194.

zation that has defended freedom of speech at American universities and colleges for over 20 years.

In fact, the cases of censoring and silencing do not constitute a mass phenomenon. Most cases occur at leading universities and are accompanied by a media furor. Broad media coverage leads to the impression that restrictions on free speech on campus are ubiquitous, whereas the majority of academic communities in the United States still provide substantial protection for freedom of expression. Moreover, attempts to restrict free speech often manifest other political and ideological conflicts animated by identity politics. Censoring and silencing are used in ideological battles to disempower the opponent and articulate one's own views.

Debates about free speech on campus do not have to lead to the conclusion that building a safe environment for various minorities on campus requires the restriction of free speech. Chemerinsky and Gillman deny that creating an inclusive learning environment and protecting free speech on campus are contradictory goals.[33] Both are essential for universities. They oppose limiting the expression of ideas for the sake of equal educational opportunities because free expression and equality do not have to be exclusive values. The way out of the problem of speech restrictions could be to find the middle ground between those who seek to restrict free speech on campus and those who claim that free speech cannot be compromised on any account. However, the middle ground does not indicate a trade-off between freedom of speech and other values.

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[33] E. Chemerinsky, H. Gillman, *Free Speech.*..., p. x.

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