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Introduction

“Neither the entire police force available in Berkeley nor the presence of watchful professors . . . could keep in check the riotous undergraduates of the University of California” who had gathered in anticipation of the appearance of a controversial social activist. The local press and university officials had called for the lecture to be canceled, in light of disturbances that had occurred on other campuses, and there had been arrests in the past for disturbing the peace. Nonetheless, an “enterprising student” had extended the invitation and made the arrangements. The speaker had tried to circumvent the protesters by arriving on campus an hour before the announced time and sneaking into the auditorium where the scheduled talk was to be delivered. The “immense crowd” of protesters soon figured out that they had been duped, descended on the lecture hall, and “noisily demanded” that the speaker come out and face them. Instead, the speech went forward with the ticketed audience inside, and the “demonstration dangerously approached a riot at several stages in the proceedings.” The

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crowd charged the front door but was repelled by a cordon of police. Some of the students outmaneuvered the police and found an unguarded back door, forcing the speaker to briefly flee the stage before order was restored. After the talk, as the speaker sold merchandise to fans in the auditorium, students threw things at the police outside. The speaker escaped mostly unscathed but did lose a hat to the mob, and had learned from earlier events “to never wear anything that is worth much” since lost and damaged personal possessions had become routine features of these campus visits.¹ The activist was not the alt-right provocateur Milo Yiannopoulos in the spring of 2017, but the prohibitionist provocateur Carrie Nation in the spring of 1903.

Such boisterous events were relatively rare, but nonetheless newsworthy and embarrassing, episodes on American college campuses in the early twentieth century.² In the spring of 1933, the readers of the *New York Times* were dismayed by reports of a more disturbing string of events taking place at the University of Breslau in what was then Prussia and what is now western Poland. Breslau was a hotbed of support for the emergent National Socialists, and many of the university students were enthusiastic Nazis. Ernst Cohn was a young academic star, who had just been appointed to a new chair in law by the faculty of the university in the city of his birth. Students immediately began disrupting his lectures, and police were needed to clear protesters from his classrooms. The university rector announced that he could no longer guarantee the professor’s safety, and appealed to the students to respect the “freedom of teaching and to fight with spiritual arms only.” The protesting right-wing students responded with a manifesto of their own, declaring that “a new type of German university of a political nature must be built up,” and demanding

Cohn's removal from the faculty, as a left-wing coalition of students called for respecting "liberty of opinion and confession." The faculty complained that the new generation of students cared more about politics than about their studies, and suggested that life would be easier if the faculty started scrutinizing the political views and personal identity of new professors so as to avoid upsetting student sensibilities. Despite a temporary suspension of Cohn's class and negotiations between university administrators and student protesters, the protesters immediately returned to disrupting his lectures and the local police were overwhelmed. The students demanded that they should "be free to have the teachers they want," and insisted on the exclusion of "un-German" professors and suspected "Marxists." The administrators caved, Cohn's class was permanently suspended, police withdrew from campus, and order was restored. When Adolf Hitler was appointed German chancellor, the education minister sent word that Cohn had been officially dismissed. He soon emigrated to England, where he restarted his academic career and became a naturalized citizen.³ Universities could be the seat of diversity and learning, but they could also be perverted into the seat of conformity and indoctrination. Forces both inside and outside the academy could collude to prioritize politics over scholarship on the university campus, to the detriment of both the institution and civil society.

My concern here is with a particular problem on college campuses that is not new but is newly relevant. Free speech in universities has periodically been under threat, and American universities have been fortunate in avoiding some of the worst assaults that have ravaged universities elsewhere. In the early twentieth century in the United States, faculty, students, and alumni struggled over how independent the faculty would be

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and whether they could profess controversial views that discomforted (the usually more conservative) donors. In the early days of the Cold War, state governments tried to squelch radical voices on campuses. During the Vietnam War, sometimes literal battles raged over the scope and limits of student protests. The details change, but free speech has frequently been a subject of controversy on college campuses, with some members of the campus community urging more freedoms and others advocating for more restraints. Outside interests have regularly involved themselves in those controversies, seeing the fate of free speech on campus as having important implications for social and political disputes being fought elsewhere. Sometimes the pressure for restricting campus speech has come from the right and sometimes from the left. Sometimes the cry for restricting speech comes from parents, donors, and administrators, and sometimes it has come from students and faculty.

Free speech on college campuses is perhaps under as great a threat today as it has been in quite some time. We are not, of course, on the verge of returning to the rigid conformity of a century ago, but we are in danger of giving up on the hard-won freedoms of critical inquiry that have been wrested from figures of authority over the course of a century. The reasons for this more censorious environment are myriad. I will not try to detail those threats to free speech here. Although some still deny that there is a significant threat to speech on campuses, that position requires an almost willful blindness to what has been happening on college campuses big and small. I will not try to convince you that free speech on American college campuses faces significant challenges, nor will I try to detail for you the many examples of efforts to restrict campus speech, nor will I try to untangle the various forces that

drive these contemporary speech debates. These are all important inquiries, but others have done valuable work investigating them.

I take the existence of a serious debate over the scope of free speech in American colleges as a given, and I hope to provide some reasons for resisting the restriction of speech. There are important disagreements over the proper scope of free speech in American society in general, but the college environment raises these issues in a distinctive way and in a particularly important context. As we think about appropriate limits on free speech, I fear that we have sometimes forgotten the purposes of speech on campus. By recovering the purposes of free speech in the university, I hope that we can better evaluate proposed limitations on speech and consider the potential dangers associated with those limitations.

Although I approach these issues with a background in American constitutional law and history, my concern here is not primarily with developing the legal argument in favor of speech on campus. The First Amendment is designed to restrict the power of government officials, not private actors. It constrains Congress, not Facebook; it ties the hands of administrators at the University of California at Berkeley, but not those at Middlebury College. For public universities, university administrators are government officials and constrained by the same constitutional rules that limit the discretion of other government officials. For private universities, those constitutional rules do not apply so directly, though many campuses have voluntarily embraced very similar understandings of free speech. There is a body of law surrounding the idea of academic freedom, and courts have worked to think through how to apply general constitutional principles to the unique context of institutions of higher education.

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Those legal arguments can be informative, but my interest here is more fundamental. Laying aside the question of whether courts might enforce some outside body of constitutional rules to limit the discretion of university administrators, how should members of the academic community itself understand their own interests in the free speech debate? What principles should the members of a university community—administrators, faculty, and students—strive to realize on campus? Universities have been called “First Amendment institutions” precisely because of their important place within civil society, a place “where ideas begin.”⁴ If we hope to sustain institutions that can play that role within American society, we need to act to preserve them as bastions of free thought and critical dialogue.

The argument I want to develop here is that we should understand free speech as central to the mission of a modern university. The editors of a college paper recently emphasized that “the founding fathers put free speech in the Constitution as a way . . . to protect individual citizens from the power of the government.”⁵ That is certainly true, but the implication that we need not concern ourselves with principles of free speech outside the context of government power does not follow. The right to free speech is not an extrinsic value to a university that has to be imposed by outside forces to serve ends that have no immediate connection to the goals of higher education itself. Rather, the value of free speech is closely associated with the core commitments of the university itself. The failure to adequately foster an environment of free speech on campus represents a failure of the university to fully realize its own ideals and aspirations. Sacrificing speech subverts the very rationale for having a university and hampers the ability of universities to achieve their most basic goals. If we value what universities

do and the role they play within American society, then we must likewise value free speech in universities.

In these pages, I hope to provide some reasons for valuing robust protections for free speech on campus and for distrustful proposals to empower campus administrators to police speech on college campuses. As is discussed below, the “speech” on campus takes a wide variety of forms, and they do not all raise the same issues nor should they all be judged by the same standards. Scholarly discourse in the classroom and in academic research should be evaluated by academic standards, and members of the faculty should be held to the expectations of their professions. Scholarly speech is not “free” in the sense of anything goes, but the ideal of academic freedom emphasizes that members of the faculty should have the independence to exercise their professional judgment and not be constrained by social, political, or financial pressures to shade how they teach or what they write. But the campus is home to more than the work of scholars. Universities have long offered an arena in which students and visitors engage with and advocate for ideas. Those debates are often boisterous and freewheeling. They reflect the chaos of American democracy rather than the decorum of the seminar room. What holds those two worlds together is a common commitment to taking ideas seriously, to exploring the unconventional and the unexpected, to examining critically what we might otherwise take for granted, and to holding accepted truths up for challenge and reconsideration. If universities are to be a space where ideas are held up to critical scrutiny and our best understanding of the truth is identified and professed, then dissenting voices must be tolerated rather than silenced, and disagreements must be resolved through the exercise of reason rather than the exercise of force. As it happens, those habits of skepticism,

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tolerance, and deliberation have value not only for advancing the mission of a university but also for reinforcing the foundations of a liberal democratic society.

I develop this argument for valuing unfettered campus speech across four chapters. First, I need to unpack a bit what I take to be the core mission of a university in order to lay bare the connections between that mission and free speech. Second, I offer some reasons for valuing and protecting speech. The rationale for protecting free speech that I offer here is in many ways conventional, even traditional, but the general reasons for protecting speech can be too easily obscured and forgotten in the midst of particular controversies, and it is important to remind ourselves of why we are better off giving a wide scope to free speech. Third, I apply these considerations to some of the specific contexts that have given rise to controversy of late. In doing so, I hope that a reminder of what we are trying to do on college campuses and the values that free speech serves will allow us to clarify a bit how we should navigate the particular controversies that confront us. Finally, I consider whether university communities should worry about fostering “viewpoint diversity” on campus and just how free-ranging academic inquiry should be.