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Who's Undermining Free Speech on Campus Now?

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Freedom of speech is crucial both to a healthy democracy and the life of the mind. The First Amendment to the U.S. Constitution prohibits Congress from any act that would abridge it and the charters of most of our colleges and universities recognize that freedom of thought and speech are essential to a healthy academic community.

Yet, freedom of speech has been a contested value since the birth of the Republic, most commonly in periods of war, from the Alien and Sedition Acts of 1798 through the USA Patriot Act of 2001. It isn't surprising, then, that freedom of speech is now under siege. What is new in our academic communities is that it is threatened both from within and from outside them.

The internal threat to free speech in academia is posed by speech codes. They take many forms and vary from one college to the next university. After the 1960s, when American colleges and universities ceased to operate in loco parentis, campus speech codes emerged on one campus after another as a means of securing a "safe space" for some students who were offended by certain kinds of speech. On one campus or another, speech that is discomfiting, embarrassing, flirtatious, gender specific, inappropriate, inconsiderate, harassing, intimidating, offensive, ridiculing or threatens a loss of "self-esteem" is banned by speech codes.

Too often, they target student critics of academic bureaucracy. Taken literally, speech codes would ban healthy jeering at a visiting sports team. Wouldn't want to intimidate those Aggies! More importantly, teachers have to be able to urge students to consider perspectives that they had not previously considered, without fear of being accused of being "offensive." Ultimately, speech codes are problematic because they vest final authority in the subjectivity of the offended.

Whether it is "intentional or unintentional," for example, Brown University bans all "verbal behavior" that may cause "feelings of impotence, anger, or disenfranchisement." The nation's Founders, who did not mind offending British authorities, would have been ill-educated by such constrictions on free speech.

The problem with speech codes is that speech that should be self-governed by good manners and humility is prescribed by inflexible legal codification. Fortunately, however, the Foundation for Individual Rights in Education has fought and won a series of legal battles that have curtailed the prevalence of speech codes in public higher education.

In private colleges and universities, where First Amendment rights do not necessarily prevail, the struggle continues on an institution by institution basis. Just when there is good news to report about the unconstitutionality of speech codes on public campuses, however, new threats to free speech arise