

Answering Tough Questions: Popular Arguments against Free Speech and Why they Fall Short.

Trigger Warnings

The Argument: Trigger warnings aren't about shutting down discussions or censoring conversations. Rather, trigger warnings are a necessary measure to protect the mental and emotional health of students who have experienced severe trauma. Trigger warnings are supposed to give students a heads up about difficult content so that they can better engage with and learn the course material.

Where it Falls Short: Whether trigger warnings are a useful teaching tool when dealing with a specific course or specific piece of content is for individual professors to decide. Such protections for professors are fundamental to academic freedom. From a mental health standpoint, FIRE doesn't take a stance on the utility of trigger warnings. That being said, professors should not have to fear institutional consequences for presenting their course material in the manner they deem most appropriate. Even where trigger warnings are not meant to shut down conversations, censor people, or chill speech, they can still be problematic in practice. There are a near infinite number of possible triggers and the associated trauma is oftentimes entirely subjective. This becomes especially troubling when suggestions for trigger warnings become mandates. Civility is an important part of productive campus dialogue. Forcing folks to qualify their language to one's individual sensibilities is anything but civil.

Hate Speech

The Argument: Yes, people have the constitutional right to free speech but not the right to spout hate. Some ideas and viewpoints are simply too extreme and hurtful to be expressed. Hate speech is not free speech!

Where it falls short: The question of hate speech while moral and perhaps even spiritual, is not a legal one. Simply, from a legal perspective, there is no constitutional exception for so-called "hate speech." The First Amendment fully protects speech that some may find unpopular or even downright offensive. The First Amendment allows you to wear a jacket that says "Fuck the Draft" in a public building (see [Cohen v. California](#), 403 U.S. 15), yell "We'll take the fucking street later!" during a protest (see [Hess v. Indiana](#), 414 U.S. 105), burn the American flag in protest ([Texas v. Johnson](#), 491 U.S. 397 and [United States v. Eichman](#), 496 U.S. 310), and give a racially charged speech to a restless crowd (see [Terminello v. Chicago](#), 337 U.S. 1). You can even, consistent with the First Amendment, call for the overthrow of the United States government (see [Brandenburg v. Ohio](#), 395 U.S. 444). This is not a recent development in constitutional law—these cases date back to 1949. The U.S. Supreme Court stated the general rule regarding protected speech quite well in [Texas v. Johnson](#), when it held: "The government may not prohibit the verbal



or nonverbal expression of an idea merely because society finds the idea offensive or disagreeable.” Federal courts have consistently followed this holding when applying the First Amendment to public universities and have consistently used this concept in striking down college speech codes that regulate offensive or unpopular language.

The Argument: Hateful speech might be constitutionally protected, but it shouldn’t be! Most other countries have laws that prohibit hate speech. The USA should as well!

Where it falls short: That’s correct that there is no constitutional exception for so-called “hate speech.” This is, and should be, a source of tremendous pride for all who fall under the protections of the First Amendment. Strong legal protections for speech are the foundation of a robust intellectual climate and a smoothly functioning democracy. Disallowing hate speech is not merely untenable but is ultimately very dangerous. In many countries where this power has been given, it has soon thereafter been abused. The promotion of a robust intellectual climate through debate, discussion and tolerance of all views is the cornerstone of epistemic humility and the foundation of the process of truth discovery. Furthermore, a scenario that allows for free open and honest inquiry is the best mechanism available whereby we may stand up to hate. True, some ideas are repugnant, and some people will hold these ideas against all reason. However, the best way to defeat hate speech is by exposing it and openly arguing against it. You might even wind up convincing someone of your viewpoint instead of encouraging them by demanding that they be silenced. If such lofty academic idealism fails to persuade, perhaps the simplest reason to permit such speech is that, as FIRE’s co-founder, [Harvey Silverglate](#), put it: “If there are Nazis in the room, I want to know who they are so that I can keep an eye on them.”

Are there settled questions that we don't need to debate anymore?

The Argument: Some ideas can be dismissed because our society has already determined that they are outdated or wrong. Can’t we simply outlaw the saying of certain things that undermine settled moral or scientific truths?

Where it falls short: It’s important not to characterize certain opinions as “beyond the pale” or “decided questions.” The truth is that moral and scientific progress is slow and the path towards it is riddled with detours. It is important to maintain humility about our ability to know things for certain. It is also important to note that when certain ideas become dogmas, we lose the important ability to examine and challenge those ideas. John Stuart Mill put it best in [On Liberty](#). “However unwillingly a person who has a strong opinion may admit the possibility that his opinion may be false, he ought to be moved by the consideration that however true it may be, if it is not fully, frequently, and fearlessly discussed, it will be held as a dead dogma, not a living truth.” The fight for justice is



renewed through constant engagement. Even if you believe a position to be “wrong” it is important that you are able to clearly articulate why that is the case. This cannot happen if we unquestioningly accept certain positions as true without evaluating and debating them ourselves. Even if, hypothetically, we could figure out the answer to an important moral question, the process of working through the arguments against that position and critically weighing options is part of what it means to be a thinking human being. It is an important intellectual exercise to truly engage with opposing viewpoints.

Safe Spaces

The Argument: Aren’t safe spaces just a way to exercise the freedom of association? A community has certain values that it should be allowed to protect. An attack on those beliefs is a threat to the very heart of the community. Are you saying that we can’t maintain the sanctity of our closed community?

Where it falls short: Students have the right to voluntarily associate around shared beliefs and interests. Expressive organizations, such as political advocacy or religious groups, may create their own “safe spaces” for like-minded people. However, students and administrators do not have the right to exclude certain viewpoints from public spaces and forums. We must be mindful of the distinction between safe spaces as a shield and safe spaces as a sword. Safe spaces as a shield are a simple testament to the inviolable freedom of association and are absolutely protected under the First Amendment. However, when the language of safe spaces is used as a sword and extended into the public domain in an attempt to control what others say and do. As a college student, the less you interact with diverse viewpoints, the more you rob yourself of one of the core benefits of higher education. The use of safe spaces as a sword undermines this process for all parties.

Power Disparities

The Argument: Voices that have political power or money will be able overpower the voices of minorities. Free speech protects the voices of the most powerful in our society at the expense of the weak.

Where it falls short: Free speech is the very thing that gives the weak the ability to speak truth to power. By ensuring a robust debate we make certain that powerful speech will not remain unchecked. There is always a fear that the voices of the strong, rich, or powerful will shut out those of the weak. Free speech as a great equalizing force is the remedy. Historically, free speech has been a tool of the oppressed. It is also the case that, any risk in allowing free speech, is far outweighed by threats from censorship. The moment you put acceptable discourse up to a popular vote or autocratic rule it is a near inevita-



CURRENT FREE SPEECH ISSUES: ACTIVITY

bility that you will only succeed in exacerbating existing power disparities. The purest of motives cannot save us from this contingency. It seems likely that inequality in some form or another will always be with us. What we can assure is that folks remain equal at the most foundational level, in their right to speak freely. Protecting everyone's right to speak freely is the best chance at ensuring that every voice can challenge authority and bring to light any injustice they are suffering. Historically, the freedom to speech has been the greatest friend and refuge of the least among us. FIRE's President Greg Lukianoff put it this way: "Free speech is about protecting minority rights. Free speech is about admitting you don't know everything. Free speech is about protecting oddballs. It means protecting dissenters."

No matter what the argument against free speech is, the question remains: How does giving away your free speech rights help you? Because, ultimately, the restrictions one group imposes on another will end up being imposed on themselves. Power regularly changes hands; hold onto your rights!

