

FREE SPEECH AND THE INCLUSIVE CAMPUS

A Lesson for High School Students

by Robert Cohen

Essential Question:

Can free speech and inclusivity coexist on college campuses?

Rationale or Intro:

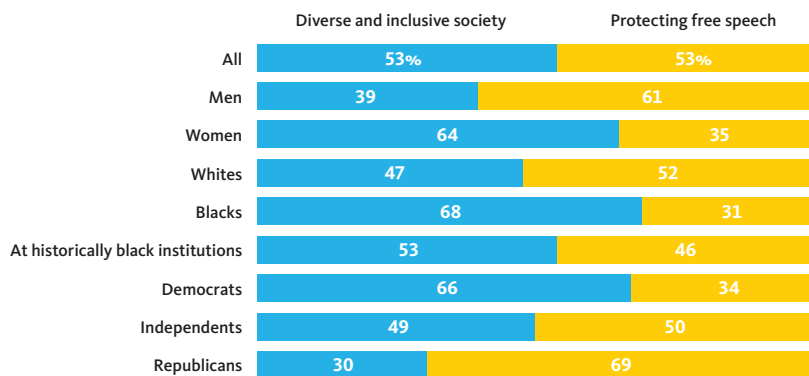
The extent to which students can exercise their First Amendment rights on campus has been debated at colleges and universities, in the media, in the halls of government, and in the courts for more than fifty years. In *Tinker v. Des Moines* (1969), for example, the Supreme Court ruled that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” Though there are limits on student speech, students’ rights to speak and be heard, and the ways in which they exercise this right, have become a hallmark on college campuses in the United States. Where

students maintain and express contradictory positions, though, speaking freely can lead to conflict and additional questions as to what is and is not permissible. Such was the case at UC Berkeley, during the 1964 Free Speech Movement, one of the foremost examples of advocacy in support of students’ First Amendment rights and in 2016 when the conservative Berkeley College Republicans’ support for a border wall, and the way in which they expressed it, seemed to threaten undocumented students on campus.

Part One: How Do College Students View Free Speech?

Directions: Distribute or project the following charts and ask students to examine them. Guide a brief discussion using the suggested follow up questions, as time allows. [Note: The Gallup/Knight poll surveyed more than 3000 full-time college students (including students at historically black colleges) in the Fall of 2017.]

Inclusivity is more important than speech, majority of students say
When forced to choose, a small majority of college students say inclusivity is more important than free speech, though they widely believe in the importance of both to democracy.



Note: Due to rounding, some percentages may not add up to 100 percent.
Source: Gallup survey of about 3,000 college students.

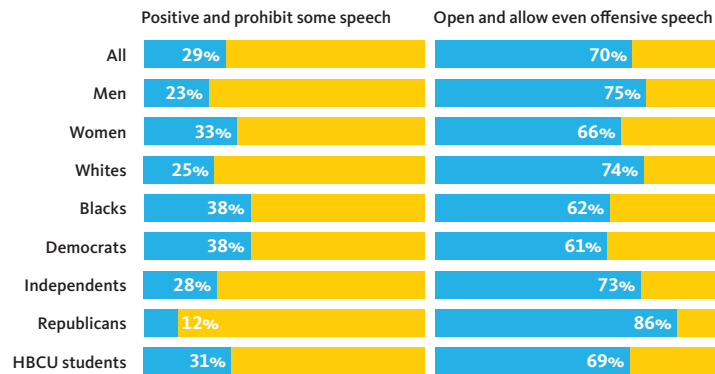
Gallup/Knight Foundation Poll, March 2018¹.

1 Niraj Chokshi, “What College Students Really Think About Free Speech,” The New York Times, March 12, 2018, <https://www.nytimes.com/2018/03/12/us/college-students-free-speech.html>.

- In your own words, what question was asked in this chart? What does ‘diverse and inclusive’ mean to you? Provide examples.
- In general, how did the respondents (the students polled) prioritize free speech vs. inclusivity ?
- When you look at specific groups surveyed, to what extent did they depart from the majority’s view of inclusivity versus free speech? Did specific groups value diversity or free speech to the same degree? What might account for any differences in these respondents’ views from the majority?

Students overwhelmingly prefer openness to inclusivity on campus

The vast majority of students say they would rather have a learning environment that is open and permits offensive speech to one that is positive but limits it.



Source: Gallup survey of about 3,000 college students.

Gallup/Knight Foundation Poll, March 2018².

- What is the overall conclusion of this question? In your own words, provide examples of what might be ‘positive and prohibit some speech’ and ‘open and allow even offensive speech.’
- Do any specific groups depart from the majority’s views in greater proportion? What might account for this difference of opinion?

Part Two: Case Study - UC Berkeley, Fall, 2016

Directions: Break students into discussion groups. Direct groups to evaluate the case study from the perspective of UC Berkeley’s chancellor and debate an appropriate response. Reconvene with each group presenting their recommended course of action.

At UC Berkeley (Cal) there is an advocacy group of and for undocumented immigrant students. Their members are tabling on campus just off of Sather Gate urging that the university accord their group a larger office space for their organization. Their table is set up not far from the Berkeley College Republicans (BCR) tent. The BCR is avidly opposed to illegal immigration, the presence of undocumented students, and UC providing any support at all for the undocumented student group. The BCR decides to demonstrate this opposition in an ‘in-your-face’ way, using Lego-like building blocks to build a replica of (then) Republican presidential candidate Donald Trump’s “Wall” and chanting, “Build the Wall. Deport them all.” All this is done inches away from undocumented students who feel angry, scared, and threatened by the wall model and the chants.

² Ibid.

You are the chancellor of Cal, and hear about this conflict and are afraid it may lead to violence. *What do you do?* Examine the following options, select the best one, and explain your reasoning. Consider the chancellor's responsibilities to a diverse student body and Free Speech concerns. Prepare a brief defense of your response as chancellor to present to your group. One person should take notes on the group's debate to share with the class.

As chancellor I would...

- A) Do nothing, since the BCR has a First Amendment right to express these views (and since its members are adults it is not my responsibility as chancellor to intervene). *How would you respond to complaints that doing nothing suggests that you are indifferent to the serious campus tension raised by the unprecedented political polarization wrought by the 2016 presidential race?*
- B) Bar the BCR from the Plaza to avoid violence and/or undercut assaultive and hateful speech. *How would you address the First Amendment issues such a ban would raise?*
- C) Meet with the BCR leaders and urge them to find a more civil way to express their views on immigration, ask that they seek to be more responsible in the way they exercise their free speech rights, and consider ways to engage rather than simply offend classmates with whom they disagree. *How would you deal with the criticisms this might raise that you are using your authority as chancellor to force a more moderate brand of politics on dissenting students?*
- D) Meet with the undocumented students and remind them that the BCR members have the right to express their views, and that undocumented students, in turn, have the right to express their views. You anticipate that these students will say that they feel personally threatened by the deportation chants. *How will you respond to these concerns?*

Questions for Discussion:

Following the case study activity and debrief, teachers may ask one or more of the following application questions.

- Is there a difference between using your rights and abusing your rights? If so, how can you tell if an abuse has occurred? How would you characterize BCR's actions in this case?
- In 1927 Justice Brandeis (*Whitney v. California*) contended that the only solution for offensive speech was "more speech." What might he have meant by that? Do you agree with him? How might you apply that idea to the circumstances in this case study?
- How might changes in the nation and new methods of communication embolden people to speak more freely than in the past? To what extent do you think the conflict at Berkeley was the result of these new ideas about acceptable speech?

Teaching materials designed by Robert Cohen, Stacie Brensilver Berman, and Debra Plafker of the NYU Social Studies/History Curriculum Collaborative.