

Mitchell's Musings 6-22-15: Can We All Get Along?

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Rodney King asked the title's question after the Los Angeles Riots of 1992. Actually, he said a lot more than that.¹ But the question now seems more applicable to academia than to urban riots.

These days, academia is seemingly beset with controversies that can loosely be described as having something to do with "diversity" and/or academic freedom. Because of concerns about sexual harassment and assault on U.S. campuses, there has been increased "Title IX" activity.² (Title IX generally bans sex discrimination in higher education as a condition for federal funding.) Two issues have been raised. One is how well university bureaucracies are equipped to adjudicate matters that may in some cases be criminal in nature. More specifically, the question has been whether what they do in response to complaints charging harassment or assault meets standards of due process that would be applied in the outside legal system.³

A second concern has to do with issues of free speech and academic freedom. A faculty member – Laura Kipnis of Northwestern University - who wrote a piece for the *Chronicle of Higher Education* was the subject of a complaint under Title IX by students which led to an Orwellian investigation.⁴ Various rationales have been offered for what occurred at Northwestern, but none pass the sniff test. (The charges were eventually dropped.)

Apart from Title IX issues, there have been more general controversies about such matters as a push for mandatory "trigger" warnings on course syllabi (alerts that readings or class topics that might offend someone were contained in a course).⁵ Related to such triggers is a supposed justification for misbehavior on the grounds that the perpetrator was "triggered" and therefore somehow not responsible for his/her actions.⁶ In addition, various campaigns have developed to discourage particular speakers, viewed as having expressed incorrect opinions or having supported incorrect actions, from

¹<https://www.youtube.com/watch?v=tgiR04ey7-M>

²<https://nces.ed.gov/fastfacts/display.asp?id=93>

³<http://www.thecrimson.com/article/2015/2/18/law-profs-academic-freedom/>

⁴http://www.huffingtonpost.com/2015/05/31/laura-kipnis-essay-northwestern-title-ix_n_7470046.html

⁵<http://www.latimes.com/opinion/editorials/la-ed-trigger-warnings-20140331-story.html>

⁶<http://articles.latimes.com/2014/mar/26/news/la-ol-ucsb-professor-pro-life-demonstrator-trauma-trigger-censorship-20140325>

giving graduation addresses.⁷ Boycotts of Israeli universities and academics have been promoted and any possible tension with academic freedom by such actions has been denied.⁸

Now it would be nice to sort these varied developments and discover a unified theory of their underlying cause. It would be nice to be able to say that campuses undergo waves of “activism” and these events are just the return of the 1960s or the 1930s. But I wasn’t around in the 1930s and, although I was around in the 1960s, I don’t remember anyone campaigning for trigger warnings back then. In any event, I don’t have a theory of “waves” and why they arise. If you really push me, I would guess that external political polarization has something to do with these campus problems this time around. The fact that in the Internet age norms of good behavior have been loosened may also be connected.

I would say, however, that hard-and-fast administrative rules of appropriate conduct are unlikely to resolve such issues. Let’s take “triggers.” I don’t think it would be a good idea to mandate course trigger warnings because it is impossible for instructors to know for sure all the topics that might cause offense or distress. What would happen if something I considered innocuous turns out to offend you? Do you sue me? Am I subject to university sanction? On the other hand, if instructors want to include warnings voluntarily because they have a sense that prospective students should know about a particular sensitive course topic, that approach is fine with me. It’s a bit like the warnings about graphic content sometimes given before radio or TV news reports or like the rating system used for movies.

On the other hand, an absolute right that you can say anything in class or elsewhere won’t work, either. There is the old qualification about not being free – despite free speech guarantees – to shout fire in a theater when there is no fire. But it is interesting to note that the fire example comes from an old U.S. Supreme Court decision against the exercise of speech in opposing military recruitment during World War I. You might not feel that the two activities – a false cry of fire and pacifism - are equivalent.⁹

Thus, the only rules available are fuzzy ones involving common sense, introspection, empathy, and purpose. If you have some goal – whether it is furthering or opposing some policy or simply conveying information to students or others – giving offense to your audience is unlikely to be effective and may in

⁷<http://time.com/104142/haverford-commencement-speaker/> and <https://www.insidehighered.com/news/2014/10/30/berkeley-chancellor-blocks-attempt-rescind-invitation-bill-maher>

⁸<https://www.insidehighered.com/news/2014/11/10/american-studies-association-seeks-broaden-public-image-after-boycott>

⁹<https://www.law.cornell.edu/supremecourt/text/249/47>

fact backfire. Telling them that they have no right to an opinion or that you don't care what their opinion is probably won't help further your objective.

Let's take an example from the debate over gay marriage in California. In 2000, state voters passed Proposition 22 banning gay marriage. The then-mayor of San Francisco Gavin Newsom, in a test of Prop 22, permitted gay marriages in that city until an injunction brought a halt to the process. During that episode, Newsom proclaimed, "*It's going to happen, whether you like it or not!*" Eventually, the California Supreme Court voided Prop 22 and opponents of gay marriage put Proposition 8 on the 2008 ballot with a seemingly tighter marriage ban. Those promoting Prop 8 and its ban on gay marriage placed an ad on TV featuring Newsom and his "whether-you-like-it-or-not" remark as both the lead-in and ending statement of the ad.¹⁰ Prop 8 passed, reinstating the ban, but its margin of victory was much narrower than that of Prop 22: 52% in favor for Prop 8 in contrast to 61% for Prop 22. The state Supreme Court then flipped and upheld the Prop 8 marriage ban.

Now we know with hindsight that public opinion was indeed shifting away from favoring a ban on gay marriage.¹¹ I can't tell you that the TV ad provided the narrow margin of victory for opponents of gay marriage despite the trend, but my suspicion is that voters did not like being told that what they did or thought had no value. (Click on the ad and see if you don't think it was effective.) In short, it would have been better for the opponents of Prop 8 if Newsom hadn't said what he said. But, of course, he had the free speech right to make the statement. The issue is not freedom but prudence.

Or let's take it down to a more local academic event. (I am going to disguise the persons involved or the topic of this event by not giving details for reasons that are evident.) I recently attended a presentation by a student team that had developed a consulting report for a group that was promoting a program which the general public opposed in the particular region involved (not in California). In their presentation, the students analyzed and proposed various strategies for establishing the program despite the lack of local public support. One of the faculty members in attendance (not yours truly) in the question and answer period that followed the presentation asked whether, given the popular opposition, the team had considered an approach aimed at changing public opinion. There was a long pause after the question was posed until one student on the team essentially said that since public opinion on the issue was immoral, they hadn't considered such an option.

¹⁰<https://www.youtube.com/watch?v=4kKn5LNhNto>

¹¹http://www.washingtonpost.com/politics/courts_law/poll-gay-marriage-support-at-record-high/2015/04/22/f6548332-e92a-11e4-aae1-d642717d8afa_story.html

From a purely pragmatic view, wouldn't you want at least to *consider* trying to persuade rather than override or repress? Possibly, you might decide that persuasion was not feasible but it's hard to rationalize not weighing the option. Of course, some people might feel a need to be the tellers of truth and morality, regardless of whether it helped or hindered whatever they were seeking. You have the right to think that way, but it borders on fanaticism or just self-centered ego satisfaction. It may also represent a failing to understand how others may react to what you are doing or saying.

Finally, there is the messy outside world. In the Middle East, for example, it turns out that removing nasty dictators can unleash far worse mayhem and massacre. Yet I continue to hear very firm views on what should be done there. Given recent history there, it's hard to see how anyone can be a True Believer in a particular course of action, but there is no shortage of them. Going back in time, despite the army of supposed Soviet experts that the U.S. maintained during the Cold War, none foresaw the collapse of the Soviet Union. Generally, the lesson to be drawn is that when it comes to foreign policy and domestic policy, there is no mechanical certainty. Yes, some opinions are more informed than others and ultimately someone has to make decisions even when outcomes are not certain. Debate is fine, but a bit of humility is often advisable.

Generally, the critique of political correctness on campuses nowadays has come from the right side of the political spectrum, mainly because such correctness tends to tilt left. But universities cannot assume, therefore, that only right wingers will be put off by excesses. A popular topic in campus diversity training programs is "microaggressions" which are statements or actions deemed potentially offensive to minorities or women. The generally libertarian [Volokh Conspiracy](#) blog – which is carried on the *Washington Post* website – reproduced a list of examples of microaggressions from the University of California system. The "microaggressions" listed included such statements as "America is a melting pot" and "America is the land of opportunity."¹²

I suspect that many voters – not just those on the right - in California and the nation might well view the inclusion of such statements on the list as "microaggressions" *aimed at them and their beliefs*. Did anyone consider that possibility when the list was put together? It seems doubtful despite the fact that, particularly for public universities, the views of those voters matter.

¹²<http://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/06/16/uc-teaching-faculty-members-not-to-criticize-race-based-affirmative-action-call-america-melting-pot-and-more/> and http://www.ucop.edu/academic-personnel-programs/files/seminars/Tool_Recognizing_Microaggressions.pdf

In short, if the answer to this musings' title question is that on contemporary campuses we *can't* all get along, then what is lacking is prudence, humility, and common sense. It's hard to create rules that will fix that lack.