
An Interview with Keith E. Wittington: Free Speech, Hate Speech and the University

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Abstract

The purpose of this paper was to provide a forum for the open discussion of speech and free speech on college and university campuses around the world. Professor Keith E. Wittington was interviewed about his latest book as well as his thoughts and feelings and research that he has conducted and presented in his book. As this was not pure empirical or experimental research, no funding was required. As Professor Wittington indicates in his interview, there are major concerns that have to be discussed at this time in the current zeitgeist.

Submitted

28.03.2019

Revised

11.04.2019

Accepted

22.05.2019

Keywords:

*Free Speech,
Democracy,
Hate Speech,*

Suggested Citation:

Shaughnessy, M.F. (2019). An Interview with Keith E. Wittington: Free Speech, Hate Speech and the University. *International Journal of Academic Research in Education*, 4(1-2), 59-64. DOI: 10.17985/ijare.546332

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INTRODUCTION

In this paper, Professor Keith Wittington responds to some global questions regarding free speech and hate speech at the university level. The main concerns regarding free speech are discussed. Keith E. Wittington is William Nelson Cromwell Professor of Politics in the Department of Politics at Princeton University. He is the author of *Speak Freely: Why Universities Must Defend Free Speech*, as well as *Constitutional Construction: Divided Powers and Constitutional Meaning*, and *Constitutional Interpretation: Textual Meaning, Original Intent, and Judicial Review*, and *Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History* (which won the C. Herman Pritchett Award for best book in law and courts and the J. David Greenstone Award for best book in politics and history), and *Judicial Review and Constitutional Politics*, and *American Political Thought: Readings and Materials*. He is the editor (with Neal Devins) of *Congress and the Constitution* and editor (with R. Daniel Kelemen and Gregory A. Caldeira) of *The Oxford Handbook of Law and Politics* and editor of *Law and Politics: Critical Concepts in Political Science*. He is also the author (with Howard Gillman and Mark A. Graber) of *American Constitutionalism, vol. 1: Structures of Government and American Constitutionalism, vol. 2: Rights and Liberties* (which together won the Teaching and Mentoring Award for innovative instructional materials in law and courts), and *American Constitutionalism: Powers, Rights and Liberties* (a one-volume abridgement). He has published widely on American constitutional theory and development, federalism, judicial politics, and the presidency. He has been a John M. Olin Foundation Faculty Fellow and American Council of Learned Societies Junior Faculty Fellow, and a Visiting Scholar at the Social Philosophy and Policy Center, and a Visiting Professor at the University of Texas School of Law. He is a member of the American Academy of the Arts and Sciences. He is editor (with Gerald Leonard) of the *New Essays on American Constitutional History* and editor (with Maeva Marcus, Melvin Urofsky, and Mark Tushnet) of the *Cambridge Studies on the American Constitution*. He is completing a book entitled *Repugnant Laws: Judicial Review of Acts of Congress from the Founding to the Present and The Idea of Democracy in America, from the American Revolution to the Gilded Age*.

Purpose of the study

The aim of this interview is to procure insights and thoughts, opinions and feelings regarding the current state of affairs in terms of free speech at our colleges and universities around the world. This interview is of critical importance in terms of the recent changes in political ideology around the world.

METHOD

In this interview, Professor Keith E. Wittington was asked to respond to a number of questions regarding the current state of affairs in terms of free speech on college and university campuses around the world and the impact on students and faculty alike.

FINDINGS

This interview provided some exacting insights into the current situation of free speech and hate speech and raised concerns regarding the rights of the individual to share beliefs, attitudes, philosophies and address current political concerns.

DISCUSSION & CONCLUSION

The interview discussed several relevant, salient topics which are currently germane in the international framework and political climate. It is hoped that this interview will provide some additional insights to the current concerns regarding free speech.

- 1) Professor Whittington, in your latest book, you indicate that universities must defend free speech. How do you propose that they go about that and whose responsibility is it?

I think those of us who live and work in universities should be vocal in promoting the values of free speech generally, but it is especially important that we practice those values as well as preach them. It would be valuable if faculties would affirm free speech principles, for example by adopting the University of Chicago statement on principles of free expression. Universities should do more to try to educate incoming students on the mission and values of institutions of higher education. Faculty have a responsibility to model good behaviour and demonstrate respect for intellectual inquiry and tolerance for disagreement, and university administrators have a responsibility to design and implement rules that support a robust intellectual environment and a diverse campus community.

- 2) What exactly does the constitution have to say about free speech- obviously one cannot yell fire in a crowded movie theatre---but to what extreme can people espouse views on say abortion or deportation?

As interpreted by the U.S. Supreme Court in the United States, the Constitution requires government officials to respect the right of individuals to hold and express extreme views, stopping only those who threaten imminent violence.

- 3) It seems that people nowadays do not seem to understand the difference between an attitude, a philosophy, an opinion or even a value. Where and when and how should these thinking skills be taught?

Preferably earlier than college. Middle school and high school students can and should learn to grapple with difficult social concepts and a pluralistic world of disagreement.

- 4) It seems that college students have the upper hand on the university campus- all they have to do is yell racist, or sexist or maybe even dentist- as I am not sure some of these students have the foggiest idea how to prove some of these charges. Do all faculty have to be extremely careful on campus nowadays?

I think the fear of students can be overstated. It is certainly the case that professors (as well as students and administrators) can unexpectedly find themselves in the middle of controversy, with potentially dire career consequences. It would be helpful if we could treat each other with some tolerance and charity, which might help overcome mistakes and misunderstandings. But it is also true that professors should be fairly careful on campus. We have a responsibility to treat difficult ideas with care and sensitivity and to behave professionally, and ultimately we have a responsibility to give our students and colleagues our best-considered judgment, even when our views run counter to the campus mainstream.

- 5) Certain college campuses may be more liberal than others- and allow some scholars on campus such as Charles Murray and Heather McDonald. Do administrators have to be concerned that some students might be upset about some supposedly radical views?

Administrators should be concerned if students do not understand that they will encounter radical views on a college campus, whether those views come from the right or the left, and administrators should be concerned if students are not capable of reasoning about disagreeable ideas and critically examining their own convictions. I don't think administrators need to be concerned if students are particularly upset by ideas they might encounter. Some ideas are upsetting. There's nothing wrong with being emotionally moved – either positively or negatively – by ideas and arguments. The question is how we respond to things that we find upsetting.

- 6) Graduation speakers- should they be using the pulpit for their political or ideological views? Or just promoting some bland, tepid, well wishes?

Commencement speakers need to be sensitive to the occasion on which they are speaking. They are helping to celebrate student accomplishments, and they are speaking to a captive audience that will not have an opportunity to ask questions or engage in debate. But that does not necessarily mean that a commencement speech has to be bland (though many are). It is reasonable for commencement speakers to provoke their audience and give them something to think about, but a commencement address is probably not the time for a stump speech.

- 7) The art of debate and discussion- Is it a lost art?

There are certainly grounds for worry. Emotion can often take the place of thought, literal and figurative shouting can often take the place of deliberation, and posturing can often take the place of genuine discussion. We have to learn how to genuinely listen to one another and meaningfully engage with alternative points of view. Those skills are not always encouraged or rewarded.

- 8) A college campus should be a haven for those who have perhaps radical or idiosyncratic ideas- but it seems that the loud, boisterous groups with loud voices and signs that attack the stage have the upper hand. Your thoughts?

We should want and expect universities to provide shelter to those with unorthodox views. They should be places where people are willing to question conventional wisdom and explore ideas that are outside the mainstream. But tolerating people with unconventional ideas is often difficult. There are those both inside and outside of universities who are very quick to denounce those who step out of line and do what they can to silence them. We should expect people to disagree and give voice to criticisms when they encounter ideas that they think are mistaken, but we should also expect people to be willing to engage with one another in good faith, to tolerate those with whom they disagree, and to seek to work through disagreements by way of discussion and persuasion rather than coercion and force.

- 9) While our founding fathers wrote the Constitution, they may have had no idea of the complexity of the world 200 years hence. Thus, we get various interpretations of the amendments. In your mind how should the Constitution be interpreted in say 2020?

Living with a fundamental text as old as the U.S. Constitution is necessarily complicated. I have argued that we have a responsibility to first seek out the original meaning of the constitutional text and try as best we can to determine what principle or rule was established by those with the authority to lay down the fundamental law, at least until we are willing and able to undertake the task of creating new constitutional text. The original meaning of the constitutional text may often be uncertain, however, or have unclear implications for current debates, or simply be silent about

issues that we currently care about. In those circumstances, we have important political decisions of our own to make about how we hope to govern ourselves.

- 10) We hear a lot about "marginalized" individuals. Do they have the same free speech rights as others?

Absolutely. We should recognize that everyone has the same right to express their views and seek to persuade others.

- 11) "Hate speech" how do you define it and what can be done to those who verbalize it in a public place? Or is it still "free speech" to hate a racial or ethnic or cultural group?

There is no agreed upon definition of hate speech. The concept does not exist in American law, and scholars and activists who have argued about it do not agree among themselves as to what is included in the concept of hate speech. In practice, there are often deep disagreements about whether a particular utterance should be counted as an instance of hate speech, with frequent efforts to simply brand those with whom we disagree as engaging in "hate speech." Certainly, hatred of a racial, ethnic, cultural, sexual, religious, political, economic group – and various other kinds of groups as well – represents a point of view, and American constitutional law protects our right to hold such views and to express them freely. We are not free to threaten or harass or do violence to others, and we are not free from criticism or social ostracism for expressing hateful views nor should we expect others to give us an audience for expressing such views. But the government cannot use the power of the law to suppress hateful speech.

- 12) I am hypothesizing here- and I may be wrong and would be glad to see the data- but it seems that there was a very " silent majority" who quietly exercised their right to vote and who voted for Trump. Is this perhaps what is occurring in America? People fearful of verbalizing support for a position, turn to a candidate who epitomizes certain unspoken values?

No doubt there were a lot of people who quietly voted for Trump in the 2016 election, but there were certainly plenty of people more than willing to make their views known. I'm sure that part of Trump's appeal to some voters was his willingness to break with social conventions, to give vocal support to groups and values that seemed to be under assault, and to give offense to groups and values that seemed to be enjoying cultural ascendancy. Trump positioned himself as a kind of culture warrior, and are certainly those who were looking for a champion who would go to war on their behalf.

- 13) You are working on "Repugnant Laws" in your legal mind and opinion- are there repugnant amendments to the Constitution?

There are certainly lots of proposals for constitutional amendments that seem pretty repugnant. It is both a virtue and a vice of the U.S. Constitution that it is very hard to amend, and the benefit of that difficult amendment process is that we tend to weed out really horrible amendment proposals.

- 14) Certain things have been revoked---prohibition for example. Are there laws or amendments that need to be scrutinized? For example, the right to bear arms?

There are certainly some features of the U.S. Constitution that could use some reconsideration. I'd prefer that we formalize some of the effective changes we have already made in the workings of the constitutional system, such as the twentieth-century expansion of national power and of individual rights. It'd be worth having a serious debate over some of the structural features of the

Constitution, such as the method of legislative apportionment, the lifetime tenure of judges, and the design of the United States Senate.

- 15) It seems that loud screaming people with bullhorns have the upper hand in terms of coercing colleges and universities to do their bidding. Anything legally that administrators can do? And are we putting police in a situation in terms of attempting to deal with a "free speech" issue?

I think it is overstated to imagine that screaming people are making universities do their bidding, but college administrators could do a better job of enforcing rules that require us to respect the rights of other people on campus even when we disagree with them.

- 16) Why did you write this book about free speech- what brought it about?

I was motivated by three related concerns. First, it seemed that many people both inside and outside of universities were at best unclear about the core mission of a university and at worst hostile to that mission. Second, in our polarized political climate, we have become quite intolerant of disagreement and seemingly unable to listen to and learn from those with whom we disagree. Third, specifically on campus, we struggle with appreciating and following through on the principles of free inquiry and acceptance of intellectual diversity. I hoped the book would help clarify why we should value disagreement, skeptical inquiry, and expressions of dissent, why those values are particularly important for the health of universities and their ability to contribute to society, and what the implications of those values are in the context of the kinds of specific controversies that we find ourselves in. I hope the book can make a little contribution toward making universities better versions of themselves and for bolstering support for what universities are trying to accomplish.

- 17) What have I neglected to ask?

It is easy to endorse the principle of free speech in the abstract, and most Americans and most members of campus community do. It is much harder to apply those principles when we are confronted with ideas and speech that we find profoundly disagreeable, misguided, offensive, or dangerous. The fact that we find ideas disagreeable or dangerous, however, does not mean that we are right or that such ideas are not worth exploring and subjecting to careful scrutiny. The fact that others might find those ideas interesting or even persuasive does not give us the right to suppress them and deny others the opportunity to make up their own minds as to what they should believe.

References

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