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THE KIDS ARE ALRIGHT

*Thomas Healy**

“I never dared be radical when young for fear it would make me conservative when old.” – Robert Frost

I.

And so the hand-wringing about free speech on college campuses continues. Only this time we gather not to fret about the antics of immature and intolerant undergraduates but about the behavior of our own more enlightened students, who, we like to think, should know better.

The impetus for the latest round of agonizing is a series of incidents at law schools over the past few years that have raised concerns about the commitment of today’s law students to the principle of free speech. There was the heckling of Professor Josh Blackman at CUNY Law School in 2018;¹ the walkout on Judge Patrick Bumatay at Stanford Law School in 2021;² the interruption of Judge David Stras at Duke Law School that same year;³ and the shouting down of Ilya Shapiro at Hastings last March.⁴ But if we are being completely honest, it was the incident at Yale Law School a few weeks later—when a group of students loudly protested an event because of their opposition to one of the panelists—that really set tongues clucking.⁵ For no other institution of legal education generates such envy and resentment, such obsessive and absurd attention as the small, ultra-selective, and completely unrepresentative school in New Haven.

* Professor of Law, Seton Hall University School of Law. Thanks to my fellow panelists, Kevin Baine and Frederick Lawrence, for their thoughtful contributions; to our commentators, Guido Calabresi, Danielle Holley, Eduardo Peñalver, and David Rabban for their insightful feedback; to Norman Silber for organizing this Symposium; and to the members of the *Hofstra Law Review* for their hard work in editing and publishing the presentations.

1. See *infra* notes 51-53 and accompanying text.
2. See *infra* notes 42-43 and accompanying text.
3. See *infra* notes 48-50 and accompanying text.
4. See *infra* notes 58-69 and accompanying text.
5. See *infra* notes 54-57 and accompanying text.

The backlash from the Right was fast and furious. Judge Laurence Silberman circulated an email to his fellow federal judges encouraging them not to hire any students involved in the Yale protest.⁶ Conservative media outlets described the Yale students as “modern-day brownshirts”⁷ and a “political mob.”⁸ Republican Senators Ted Cruz and Mike Lee signed a letter calling for the students to be disciplined.⁹ And just when it seemed the furor had died down, Judge James C. Ho, who sits on the U.S. Court of Appeals for the Fifth Circuit, announced in September that he would no longer hire any students who chose to attend Yale.¹⁰ Judge Elizabeth Branch, of the Eleventh Circuit, soon joined Judge Ho’s boycott,¹¹ and the *Washington Free Beacon* reported that as many as twelve additional judges will also decline to hire Yale students, though they will not say so publicly.¹²

6. See Nate Raymond & Karen Sloan, *Conservative Judge Urges U.S. Judiciary to Not Hire Yale Protesters as Clerks*, REUTERS (Mar. 17, 2022), <https://www.reuters.com/legal/legalindustry/conservative-judge-urges-us-judiciary-not-hire-yale-protesters-clerks-2022-03-17> [<https://perma.cc/4P3W-S73T>].

7. Richard L. Cravatts, *Modern Day Brownshirts Suppress Free Speech at Yale Law School*, MINDING THE CAMPUS (Mar. 24, 2022), <https://www.mindingthecampus.org/2022/03/24/modern-day-brownshirts-suppress-free-speech-at-yale-law-school> [<https://perma.cc/KWX7-ZTMD>].

8. Editorial, *Yale Law Students for Censorship: Maybe Those Who Try to Shout Down Speakers Shouldn’t Get Judicial Clerkships*, WALL ST. J. (Mar. 20, 2022, 4:58 PM), <https://www.wsj.com/articles/yale-law-students-for-censorship-silberman-shouting-panel-federalist-society-free-speech-hiring-11647793665> [<https://perma.cc/HA7N-54EA>].

9. See Lucy Hodgman & Philip Mousavizadeh, *Prominent Conservatives Call for Law School to Discipline Protestors*, YALE DAILY NEWS (Apr. 11, 2022, 12:50 AM), <https://yaledailynews.com/blog/2022/04/11/prominent-conservatives-call-for-law-school-to-discipline-protestors> [<https://perma.cc/F84J-DQEU>].

10. See Debra Cassens Weiss, *Why This Conservative Federal Appeals Judge Will No Longer Hire Clerks from Yale Law School*, ABA J. (Oct. 3, 2022, 11:44 AM), <https://www.abajournal.com/news/article/why-this-federal-appeals-judge-will-no-longer-hire-clerks-from-yale-law-school> [<https://perma.cc/NY2J-9HAR>]. Ho’s boycott does not apply to current Yale law students, only to those who choose Yale in the future. See James C. Ho, *Agreeing to Disagree: Restoring America By Resisting Cancel Culture*, 27 TEXAS REV. L. & POL. 1, 17-18 (2022). The implication is that future students are on notice that Yale is hostile to free speech, and if they choose to attend, they are complicit in that hostility.

11. See Nate Hochman, *Exclusive: Another Federal Judge Joins Boycott of Yale Law*, NAT’L R. (Oct. 7, 2022, 2:34 PM), <https://www.nationalreview.com/2022/10/exclusive-another-federal-judge-joins-boycott-of-yale-law> [<https://perma.cc/F5XN-443S>].

12. See Aaron Sibarium, *Citing Concern for Free Speech, 12 Federal Judges Say They Won’t Take Clerks from Yale Law School*, FREE BEACON (Oct. 4, 2022), <https://freebeacon.com/campus/citing-concern-for-free-speech-12-federal-judges-say-they-wont-take-clerks-from-yale-law-school> [<https://perma.cc/K7GJ-6DRG>]. Whether the boycott will actually transpire is unclear. At a recent event at Yale Law, both Judge Ho and Judge Branch indicated that they might not go through with it after all. See Joe Patrice, *Federal Judges All But Admit Yale Law School Boycott Was a Ruse and the School Fell for It Hard*, ABOVE THE L. (Dec. 1, 2022, 2:14 PM), <https://abovethelaw.com/2022/12/federal-judges-yale-law-school-boycott-ruse> [<https://perma.cc/P4JB-RMBD>].

Moderates and liberals joined the condemnation. David Lat, a Yale Law graduate who founded the popular website Above the Law, sent an open letter to Dean Heather Gerken complaining about the intellectual climate at the school and blaming her for not adequately enforcing the school's free speech policies.¹³ He followed up with a Substack post bemoaning the “mindset” of law students “in the year 2022.”¹⁴ Yale Law Professor Kate Stith, who was moderating the event when the incident occurred, told the student protesters to “grow up” and later asserted that “[l]aw schools are in crisis.”¹⁵ Professor Nadine Strossen, the former president of the American Civil Liberties Union, described the monitoring of speech by law students these days as akin to the “panopticon.”¹⁶

I will have little to say about the conservative backlash in this essay. When conservatives such as Judge Ho respond to “cancel culture” by engaging in the very same behavior they condemn—in effect indiscriminately “canceling” an entire student body—it is hard to take them seriously. The difficulty is compounded when they make comments indicating that what they want is not debate that is “uninhibited, robust, and wide open”¹⁷ but passivity and acquiescence.¹⁸

But the liberal critique, which is arguably less hypocritical and less politically motivated, warrants a response. In conversations, at conferences, and in public commentary over the past few years, I have noticed a common refrain from people who might best be described as “liberals of a certain age,” or “LOACAs” for short. These liberals, usually well past forty¹⁹ and often veterans of earlier free speech battles, are

13. See David Lat, *An Open Letter to Yale Law Dean Heather Gerken*, ORIGINAL JURISDICTION (Mar. 21, 2022), <https://davidlat.substack.com/p/an-open-letter-to-yale-law-dean-heather> [https://perma.cc/97XW-AUGC]. Although Lat was vice president of the Federalist Society at Yale while in law school, he has described himself as having “drifted leftward” in the intervening two decades and as no longer being a conservative, a Republican, or a member of the Society. See David Lat, *Yale Law School and the Federalist Society: Caught in a Bad Romance?*, ORIGINAL JURISDICTION (Nov. 13, 2021), <https://davidlat.substack.com/p/yale-law-school-and-the-federalist> [https://perma.cc/H2EP-Q87U].

14. See David Lat, *Is Free Speech in American Law Schools a Lost Cause?*, ORIGINAL JURISDICTION (Mar. 17, 2022), <https://davidlat.substack.com/p/is-free-speech-in-american-law-schools> [https://perma.cc/R3DQ-BBNH].

15. See Aaron Sibarium, *The Takeover of America's Legal System: The Kids Didn't Grow Out of It*, FREE PRESS (Mar. 21, 2022), <https://www.thefp.com/p/the-takeover-of-americas-legal-system> [https://perma.cc/EU9E-3BL7].

16. *Id.*

17. *N.Y. Times v. Sullivan*, 376 U.S. 254, 270 (1964).

18. See *infra* notes 52-62 and accompanying text.

19. I fall comfortably into this age demographic and therefore do not use the term LOACA disparagingly. I also do not mean to suggest that only liberals over forty have concerns about the attitudes of today's students or that all liberals over forty have the same concerns. But I do sense a generational divide on the left when it comes to the issue of free speech, and it is that divide that I address in this essay.

perplexed and dismayed by the attitude of their left-leaning students. Young progressives are intolerant and close-minded, many LOACAs complain. They don't value debate and free inquiry. They seek to achieve their goals through coercion and intimidation instead of dialogue and persuasion. In short, many LOACAs charge, today's students have rejected the legacy of liberalism in favor of repression and censorship.

Are the LOACAs correct? Or do their complaints about today's students betray their own creeping conservatism?

II.

In answering this question, I should define what I mean by liberalism. It is true that liberalism, in the classic sense, prizes free speech, tolerance, rationality, and individual liberty. It is also true that twentieth century liberals largely embraced these values, viewing them as key to social progress and relying on them to advance a range of progressive causes, from the anti-war movement to the struggle for racial equality. And for the most part, they were right: free speech *was* instrumental in revealing the folly and injustice of American involvement in Vietnam and the immorality and unconstitutionality of segregation. As Timothy Shiell documents in a recent book, the success of the civil rights movement was heavily dependent on an expansive interpretation of free speech.²⁰ Or as John Lewis put it, focusing specifically on freedom of the press: "Without the press, the Civil Rights movement would have been a bird without wings."²¹

But there is another aspect to liberalism that this definition neglects. Liberalism, even in the classic sense, is not just about tolerance and respect for individual rights; it is also about questioning the status quo, challenging received wisdom, and working toward a more just and equitable society. Liberalism is not content with conserving the gains of the past; that is the job of conservatism, which is reflexive and reactionary. Liberalism is forward-looking, focused on progress and social betterment, even if that means abandoning or altering principles that were once considered sacrosanct. And under this definition, today's law students are operating well within the liberal tradition.

To begin with, many students are unwilling to accept without question the free speech orthodoxy that has been handed down to them. They

20. See TIMOTHY C. SHIELL, *AFRICAN AMERICANS AND THE FIRST AMENDMENT: THE CASE FOR LIBERTY AND EQUALITY* 63-89 (2019).

21. Roy Peter Clark, *The Wings of the Bird: Rep. John Lewis and His View of the American Press*, POYNTER (July 20, 2020), <https://www.poynter.org/reporting-editing/2020/the-wings-of-the-bird-rep-john-lewis-and-his-view-of-the-american-press> [https://perma.cc/224T-WAY9].

see the way an earlier generation's approach to free speech has empowered corporations that seek neither the truth nor a more legitimate democracy.²² They understand how the unlimited flow of money into political campaigns has corrupted the electoral process and made government officials less, not more responsive, to the concerns of the public.²³ And they recognize the harm inflicted by hateful and dehumanizing speech, especially when directed at groups that have historically been marginalized. Having been educated in schools that are attuned to the problems of bullying and exclusion, many left-leaning students find speech that denies the dignity of their fellow classmates deeply troubling. As a result, they see little value in speech that perpetuates hate based on race, religion, gender, and sexual orientation.

Some LOACAs interpret this as a rejection of free speech and of the role it has played in advancing equality over the past seventy-five years.²⁴ Shiell, for one, worries that progressives, in pushing for bans on hate speech, have abandoned the principle of liberty embodied in the First Amendment in favor of the principle of equality embodied in the Fourteenth Amendment.²⁵ But this reads too much into the progressive critique of hate speech. One can embrace a strong principle of free speech and still question the judgment that hate speech should receive full First Amendment protection, as it does now.²⁶ The Supreme Court has recognized numerous categories of unprotected speech over the past century, from fighting words to threats to defamation to obscenity.²⁷ In doing so, the Court has concluded that speech within these categories has so little value that it is not worth protecting in light of the significant

22. See generally Amanda Shanor, *The New Lochner*, 2016 WIS. L. REV. 133, 136, 137 (2016) (documenting the increasing use of the First Amendment by corporations to achieve deregulatory goals).

23. See *Citizens United v. FEC*, 558 U.S. 310, 319 (2010) (striking down a law limiting corporate expenditures on candidate elections).

24. Not all LOACAs feel this way, of course. Some share the younger generation's frustration with existing First Amendment doctrine, particularly when it comes to the protection of corporate speech and campaign spending. But older liberals are often more willing to defend—or at least justify—the current regime than are most left-leaning students.

25. See SHIELL, *supra* note 20, at 99-100, 103, 108-18.

26. See *R.A.V. v. City of St. Paul*, 505 U.S. 377, 380 (1992) (striking down city ordinance that prohibited the display of a symbol which one knows or has reason to know “arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender”); *Collin v. Smith*, 578 F.2d 1197, 1199 (7th Cir. 1978) (striking down city ordinance banning the dissemination of any material that “promotes and incites hatred against persons by reason of their race, national origin, or religion, and is intended to do so”).

27. See generally Genevieve Lakier, *The Invention of Low-Value Speech*, 128 HARV. L. REV. 2166 (2015) (documenting the Court's creation of the categories of unprotected speech over the past century).

harm it causes.²⁸ Most LOACAs accept this balancing of value and harm as consistent with a robust principle of free speech. So why is the prospect of adding another category of unprotected speech to the First Amendment dustbin so antithetical to a robust principle of free speech? If we are willing to accept the Court's judgment that other categories of speech lack value and cause significant harm, why are we not willing to accept a similar judgment with respect to hate speech?

The answer many students have reached is the same one Catherine MacKinnon has reached in criticizing the courts' choice to allow the prohibition of sexually explicit speech that offends traditional values (what the Court has labeled "obscenity") but not sexually explicit speech that subordinates women (what she labels "pornography").²⁹ MacKinnon argues that the courts protect pornography because they choose not to see, or simply cannot see, the harm it inflicts on women.³⁰ Similarly, many young people on the left interpret the courts' protection of hate speech as a failure to recognize or care about the harm it inflicts on marginalized groups.³¹ As MacKinnon puts it, "What unites many cases where speech interests are raised and implicated but not, on balance, protected, is harm, harm that counts."³²

My point is not that the students are necessarily correct and that hate speech should be swept into the dustbin of the First Amendment. There are many reasons to be skeptical about hate speech bans. As Nadine Strossen has shown, hate speech bans are often hopelessly vague, selectively enforced, and used against the very people they are designed to protect.³³ There is also a risk that hate speech bans would unduly chill public debate because so much of that debate revolves around issues of race, religion, gender, and sexuality. These are all powerful arguments against criminalizing hate speech, and it is fair to address them to those

28. See, e.g., *New York v. Ferber*, 458 U.S. 747, 763-64 (1982) ("[I]t is not rare that a content-based classification of speech has been accepted because it may be appropriately generalized that within the confines of the given classification, the evil to be restricted so overwhelmingly outweighs the expressive interests, if any, at stake, that no process of case-by-case adjudication is required."). But see *United States v. Stevens*, 559 U.S. 460, 470-71 (2010) (rejecting the claim that categories of speech can be deemed unprotected based on a balancing of value and harms); *American Booksellers Ass'n v. Hudnut*, 771 F.2d 323 (1985), *aff'd*, 475 U.S. 1001 (1986) (mem.).

29. See *American Booksellers*, 771 F.2d at 323.

30. See Catharine A. MacKinnon, *Pornography, Civil Rights, and Speech*, 20 HARV. C.R.-C.L. L. REV. 1, 20 (1985) ("Pornography is a harm of male supremacy made difficult to see because of its pervasiveness, potency, and, principally, because of its success in making the world a pornographic place.")

31. For a compelling account of those harms, see JEREMY WALDRON, *THE HARM IN HATE SPEECH* (2012).

32. See *id.* at 28.

33. See NADINE STROSSEN, *HATE: WHY WE SHOULD RESIST IT WITH SPEECH, NOT CENSORSHIP* 69-104 (2018).

who advocate for the punishment of hate speech. But they are simply arguments—and contestable ones at that. Many other democracies have banned hate speech without dire consequences and without undermining their legitimacy.³⁴ And many of the arguments against hate speech bans are also applicable to other categories of unprotected speech. The Supreme Court’s definition of obscenity is hardly a model of clarity,³⁵ and bans on fighting words have been disproportionately enforced against racial minorities.³⁶ All of which suggests that the critique of hate speech is not a rejection of free speech so much as a challenge to what free speech entails. And it is surely not a rejection of liberalism.

Beyond their willingness to challenge free speech orthodoxy, students today are raising important questions about higher education—and the role of free speech within it. To many LOACAs—especially those in academia—the university is a place of unfettered inquiry, a realm dedicated primarily to the production and distribution of knowledge. In this realm of abstract and disinterested investigation, all questions and ideas must be entertained, regardless of how much they threaten the dignity or well-being of some members of the university community. This may have been an accurate description of universities at some earlier moment in history, perhaps as recently as fifty or seventy-five years ago. But universities today are not exclusively, or even primarily, in the business of producing knowledge. Instead, they are largely in the business of conferring credentials, of opening the doors to economic prosperity and the professional class.³⁷ And if they are to serve that role in a way that is accepted as legitimate, they must be open to all students on an equal basis. Moreover, they must take care to structure the educational experience in a way that gives everyone a fair shot at success.

This means that academic discussion must necessarily take account of the vulnerabilities and historical legacies that students carry with them into the classroom. A professor cannot play the part of provocateur or

34. According to a Pew Research analysis, eighty-nine countries ban hate speech, including eighty-four percent of European nations. See Angelina E. Theodorou, *As FIFA Attempts to Curb Racism at the World Cup, a Look at Hate Speech Laws Worldwide*, PEW RSCH. CTR. (June 20, 2014), <https://www.pewresearch.org/fact-tank/2014/06/20/as-fifa-attempts-to-curb-racism-at-the-world-cup-a-look-at-hate-speech-laws-worldwide> [https://perma.cc/V138-RT2U].

35. See *Miller v. California*, 413 U.S. 15, 41 (1973) (Douglas, J., dissenting) (“For no more vivid illustration of vague and uncertain laws could be designed than those we have fashioned.”).

36. See Burton Caine, *The Trouble with “Fighting Words”*: *Chaplinsky v. New Hampshire Is a Threat to First Amendment Values and Should Be Overruled*, 88 MARQ. L. REV. 441, 553-62 (2004) (analyzing fighting words cases from state courts and showing that bans on fighting words are used mainly to punish racial minorities for talking back to police).

37. See, e.g., Franciska Coleman, *The Anatomy of Cancel Culture*, 2 J. FREE SPEECH L. 205, 207 (2022) (“[U]niversities are increasingly viewed as both engines for the production of knowledge and norms in society and as vehicles of racial integration and class mobility.”).

devil's advocate without considering how that provocation might alter the playing field for his students. To offer a concrete example, imagine a professor who raises the question whether there is a correlation between IQ and race. In the university of the past—or the one imagined by some LOACAs—such a question would be fair game for academic inquiry, since all ideas, no matter how dangerous and dehumanizing, must be entertained. But once we acknowledge the actual function that universities serve today, it becomes clear that such a question, even if the professor answers it in the negative, is untenable. The very asking of the question subjects some students to a loss of dignity, self-esteem, and status that makes their path to success harder than that of their classmates.

One might argue that the problem is not with universities, but with how today's students view higher education. Instead of regarding college or graduate school in instrumental terms, they should embrace the inherent value of learning. But it is universities, not students, that have cultivated the credentialing function, and the proof is in the pudding, or more specifically the tuition. If universities were selling the acquisition of knowledge for its own sake, undergraduate tuition would not cost an average of \$40,000 per year—and in many places, twice that—because few students would pay it. The only way most students can rationalize paying hundreds of thousands of dollars for a college or professional degree is if that degree offers the prospect of a substantial return on investment. Universities know this and have thus abandoned the pretense that what they are selling is primarily the acquisition of knowledge. They have found a market for the conferring of credentials, and they are exploiting it for all its worth.

Moreover, those of us fortunate enough to be full-time tenured professors have largely accepted the arrangement. The steep tuition charged by our schools buys us light teaching loads, research leaves, sabbaticals, a nice salary, and other perks. If we cared only about the pursuit of knowledge and free, unfettered inquiry, we could give up some of these benefits, lower the cost of tuition, and recruit students who simply want to learn and don't require a lucrative job to repay student loans. In that world, we could ask all the provocative questions we wanted in the classroom because no one's livelihood or future success would be at stake. But having accepted the model of university-as-gatekeeper, we are in no position to complain when students object to thoughtless provocation and an attitude of disinterested intellectualism.

None of this means that difficult or sensitive questions cannot be explored in the classroom. Part of a professor's job, especially in law school, is teaching students how to make persuasive arguments, which entails understanding the arguments on the other side. Thus, for

example, when discussing affirmative action, a professor must make sure that students understand the “mismatch theory” embraced by Justice Clarence Thomas, which posits that students admitted as a result of race-based preferences often struggle because they are outmatched academically.³⁸ But helping students understand the mismatch theory is not the same as endorsing it. There is no pedagogical purpose that would be served by a professor expressing agreement with the mismatch theory in the classroom.³⁹ To the contrary, such an expression of agreement would poison the learning atmosphere, suggesting to some students that they don’t belong and to others that they are intellectually superior. In fact, I believe a professor should make clear that, whatever one thinks of the mismatch theory in general, it has no bearing on the abilities of the students in his classroom and that all students admitted to the school are fully qualified. A professor should also put the mismatch theory in context, noting that the studies on which it is based have been widely disputed by social scientists and legal scholars and that it is part of a long history of questioning the intellectual abilities of minority racial groups.⁴⁰

The final way in which students today are demonstrating their commitment to the liberal tradition is by using their voices to push for social change. The past decade has witnessed an explosion of protests and demonstrations around the nation, many of them led by or heavily populated by students.⁴¹ From the University of Missouri to Columbia to the University of California at Berkeley, students have been at the forefront of demands for racial justice, sexual equality, trans rights, gun control, and action to slow climate change.⁴² In fact, recent surveys show that college students are more likely now than at any time in the past

38. See *Fisher v. Univ. of Tex.*, 570 U.S. 297, 331-34 (2013) (Thomas, J., concurring).

39. A professor can express support for the mismatch theory in his scholarship. But if he does so, he should go out of his way to make clear that he does not question the qualifications of the students in his classes.

40. See Richard Lempert, *Mismatch and Science Desistance: Failed Arguments Against Affirmative Action*, 64 UCLA L. REV. DISCOURSE 136, 145-50 (2016) (asserting that the studies on which “mismatch theory” is based have been discredited and cataloguing the research that contradicts the theory).

41. See, e.g., Stacy Teicher Khadaroo, *Why College Activism Is Soaring*, CHRISTIAN SCI. MONITOR (Feb. 11, 2016), <https://www.csmonitor.com/USA/Education/2016/0211/Why-college-activism-is-soaring> [<https://perma.cc/KC79-3JCF>]; Steven Mintz, *Student Protests, Past and Present*, INSIDE HIGHER ED (Jan. 25, 2021), <https://www.insidehighered.com/blogs/higher-ed-gamma/student-protests-past-and-present-0> [<https://perma.cc/6LBA-Z8EU>] (describing a recent surge in student protests beginning in 2012).

42. See, e.g., John Eligon & Richard Pérez-Peña, *University of Missouri Protests Spur a Day of Change*, N.Y. TIMES, Nov. 9, 2015, at A1; Kate Taylor, *Mattress Protest at Columbia University Continues into Graduation Event*, N.Y. TIMES, May 19, 2015, at A23.

fifty years to participate in protests.⁴³ The high point of this protest movement occurred in the summer of 2020, after the murder of George Floyd, when millions of people took to the streets to protest police brutality against Black Americans. Although people of all ages took part, surveys indicate that two-fifths of the protesters were under the age of thirty.⁴⁴ Like LOACAs during an earlier era, today's students are vigorously exercising their rights to speak and peacefully assemble. To suggest that young people have turned their back on free speech is to ignore how they, as much as any prior generation, have embraced the power of protest.

III.

If there are ways in which students today embrace the values of liberalism, what about the ways in which they do not? What about the “canceling” of individuals they disagree with, the shouting down, the threats, intimidation, and violence? What about the atmosphere of enforced liberal orthodoxy that reigns on college campuses today? It is, as Professor Mary Ann Franks and others have demonstrated, largely a myth.⁴⁵ The prevailing narrative is based on a few, highly visible incidents, such as the violent protests against Charles Murray at Middlebury College in 2017 and the physical destruction at Berkeley during a talk by Milo Yiannopoulos the same year.⁴⁶ These incidents were disturbing and unacceptable, but they are not representative. Nor are the handful of speaker disinvitations that get outsized media attention. As Franks has shown, the known incidents represent an infinitesimal fraction of all the speaker invitations on campuses each year.⁴⁷

The polling data also does not support the prevailing narrative that students are censorious and repressive. For every poll that purports to

43. See Courtney Kueppers, *Today's Freshman Class Is the Most Likely to Protest in Half a Century*, THE CHRON. OF HIGHER EDUC. (Feb. 11, 2016), <https://www.chronicle.com/article/todays-freshman-class-is-the-most-likely-to-protest-in-half-a-century>; see also James Paterson, *Report: Activism is on the rise among college-bound students*, HIGHER ED DIVE (Nov. 7, 2018), <https://www.highereddive.com/news/report-activism-is-on-the-rise-among-college-bound-students/541568> [<https://perma.cc/VQR6-JY8N>].

44. See Amanda Barroso & Rachel Minkin, *Recent Protest Attendees Are More Racially and Ethnically Diverse, Younger Than Americans Overall*, PEW RSCH. CTR. (June 24, 2020), <https://www.pewresearch.org/fact-tank/2020/06/24/recent-protest-attendees-are-more-racially-and-ethnically-diverse-younger-than-americans-overall> [<https://perma.cc/SC3P-Z33D>].

45. See Mary Ann Franks, *The Miseducation of Free Speech*, 105 VA. L. REV. ONLINE 218, 221-26 (2019).

46. See Madison Park & Kyung Lah, *Berkeley Protests of Yiannopoulos Caused \$100,000 in Property Damage*, CNN (Feb. 2, 2017), <https://www.cnn.com/2017/02/01/us/milo-yiannopoulos-berkeley> [<https://perma.cc/MB8X-KFZT>].

47. See *id.*

show that young people are less committed to free speech than older generations, there is another that contradicts it.⁴⁸ There are also polls showing that young people are more open to heterodox views than older generations.⁴⁹ And one of the most comprehensive recent surveys—a 2020 report from researchers at the University of North Carolina at Chapel Hill—paints a generally positive picture of student attitudes toward free speech.⁵⁰ According to the report, the overwhelming majority of students (87%) oppose deplatforming speakers, and large majorities of both liberal and conservative students value viewpoint diversity on campus. As one of the report’s authors stated, this “suggests a hidden cross-ideological consensus on free expression issues.”⁵¹

But what about the incidents that have led to the latest round of hand wringing? Surely, they are evidence of illiberalism among today’s law students. Alas, those too are largely exaggerated, as a closer examination of each incident reveals.

I will pick the easy fruit first. In an essay explaining his decision to boycott Yale Law students, Judge Ho complained about the “campus vitriol” one encounters at law schools today.⁵² As an example, he cited the case of Judge Patrick Bumatay, who was “interrupted” while speaking on the value of judicial dissents at Stanford Law School. What Judge Ho means by “interrupted” is that shortly after Judge Bumatay was introduced and began his talk, a group of fifteen to twenty students stood up and walked silently out of the room.⁵³ The students said nothing, and their departure in no way “interrupted” Judge Bumatay’s speech. He did acknowledge that the students were leaving and briefly departed from his prepared remarks. “And I see many of you students are taking my lecture topic to heart and I think that’s a good thing,” he said. “Dissent is a good thing. Exercising dissent is a good thing. What’s better, though, is dissent that leads to discussion, so I invite you all to come back and ask questions during the question period or come meet me afterwards.”

48. See Thomas Healy, *Return of the Campus Speech Wars*, 117 MICH. L. REV. 1063, 1068-70 (2019).

49. See *id.*

50. See Jeffrey Sachs, *Free Speech and Viewpoint Diversity at UNC: Some Thoughts on a New Report*, HETERODOX: THE BLOG (Apr. 7, 2020), <https://heterodoxacademy.org/blog/freedom-free-speech-viewpoint-diversity-unc> [<https://perma.cc/Z7JB-7NSW>].

51. Timothy Ryan, *The Hidden Consensus on Free Expression*, HETERODOX: THE BLOG (Feb. 20, 2020), <https://heterodoxacademy.org/blog/viewpoint-diversity-hidden-consensus-free-expression> [<https://perma.cc/C7GE-LQ5T>].

52. See Ho, *supra* note 10, at 3.

53. Stanford Law School, *Constitution Day 2021 Lecture with Judge Patrick J. Bumatay*, YOUTUBE (Sept. 16, 2021), <https://www.youtube.com/watch?v=IloW-7fGXbE> [<https://perma.cc/T4GB-F9ES>].

The students did not come back, and Judge Bumatay continued his speech without further incident.

Was this an example of “campus vitriol?” If so, Judge Ho has an exceedingly weak stomach. It is certainly possible that Judge Bumatay was flustered by the students’ walkout. But as Jeremy Waldron has argued, the right to speak freely is not the same as the right to speak without being disconcerted.⁵⁴ To the contrary, listeners who disconcert a speaker are exercising their own expressive rights. They also provide important context for the speech, signaling to other audience members that not everyone agrees with the speaker and perhaps prompting them to think more critically about the speaker’s message.⁵⁵ What about Judge Bumatay’s argument that it would have been better for the students to stay, listen, and ask questions? To that argument, I offer the following hypothetical. Would anyone object if the students did not show up to begin with? If a student said to his roommate, “Are you going to listen to Judge Bumatay?” and the roommate responded, “No, I can’t stand that guy and the beliefs he espouses,” no one would accuse the roommate of canceling Judge Bumatay. They would simply acknowledge his right to spend his time however he chooses. So why is it different if the roommate decides to make a statement by showing up to the speech and then leaving? Why the insistence that we listen to and debate those we disagree with at every turn? The implication that one violates the principle of free speech by refusing to engage to the maximal extent possible with those one disagrees with is untenable and places unrealistic obligations on people, obligations that usually fall hardest on those with the least power.⁵⁶

As another example of vitriol at law schools, Judge Ho pointed to the case of Judge David Stras, who “was disrupted” during a speech at Duke Law School.⁵⁷ Here is what happened to Judge Stras. At an event hosted by the Duke chapter of the Federalist Society on September 21, 2021, Judge Stras gave a speech titled, “What My Grandparents’

54. See Jeremy Waldron, *Heckle: To Disconcert with Questions, Challenges, or Gibes*, 2017 SUP. CT. REV. 1, 10-12 (2017) (arguing that a speaker has no right “that [an] audience hear him *exactly as he wants to be heard* without interruption or distraction”) (emphasis in original).

55. See *id.* at 21-25.

56. See Patrice, *supra* note 12 (arguing that “there’s no virtue in forcing people to constantly take remedial courses in ideas they’ve already reviewed, scrutinized, and rejected”); Osita Nwannevu, *The Willful Blindness of Reactionary Liberalism*, NEW REPUBLIC (July 6, 2020), (rejecting the idea that liberalism imposes on us “an obligation of some sort to be maximally permissive of opposing ideas”).

57. See Ho, *supra* note 10, at 3.

Experiences in the Holocaust Taught Me about the First Amendment.”⁵⁸ Judge Stras was defending a decision he wrote for the Eighth Circuit holding that a state anti-discrimination law prohibiting videographers from discriminating against same-sex weddings violated their free speech rights.⁵⁹ A group of students representing the Duke Outlaw chapter objected to the parallel they viewed Stras as making between Nazism and anti-discrimination laws protecting LGBTQ+ individuals. At some point during his talk, these students stood up, and one of them began to read the following statement: “Your honor I’d like to speak for a group of students who are here to listen and defend their views as you are encouraging us to do.” At that point, Judge Stras interjected, “Please do,” and the student continued:

I am a queer Jewish law student. Lawyers, politicians, and others who advocate for LGBT anti-discrimination laws are not comparable to Nazis. Suggesting otherwise as you have is abhorrent and although we came to listen to you speak we are not going to sit here and listen to blatant homophobia. Thank you for coming today.⁶⁰

Judge Stras responded by saying, “Thank you for speaking out,” and paused his speech until the students had left the room.⁶¹

It should go without saying that this was in no sense a cancellation of Judge Stras or a repudiation of free speech. The students reasonably believed that Judge Stras was comparing them and other advocates of anti-discrimination law to Nazis. Judge Ho may disagree with their understanding of the speech. Or he may think there’s nothing wrong with the comparison. But certainly, there are some things even Judge Ho would refuse to sit passively and listen to. We all have our lines; the students’ line just happens to be different from Judge Ho’s. And how did they express their view that Judge Stras had crossed the line? In the most civil and respectful way possible. But apparently, that is not enough for Judge Ho. Unless the students sit through the entire speech and limit themselves to asking questions or making comments at the end, they have cancelled Judge Stras. Essentially, Judge Ho is telling the students that the only acceptable response to speech that demeans and denigrates you is to sit there and take it.

58. See Josh Blackman, *Judge David Stras Was Protested at Duke Law School*, REASON (Sept. 30, 2021), <https://reason.com/volokh/2021/09/30/judge-david-stras-was-protested-at-duke-law-school> [https://perma.cc/4LJD-PBNE] [hereinafter *Stras Protested at Duke*].

59. See *Telescope Media Group v. Lucero*, 936 F.3d 740, 747 (8th Cir. 2019).

60. See *Stras Protested at Duke*, *supra* note 58.

61. See *id.*

The incident involving Josh Blackman at CUNY Law was more rancorous than either of these two examples, but it was still no cause for pearl-clutching.⁶² Blackman was invited to speak on the topic of free speech by the CUNY chapter of the Federalist Society in March 2018. Angered by Blackman's views on immigration, race, pronouns, and other issues, a group of CUNY students lobbied the school to rescind his invitation. When that didn't work, they organized a demonstration to express their opposition to his presence on campus. Lining the hallway outside the room where he was scheduled to talk, about thirty students chanted "shame on you," as he walked past and held up signs with messages such as "Racists are Not Welcome Here," "Pronouns Matter, Josh Blackman Does Not," and "My free speech is fuck you, white supremacist." In a subsequent account of the incident, Blackman stated that one student made "a half-hearted effort to block" his entry into the room.⁶³ If so, it was extremely half-hearted based on the video recording I watched. But Blackman does not claim that the students were violent or threatening, and he acknowledges that they were simply exercising their own expressive rights.

It is what happened inside the classroom that Blackman objects to. As he took his place at the lectern, the students filed silently into the room and walked around the perimeter. Many of the students then left, but some stayed, including about a dozen who stood in the front of the room behind Blackman (he claims they were "inches" over his shoulder,⁶⁴ but the video shows that the closest student was at least several feet behind him, and the rest were spread out across the width of the room). The president of the Federalist Society chapter asked the students to move to the side or back of the room because the front was reserved for the speaker, but when the students questioned the basis for this rule, he did not press the issue. At the same time, a student off camera pointed out that there were only five people in the audience and encouraged her fellow protesters to "leave in a few minutes" so as not to give Blackman content for his blog. As the chapter president prepared to introduce Blackman, some of the students interjected with comments, such as "shame on you," "I don't understand how CUNY allows this," and "legal objectivity is a myth." These interjections continued during the brief

62. *Students at CUNY Law Protested and Heckled My Lecture About Free Speech on Campus*, JOSH BLACKMAN'S BLOG (Apr. 12, 2018), <https://joshblackman.com/blog/2018/04/12/students-at-cuny-law-protested-and-heckled-my-lecture-about-free-speech-on-campus> [<https://perma.cc/239Q-SXNH>]. For Blackman's account, see generally Josh Blackman, *#Heckled*, FIRST AMEND. L. REV., Fall 2019, at 1, 3 [hereinafter *#Heckled*] (accounting the events at CUNY law).

63. See *#Heckled*, *supra* note 62, at 29.

64. See *id.* at 3, 46.

introduction, with some of the students directing their comments toward audience members. Blackman then thanked CUNY for having him, to which a student responded, “CUNY is not having you,” and there was another round of interjections that was stopped within thirty seconds by a school administrator, who said in a loud voice, “Alright, listen. Everybody stop.” She reminded the students that although university rules allowed them to protest, they were not allowed to “keep anyone from speaking.” If they did, she warned, she would return. “You can resolve this yourself, or you can have me resolve it.”

Blackman then began to speak and did so largely uninterrupted for about two minutes. There were occasional comments and laughter, some of which came from the audience, but Blackman could easily be heard as he explained his view of the law. When a student in the audience shouted, “Fuck the law,” Blackman pivoted to respond, and there was a brief round of shouted comments that lasted about thirty seconds. Then, as the room quieted down and Blackman began to speak again, one of the students said, “I don’t want to listen to this,” and Blackman responded, “You want to go? Please leave, by all means.” As the students filed out, one of the students in the audience defended his presence by stating that he was there to ask Blackman hard questions. The student then spoke for about two and a half minutes, challenging Blackman’s views on legal objectivity while supporting his right to speak. At that point, according to Blackman, he decided to depart from his planned remarks and turned the session into a dialogue, in which he invited questions from the thirty or so members of the audience and offered answers. After about an hour of this, Blackman thanked the audience, which clapped politely, and the session ended.

In an essay recounting his experience, Blackman argued that the students “shouted me down through constant interruptions.” He also complained that he was not able to give the speech he had prepared and that, although the incident never turned violent, it easily could have.⁶⁵ I have no doubt this was an unpleasant experience for Blackman, and it may have *felt* as though he was constantly interrupted. But the video does not support that description. The students did not shout him down; they mostly stood silently behind him. And although there were interjections, they were not so loud and continuous as to prevent Blackman from speaking. Moreover, the protesting students left three minutes after the administrator issued her warning, leaving Blackman free to return to his prepared remarks. That he did not do so is understandable; he was responding in the moment to a fluid situation, and he made the choice to

65. *See id.* at 2-3, 45.

engage in a dialogue rather than give a prepared speech. But it was a choice nonetheless, and it in no way undermined the value of his visit. In fact, one could make a strong case that, from the standpoint of free speech values, his hour-long discussion with the students was far more productive than delivering a canned speech that simply repeated talking points the students are well-acquainted with.

I view the Yale incident in a similar fashion.⁶⁶ In March 2022, the Yale Federalist Society sponsored an event featuring Kristen Waggoner, a lawyer for the Alliance Defending Freedom (“ADF”), which supports the criminalization of homosexuality and an end to gay marriage and which the Southern Poverty Law Center has labeled a hate group. As Professor Kate Stith introduced Waggoner, about a hundred students stood up in protest, many of them holding signs denouncing ADF. Most of the students were silent, but there was some talking, and one protester got into a brief argument with an audience member. Professor Stith reminded the students that Yale has a free speech policy prohibiting disruption of invited speakers, and some of the students responded that they were exercising their own right of free speech, to which Professor Stith said, “Grow up.” This prompted a loud exclamation from the students and a brief round of interjections lasting about thirty seconds. At that point, Professor Stith began to read from Yale’s free speech policy, informing the students that if they continued to disrupt the speech, she would give them a second warning, and that on the third warning they would be asked to leave the room. As she spoke, there were occasional jeers and shouts, as well as one genuine inquiry about whether the students would be allowed to ask questions at the end. She assured the students that they would, and one student said, “Thank you.” The bulk of the students then left the room, about two minutes after the event had begun.

Unlike the incident at CUNY, it is what happened in the hallway outside the room that has generated the most criticism. After leaving the room, the students gathered in the hallway and continued their protest, stomping, shouting, clapping, and singing.⁶⁷ There is some debate about how disruptive the protest was,⁶⁸ and some commentators have analyzed

66. Aaron Sibarium, *Hundreds of Yale Law Students Disrupt Bipartisan Free Speech Event*, FREE BEACON (Mar. 16, 2022), <https://freebeacon.com/campus/hundreds-of-yale-law-students-disrupt-bipartisan-free-speech-event> [<https://perma.cc/Z6T3-SMF8>] (a video of the Yale incident can be viewed at the preceding link).

67. *Id.*

68. Compare *id.*, with Mark Joseph Stern, *The Truth About the Yale Law School Protest That Prompted a Federal Judge to Threaten a Clerkship Blacklist*, SLATE (Mar. 18, 2022), <https://slate.com/news-and-politics/2022/03/yale-law-school-laurence-silberman-free-speech-blacklist.html> [<https://perma.cc/4BBS-5U2T>].

audio and video footage like the Zapruder film.⁶⁹ But the fact is that the event continued until the end, and no one was stopped from speaking.

I save the incident at Hastings for last because it is the hardest to defend.⁷⁰ And I won't, not really. In March 2022, Ilya Shapiro, who was preparing to assume a job as a senior lecturer and administrator at Georgetown Law School, was invited by the Hastings chapter of the Federalist Society to discuss the then-vacant Supreme Court seat. Several weeks earlier, Shapiro had publicly objected to President Biden's pledge to appoint a Black woman to the Supreme Court. Arguing that Biden should ignore race and sex and choose Shapiro's own preferred candidate, the Indian-born judge Sri Srinivasan, Shapiro tweeted, "But alas [he] doesn't fit into the latest intersectionality hierarchy so we'll get lesser black woman." He also tweeted that if Biden nominated a Black woman to the Court, she "will always have an asterisk attached." Shapiro's tweets prompted a fierce backlash, and he was placed on administrative leave pending an investigation by Georgetown.⁷¹ So when Shapiro arrived in the Hastings classroom for the discussion, he was met by a large group of students, many holding signs with messages such as, "I Am Not Lesser," "Support Black Women," and "U.C.H. Condone White Supremacy." After Shapiro was introduced and took the podium, the students began chanting loudly "Black lawyers matter" while pounding on the desks. Some students shouted personal insults such as "You're balding." Shapiro did not attempt to speak, and no member of the Hastings administration attempted to quiet the students. After five minutes, the school's academic dean approached Shapiro, and the two men left the room to cheers and applause. When the Dean returned a few minutes later, he reminded the students of the school's free speech policy and code of student conduct and announced that he would bring Shapiro back "to try this one more time." The second attempt was equally unsuccessful. Each time Shapiro attempted to speak, the students began to shout and chant "Black lawyers matter." After about forty

69. See generally Lat, *supra* note 14 (analyzing the controversies at UC Hastings and Yale Law School).

70. Foundation for Individual Rights and Expression, *Protestors Disrupt Remarks by Ilya Shapiro at UC Hastings*, YOUTUBE (Mar. 4, 2022), <https://www.youtube.com/watch?v=Gz6u90XqSLI> [<https://perma.cc/D6F4-JK77>].

71. The investigation concluded that Shapiro's tweets "had a significant negative effect on the Georgetown Law community, including current and prospective students, alumni, staff, and faculty." But because Shapiro was not yet a Georgetown employee at the time of his tweets, he was found not to have violated the school's policies and was cleared to assume his new job. Shapiro declined to do so, asserting that academia had become intolerant of conservative views and inhospitable to free speech. See Anemona Hartocollis, *A Conservative Quits Georgetown's Law School Amid Free Speech Fight*, N.Y. TIMES, June 6, 2022, at A15.

minutes, the organizers escorted him out of the room. Unlike the other incidents, this was a genuine shouting down that prevented the speaker from expressing his views. It is antithetical to the principle of free speech, and for reasons I have explained elsewhere, it troubles me.⁷²

And yet, it is hard for me not to feel inspired watching the students, many of them Black women, stand up for their right to be accepted at law school and on the Supreme Court. These are students who likely would not have been admitted to Hastings forty or maybe even twenty years ago. As a result of a long struggle against the kind of racism and sexism implicit in Shapiro's tweets, doors that were once closed to them have been opened. And now that they have walked through those doors, they understandably object when the school welcomes someone to campus who appears to question whether they truly belong. They want Hastings to stand up for them, and the argument that the Federalist Society has a right to invite Shapiro and that he has a right to speak does not hold much sway with them. Were I in their shoes, I would almost certainly feel the same way. So although I don't condone their methods, I can't bring myself to scold and admonish them. I admire them too much for that, and I am a bit puzzled that my fellow LOACAs don't feel the same way.

IV.

Does all of this add up to a crisis? Are the recent incidents evidence that today's law students have turned their backs on liberalism? I don't see it. Aside from the shout-down at Hastings, none of these protests, whether silent or raucous, polite or rude, were inconsistent with the principle of free speech. They may have been ugly and unpleasant. They may have flustered and disconcerted the speakers. They may have been counterproductive. But only a cramped and narrow understanding of free speech would disallow expression on such grounds.⁷³

72. See Thomas Healy, *Social Sanctions on Speech*, 2 J. FREE SPEECH L. 21, 56 (2022).

73. After this essay was written and shortly before publication, another incident occurred at Stanford Law School during a speech by Fifth Circuit Judge Kyle Duncan. I have been unable to locate a full video recording of the incident, and the only audio recording I have found makes it difficult to gauge the relative volume of various speakers. See David Lat, *The Full Audio Recording of Judge Kyle Duncan at Stanford Law*, ORIGINAL JURISDICTION (Mar. 15, 2023), <https://davidlat.substack.com/p/the-full-audio-recording-of-judge> [<https://perma.cc/QEQ5-L53V>]. But based on that recording and various accounts, the incident appears to fall somewhere between Josh Blackman's experience at CUNY and Ilya Shapiro's at Hastings. That is, it was a partial shout-down in which Judge Duncan was able to speak intermittently for around forty minutes with frequent and noisy interruptions. See, e.g., David Lat, *Yale Law Is No Longer #1—For Free-Speech Debacles*, ORIGINAL JURISDICTION (Mar. 10, 2023), <https://davidlat.substack.com/p/yale-law-is-no-longer-1-for-free-speech> [<https://perma.cc/J7MP-CMPR>]. What complicates the story is that Judge

So what explains the hand wringing among so many LOACAs? While considering this question in recent months, I found myself turning to an unlikely source: Russian literature. Specifically, I found myself revisiting the novel *Fathers and Sons* by Ivan Turgenev. Published a hundred and fifty-one years ago, in 1862, *Fathers and Sons* has a surprisingly contemporary plot. A student returns home from college with an older friend he is much in awe of. The friend, severe and brusque, is disillusioned with the social reforms of the past and has embraced a radical new philosophy called nihilism. The student's father regards himself as a liberal who has stayed current with the latest ideas, and he is dismayed by the friend's dismissal of him as outdated and ineffectual. He is also wounded by his son's apparent agreement with the friend. The father's brother, meanwhile, is less wounded than outraged. An aristocrat who yearns for the traditions of the past, he views the friend as arrogant, vulgar, and dangerous. So he decides to do battle with him, first with words and then with pistols.

Fathers and Sons was one of the first works of modern literature to explore the nature of intergenerational conflict, to address “the confrontation of the old and the young, of liberals and radicals,” as Isaiah Berlin put it in his brilliant lecture on Turgenev.⁷⁴ The novel shows how the conflict between young and the old is universal. Moreover, it shows how naturally each generation conforms to its assigned role in this drama. It is the role of the younger generation to challenge the accepted order, and it is the role—we might say it is the fate—of the older generation to defend it.

That, it seems to me, is what is happening in the debate about free speech on campus. Today's students, like the “Sons” of Turgenev's title, are impatient with the old norms, which seem outdated and ineffectual to them. They have their own ideas about freedom and equality and are not willing to accept unquestioningly the truths that have been handed down to them. Many LOACAs, meanwhile, like Turgenev's “Fathers,” are

Duncan appears to have come to Stanford determined to spar with the students, and rather than tamp down the protests he added fuel to the fire. See Joe Patrice, *Federal Judge Calls Stanford Law Students ‘Appalling Idiots’ After Refusing to Answer Their Questions*, ABOVE THE L. (Mar. 13, 2023), <https://abovethelaw.com/2023/03/kyle-duncan-stanford-law-school> [https://perma.cc/6FUX-UW7P]. As a number of commentators have argued, the incident does not reflect well on either the students or Judge Duncan. See Ken White, *Hating Everyone Everywhere All at Once at Stanford*, THE POPEHAT REP. (Mar. 14, 2023), <https://popehat.substack.com/p/hating-everyone-everywhere-all-at> [https://perma.cc/DBG8-GZD5]. But it doesn't change my overall view about the state of free speech at law schools.

74. See Isaiah Berlin, *Fathers and Children: Turgenev and the Liberal Predicament*, N.Y. REV. (Oct. 18, 1973), <https://www.nybooks.com/articles/1973/10/18/fathers-and-children-turgenev-and-the-liberal-pred> [https://perma.cc/MB7D-UREU].

dismayed, wounded, and outraged. Their understanding of free speech has served them well, and they fail to understand why it's not good enough for a younger generation.

What makes Turgenev's exploration of this dynamic so compelling is that he does not come down clearly on one side or the other. Instead, as Berlin explained, "[h]e tried to stand aside and see the scene objectively." This frustrated many critics, especially older liberals who wanted Turgenev to expose the radicals as a menace. But although he understood this view, he was too sympathetic to the radicals to embrace it. "They seemed to him a new, cleareyed generation," Berlin wrote. "Above all they were the young, the future of his country lay in their hands, he did not wish to be cut off from anything that seemed to him alive, passionate, and disturbing."⁷⁵

I feel a similar sympathy toward students today. Their views and methods are not always consonant with mine. They express themselves with a certainty I often lack. But they have a passion and clear-sightedness I respect, and they further one of the central goals of liberalism: they push the rest of us to see things from a new and sometimes disturbing perspective.

75. *Id.*