

University of St. Thomas Law Journal

Volume 15

Issue 1 *Campus Speech in Uncertain Times: Hopes
and Challenges?*

Article 1

2018

The Anti-Coddling Narrative and Campus Speech

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Bluebook Citation

Rob Kahn, *The Anti-Coddling Narrative and Campus Speech*, 15 U. St. Thomas L.J. 1 (2018).

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ARTICLE

THE ANTI-CODDLING NARRATIVE AND
CAMPUS SPEECH

ROB KAHN*

ABSTRACT

In this essay, I respond to an argument raised by some of the sources in Professor Chris Roederer’s Editor-in-Chief Lecture, namely that a major reason speech is under assault on college campuses is that college students have been coddled by parents, teachers, and now by university administrators. I refer to this as the anti-coddling narrative. In what follows, I argue that the anti-coddling narrative is problematic for two reasons: (1) it does not accurately depict the challenges facing this generation of college students, and indeed ignores other groups that demand coddling; and (2) it will not convince college students to adopt free speech values. Instead, we should replace the anti-coddling narrative with a perspective that treats campus protests for safe spaces and trigger warnings as speech acts just as worthy of protection as the speech acts they oppose.

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* Professor of Law, University of St. Thomas School of Law. I would like to thank Tom Berg, Neil Hamilton, Greg Sisk, and Jacqueline Baronian. Let me also thank the *University of St. Thomas Law Journal* editors for their helpful suggestions. They have made this a stronger article as a result. I presented an abbreviated version of this paper at the University of St. Thomas Faculty Research Slam held on January 30, 2018.

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I. THE ANTI-CODDLING MOMENT

The 2017 *University of St. Thomas Law Journal* Editor-in-Chief Lecture addressed the future of free speech on college campuses.¹ The keynote address, delivered by Professor Christopher Roederer, took up a variety of issues including trigger warnings, the Obama Administration’s Title IX ruling, and the mandatory reporting of sexual assault cases on college campuses.² In addition, he examined why these issues seem to have played out with less intensity at law schools.³ The other panelists—Phi Beta Kappa CEO and Secretary Fred Lawrence and former American Civil Liberties Union (ACLU) President Nadine Strossen—made impassioned pleas for protecting freedom of expression on campus, while highlighting the other tools campus administrators can use to respond to hate speech.⁴ The goal, in Roederer’s words, is to create a “healthier balance between free speech, the missions of institutions of higher learning, and the goals of civil rights legislation to provide fair equality of opportunity for all students.”⁵ To that end, Roederer asked if the answer was not “some form of de-escalation” that might feature “more emphasis on restorative justice[.]”⁶

This is indeed a worthy goal; but the focus of this essay is different. Several of Professor Roederer’s sources quoted in his paper argue that campus speech is such a fraught issue because parents and teachers have coddled today’s generation of college students since birth.⁷ This coddling, so the argument goes, often takes the form of “helicoptering,”⁸ in which the

1. Symposium, *Campus Speech in Uncertain Times: Hopes and Challenges*, 15 UNIV. ST. THOMAS L.J. 1 (2018).

2. Christopher J. Roederer, *Free Speech on the Law School Campus: Is it the Hammer or the Wrecking Ball that Speaks*, 15 UNIV. ST. THOMAS. L. J. 1, 53–67, 68–73 (2018) (first discussing Title IX and mandatory reporting; then discussing trigger warnings).

3. *Id.* at 33 (asking where law schools belong in the broader debate over campus speech).

4. Frederick M. Lawrence, CEO & Secretary, Phi Beta Kappa Society, Address at the *University of St. Thomas Law Journal* Symposium (Nov. 7, 2017); Nadine Strossen, Professor, New York Law School, Address at the *University of St. Thomas Law Journal* Symposium (Nov. 7, 2017).

5. Roederer, *supra* note 2, at 34.

6. *Id.* at 33.

7. *Id.* at 82–83, 91 n.297 (first discussing Charles Lipson, *The Death of Campus Free Speech—and How to Revive It*, REAL CLEAR POLITICS (June 28, 2016), https://www.realclearpolitics.com/articles/2016/06/28/the_death_of_campus_free_speech_—_and_how_to_revive_it_131029.html; then discussing Greg Lukianoff & Jonathan Haidt, *The Coddling of the American Mind*, THE ATLANTIC (Sept. 2015), <https://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356/>; and then discussing Rebecca Flanagan, *The Kids Aren’t Alright: Rethinking the Law Student Skills Deficit*, 2015 BYU EDUC. & L.J. 135, 170–71 (2015).

8. See Anna Almendrala, *5 Signs You Were Raised by Helicopter Parents*, HUFFINGTON POST (Sept. 30, 2015, 7:00 AM), https://www.huffingtonpost.com/entry/5-ways-to-tell-you-were-raised-by-helicopter-parents_us_5609de6ee4b0dd850308e260 (noting the tendency of helicopter

parent or teacher hovers over the child, removing all obstacles to that child's success.⁹ In college, this "helicoptering" continues as colleges remove obstacles to student success by "scrubbing" college campuses clean of any speech the students find offensive.¹⁰

Let me give a few examples from Roederer's essay. In a section entitled "Mentally Ill Campus Culture?," Roederer cites Greg Lukianoff and Jonathan Haidt's 2015 essay, *The Coddling of the American Mind*, which argues that the policing of speech and punishing of speakers on American college campuses has led to a "vindictive protectiveness" that teaches students to think "pathologically."¹¹ This pathology expresses itself in micro-aggressions and trigger warnings, which the authors trace back to the decline of "free-range" parenting and anti-bullying efforts in public schools.¹²

Roederer also cites University of Chicago Political Science Professor Charles Lipson who, in *Real Clear Politics*, faulted college administrators whose "offices are devoted to comforting delicate snowflakes and soothing their feelings."¹³ To illustrate the scope of the problem, Lipson describes—and Roederer recounts—a class exercise in which a transgender student at the University of Northern Colorado complained after transgender issues were included on a list of student-generated "difficult topics," which included "abortion, gay marriage, and climate change."¹⁴ The problem, according to Lipson, is that "safety" has developed a "special meaning," one divorced from physical threats like robbery or sexual assault.¹⁵ Instead, it means: "I feel unsafe because I disagree with your ideas. So shut up. Right now."¹⁶

Taking up law schools, Roederer discusses the work of Rebecca Flanagan who laments how, in her words: "The undergraduate experience has changed from one of intellectual rigor and exploration to one that focuses on personal pleasure, much like a four-year vacation."¹⁷ Because college students view themselves as consumers, whose needs must be constantly satisfied, they find it hard to "engage with ambiguities" or "grapple with uncertainty," which "makes them unprepared for the pedagogical challenges they must face as law students."¹⁸ This has led, or so Roederer sug-

parents to hover over their children). Helicoptering is harmful because it deprives the child of agency. *Id.*

9. *See id.* (describing how helicopter parents "rescue" their children "at the first sign of trouble").

10. *See id.* (describing parents meeting with college professors); Lukianoff & Haidt, *supra* note 7 (describing scrubbing).

11. Roederer, *supra* note 2, at 81, 83 (quoting Lukianoff & Haidt, *supra* note 7).

12. *Id.* at 83–88 (quoting Lukianoff & Haidt, *supra* note 7).

13. *Id.* at 83 (quoting Lipson, *supra* note 7).

14. *Id.* at 82 (quoting Lipson, *supra* note 7).

15. *Id.*

16. Lukianoff & Haidt, *supra* note 7, at 67 (quoting Lipson, *supra* note 7).

17. Roederer, *supra* note 2, at 91 n.297 (quoting Flanagan, *supra* note 7).

18. *Id.* at 92, n.302 (quoting Flanagan, *supra* note 7).

gests, to spoon-feeding in law school classrooms, which in turn reflects what he calls “the trophy generation.”¹⁹ Polling his own Constitutional Law students, Roederer found that a simple majority of students favored banning some forms of “offensive and biased speech,”²⁰ while four out of five students supported policies banning intentionally offensive slurs.²¹

I refer to these sorts of arguments as the anti-coddling narrative. The narrative rests on two premises: (1) college students are constantly coddled, and (2) this coddling poses a threat to free speech on campus. To put it another way, coddling is both a cause of campus unrest and a mistake college administrators make when responding to this unrest. At first blush, the anti-coddling narrative is quite powerful. Of all censorship’s sins, what is worse than depriving young people of the opportunity to learn? How will students raised on trigger warnings and safe spaces survive in the “real world” that awaits them upon graduation? Assuming graduating students survive the challenges of adulthood, will they pass on the free speech values of their parents and grandparents?

The anti-coddling narrative, while well intentioned, is factually inaccurate and harms the cause of promoting free speech values on campus and in society at large.²² Tracing all problems on the college campus to coddling, and isolating campus coddling from broader social trends, are conceptual dead ends. In addition, referring to college students as “coddled” will not help build support for a culture of free speech on college campuses.²³ Instead, we should treat calls from “coddled” students for trigger warnings and safe spaces with the same respect as other campus speech acts. Taking this step will help college students learn how to balance competing demands for freedom of speech.

The rest of this essay fleshes out these points. Part II argues that the anti-coddling narrative fails to appreciate the challenges faced by the current generation of college students. Indeed, these students face far more obstacles in making their way than their forebears from the Baby Boom and

19. *Id.* at 91, n.301 (citing James Bennet, *The Trophy Generation*, THE ATLANTIC (July/Aug. 2011), <http://www.theatlantic.com/magazine/archive/2011/07/the-trophy-generation/308542/>). Bennet complains that today’s sports awards are given to children whose only accomplishment is their “punctuality” in attending sporting events. Bennet, *supra*.

20. Roederer, *supra* note 2, at 88. This was preferred over the alternative—“an open environment that allowed such speech”—by a 54 percent to 45 percent margin. *Id.*

21. *Id.* at 89. Roederer also found that nine out of ten students (90.18 percent) of students opposed restricting speech on political grounds. *Id.*

22. Roederer, for his part, does not appear to support the anti-coddling narrative, which takes up a small part of his article. Instead, Roederer’s article focuses on the current dilemma facing colleges more generally of seeking a creative middle ground that, for example, recognizes both the harms of microaggressions and the risk of overstating them. *Id.* at 86–87.

23. I am not arguing that speech restrictions on campus are a good thing; quite the opposite. Roederer has a point when he says: “The label of microaggression has itself become a microaggression.” *Id.* at 87.

Generation X.²⁴ In addition, the use of the coddling label to describe college students is unfair given that what passes for “coddling” on college campuses exists in other venues under the more socially acceptable label of “zero tolerance.”²⁵

Part III looks at the effectiveness of the anti-coddling narrative as a way to reach Millennials. It is easy to lampoon trigger warnings, safe spaces, and hypersensitive students; but do these arguments hit home where they matter most? Is telling today’s college students that their parents and teachers coddle them a promising way to help them internalize free speech values?²⁶

Part IV turns to the future. Replacing the anti-coddling approach to campus speech with a more speech friendly perspective will yield three benefits. First, it will encourage a renewed focus on academic freedom as a justification for speech. Second, it will help create an environment that facilitates discussion of hard cases. Finally, it will increase the flexibility for teachers, fellow students, and campus administrators to respond to “offensive” speech in non-punitive ways that nevertheless console victim groups.²⁷ The Conclusion examines the implications of rejecting the anti-coddling narrative for college campuses and the broader society facing rapid technological change.²⁸

II. IS THE CODDLING LABEL ACCURATE?

This section makes three points. First, the “coddled” generation actually faces greater challenges than their Generation X parents and Baby Boomer grandparents.²⁹ Second, the zero tolerance idea that animates the anti-coddling narrative is well tolerated in a wide range of areas outside of the campus speech context—both inside and outside the educational setting. Finally, consumerist college students are pressuring universities to coddle them; as with zero tolerance, the new consumerism is not limited to the

24. The coddling narrative often speaks about generations. On this view, Baby Boomers (1946–1964) share certain traits, which differ from the traits shared by Generation Xers (1965–1982) and Millennials (1983–2002). To be sure, labels have their purposes. See NIKOLAY KOPOSOV, *MEMORY LAWS, MEMORY WARS: THE POLITICS OF THE PAST IN EUROPE AND RUSSIA* 5 (2017) (defending prototype theory, which views concepts as having “a hard core and a complexly structure periphery.”). But labelling an entire generation risks diminishing real religious, occupational, and ideological differences within given age cohorts.

25. See *infra* Part II.

26. See *infra* Part III.

27. See *infra* Part IV.

28. See *infra* Part V. Most notable here is the rise of big data, which has shifted the basis of judgment from causation (consistent with findings of innocence or guilt) to correlation (which encourages social sanctions based on the risk of harm). See VIKTOR MAYER-SCHÖNBERGER & KENNETH CUKIER, *BIG DATA: A REVOLUTION THAT WILL TRANSFORM HOW WE LIVE, WORK AND THINK* 175–78 (2013) (describing the difficulty a big data age will have in holding people responsible “for their behavior, not their propensities”).

29. See *infra*, Part II-A.

campus speech context. Taken together, these points lead to a question: Why do we apply the “coddled” label to college students but not to others (police officers, school administrators, etc.) who also are protected from unwanted risk?³⁰

A. *The Actual Challenges Facing Millennials*

While there are some overprotective parents, teachers, and college administrators, and plenty of examples of overzealous parents pulling out all the stops to smooth out the lives of their adult children,³¹ the “helicopter” metaphor is overstated.³² To be sure, middle-class parents today are spending more time with their children than they once did.³³ But rather than smoothing out obstacles, these parents engage in a practice of “concerted cultivation,” in which parent and child work together to deal with practical problems.³⁴ The major concern is not with “coddling,” but with the fact that working class parents do not have the same amount of time to spend with their children.³⁵

In addition, the anti-coddling narrative tends to ignore the practical challenges Millennials face. These challenges include a breakdown in the social safety net,³⁶ the concentration of wealth in the top one percent,³⁷ militarized policing,³⁸ and school shootings,³⁹ among other things.⁴⁰ At the

30. See *infra*, Part II-B.

31. For example, some parents meet with their children’s college professors and accompany them on job interviews. See Almendrala, *supra* note 8.

32. See Brink Lindsey, *The Real Problem With Helicopter Parents: There Aren’t Enough of Them*, THE ATLANTIC (Oct. 11, 2012), <https://www.theatlantic.com/business/archive/2012/10/the-real-problem-with-helicopter-parents-there-arent-enough-of-them/263410/>.

33. *Id.*

34. *Id.*

35. *Id.*

36. For example, Millennials wonder if Social Security will be present when they retire. See *Half of Millennials Don’t Believe Social Security Will Exist When They Retire: Poll*, HUFFINGTON POST (Oct. 20, 2011, 9:48 AM), https://www.huffingtonpost.com/2011/10/20/millennials-social-security_n_1021602.html.

37. See Matt Egan, *Record Inequality: The Top 1% Controls 38.6% of America’s Wealth*, CNN (Sept. 27, 2017, 4:04 PM), <http://money.cnn.com/2017/09/27/news/economy/inequality-record-top-1-percent-wealth/index.html>.

38. See ACLU, WAR COMES HOME: THE EXCESSIVE MILITARIZATION OF AMERICAN POLICING 2 (2014) (describing how SWAT teams across the country are “forcing their way into people’s homes in the middle of the night, often deploying devices such as flashbang grenades to temporarily blind and deafen residents, simply to serve a search warrant on the suspicion that someone may be in possession of a small amount of drugs.”).

39. While the number of school shootings has remained constant since the 1980s, the shootings themselves have become more deadly. See Grant Duwe, *Mass Shootings Are Getting Deadlier, Not More Frequent*, POLITICO (Oct. 4, 2017), <https://www.politico.com/magazine/story/2017/10/04/mass-shootings-more-deadly-frequent-research-215678>. The recent school shooting in Parkland, Florida only reinforces this point. See Oliver Laughland et al., *Florida School Shooting: At Least 17 People Dead on “Horrific, Horrific Day”*, GUARDIAN (Feb. 15, 2018, 3:53 PM), <https://www.theguardian.com/us-news/2018/feb/14/florida-shooting-school-latest-news-stoneman-douglas>.

same time, social media, while allowing unparalleled opportunities for expression and connection, exposes its (largely) young users to public humiliation when what used to be considered a youthful mistake becomes the focus of a viral video clip or Tweet.⁴¹ Finally, college students are taking out more and more loans to pay for their education,⁴² and many are working their way through school.⁴³ While many words might describe youth facing this situation, “coddled” is not one of them.⁴⁴

Finally, Lukianoff and Haidt do not simply insist that college students are coddled; they maintain that this coddling is pathological.⁴⁵ Students who are coddled are unable to respond to challenges. Intellectually, they are overly cautious. Socially they struggle to accept people whose background and views differ from their own. When it comes to dealing with adversity, college students lack grit.⁴⁶ To sum it up, the problem with today’s Millennials is that, when it comes to facing challenges, they have *zero tolerance*.

40. For example, the current generation will face the consequences of a warming climate. See James Temple, *Global Warming’s Worst-Case Projections Looking Increasingly Likely*, MIT TECH. REV. (Dec. 6, 2017), <https://www.technologyreview.com/s/609620/global-warmings-worst-case-projections-look-increasingly-likely/>.

41. See Gillian Branstetter, *Teens Should Have the Chance to Erase Their Online Mistakes*, DAILY DOT (July 30, 2015, 2:30 PM), <https://www.dailydot.com/via/teens-should-have-chance-to-erase-online-mistakes/> (“While everyone makes questionable choices in their youth, it’s only recent generations that have had social media force their adolescent mistakes into their adult lives.”).

42. Andrew Martin & Andrew W. Lehren, *A Generation Hobbled by the Soaring Cost of College*, N.Y. TIMES (May 21, 2012), <http://www.nytimes.com/2012/05/13/business/student-loans-weighing-down-a-generation-with-heavy-debt.html?pagewanted=all> (noting that two-thirds of students borrow for college, up from forty-five percent in 1992–93).

43. See, e.g., Rick Seltzer, *Net Price Keeps Creeping Up*, INSIDE HIGHER ED (Oct. 25, 2017), <https://www.insidehighered.com/news/2017/10/25/tuition-and-fees-still-rising-faster-aid-college-board-report-shows> (noting the slow, steady increase of published tuition prices over the past several years).

44. See Neil W. Hamilton, *Professional Formation with Emerging Adult Law Students in the 21–29 Age Group: Engaging Students to Take Ownership of Their Own Professional Development Toward Both Excellence and Meaningful Employment*, 2015 J. PROF. LAW. 125, 127 (2015) (describing challenges faced by the eighteen-to-twenty-nine-year-old cohort including “macro-economic changes that have made financial independence more elusive”). The anti-coddling narrative passes over these concerns, preferring to define “coddled” as an intellectual phenomenon; for instance, Lukianoff & Haidt, *supra* note 7, in their title speak of the coddling of “the American mind.” *Id.* On this view, college administrators prevent students from grappling from the world at large, especially the part outside the liberal, politically correct bubble. See Lipson, *supra* note 7, (placing his anti-coddling argument in the context of transgender rights). One wonders what happens when the politics change. For example, in October 2018 University of Southern Maine Professor Susan Feiner offered her class academic credit to protest the confirmation of then Judge Brett Kavanaugh. See Susan Svrluga, *Professor barred from Maine university system for offering credit to students who protested Kavanaugh*, CHICAGO TRIBUNE (Oct. 20, 2018), <http://www.chicagotribune.com/news/nationworld/ct-maine-professor-kavanaugh-20181020-story.html>. University of Southern Maine President Glenn Cummings described Professor Susan Feiner’s class as “fierce, ferocious. . .and threatening.” *Id.* Was President Cummings coddling his students by protecting them from liberal views? If so, are the anti-coddling advocates ready to make an issue of this?

45. Lukianoff & Haidt, *supra* note 7.

46. See *id.*

B. *Coddling vs. Zero Tolerance*

Until recently, the term “zero tolerance,” had a positive meaning.⁴⁷ During the 1990s, the New York City police adopted the fixing broken windows thesis, which held that the way one stops major crime is to vigorously police quality of life violations, such as loitering, graffiti, and minor property crimes.⁴⁸ There were two benefits to this approach. First, a person arrested for a quality of life crime might be deterred from attempting something more serious.⁴⁹ Second, and perhaps more relevant here, there was a sense that cleaning up a neighborhood would, on its own, discourage crime.⁵⁰

Underlying zero tolerance is a neoliberal worldview in which social elites deploy “policies, arguments and rhetorical devices” to ensure “a redistribution of national income” away from the welfare state.⁵¹ Unable to offer social groups a larger piece of an ever-expanding pie, the neoliberal elites offer a smooth, efficient running of the capitalist economy, one in which any advances will come from enhancements in efficiency, productivity, and orderliness.⁵² This, in turn, requires social norms that stifle dissent, protest, and difference.⁵³

One sees the zero tolerance theme in campaigns to root out bullying, drugs, and other undesirable behavior from schools.⁵⁴ One sees the same idea in the rationale behind the movement for state mandated testing—we are not going to risk any type of education that will lead to lower test

47. See Emily Yoffe, Opinion, *Zero Tolerance for Zero Tolerance*, N.Y. TIMES (July 25, 2018), <https://www.nytimes.com/2018/07/25/opinion/zero-tolerance-immigration.html> (critiquing the zero tolerance concept in the aftermath of President Trump’s child separation policies).

48. See George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, THE ATLANTIC (Mar. 1982), <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>; see also GEORGE L. KELLING & CATHERINE M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* (1998). For a critical view of the theory and its adoption, see Neil Smith, *Global Social Cleansing: Postliberal Revanchism and the Export of Zero Tolerance*, 28 SOC. JUST. 68 (2001). For a defense of the theory, see George L. Kelling & Richard J. Bratton, *Why We Need Broken Windows Policing*, CITY J. (Winter 2015), <https://www.city-journal.org/html/why-we-need-broken-windows-policing-13696.html>.

49. Kelling & Bratton, *supra* note 48.

50. Kelling & Wilson, *supra* note 48 (describing how untended property conveys the message that “no one cares” which, in turn, encourages crime).

51. Kaposov, *supra* note 24, at 53; see also Jeremy Kaplan-Lyman, Note, *A Punitive Bind: Policing, Poverty and Neoliberalism in New York City*, 15 YALE HUM. RTS. & DEV. L.J. 177, 182–87 (2012) (describing the rise of neoliberalism in the United States).

52. Kaplan-Lyman, *supra* note 51, at 188–91 (discussing neoliberalism and punishment).

53. See Yoffe, *supra* note 47 (describing how, after going on a “criminal justice binge” during the 1980s and 1990s, the United States incarcerated a larger share of its population than any other country). Yoffe also gives examples of strict enforcement of norms from the corporate world—including the speedy firing of Rosanne Barr. *Id.*

54. See Russ Skiba & Reece Petersen, *The Dark Side of Zero Tolerance*, 80 PHI DELTA KAPPA 372 (1999) (describing the rise of zero tolerance policies in public schools and their operation in practice).

scores.⁵⁵ Behind this stands a culture of compliance that takes pains to make sure that everything one does—from brushing one’s teeth in the morning,⁵⁶ to turning off one’s cell phone a half hour before bedtime⁵⁷—is done the correct way. Often, this is done in the name of data-driven science.⁵⁸ Given the extent of compliance in our daily lives, is it any wonder that college students want to extend the culture of compliance to their campuses?

Not only that, the culture of compliance can at times produce the same results as student political correctness, which is typically associated with coddling. For example, a teacher might place a trigger warning on *Huckleberry Finn*, or remove it from the syllabus entirely, in the name of creating a safe space.⁵⁹ A middle school English teacher may remove the same book for what looks like a different reason—time spent reading about Huck is time the class is not preparing for the standardized test.⁶⁰ How different, however, are these two examples? In both instances, students in the class will not be reading *Huckleberry Finn*. Perhaps this is a good thing. My only

55. This focus was most evident in the 2002 No Child Left Behind (NCLB) Act which, by its very title, highlighted a zero tolerance message. No Child Left Behind Act (NCLB) of 2001, Pub. L. 107–110, § 1111(b)(1), 115 Stat. 1425 (2002) (codified at 20 U.S.C. § 6311); see Derek W. Black, *Abandoning the Federal Role in Education: The Every Student Succeeds Act*, 105 CAL. L. REV. 1309, 1324–31 (2017) (describing the operation of NCLB). More recently, NCLB has since been amended by the Every Student Succeeds Act (ESSA), see *id.* at 1333–35 (describing how the ESSA offered states flexibility in applying federal standards), and there is a backlash against standardized tests, see Renalia Smith DuBose, *New State Laws Reflect the Rethinking of Excessive Mandated Standardized Testing in America’s Public Schools*, 11 FLA. A. & M. L. REV. 209, 233 (2016). Despite these changes, some states still attach punitive sanctions to schools when test results fail to hit required benchmarks. See Valerie Straus, *Are States Really Trying to Overcome the Harmful Legacy of No Child Left Behind?*, WASH. POST (Feb. 12, 2018), https://www.washingtonpost.com/news/answer-sheet/wp/2018/02/12/are-states-really-trying-to-overcome-the-harmful-legacy-of-no-child-left-behind/?utm_term=.56146871613b.

56. See Philippe Michaud, *20 Mistakes You’re Making Every Time You Brush Your Teeth*, MSN, <https://www.msn.com/en-ca/health/wellness/20-mistakes-you%E2%80%99re-making-every-time-you-brush-your-teeth/ss-AAxTP5> (last visited Feb. 8, 2018).

57. See Nicole Dossantos, *20 Things You Shouldn’t Do Before Bed*, MSN (May 8, 2017), <https://www.msn.com/en-in/health/wellness/20-things-you-shouldn%E2%80%99t-do-before-bed/ss-BBCMYTD?li=AAggbRN>.

58. See, e.g., Larry Rosen, *Relax, Turn Off Your Phone, and Go to Sleep*, HARV. BUS. REV. (Aug. 31, 2015), <https://hbr.org/2015/08/research-shows-how-anxiety-and-technology-are-affecting-our-sleep> (describing sleep studies and concluding that people who sleep near their phones are anxious and have trouble falling and staying asleep).

59. See Pam Louwagie, *Duluth Schools Remove ‘Huckleberry Finn’ and ‘To Kill a Mocking Bird’ from Curriculum*, STAR TRIB. (Feb. 8, 2018, 5:43 AM), <http://www.startribune.com/duluth-schools-remove-huckleberry-finn-and-to-kill-a-mockingbird-from-curriculum/473208003/> (removing books from syllabus because of racial slurs).

60. See Erik Robellen, *Testing and Test Prep: How Much Is Too Much?* EDUC. WRITERS ASS’N (June 3, 2016), <https://www.ewa.org/blog-educated-reporter/testing-and-test-prep-how-much-too-much> (noting that sixty-two percent of teachers “say they spend too much time readying students for state-mandated exams”); Kelly Gallagher, *Why I Will Not Teach to the Test*, EDUC. WK. (Nov. 12, 2010), https://www.edweek.org/ew/articles/2010/11/17/12gallagher_ep.h30.html (complaining that state testing “does not permit deeper instruction”).

point here is that political correctness is not the only cause of the hollowing out of primary and secondary education.⁶¹

Leaving the educational context, consider other policies motivated by the “zero tolerance” concept. For example, New York City’s “stop and frisk” policy was based on the idea that wide-scale stops were necessary to make the city safer.⁶² Why isn’t this an example of “helicopter policing,” in which the NYPD, like an overzealous parent, frisks threatening-looking individuals to make sure middle class families in Times Square will encounter no one who scares them?

Or consider the “statin wars,” in which a group of doctors raised the alarm after a medical magazine ran an article suggesting that people with high cholesterol could survive without taking statin drugs.⁶³ The doctors, who called on the magazine to retract the article,⁶⁴ seemed to think that members of the general public were unable to make informed choices about how to manage their cholesterol levels. Why isn’t this an example of coddling or, to use the language of Lukianoff and Haidt, scrubbing?⁶⁵ Weren’t the doctors infringing on academic journalism, an area traditionally associated with free debate, in the name of avoiding risk?

These examples raise a larger question: Why does coddling become more problematic when the “coddled” are millennial college (and law) students, often of minority ethnic, religious, or racial categories? Is this a reflection of the lack of power students still have in the higher education landscape and in society at large?⁶⁶ This, in turn, raises a question of basic fairness: If school administrators, police officers, and doctors get to use zero tolerance discourse to protect their interests without being seen as enti-

61. Moreover, even in the primary school context, not all textbook censorship is done in the name of ethnic, religious, or racial minorities. See DIANE RAVITCH, *THE LANGUAGE POLICE: HOW PRESSURE GROUPS RESTRICT WHAT STUDENTS LEARN* 62–68 (2003) (describing efforts to remove “creeping socialism” from schoolbooks in Texas during the 1950s and 60s).

62. For a factual overview of the policy, see Philip Bump, *The Facts About Stop-and-Frisk in New York City*, WASH. POST (Sept. 26, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/09/21/it-looks-like-rudy-giuliani-convicted-donald-trump-that-stop-and-frisk-actually-works/?utm_term=.eef6dc944f1b (assessing the policy in light of proposal by then candidate Donald Trump to enact stop and frisk on a nationwide basis).

63. See Larry Husten, *The Lancet Versus BMJ: Dispatch from the Statin Wars*, *CARDIO BRIEF* (Sept. 15, 2016), <http://www.cardiobrief.org/2016/09/15/the-lancet-versus-bmj-dispatch-from-the-statin-wars/> (describing call to retract two articles published in 2014 in the *British Medical Journal* critical of the use of statin drugs to treat borderline cases of high cholesterol).

64. *Id.*

65. Lukianoff & Haidt, *supra* note 7 (using the “scrubbing” metaphor repeatedly).

66. Historian Samuel Walker makes the point more generally that speech freedoms (and restrictions) reflect power relations and that the rise of campus speech codes reflects the power of a coalition of women and minority students on campus. See SAMUEL WALKER, *HATE SPEECH: THE HISTORY OF AN AMERICAN CONTROVERSY* 14–16 (1994). While this may appear to contradict what I am saying above (since colleges are, in fact, instituting safe spaces and trigger warnings), my broader point aligns with Walker—college students are seen as “coddled” because they lack power.

tled or privileged, why are college students criticized for doing the same thing?

C. *Coddling and Consumerism*

Here one might, along the lines of Flanagan, point to the consumer orientation of students, which puts pressure on colleges and universities to coddle them.⁶⁷ That said, how much consumer power do college students actually have in American society?⁶⁸ For example, do most students actually choose schools based on the availability of safe spaces and trigger warnings? I would imagine that, for many students, shiny new dormitories, successful football teams, and academic reputation play a bigger role.⁶⁹ Finally, it is hard to reconcile the picture of the savvy student-consumer who, armed with worldly experience, negotiates the best possible deal for his or her education, with the sheltered student who, thanks to coddling, has never had to ask for anything.

Before moving on, let me offer two caveats. First, in linking coddling to other zero tolerance policies, my target is not the emerging culture of compliance. On this point, I am agnostic. Big data, and the compliance culture it has spawned, poses risks of false positives,⁷⁰ and replacing causation with correlation risks punishing probabilities rather than behavior;⁷¹ at the same time, the rise of big data may make compliance culture inescapable.⁷²

Second, I am not seeking to construct an authoritative explanation for how, as a historical matter, the zero tolerance discourse of college students

67. See Roederer *supra* note 2, at 91–92, nn.297–300 (discussing Flanagan, *supra* note 7, at 136–37, 154–55, 170–71).

68. More generally, one might ask how much power consumers actually have. For example, retailers are able to use consumer information gleaned from social media to set up a regime of dynamic pricing. See Vivian Adame, *Consumers' Obsession Becomes Retailers' Possession: The Way That Retailers Are Benefiting from Consumers' Presence on Social Media*, 53 SAN DIEGO L. REV. 653, 667 (2016).

69. See, e.g., Stephanie Steinberg & Aaron Brodie, *Dorms Go Extreme to Lure Students*, CNN (last updated Sept. 22, 2011, 9:12 AM), <https://www.cnn.com/2011/09/22/living/dorm-rooms/index.html> (describing 175 million dollar North Quadrangle Residential and Academic Complex which offers students video conferencing and flat screen TVs); Sean Silverthorne, *The Flutie Effect: How Athletic Success Boosts College Applications*, FORBES (Apr. 29, 2013, 9:48 AM), <https://www.forbes.com/sites/hbsworkingknowledge/2013/04/29/the-flutie-effect-how-athletic-success-boosts-college-applications/#3e426f2d6e96> (describing how success of college sports teams leads undergraduate applications to increase “dramatically”).

70. By replacing causation for correlation, big data risks generating false positives. See Tim Harford, *Big Data: A Big Mistake?*, SIGNIFICANCE (Dec. 2014), <http://onlinelibrary.wiley.com/doi/10.1111/j.1740-9713.2014.00778.x/full> (describing how a store using big data to sell baby clothing sent coupons to women who were not pregnant).

71. See MAYER-SCHÖNBERGER & CUKIER, *supra* note 28, at 179–82.

72. See Robert Matthews, *How 'Big Data' Is an Inescapable Force That Is Shaping the Future*, NATIONAL (Mar. 7, 2015, 4:00 AM), <https://www.thenational.ae/business/technology/how-big-data-is-an-inescapable-force-that-is-shaping-the-future-1.80610> (concluding that “[w]hether we like it or not, Big Data is here to stay”).

against hate speech earned the “coddling” label.⁷³ I only want to suggest that some behaviors the anti-coddling narrative targets have deeper roots in American society than critics suspect. The next section explores how the anti-coddling narrative harms the very cause of freedom of speech it intends to protect.

III. THE FLAWED POLITICS OF THE ANTI-CODDLING NARRATIVE

Even if the anti-coddling narrative were an accurate description of life for today’s college students, one wonders if the best way to promote free speech and open dialogue on college campuses is to tell eighteen-to-twenty-one-year-olds that they are being coddled. Let me raise two points here: one about inter-generational name-calling, the other about how to best instill free speech values in the up-and-coming generation.

A. *The Limits of Intergenerational Name-Calling*

The inter-generational point is simple. To the extent one takes each generation as a coherent grouping,⁷⁴ the coddling argument looks like yet another area in which Generation X is hectoring Millennials for their supposedly undisciplined lifestyle.⁷⁵ (As a late Baby Boomer, I cannot help but think about the song, “Kids,” from the 1963 musical, *Bye Bye Birdie*, which lays out a number of complaints about the younger generation before ending on the lament, “What’s the matter with kids today!”).⁷⁶ If Millennials

73. This would, however, be a worthwhile project. One place to examine is Herbert Marcuse’s 1969 essay about liberation that saw students along with workers as agents of revolutionary change. HERBERT MARCUSE, AN ESSAY ON LIBERATION vii–ix (1969) (describing role of students in revolutionary struggle). While Marcuse is a Marxist, the social-scientific literature on revolution also points to the role played by underemployed students in radical uprisings. See Filipe R. Campante & Davin Chor, *Why Was the Arab World Poised for Revolution? Schooling, Economic Opportunities and the Arab Spring*, 26 J. OF ECON. PERSP. 167, 184 (2012) (tracing support for the Arab Spring to “the lack of adequate economic opportunities for an increasingly educated populace”). In my opinion, the challenges facing today’s students, and their limited prospects, point in a direction that is threatening to a neoliberal society; the coddling label is one way of responding to this.

74. As noted, there are problems treating generations as monolithic categories. See William Cummings, *The Malignant Myth of the Millennial*, USA TODAY (May 11, 2017, 6:43 PM), <https://www.usatoday.com/story/news/nation/2017/05/11/millennial-myth/100982920/> (faulting generational categories for imprecise definitions and quoting a media studies professor, Siva Vaidhyanathan, who sees generations as little better than astrology).

75. There is abundant literature on why Generation X has issues with Millennials. See, e.g., John McDermott, *Why Gen X Is So Pissed at Millennials*, MEL MAG (Jan. 3, 2017), <https://melmagazine.com/why-gen-x-is-so-pissed-at-millennials-fdc1f2cc2e2c> (tracing Gen X’s dislike of Millennials to age discrimination which has left Gen Xers with “dwindling job prospects”); Matthew Jones, *The Terrible Truth About Hating Millennials That No One Wants to Admit*, INC. (Feb. 21, 2017), <https://www.inc.com/matthew-jones/the-brutal-truth-about-why-gen-xers-hate-millennials-that-no-one-wants-to-admit.html> (attributing Gen X anger at Millennials as a way to deal with their own mortality).

76. Paul Lynde & Marijane Maricle, *Kids, on BYE BYE BIRDIE: 1960 ORIGINAL BROADWAY CAST REMASTERED* (Colom. Broadway Masterworks 2000) (1960). The lyrics are available online. E.g., *Kids Lyrics*, ST LYRICS, <https://www.stlyrics.com/lyrics/byebyebirdie/kids.htm> (last visited

have largely ignored the advice of their elders to ditch their computers in the classroom⁷⁷ and to spend less time on social media,⁷⁸ among other things,⁷⁹ is it any wonder that this same generation has also ignored the advice of Generation X when it comes to questions of hate speech, safe spaces, and trigger warnings?⁸⁰

B. Disrespecting Student Speech

The free speech concern requires more discussion. Ironically, the coddling narrative does not help the case for freedom of speech on college campuses. To the contrary, it is quite harmful, because instead of channeling the energy of Millennials into productive dialogue, it takes a substantive concern raised by many of them—that hate speech is a problem on college campuses—and calls it the result of immaturity and bad parenting.⁸¹ In the process, the anti-coddling narrative ignores something Nadine Strossen highlighted in her remarks, namely that calling for a college to ban a sup-

Feb. 15, 2018). Among other things, the singer faults the younger Baby Boomer generation for unclear speech, laziness, “awful clothes,” and the difficulty of trying to “control” them. *Id.*

77. See Beth McMurtrie, *Should Laptops Be Banned in Class? An Op-Ed Fires Up the Debate*, CHRON. OF HIGHER EDUC. (Nov. 27, 2017), <https://www.chronicle.com/article/Should-Laptops-Be-Banned-in/241878>.

78. See, e.g., Jean M. Twenge, *Have Smartphones Destroyed a Generation?*, THE ATLANTIC (Sept. 2017), <https://www.theatlantic.com/magazine/archive/2017/09/has-the-smartphone-destroyed-a-generation/534198/> (arguing that excessive screen time makes young people more vulnerable). The concern about social media is so pervasive that even the Royal Family is getting involved. See Richard Palmer, ‘Crazy and Scary’ Prince Harry Warns Young People Spend Too Much Time on Social Media, EXPRESS (Oct. 26, 2017), <https://www.express.co.uk/news/royal/871356/Prince-Harry-warns-young-people-about-crazy-social-media-mental-health-charity-Copenhagen>.

79. For example, one observer faults Gen-Xers for stressing work-life balance without living it, remaining unduly suspicious of technology, expecting Millennials to remain with one company, and judging Millennials based on their appearance. See Merge Gupta-Sunderji, *Four Things Millennials Hate About You*, GLOBE & MAIL (updated Mar. 25, 2017), <https://www.theglobeandmail.com/report-on-business/careers/leadership-lab/four-things-millennials-hate-about-you/article17721456/>.

80. See *supra* notes 20–21 and text accompanying (noting that Professor Roederer’s Constitutional Law students are open to restrictions on hate speech). Nor are Professor Roederer’s students unique in their willingness to consider banning hate speech. See Jacob Poushter, *40% of Millennials OK with Limiting Speech Offensive to Minorities*, PEW RES. (Nov. 20, 2015), <http://www.pewresearch.org/fact-tank/2015/11/20/40-of-millennials-ok-with-limiting-speech-offensive-to-minorities/> (distinguishing the 40 percent support for hate speech restrictions among Millennials with 47 percent for Gen X, 24 percent for Boomers and 12 percent for the Silent Generation).

81. For instance, Lukianoff and Haidt trace the current generation of “coddled” students to parents and school officials who, faced with a crime wave and school shootings, prioritized safety. Lukianoff & Haidt, *supra* note 7.

While not directly taking up campus protests, former Stanford Dean Julie Lythcott-Haines faults parents whose “overhelping” has created a “brittle” generation of college students, Emma Brown, *Former Stanford Dean Explains Why Helicopter Parenting is Ruining a Generation of Children*, WASH. POST (Oct. 16, 2015), https://www.washingtonpost.com/news/education/wp/2015/10/16/former-stanford-dean-explains-why-helicopter-parenting-is-ruining-a-generation-of-children/?utm_term=.4649a614717a. Presumably, students express this brittleness by calling for safe spaces.

posedly offensive speaker is itself a form of speech.⁸² To the extent a college campus is a place of free inquiry and debate, these calls should be encouraged—or at least tolerated.⁸³

Some of this speech can be disruptive, as was the case in 2017 at Middlebury College,⁸⁴ and—as such—might be rightfully restricted, especially if students use violence or threats of violence to advance their agenda.⁸⁵ This type of argument, however, is a traditional one. The challenge for free speech advocates is how to tolerate the intolerant.⁸⁶ In the end, this requires balancing a wide variety of factors while being as protective of speech as is humanly possible.⁸⁷ If a controversial outside speaker (such as Ann Coulter) merits this balancing,⁸⁸ the students who would oppose the speaker deserve it as well.

Let me give an example from my own campus, the University of St. Thomas, one mentioned by Lukianoff and Haidt in their *Atlantic* article.⁸⁹ In May 2014, undergraduate students at the University of St. Thomas sought to bring a camel to campus on a Wednesday to celebrate hump day.⁹⁰ A combination of animal rights activists and Middle Eastern students protested and the University cancelled the event.⁹¹ As a result, commenta-

82. Strossen, *supra* note 4.

83. See Interview by Peter Molnar with Nadine Strossen, Professor, New York Law School, in New York, N.Y. (Nov. 4, 2009), in *THE CONTENT AND CONTEXT OF HATE SPEECH: RETHINKING REGULATION AND RESPONSES* 378, 385 (Michael Herz & Peter Molnar, eds., 2012) (“Everyone has a responsibility to respond, to disagree, to denounce, to castigate, to marginalize the people who are spouting that kind of discriminatory idea.”).

84. There is extensive literature on the protests. See Peter Beinhart, *A Violent Attack on Free Speech at Middlebury*, *THE ATLANTIC* (Mar. 6, 2017), <https://www.theatlantic.com/politics/archive/2017/03/middlebury-free-speech-violence/518667/> (viewing the students protesting Murray as censors); Thomas Healy, *Who’s Afraid of Free Speech? What Critics of Campus Protest Get Wrong About the State of Public Discourse*, *ATLANTIC* (June 18, 2017), <https://www.theatlantic.com/politics/archive/2017/06/whos-afraid-of-free-speech/530094/> (arguing that the protests against Murray were themselves protected speech).

85. This would be in keeping with *Brandenburg v. Ohio*, 395 U.S. 444 (1969), which allows the state to punish speech that incites imminent lawless action, a point conceded by Strossen in her interview with Peter Molnar. Interview by Peter Molnar with Nadine Strossen, *supra* note 83, at 396–97.

86. See KARL POPPER, *THE OPEN SOCIETY & ITS ENEMIES* 581 n.4 (3rd ed. 2013) (discussing the paradox that an open society must tolerate the intolerant).

87. Justice Louis Brandeis made this point in his concurring opinion in *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

88. Ann Coulter was scheduled to speak at Berkeley but backed out in response to planned protests. Paige St. John, *Ann Coulter Says She Will Not Speak at Berkeley: ‘It’s a Sad Day for Free Speech’*, *L.A. TIMES* (Apr. 26, 2017, 7:35 PM), <http://www.latimes.com/local/lanow/la-me-coulter-berkeley-20170426-story.html>. She did this after campus authorities, citing security concerns, moved the site of her speech to a less prominent location, given earlier clashes at Berkeley between anarchist and alt-Right protesters. *Id.*

89. Lukianoff & Haidt, *supra* note 7.

90. Aaron Rugar, *St. Thomas Cancels “Hump Day” Event, Starring a Camel, After Students Threaten Protest*, *CITY PAGES* (May 16, 2014), <http://www.citypages.com/news/st-thomas-cancels-hump-day-event-starring-a-camel-after-students-threaten-protest-6531175>.

91. *Id.*

tors around the country lampooned both the University and the students who protested the hump day event.⁹²

My qualm here is not with the attacks on the University's administration; perhaps they made a mistake. My concern is with the attacks on students. The anti-coddling narrative claims to exist on behalf of advancing student expression; yet when students decide to express themselves, they are cast as "idiots"⁹³ and "rabble rousers."⁹⁴ This is not, in my opinion, a productive way to encourage the spread of libertarian values across society.⁹⁵

C. Coddling and Silencing

Indeed, the coddling narrative can be used to silence dissent. To show this, I want to use an example from outside the campus setting. In late November 2017, Minnesota Public Radio (MPR) severed its connections with Prairie Home host Garrison Keillor after allegations emerged that he had engaged in "inappropriate behavior."⁹⁶ At first, the source of these allegations was kept private by MPR.⁹⁷ In February 2018, the *Minneapolis Star Tribune* ran an article revealing that MPR's actions were triggered by a male whistleblower, not one of the victims themselves.⁹⁸ This led to a letter

92. See, e.g., Brandon Ferdig, *Ideas Denied: St. Thomas and 'Hump Day'*, STAR TRIB. (May 21, 2014), <http://www.startribune.com/ideas-denied-st-thomas-and-hump-day/260029641/> (describing event as "Camelgate" and admonishing students for not "getting off Facebook and studying harder for that exam"); see also Valerie Richardson, "Hump Day" Camel Party Cancelled at College over Fear of Offending the Middle East, WASH. TIMES (May 16, 2014), <https://www.washingtontimes.com/news/2014/may/16/hump-day-party-camel-cancelled-minnesota-college-o/> (quoting Ed Whelan of the Ethics and Public Policy Center: "Reindeer, yes, camel, no? . . . Are college students "racially insensitive" to Laplanders? Or are they just idiots?").

93. See Richardson, *supra* note 92.

94. In a part of Charles Lipson's *Real Clear Politics* article that Roederer does not quote, Lipson refers to student rabble rousers who come to campus specifically to disrupt campus events. Lipson, *supra* note 7.

95. To the extent the anti-coddling movement focuses on the administration rather than the students, the concerns about disrespecting student speech are greatly mitigated. The hard cases involve students who sincerely believe that a given speech act threatens them—for instance, the transgender student mentioned by Lipson in his article. *Id.* Here Lipson faces a dilemma: he can either accept the student's concerns as genuine (which means the administration might have cause for doing something) or he must dismiss the student's speech claims as illegitimate (which runs the risk of disrespecting the student).

96. Maya Salam, *Minnesota Public Radio Drops Garrison Keillor over Allegations of Improper Conduct*, N.Y. TIMES (Nov. 29, 2017), <https://www.nytimes.com/2017/11/29/business/media/garrison-keillor-fired.html>. At the time, Keillor admitted putting his hand down a woman's back. *Id.*

97. Jeff Baenen, *Keillor Criticizes His Firing; MPR Executive Describes 'Multiple Allegations'*, PIONEER PRESS (Dec. 7, 2017), <https://www.twincities.com/2017/12/07/keillor-says-mpr-wrong-to-dismiss-him-without-investigation/> (noting failure of MPR CEO Jon McTaggart to reveal details about the allegations against Keillor).

98. Jeffrey Meitrodt & Neal Justin, *Source of Garrison Keillor Allegations Shocks Those Close to Radio Host*, STAR TRIB. (Feb. 16, 2018, 10:52 AM), <http://www.startribune.com/source-of-garrison-keillor-allegations-shocks-those-close-to-radio-host/474250133/> (describing how long

to the editor by Edina resident Paul Bearmon that ran in the *Star Tribune* on February 19, 2018. The letter used the uncovering of the male whistleblower to attack elements of “[t]oday’s feminist movement.”⁹⁹

Bearmon opened his letter with an assessment of Dan Rowles, the whistleblower, who Bearmon does not see as “a knight-in-shining-armor type of guy.”¹⁰⁰ Shifting gears, Bearmon, referring to his own January 30, 2018 *Star Tribune* letter, warned that “allegations. . .of an unknown degree of offense are now enough to destroy the career and legacy of any man.”¹⁰¹ He noted in passing that “the woman” involved in the allegations “apparently did not add her voice to [Rowles’s] for several months.”¹⁰²

Up to this point, Bearmon’s letter was an unsurprising defense by a Minnesota resident of Garrison Keillor, viewed by many in the state as a local icon.¹⁰³ Indeed, when Keillor retired from Prairie Home in June 2016, one critic worried about the future, noting, “Whatever affinity the East Coast has for Minnesota comes largely because of the image of the place created by Keillor.”¹⁰⁴ At the same time, Bearmon’s letter is also a fairly conventional critique of the #MeToo movement for going too far.¹⁰⁵ Bearmon is, in this regard, no different from any of Keillor’s defenders.¹⁰⁶

The tone of the second half of Bearmon’s letter, however, is quite different. Noting the “knee-jerk” nature of the feminist movement, which he described as “a selfish movement operating under a thin veneer of political correctness.”¹⁰⁷ Bearmon then complained that feminists are seeking a “childlike utopia” where women “get to play king, queen, prince and prin-

time Keillor associate Dan Rowles brought allegations to MPR’s attention after he was let go from show).

99. Paul Bearmon, Letter to the Editor, *Garrison Keillor Allegations*, STAR TRIB. (Feb. 19, 2018, 12:01 PM), <http://www.startribune.com/readers-write-tim-pawlenty-s-governor-again-potential-developments-regarding-garrison-keillor-allegations-toll-roads-dogs-everywhere/474346583/>.

100. *Id.*

101. *Id.* (quoting Paul Bearmon, Letter to the Editor, *Sexual Misconduct*, STAR TRIB. (Jan. 30, 2018, 6:00 PM), <http://www.startribune.com/readers-write-super-bowl-zipline-and-kite-festival-super-bowl-and-businesses-downtown-surveillance-mineral-exploration-crusty-old-cave-trolls-larry-nassar-sentencing/471692754/>).

102. *Id.*

103. See Bob Collins, *Our Identity after Prairie Home Considered*, MPR NEWS (June 27, 2016, 6:45 AM), <https://blogs.mprnews.org/newscut/2016/06/our-identity-after-prairie-home-considered/>.

104. *Id.*

105. Jia Tolentino, *The Rising Pressure of the #MeToo Backlash*, NEW YORKER (Jan. 24, 2018), <https://www.newyorker.com/culture/culture-desk/the-rising-pressure-of-the-metoo-backlash>.

106. Jeff Baenen, *Garrison Keillor Firing Prompts Backlash from His Fans*, AP NEWS (Dec. 1, 2017), <https://www.apnews.com/27ea88a3e10646c98a34aa4c6d596d50/Garrison-Keillor-firing-prompts-backlash-from-his-fans> (describing reaction of Keillor’s fans).

107. Bearmon, *supra* note 99. Bearmon’s tone here is especially ironic given that he had two letters published in the *Star Tribune* in the space of three weeks.

cess[.]”¹⁰⁸ A little later, Bearmon asserted: “Women infantilize themselves when they call upon an authoritarian, coddling structure (such as MPR. . .) to deal with their unhappy social interactions.”¹⁰⁹ Bearmon then gave women a choice: “If a serious crime or outrageous abuse occurred, report it. If not, deal with it like a grown-up.”¹¹⁰

The language Bearmon uses—“childlike,” “play,” “infantilize,” and “coddling” —silences victims in two ways. First, being “grown-up” is implicitly equated with not speaking (or at least grown-ups should not rely on a male authoritarian power structure to protect themselves). Second, attempts by female victims of sexual abuse to tell their stories are dismissed as childlike and infantile; so even if the women (or men) of the #MeToo movement can speak, their voices lack credibility because they are not the voice of responsible adults. The irony, and genius, of Bearmon’s argument lies in how he then wrapped this silencing in a broader narrative that inveighs against the “political correctness” of “authoritarian, coddling structure[s].”¹¹¹

While the factual situation is different,¹¹² the language of the anti-coddling movement silences college students by using similar arguments. At first glance, this might not seem to be the case. For example, the University of Chicago letter to students quoted by Roederer calls on students “to be engaged in rigorous debate, discussion, and even disagreement.”¹¹³ This might seem to be the opposite of silencing. At the same time, however, according to Flanagan, college students “lack intellectual rigor,” view college as “a four-year-vacation,”¹¹⁴ and cannot “engage in ambiguity” or “grapple with uncertainty.”¹¹⁵ So perhaps it is better that they not speak after all.

In addition, Bearmon’s request that the MPR staffer deal with sexual abuse “as a grown-up” mirrors Lipson’s dismissal of the transgender student’s sense of unease that a fellow student found the transgender identity a question for debate.¹¹⁶ One can argue whether the student is right or

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. Let me be clear, I am not suggesting that Lukianoff and Haidt, or any of the other coddling opponents, oppose the #MeToo movement, or would agree with the opinions expressed by Bearmon. But the logic of their arguments is similar.

113. Roederer, *supra* note 2, at 29 n.13 (quoting Letter from John (Jay) Ellison, Dean of Students in the Coll. at the Univ. of Chi., to the Class of 2020, https://news.uchicago.edu/sites/default/files/attachments/Dear_Class_of_2020_Students.pdf [hereinafter University of Chicago Letter]).

114. Flanagan, *supra* note 7, at 170–71.

115. Flanagan, *supra* note 7, at 155.

116. Lipson, *supra* note 7.

wrong.¹¹⁷ The larger point, however, is that Lipson brings up the transgender student as an example of what is wrong with college campuses today.¹¹⁸ In an ideal world—one informed by the University of Chicago letter, with its celebration of the college campus as a place where students “espouse and explore a wide range of ideas”¹¹⁹—the transgender student would refrain from raising her concern in the first place.¹²⁰

Finally, Bearmon’s emphasis on the “childlike” nature of the MPR staffers echoes Lukianoff and Haidt’s language of pathology. As we have seen, Lukianoff and Haidt warn of a “vindictive protectionism” in which coddled college students act out in a pathological way against whatever threatens them.¹²¹ While there are elements of truth in their assessment of college students, the over-the-top nature of their article exemplifies the type of catastrophic thinking they claim to be against.¹²²

At the same time, the use of “catastrophic thinking” as a label enforces a regime of silencing. A student whose complaints about hate speech, safe spaces, or campus sexual harassment policies are dismissed as catastrophic thinking, because that student (like all students in his or her generation) has been coddled since birth, will not likely be heard. Lukianoff and Haidt claim to be concerned about not labeling people with differing views as aggressors,¹²³ a position that Roederer associates with promoting a healthy dialogue.¹²⁴ But if Lukianoff and Haidt were genuinely interested in moving past the friend vs. foe framework, why did they begin their *Atlantic* article with language reminiscent of the *Communist Manifesto*: “Something strange is happening at America’s colleges and universities. A movement is arising, undirected and driven largely by students, to scrub campuses clean of words, ideas, and subjects that might cause discomfort or give offense?”¹²⁵

117. As a Jew, I would feel uncomfortable if my son or daughter told me that their history class debated whether the Holocaust happened. In both cases, the debate sends the message that the group in question (Jews or transgendered people) do not have a place in society. See, e.g., Chemi Shalev, *First Trump Came for Mexicans, Then Muslims and Now Transgender People*, HAARETZ (Aug. 27, 2017), <https://www.haaretz.com/us-news/premium-first-trump-came-for-mexicans-then-muslims-and-now-trans-people-1.5446104> (noting that an early victim of the Nazis, Magnus Hirschfeld, was an advocate for transgender rights).

118. Lipson, *supra* note 7.

119. University of Chicago Letter, *supra* note 113.

120. For his part, Lipson expressed fears that the transgender student would prevent any discussion of the issue—in effect converting the classroom into a safe space. Lipson, *supra* note 7. In actuality, this will only happen if the teacher, in addition to letting the transgender student speak, also acts on her suggestion. But tolerating a call for censorship and acting on it are not the same thing.

121. Lukianoff & Haidt, *supra* note 7.

122. See Roederer, *supra* note 2, at 84 (citing Lukianoff & Haidt, *supra* note 7) (highlighting the perils of “teaching students to catastrophize and have zero tolerance”).

123. Lukianoff & Haidt, *supra* note 7.

124. Roederer, *supra* note 2, at 87.

125. Lukianoff & Haidt, *supra* note 7. The *Communist Manifesto* begins: “A spectre is haunting Europe — the spectre of communism. All the powers of old Europe have entered into a holy

Let me be clear: in arguing that the anti-coddling narrative is counter-productive for the protection of free speech, I am not suggesting that all eighteen-to-twenty-one-year-olds are mature, world-wise, and open to new ideas.¹²⁶ Some of the points raised by anti-coddlers are well-taken. I agree with Flanagan that “tolerating ambiguity” and “grappling with uncertainty”¹²⁷ are important qualities for college students (and folks in general) to have; I also take Lukianoff and Haidt’s point that “catastrophizing” (i.e. turning “commonplace negative events into nightmarish monsters”)¹²⁸ is a bad thing.

To sum up, the anti-coddling narrative goes wrong to the extent it assumes that demands for safe spaces and trigger warnings are *always* the result of coddling,¹²⁹ and that the college students (especially students belonging to minority groups) are the *only* people who are “coddled.”¹³⁰ Instead of engaging in generalized, intergenerational name-calling, we would protect campus speech better if we treated calls for trigger warnings and safe spaces as speech acts worthy of respect and protection, even if college administrators then ignored these requests. In other words, college administrators, teachers, and other “grown-ups” should recognize the difference, noted above,¹³¹ between listening to calls for censorship and acting on them. Taking this approach is our best bet to ensure that the free speech values nurtured in the fifty years since *Brandenburg v. Ohio*,¹³² will remain a living, breathing concern for the younger generation.

IV. THE BENEFITS OF ABANDONING THE ANTI-CODDLING NARRATIVE

To recap, the question raised by the anti-coddling narrative is not about what campus authorities do or do not censor, but about why they make these decisions and how they implement them. The next section briefly examines three potential benefits of replacing the anti-coddling narrative with an approach dedicated to protecting the speech of all students on campus, including those calling for speech restrictions.

alliance to exorcise this spectre: Pope and Tsar, Metternich and Guizot, French Radicals and German police-spies.” KARL MARX & FREDERICK ENGELS, *THE COMMUNIST MANIFESTO* 4 (1848).

126. See Hamilton, *supra* note 44 (describing developmental challenges faced by current generation of eighteen to twenty-nine-year-olds).

127. Flanagan, *supra* note 7, at 155.

128. Lukianoff & Haidt, *supra* note 7.

129. For instance, Lukianoff and Haidt, in their title, refer to the “coddling” of the American mind, an image that makes sense only if one assumes that most or all American college students are coddled. *Id.*

130. For example, Lipson refers to college campuses as a “Bizarro World”—a term meant to distinguish the college campus from other venues of social life. Lipson, *supra* note 7. In particular, he does not mention the other places where zero tolerance has led to an overly rigid enforcement of social norms. See Yoffe, *supra* note 47 (describing instances of zero tolerance across social life).

131. See *supra* note 120 and text accompanying.

132. *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

A. *A Shift from Listeners to Speakers*

The first benefit to flow from a more student-centered approach would be a change in the rationale for protecting campus speech. The anti-coddling narrative, by its very nature, focuses on the listener. On this view, the listener is deprived of the information needed to develop into a healthy, autonomous adult.¹³³ By contrast, the approach advocated below focuses on the speaker who has a right or prerogative to express him or herself. No longer would students rallying for trigger warnings and safe spaces stand accused of scrubbing the campus clean of threatening thoughts.¹³⁴ Instead, free speech advocates would highlight the academic freedom of the student protesters, their professors, and fellow students.¹³⁵ The University of Chicago letter is instructive here.¹³⁶ While the section quoted earlier calls on students to engage with ideas whether they want to or not (a somewhat coercive view of higher education),¹³⁷ other parts of the letter cast the University as a place where speakers share and express ideas.¹³⁸

The shift from listener to speaker accords with some of the most persuasive justifications of speech today. It reflects the understanding of Salmon Rushdie and Flemming Rose that humans live to tell stories.¹³⁹ It also reflects the understanding of Eric Heinze that punitive speech restrictions are illegitimate in a democracy because they prevent citizens from having a voice in legislative decision-making.¹⁴⁰ Finally, a focus on speakers opens the door to the observation that, in the past, states have used censorship against powerless groups, including those asking for speech restrictions.¹⁴¹

This is not to deny that decisions to allow (or censor) speech can impact listeners. For example, Lee Bollinger describes how citizens exposed

133. Lukianoff & Haidt, *supra* note 7.

134. *Id.*

135. For a defense of academic freedom, see Robert Post, *Why Bother with Academic Freedom?*, 9 FLA. INT'L U. L. REV. 9 (2013).

136. University of Chicago Letter, *supra* note 113.

137. *Id.*; see *supra* text accompanying note 113.

138. University of Chicago Letter, *supra* note 113 (noting that the University “welcomes people of all backgrounds” praising “diversity of opinion” as a goal and maintains that “members of our community must have the freedom to espouse and explore a wide range of ideas.”).

139. For an overview Flemming Rose’s perspective on free speech, see Robert A. Kahn, *Flemming Rose’s Rejection of the American Free Speech Canon and the Poverty of Comparative Constitutional Theory*, 39 BROOK. J. INT’L L. 657, 690 (2013) (describing Rose’s reliance on Salman Rushdie).

140. ERIC HEINZE, *HATE SPEECH AND DEMOCRATIC CITIZENSHIP* 5 (2016) (arguing that a state cannot be a democracy “without guaranteeing. . .the citizen’s prerogative of expression within public discourse”)(emphasis in original). Heinze’s emphasis on civic self-expression only makes sense if one views free speech from the perspective of speakers rather than listeners.

141. Nadine Strossen, *Regulating Racist Speech on Campus: A Modest Proposal?*, 1990 DUKE L. J. 484, 555–57 (1990).

to speech on a regular basis might exhibit signs of social tolerance.¹⁴² Developing a thick skin, however, for Bollinger is a byproduct of living in a free society;¹⁴³ it is not an end in itself. Campus free speech advocates should follow Bollinger's lead rather than chiding students who favor hate speech restrictions as coddled or the intolerant.¹⁴⁴

Shifting from listeners to speakers is particularly helpful when thinking about safe spaces. Some students will respond to speech they find hateful, not by engaging with it, but by hiding from it in a space of their own making. This is okay, provided it occurs outside the classroom and other areas where common interaction is expected. In a post-coddling university, a student is free to decide what speech merits his or her attention. While Lukianoff and Haidt may see scrubbing here,¹⁴⁵ an earlier generation might simply commend such a student for having the good sense to tune hateful speech out. This would follow the advice of Justice Brennan who, dissenting in *FCC v. Pacifica Foundation*,¹⁴⁶ advised listeners, who did not want to hear George Carlin's seven dirty words, to "simply extend [their] arm[s] and switch stations or flick the 'off' button."¹⁴⁷ Given our use of iPhones, Facebook pages, YouTube channels, and Twitter accounts, learning to turn off and drop out has a social benefit that is often underappreciated.¹⁴⁸

B. *Creating a Space to Solve Problems*

Second, a return to more traditional, speaker-based defenses of speech would create a space for university administrators, campus activists, and ordinary students to discuss hard cases, ones about which there may not be a consensus and line-drawing may be needed. Consider the following questions: How should a campus respond to students who protest against controversial speakers?¹⁴⁹ When must a university newspaper accept ads for views they oppose?¹⁵⁰ How should the university respond to tenured faculty

142. LEE BOLLINGER, *THE TOLERANT SOCIETY: FREEDOM OF SPEECH AND EXTREMIST SPEECH IN AMERICA* 9 (1986) (arguing that society is strengthened by tolerating extremist speech).

143. Bollinger's starting point is the widespread protection of free speech in the United States. *See id.* at 3 (exploring what benefits the United States might gain from its evident protection of a wide range of extremist speech).

144. Some mid-twentieth century First Amendment theorists did take a more listener-focused approach. *See* ALEXANDER MEIKLEJOHN, *FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT*, xii (1949) (contending that citizens need free speech to make sure they receive the information necessary to make informed political decisions).

145. Lukianoff & Haidt, *supra* note 7.

146. *Fed. Commc'ns Comm'n v. Pacifica Found.*, 438 U.S. 726, 749–51 (1978) (upholding the right of the FCC to punish indecent speech that is accessible to children for time, place, and manner reasons).

147. *Id.* at 766 (Brennan, J., dissenting).

148. *See* Twerge, *supra* note 78 and accompanying text.

149. For a discussion of this issue, *see* ROBERT M. O'NEIL, *FREE SPEECH IN THE COLLEGE COMMUNITY*, 77–98 (1997).

150. *See id.* at 123–43 (discussing whether college newspapers can reject offensive ads); ROBERT A. KAHN, *HOLOCAUST DENIAL AND THE LAW: A COMPARATIVE STUDY* 121–35 (2004)

members who make statements in class that some students find offensive?¹⁵¹ Can a university president say that he or she disagrees with the faculty member in question?¹⁵² More generally, how should university administrators balance their duty to respect the free speech of all students while, at the same time, responding to attacks of vulnerable members of the campus population?

From an anti-coddling perspective, these are easy questions to answer. Anything that reinforces “vindictive protectionism” is suspect.¹⁵³ Students have a right to express themselves, but any attempt to “suppress” the speech of others is suspect.¹⁵⁴ The questions above, however, largely inhabit what Roederer refers to as “the messy middle ground”¹⁵⁵—a space that is neither mere expression nor actual suppression. Take the outspoken college professor, for example. Does it matter whether the offensive speech takes place in the classroom (where it may be seen as something a student is required to emulate), or occurs in an “extramural” setting?¹⁵⁶ The nature of what the professor says might also be relevant, so might the professor’s intent in saying the offensive words. Exploring nuances helps colleges and universities justify unpopular decisions—both for and against protecting a given speech act. The coddling narrative, by suggesting that exposure to any—or almost any—speech act is good for students, robs administrators and faculty members of the tools they need to ensure colleges and universities are genuine places of learning, exploration, and dialogue.¹⁵⁷

C. *Encouraging Non-Punitive Responses to Speech*

Finally, a move away from the coddling narrative would give college administrators more flexibility in responding to racist, sexist, or homophobic speech. Traditionally, free speech theory has focused on legal punishment: for a speech restriction to be illegitimate, it must somehow

(describing debates among college newspaper staffs over whether to run ads denying the Holocaust).

151. See O’NEIL, *supra* note 149, at 27–51 (discussing power of college administrators to punish outspoken professors).

152. For Nadine Strossen the answer to this question is “yes.” See *Interview by Peter Molnar with Nadine Strossen*, *supra* note 83, at 388 (praising college presidents who, after an offensive speech act, issued statements that “clearly defend the speakers’ right to say what they did while absolutely rejecting and repudiating the ideas put forth and reaffirming prohibitions on conduct consistent with those ideas”).

153. Lukianoff & Haidt, *supra* note 7.

154. Lipson, *supra* note 7.

155. Roederer, *supra* note 2, at 57.

156. O’NEIL, *supra* note 149, at 47.

157. It is also the best way to help avert the “bunker mentality” Roederer describes in his article, in which competing sides on campus retreat into their own silos. Roederer, *supra* note 2, at 27–28.

punish the speaker.¹⁵⁸ This punishment could take the form of criminal penalties (a fine or jail sentence) or an administrative punishment (such as a student being suspended or expelled from school). It does not, however, cover situations in which a fellow student, faculty member, or administrator describes a given speech act as “contemptible,” or takes other acts that express disagreement with the underlying speech act.¹⁵⁹

Let me give an example, albeit one from a high school. Andrew Smith, a student at Novato High School, was elected by his journalism class to become the “Opinions Editor.”¹⁶⁰ In that capacity he wrote a piece, “Immigration,” that contained a number of disparaging comments about immigrants and Spanish speakers.¹⁶¹ Several Latino students and parents were upset; one student attacked Smith, another threatened to kill him.¹⁶² In response, Principal Lisa Schwartz met with upset students and parents, and—after consulting with the school board—said that the school had mistakenly allowed Smith to run the opinion piece, announced that the speech was not “protected,” and “retracted” the copies of the paper still at large.¹⁶³ Smith then sued under California Education Code § 48907, which protects student free speech rights.¹⁶⁴ After a bench trial, the District Court held for the defendant school district.¹⁶⁵

The California Appeals Court then reversed.¹⁶⁶ The Court held that “Immigration” was protected speech¹⁶⁷ and that both the removal of the newspapers and the announcement that the article was not protected speech infringed upon Smith’s right to freedom of speech.¹⁶⁸ However, the Court also addressed the school district’s attempts “to ease the distress of the

158. See HEINZE, *supra* note 140, at 21–22 (distinguishing punitive from non-punitive forms of speech regulation and arguing that the state may use “educational regimes” to enforce pluralist values).

159. *Smith v. Novato Unified Sch. Dist.*, 59 Cal. Rptr. 3d 508, 524, 526 (Cal. Ct. App. 2007) (holding that meeting with students upset at article published in high school newspaper did not violate the author’s statutory free speech rights under California law); cf. Robert A. Kahn, *Rethinking the Context of Hate Speech Regulation*, 14 FIRST AMEND. L. REV. 200, 229–34 (2016) (describing non-legal responses to hate speech) (reviewing *THE CONTENT AND CONTEXT OF HATE SPEECH: RETHINKING REGULATION AND RESPONSES* (Michael Herz & Peter Molnar eds., 2012)).

160. *Smith*, 59 Cal. Rptr. 3d at 511.

161. *Id.* at 511–12. For instance, Smith suggested that people who cannot speak English are “illegal” and that “[c]riminals usually flee here in order to escape their punishment.” *Id.* at 511–12. Smith advocated building a border wall as well as stopping people who look “suspicious.” *Id.*

162. *Id.* at 512–13.

163. *Id.* at 513.

164. *Smith*, 59 Cal. Rptr. 3d at 511. CAL. EDUC. CODE § 48907, enacted in 1978 prohibits students from publishing material that “so incites pupils as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school.” See also *Smith*, 59 Cal. Rptr. 3d at 518–19 (quoting statute).

165. *Id.* at 514.

166. *Id.* at 511.

167. *Id.* at 521.

168. *Id.* at 522, 524–26.

protesters by distancing itself from Smith’s opinion editorial. . .and providing the protestors opportunities to express their views on [the article].”¹⁶⁹ The Court saw these efforts as “wholly consistent with free speech values,” adding that the controversy over the publication of “Immigration” had probably resulted “in a useful exchange regarding how different persons and communities might view the sensitive topic of illegal immigration.”¹⁷⁰

The *Smith* case shows the potential of school authorities to defuse situations by distancing itself from offensive speech without punishing it directly. Some opponents of coddling, however, tend to find non-speech-punitive acts (such as a university president meeting with students upset about hate speech) almost as troubling as acts that punish speech (such as suspending students).¹⁷¹

For Lipson, a university president or dean of students who meets with students after a racist, sexist, or homophobic speech act is guilty, as we have seen, of “comforting delicate snowflakes and soothing their feelings[.]”¹⁷² To be fair, if the meeting was intended to put pressure on the offending speaker by showing that the administration deplores the offensive act, one might have an instance of “informal censorship,”¹⁷³ at least if the student had reason to believe that real consequences might follow from the meeting. But this does not seem to be Lipson’s main concern; he opposes meetings with students and campus administrators in the aftermath of a speech controversy because such meetings are, by definition, wrong.¹⁷⁴

From a post-coddling perspective, however, there is a world of difference between suspending a student and meeting with people offended by that student’s speech act. The former invokes the power of the university in a punitive fashion; the latter does not.¹⁷⁵ This opens the door for a more activist response to acts of campus hate, which, nevertheless, respects freedom of speech. As such, it reflects Nadine Strossen’s intuition that protecting speech does not leave a university (or society) powerless to oppose hate

169. *Id.* at 526.

170. *Smith*, 59 Cal. Rptr. 3d at 526. The Court noted that after publication a group of students formed Todos Unidos (Everyone United, a group intended to foster intercultural understanding). *Id.*

171. Lipson, *supra* note 7. Lipson spends much of his article condemning the acts of university administrators. *Id.*

172. *Id.*

173. Kahn, *Rethinking the Context of Hate Speech Regulation*, *supra* note 159, at 223–24 (2016) (book review) (noting that the United States already informally punishes some speech); KAHN, HOLOCAUST DENIAL AND THE LAW, *supra* note 150, at 137–52 (describing the use of informal censorship against Holocaust deniers in Canada, France, and Germany).

174. Lipson, *supra* note 7. Instead, a college administrator faced with such a situation should hand the student a copy of the First Amendment, have the student read it, and then send the student back to the library to “read [assignment] materials, formulate . . . arguments, and engage with other students.” *Id.*

175. See HEINZE, *supra* note 140, at 21–22.

speech.¹⁷⁶ It also accords with Fred Lawrence's point, made during his remarks at the Editor-in-Chief Lecture, that a university president is responsible for all his or her students—both the students who speak out and the students who are offended by this speech.¹⁷⁷

V. CONCLUSION: BEYOND CODDLING

Rejecting the anti-coddling narrative will not end the debate over campus speech. The issues raised by Roederer, Strossen, and Lawrence are concerning enough, even without the added worry that coddled students and their helicopter parents and teachers are scrubbing the minds of the nation's children. The anti-coddling narrative strips college students of their agency. Instead, by treating college students as young adults, capable of their own actions, we increase the chances that the younger generation will internalize free speech values. Furthermore, moving beyond coddling will open the door to a more flexible response by university administrators, faculty, parents, and students to speech questions that arise on campuses. Finally, to the extent rejection of the anti-coddling narrative leads to a more general questioning of the zero tolerance ideology underlying it, we will be better able to respond to the coming challenges to individual autonomy posed by a period of rapid technological change.¹⁷⁸

176. *Interview by Peter Molnar with Nadine Strossen*, *supra* note 83, at 387–89 (describing what university officials can do when confronted with hate speech).

177. Lawrence, *supra* note 4.

178. See MAYER-SCHÖNBERGER & CUKIER, *supra* note 28. See also John Owens & Alan Cribb, 'My Fit-Bit Thinks I Can Do Better!' *Do Health Promoting Wearable Technologies Support Personal Autonomy?*, (June 6, 2017) (Philosophy & Tech., Proposed Paper for Special Issue on Ethics of Biomedical Data Analytics), <https://link.springer.com/article/10.1007/s13347-017-0266-2> (concluding that devices like Fit-Bits replace personal autonomy with consumerist values); see also HEINZE, *supra* note 140, at 7 ("One of the chances still available to us for tempering the dominion of technocratic and managerial spheres is to seize back into our hands our societies' vestiges of citizen-driven democracy.").