▼ John Palfrey (1972–) is an educator, currently serving as Head of School at Andover Academy, and legal scholar, having served as executive director of Harvard University's Berkman Center for Internet & Society from 2002 to 2008. An authority on law and new media, he is a strong advocate for Internet freedom. This selection comes from the introduction to Palfrey's 2017 book, Safe Spaces, Brave Spaces: Diversity and Free Expression in Education. Here, Palfrey is arguing that "free expression and diversity are essential components of democracy in the twenty-first century" and that that two are ultimately compatible despite frequently being set in opposition to one another. As you read this academic argument, pay careful attention to how Palfrey structures it, particularly the ways he anticipates alternative positions and seeks to respond to them respectfully.

Safe Spaces, Brave Spaces

JOHN PALFREY

Free expression and diversity are essential components of democracy in the twenty-first century. In the United States, our shared commitment to both principles, especially as they developed in the late twentieth century, ensures that a democracy and the world at large benefit from heterogeneity. These two concepts rely on and reinforce one another.

The arguments in favor of diversity and free expression are not exactly the same, but neither are they unrelated. There are reasons for diversity that have little or nothing to do with free

expression; and there are reasons for free expression that have little or nothing to do with diversity. The areas of overlap, though, are plentiful—and they are essential to finding the best path forward. At their essence, both of these ideals support democracy because they mean that societies are educating informed, engaged citizens and seeking to establish a sense of fair play and justice in political systems. While diversity and free expression are too often pitted against one another as competing values, they are more compatible than they are opposing.

The American experiment at its best calls for diversity and free expression to coexist. That coexistence has not been easy, nor has it been all that successful, especially for those who have had less power. The American experience has been a lot easier for whites, males, Christians, heterosexuals, the able-bodied, and the wealthy in particular. And free expression has been interpreted in ways that have tended to support those in authority rather than all people **equitably**. These critiques of the American experiment are all grounded in historical truth. But it is also true that free expression can serve all of us. Diversity is about self-expression, learning from one another, working together in productive ways across differences, and in turn strengthening our democracy. Diversity that also encompasses and supports intellectual and academic freedom—without condoning hate speech—has enormous force, promise, and importance.

The American experiment
a description that reminds readers that America—and indeed, every country—is an experiment, one that can succeed or fail, depending on the actions of individuals.

equitably
a fairly, which may well not mean treating everyone the same.

Why Diversity Matters

Our commitment to seeking the truth and making sound decisions, in intellectual communities and in the public sphere, relies on the coexistence of diversity and free expression. One of the reasons to have a diverse community—one in which we truly welcome adults and young people with a broad range of racial, class, ethnic, religious, cultural, and political backgrounds, as well as people with a range of gender and sexual orientations—is that they bring various viewpoints that can help a community reach good, moral, and truthful decisions. This range of viewpoints also helps communities reach just decisions that a broad range of people will believe to be legitimate.

As one example, consider the field of journalism and the need for a diverse corps of reporters to serve a multicultural democracy well. Among other things, a democracy depends on a strong, independent field of journalism to function effectively. Journalism enables the public to stay informed about crucial issues in such a way that the people may determine their own best interests. Journalism offers plentiful examples of this concurrent need for diversity and free expression in support of

democracy. A well-trained, professional team of journalists—even if they all come from one racial background, say all Latino/Latina—may be able to cover the stories of a large and complex city with a reasonable degree of accuracy. But getting to the truth of what is really going on in, say, that city's Chinatown section will be enhanced by someone on the staff coming from that neighborhood or from a Chinese-speaking background. At a minimum, that team of reporters would need to rely on sources and informants from Chinatown in order to tell that story with a fidelity to what actually occurred and what it meant. In either event, a diverse set of voices—whether as authors or sources—can lead to a deeper understanding of the truth in a complex environment than a homogeneous group of voices can. In turn, those who rely on this journalism have a greater likelihood of discerning their own true interests and acting accordingly as citizens.[1]

Or consider the discipline of writing and studying U.S. history, which I teach to high school juniors and seniors at Andover. If virtually all the authorities writing prominent history books are white men (as they were for a long time), the likelihood is high that their narratives would extol the great male military and political leaders, not the women and many of the people of color who lived then. The idea behind diversifying the ranks of our history teachers and scholars is that a more diverse group of authors will tell a more complete—and correspondingly more truthful—version of what happened. The point is not to eliminate political and military history or the lives of "great

men" from our narratives but rather to include social and cultural history—for instance, as it is told by women or people of color, unwelcome in political and military leadership for much of our history. The point is also not that only African Americans can write about the lives of those enslaved or what it was like to be subject to Jim Crow laws, but rather that having a more diverse group of teachers and authors results in a broader range of perspectives. As the **professoriate** continues to become more diverse, the narratives that we teach in history are becoming more diverse and richer.

professoriate
the group of people who teach at colleges and universities.

Why Free Expression Matters

Free expression, likewise, enables us to find the truth. If certain views are unwelcome or barred, then the likelihood that societies will find or embrace the truth diminishes. The extreme case is an authoritarian regime—for instance, in North Korea—where dissent is nearly impossible and the free flow of ideas is nonexistent. If criticism of political figures, whether accurate or not, is disallowed or strongly discouraged—as it is, for instance, in present-day Turkey, Russia, or Thailand—then the likelihood that the truth about their activities will emerge is much lower. When Saddam Hussein received 100 percent of the votes cast in the election of 2002—all 11,445,638 of them—one can reasonably infer that the Iraqi people were not free to discuss the potential shortcomings of the next Hussein administration.[2] In the case

of the urban journalists, free expression supports understanding of the real dynamics at play in Chinatown. In the case of the historians, free expression enables broader consideration of events and patterns that had previously lain uncovered—and that may have been inconvenient to unearth, discuss, and publish. Without commitment to free expression, the truth is much less likely to emerge. Without a route to the truth, the likelihood of good policy decisions, fair dealing with communities, and just outcomes of disputes is much lower.

Additional Links between Diversity and Free Expression

Diversity and free expression are linked, too, as principles that lead to higher levels of equity and fairness. The success of these ideals provides legitimacy for a democratic system. One reason to pursue a diverse environment, especially in a school or university setting, is to ensure that every young person has a roughly equal chance at the positive gains possible through education. If a school admits only young people of a single race, gender, ethnicity, faith, sexuality, or type of ability, then the opportunities at that school are not equitably afforded to those with other characteristics. In a knowledge-dominated economy, access to the benefits of education is of fundamental importance. Diversity initiatives—including but not limited to affirmative action policies—aim to ensure that the inequities of the past are not paid for in the future. These commitments ensure that every member of an academic environment feels and is valued for what they offer to the community and can

accomplish while in school and afterward. The benefits of addressing inequity on campus connect directly to the degree of equality in the polity at large.

Free expression, in its purest form, is also a driver of equity and justice. Free expression means that no voice is categorically entitled to greater freedom than any other. At the level of principle, freedom of expression is even-handed: it means that the color of one's skin, or faith, or sexuality should not be a bar to expressing one's point of view, participating in civic life through speech, and so forth. In practice, in most societies, this form of equity has rarely existed: some people are able to speak louder and more freely than others.

Free expression is linked to a series of other freedoms with similar connections to equity. In the context of the United States, these freedoms are enshrined in the First Amendment to the Constitution: the right to free speech and a free press, the right to assemble peaceably, and the right to religious beliefs. Alongside the right to free expression, these other rights also protect those who might otherwise suffer persecution: the unpopular minority group has the right to come together peaceably in a community, or to pursue their faith, or to publish their views through a specialized press, or to seek redress from the government. Taken together, these rights have great force on behalf of an equitable society.

Some Arguments to the Contrary

The matter, of course, is not as simple as saying that diversity and free expression are mutually supportive concepts, on campus and in society at large. There are serious theoretical arguments to the contrary. There are hard cases that make these principles difficult to reconcile. The hardest cases, customarily involving hate speech, require balancing of competing interests that can leave no one happy.

The most forceful argument, expressed from the political left, against my view that these two principles should coexist comes with the (truthful) claim that the right to free expression arose in the context of inequality. The First Amendment to the U.S. Constitution, for instance, was drafted by white, powerful men of European descent—many of whom enslaved their fellow Americans. Moreover, the interpretation of the right of free expression in the United States has been historically carried out by and large by male judges, often white and well off. Given this history, the right to free expression has been a tool of empowered people, not those who have been marginalized. As such, this counterargument goes, the right to free expression is flawed and less worthy of support than diversity, equity, and inclusion, especially where these two values conflict. While I acknowledge the force of this argument, I think it is less compelling than the claim that the two principles, in a more equitable historical moment, can and should be upheld in common.

Other counterarguments take issue with either the specific

application of free expression or diversity or both. It is one thing to make a broad claim about the importance of diversity and free expression coexisting; it is quite another to determine how best to apply them in an actual society.

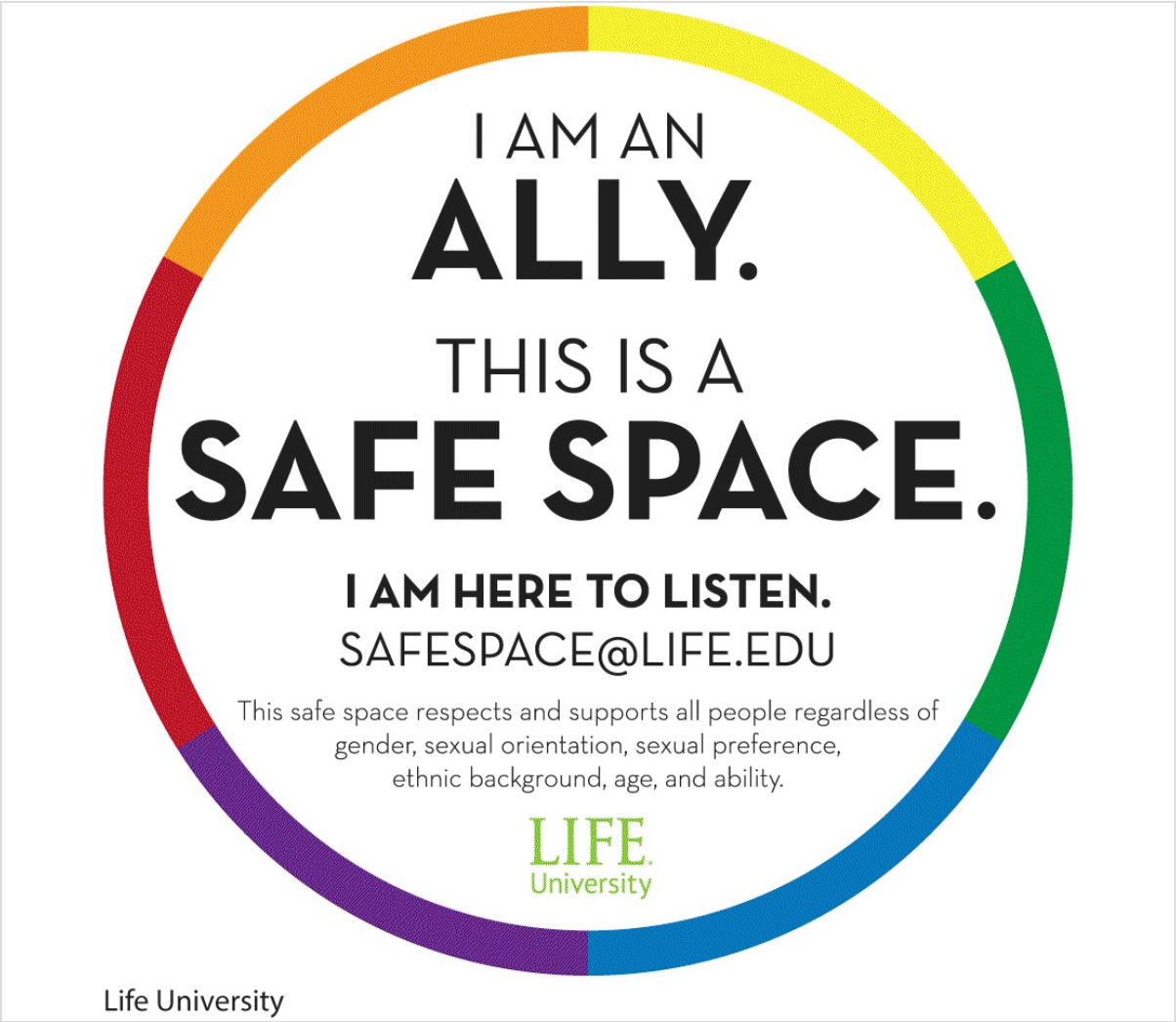
Free expression, for instance, evokes a range of possible policies, from one in which truly "anything goes" to the constrained version of free expression (which I favor) that is enshrined in the U.S. Constitution. This latter vision of free expression calls for limits to free expression in certain circumstances, known as **"time, place, and manner" restrictions.** Gender and racial harassment, fighting words, obscenity, and libel, for instance, are not protected speech even under the First Amendment. In the context of a campus, the limits to free expression often take another form: disallowing students from using hate speech targeted at another student, for instance. None of these types of restrictions on free expression would bar citizens or students from expressing a political opinion, however unpopular, as long as it does not target or put at risk another person. While some disagree with the idea of any restrictions on free expression, others wish for speech restrictions to further limit or ban certain additional forms of speech.

"time, place, and manner" restrictions
the categories of restrictions that can, under current federal law, be placed on free speech provided they are content neutral. They are narrowly tailored, and they leave open alternative means of expression. Thus, assuming these conditions are met, a school could likely legally limit free speech (or certain kinds of free speech) to certain times (e.g., not on Sunday), certain places (e.g., a free speech zone), or certain manners (e.g., no PA systems),

although it would need to be able to justify the need for doing so. The restrictions are from the ruling *Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85 (1977).

A similar counterargument might take issue with the forms of diversity that I favor in this book. As in the case of free expression, the views fall along a broad spectrum. On the one end, diversity extends to a strong form of equality and inclusion, brought about by affirmative policies intended to accomplish what proponents refer to as "social justice." On the other end of the spectrum falls extreme **xenophobia**—whether expressed by white supremacists or by those who express hatred toward others from a religious viewpoint. For the purposes of this argument, I favor a form of diversity that makes good on the promises of the American ideal: a nation that invites those from all over the world to form a community together, representing a range of backgrounds and viewpoints. On campuses, this ideal means seeking young people from all over the country and the world, from all races, ethnicities, faith backgrounds, sexual orientations, with a range of abilities, and from families with different political viewpoints. Here, too, there are, and must be, restrictions of various sorts. A nation must limit those who can immigrate in certain ways in order to avoid systems being overwhelmed by the sheer number of residents; similarly, enrollment on a campus ought to be limited to a number of students who can in fact thrive in that particular learning environment. Some might agree that this definition of diversity is too generous; others might oppose the limits I suggest or favor more radical policies to accomplish the goals of diversity, equity, and inclusion.

xenophobia
irrational fear or hatred of strangers and, by extension, those from other countries or ethnic groups (Greek, *xenos* [stranger] + *phobos* [fear]).



Life University

The Challenging Paradox

The hardest theoretical problem in holding these two ideals together is not one of definition, as thorny as that can be—it has to do with a **paradox** at the heart of this combination. One goal of diversity, equity, and inclusion—taken together—is tolerance. These ideals call for a community to enable all members to enjoy equal privileges. This notion of equity is especially hard to

accomplish in environments that have been the least equal in the past—for instance, campuses that have only recently been opened to those of a certain gender or race, where intolerance has been the norm for a long time. The paradox becomes evident when someone does not believe in tolerance. The belief they hold—or the expression they wish to convey freely—is that the very idea of tolerance is wrong.

paradox
apparent contradiction that can be resolved so that no contradiction, in fact, exists.

Must a community tolerate intolerance? It is this hard problem that presented itself on so many campuses in the fall of 2015 and again in the presidential election of 2016, and that will remain with us for the foreseeable future. Some campus activists argue for no as an answer to that question. From my perspective, the answer is yes, at least to some extent. Tolerance must extend not only to those who believe in tolerance but also to those who do not. In a democratic system at large, we give votes regardless of a person's viewpoint. As humans and communities, we learn when we are presented with viewpoints different from our own.

The difficulty with this idea—and the primary shortcoming of the view that we must tolerate some degree of intolerant speech—is that the costs of such tolerance will be borne disproportionately by those who are the targets of the intolerance. In America, those people are likely the same people whose forebears have been the targets of intolerance in

the past: people of color, women, those who identify as **LGBTQIA+**, those who do not identify squarely on the **cis-gendered binary** (female or male), and those with different abilities. This argument—that we ought to hold diversity and free expression as mutually reinforcing principles—is at its most vulnerable when we consider the disproportionality of the costs of extreme tolerance.

LGBTQIA+
umbrella term including lesbian, gay, bisexual, transgender, queer, intersex, asexual, and others who do not identify with the heterosexual and cis-gendered majority.

cis-gendered
having a gender identity that corresponds with the sex one was assigned at birth.

There are ways to mitigate this problem, though it may be a long time (or a rare place) before the problem is fully addressed. The roots of discrimination are long and run deep; they are not easily pulled out of any soil, without trace or likelihood of regrowth.

One form of mitigation is to limit free expression in specific ways. There must be a point at which the tolerant should not have to tolerate the intolerant. One limitation, sensibly included in campus policies, is to disallow hate speech personally directed at an individual. If a member of the community directs hate speech at another individual (rather than at a group), the speech can be subject to restriction and the speaker to disciplinary measures or other recourse. Specific campuses or communities might have narrowly tailored rules along these

lines to protect those most vulnerable. It is easy to imagine that rules at a school for young children would be even more protective in this respect than the rules at a high school or those at a university, given the different educational aims of these types of institutions and different maturity levels of their students.

Where a speaker expresses a general political viewpoint, communities must seek to tolerate these expressions, even if she or he preaches something inconsistent with the majority viewpoint on campus. If this political speech is intolerant toward some community members, the response should be to address this intolerant viewpoint with more speech. An affirmative obligation to speak up falls on those who oppose the position. In a civic context, it is imperative that citizens and political leaders speak up to defend the rights of all people in the community. This burden must not fall just on those threatened by the speech; those who already feel the most marginalized, undervalued, or invisible in communities may find it hard to voice their concerns. The burden ought to fall less on those directly affected and more on those who are in the favored position. In the campus context, those representing the institution itself—a college president, a university board chair, or a school principal—ought to establish a point of view that favors tolerance, diversity, equity, and inclusion over hate and intolerance. The best approach for the long run is for the truthful, positive, values-driven viewpoint to be given the chance to win out. The stronger argument should prove more

sustainable and more broadly embraced over time if it is contested than if it is merely insisted on without interrogation. To impose a rule against the less tolerant political viewpoint, or to ban that viewpoint from the commons, would have high costs in the long run, but so too does tolerating certain hateful speech on campuses.

NOTES

1. Alex Garcia, "Why Diversity in Media Matters in Making Free Speech Really Free," Medium, https://medium.com/@Alex_Garcia/why-diversity-in-media-matters-in-making-free-speech-really-free-a25cb760bd80#.zay4kev7j.

2. "Saddam Wins '100% of Vote,'" BBC News, October 16, 2002, http://news.bbc.co.uk/2/hi/2331951.stm.

RESPOND●

1. What is your response to Palfrey's claim that "[f]ree expression and diversity are essential components of democracy"? Of a successful learning environment in higher education? If you do not agree with his claims, which parts of his argument do you have trouble accepting or agreeing with? Why do you think you and Palfrey might disagree?
2. A major component of this selection is the extended definitional argument focusing on the meaning and nature of free expression and on diversity. Working in pairs or small

groups, list all the ways Palfrey defines, describes, or characterizes one of these two concepts, including the paragraph number where that comment occurs. (Your instructor may wish to divide the work among the pairs or groups in the class so that more than one group considers each concept.) Once you have completed your list, analyze the elements of the list in terms of the kinds of definitions discussed in "Kinds of Definitions" in Chapter 9. If there are items that do not fit neatly into these categories, try to label the functions those items serve in helping clarify Palfrey's understanding of the concept. Once your group has completed its task, compare your findings with those of other groups in the class, working to clarify the class's understanding of these concepts as Palfrey defines them.

3. Likely because of his training as a lawyer and legal scholar, Palfrey constructs arguments in ways that closely resemble Toulmin argumentation, discussed in Chapter 7. While there are several ways to frame Palfrey's argument, let us assume the following statement encapsulates his claim: "Our commitment to seeking the truth and making sound decisions, in intellectual communities and in public spaces, relies on the coexistence of diversity and free expression" (para. 4). Using the information given in Chapter 7 and beginning with this claim, construct an outline of Palfrey's argument (cf. p. 150), providing any explicit qualifications to the claim, the reason(s) for the claim, the warrant(s) for the claim, the forms of backing provided for the warrant, evidence for the backing, the authority or authorities cited in support of this evidence, the conditions of rebuttal, and possible responses these conditions might engender. If you find that Palfrey's argument is not a perfect Toulmin argument, note the elements that are lacking and speculate about why

they might be absent. (You will find your response to Question 2 helpful in responding to this question. You may wish to work in small groups on this question as well.)

4. **THINKING CRITICALLY** A key feature of academic arguments is making explicit the logical connections between ideas or sentences. Examine paragraph 12, reproduced below, and explain the function(s) of each of the italicized words or phrases with regard to making explicit the logical connections between ideas. (One way to think about the question is to read the passage without these elements, making minor changes so that the text would still make sense, and then to put them back in.)

> The most forceful argument, expressed from the political left, against my view that these two principles [of free expression and diversity] should coexist comes with the *(truthful)* claim that the right to free expression arose in the context of inequality. The First Amendment to the U.S. Constitution, *for instance*, was drafted by white, powerful men of European descent—many of whom enslaved their fellow Americans. *Moreover*, the interpretation of the right of free expression in the United States has been historically carried out by and large by male judges, often white and well off. *Given this history*, the right to free expression has been a tool of empowered people, not those who have been marginalized. *As such, the counterargument goes*, the right to free expression is flawed and less worthy of support than diversity, equity, and inclusion, especially where these two values conflict. *While I acknowledge the force of this argument, I think* it is

less compelling than the claim that the two principles, in a more equitable historical moment, can and should be upheld in common.

5. As noted, Palfrey's argument is very much an academic argument in the sense discussed in Chapter 17. **Write an academic argument** in response to the position Palfrey takes in this selection, seeking to be as systematic and respectful of other positions as he is. We assume that you will likely not agree with all of the assumptions or claims made by Palfrey. If you don't agree completely with Palfrey, your argument will focus on those areas of disagreement, and you will make explicit the differences between your perspective and Palfrey's, giving support for your assumptions or claims. Should you agree completely with Palfrey's claims, your argument will explain why you contend that Palfrey's analysis is the correct one, again providing evidence for your assumptions or claims.