



What Are the Limits of Academic Freedom?

A maddening new book fumbles an important debate.

THE REVIEW | ESSAY

By *Jeffrey Aaron Snyder*

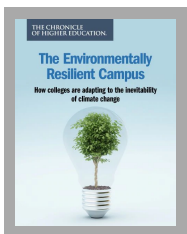
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Does academic freedom extend to white-supremacist professors?” That’s the opening line of Michael Bérubé and Jennifer Ruth’s new book, *It’s Not Free Speech: Race, Democracy, and the Future of Academic Freedom*. The answer, they argue, should be no. “Academic freedom,” the pair insists, “shouldn’t cover advocates of white supremacy any more than it covers flat-earthers in the geology department.”

It's Not Free Speech is a maddening book. It raises many important questions but is so chock-full of unresolved contradictions; gross misrepresentations; and wild, unjustified claims that it ultimately makes you wonder how the manuscript made it into print. Nonetheless, it is bound to win attention because of its bold thesis: Academic freedom is “being used as a refuge for white supremacists.”

Bérubé is a professor in the English department at Pennsylvania State University. Ruth is a professor at the School of Film at Portland State University. Active members of the American Association of University Professors at the local and national level, they wrote *It's Not Free Speech*, in part, “to question the views of ‘old-fashioned liberals.’” They describe being “shaken out of” their “complacency” by the Trump years. Their “whiteness got in the way,” they say, of reconsidering “hazy, high-minded beliefs” about academic freedom.

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The authors take notice of attacks against academic freedom from beyond academe, most notably in the form of “proposed state bans on critical race theory.” Still, they contend that the “bigger threat to the future of academic freedom follows from the refusal to think more deeply about the way academic freedom can be and has been weaponized in ways that undermine democracy,” especially by protecting the appointments of “tenured white supremacists.”

Bérubé and Ruth define a “white supremacist” as someone who promotes the idea that Black people are biologically or culturally inferior. Any professor who consistently advances “discredited” and “repugnant” views about race should be dismissed, the

authors say. They identify two principal figures who meet these qualifications: the political-science professor Bruce Gilley (who is Ruth's colleague at Portland State) and the University of Pennsylvania law professor Amy Wax. Gilley garnered attention for his controversial 2017 essay "The Case for Colonialism." Wax, meanwhile, is known as a "[rhetorical grenade thrower](#)" for her comments about immigration and the academic performance of Black students.

"There is nothing unambiguous about Wax's racism," the authors aver. "She expressly says that 'Anglo-Protestant culture' is superior to other cultures." The authors' evidence consists of two excerpts, largely stripped of context, from a [speech](#) that Wax gave at the 2019 National Conservatism conference. The first chapter of *It's Not Free Speech* focuses on "context culture" and "the politics of interpretation." One of the takeaways is that rendering judgments on whether particular utterances are "racist" requires careful consideration of the full context of the remarks, including the intent behind them and the impact they have on an audience. The authors don't seem to follow their own advice. Without seeking additional information beyond what they have presented, I am not sure how many people would feel qualified to judge whether Wax is a "white supremacist." I don't.

The authors refer to "legions of racist professors" and the "entrenched, unshakeable beliefs of the white-supremacist professoriate." "The problem," they contend, "is unfathomably larger than any one Bruce Gilley or Amy Wax." If, indeed, the problem were "unfathomably larger" than the same two individuals they mention *ad nauseam*, you would expect the authors to provide at least some sense of its scope. But by the end of the book, they have identified a grand total of three professors (Gilley, Wax, and the Indiana University economist Eric Rasmusen) whom they think should be fired because of their "commitment to white supremacism." With 1.5 million faculty members [employed](#) at U.S. colleges and universities, that represents .0002 percent of the professoriate.

illey, according to the authors, regularly posts incendiary comments online, such as
G comparing Black Lives Matter activists to “terrorists.” They contend that extramural speech like this is far more of a lightning rod for today’s academic-freedom controversies than research or teaching.

Here is how the AAUP characterized “extramural speech” in its landmark 1940 Statement of Principles on Academic Freedom and Tenure: When professors “speak or write as citizens, they should be free from institutional censorship or discipline.”

The academic freedom guaranteed in the teaching and research domains is not a license to “say and believe anything and everything imaginable”; it depends on credentialed expertise and adherence to disciplinary standards, such that a professor practicing astrology in the astronomy department would not be protected.

The protocols governing extramural speech are much more “elusive” and “mysterious.” The AAUP does not stipulate what role, if any, expertise plays in governing faculty members’ academic freedom. The AAUP used to consider the *manner* of extramural speech significant, the authors say, but for today’s AAUP, extramural utterances “can be coarse and crude and altogether disrespectful of everything.” They point to the following AAUP language as the “gold standard”: “The controlling principle is that a faculty member’s expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member’s unfitness for his or her position.”

Taking words out of context is one thing. Putting words in someone else’s mouth is another.

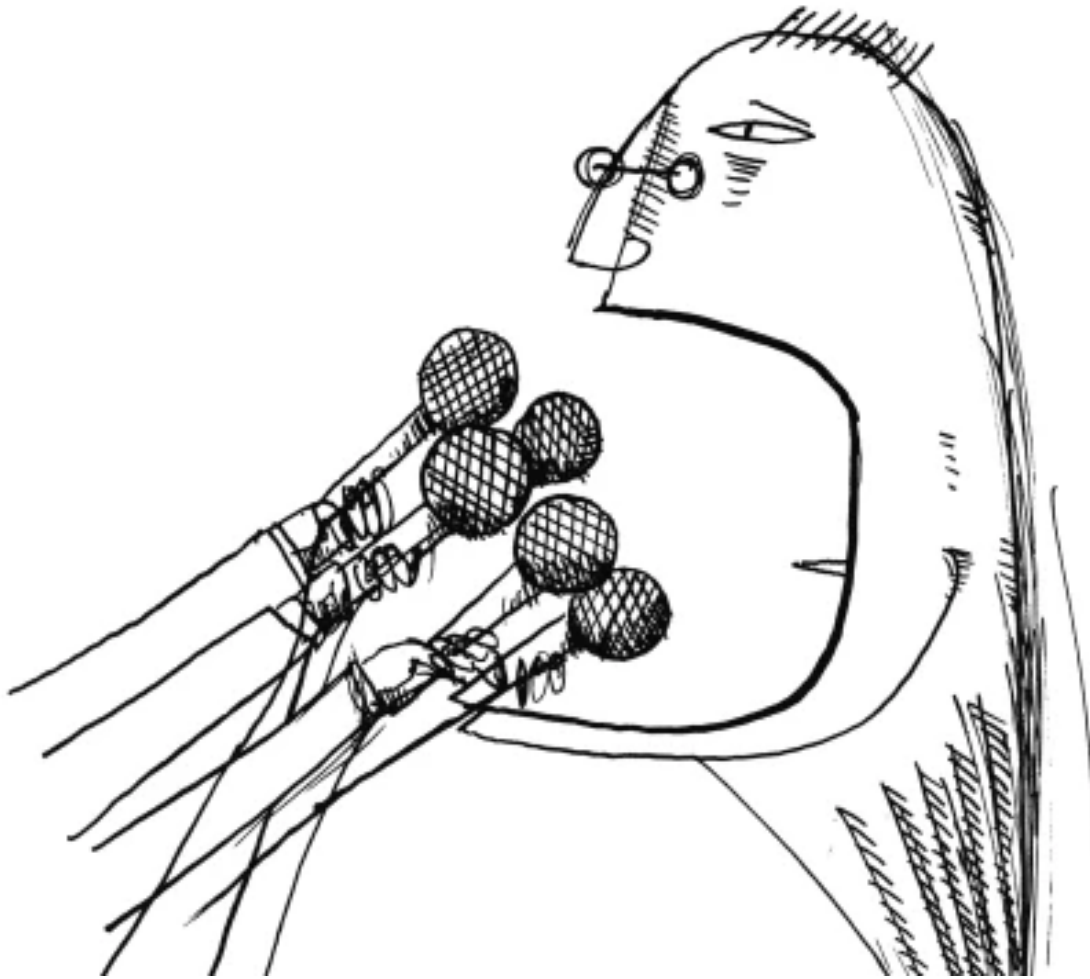
It is unclear exactly where the authors land on the questions of expertise and fitness. At one point, they say there would be “chilling consequences” if there was a sliding scale of expertise, where the more closely extramural speech is related to your

academic area, the less academic-freedom protection it deserves. At another, they question whether scholars should be allowed to promote falsehoods on social media such as Covid misinformation if they have “a plausible relation to a faculty member’s area of expertise.” Still elsewhere, they seem to endorse a consequentialist argument where “groundless, delusional, or corrosive” extramural speech has to be assessed on whether it provides intellectual cover for misguided or reactionary public policies.

Whatever the case, the authors are surely right that academic-freedom controversies increasingly revolve around extramural speech. And that the rules, regulations, and principles governing extramural speech are muddled and have failed to keep pace with the explosion of social media.

Social media’s capacity to broadcast “the most noxious ideas humans have yet devised” prompted the authors to reconsider their faith in “liberal platitudes” like the “best antidote to hate speech is more speech.” So too did their discovery of critical race theory.

The authors devote an entire chapter to rehearsing CRT’s history and central tenets, arguing that CRT has “profound implications” for how we think about academic freedom. It might have been an illuminating exercise had they explored how specific CRT ideas such as “interest convergence” relate to academic freedom. (Interest convergence asserts that Black rights are guaranteed only when they promote the other interests of powerful policy makers.) Instead, what they derive from their acquaintance with CRT is a kind of mind-set: maintain a healthy skepticism toward liberalism’s potential to foster racial justice; continuously interrogate white supremacy; and have the confidence to declare some ideas off-limits.



JAMES YANG FOR THE CHRONICLE

In classroom discussions, the authors assert that “some things are not worthy of entertaining as if we could pretend they were bloodless.” Considering the potential benefits of Western colonialism is one. Debating whether the 1954 *Brown v. Board of Education* ruling should have happened is another.

But debating *Brown* is central to critical race theory! As the authors outline, the late Black lawyer and civil-rights activist Derrick Bell was a major figure in the critical-race-theory movement. Bell drew on his own extensive experience working with the NAACP Legal Defense Fund to enforce the *Brown* decision to articulate some of critical race theory’s foundational principles.

Brown famously proclaimed that “separate educational facilities are inherently unequal.” As a law professor later in his career, Bell surveyed the effects of *Brown* and

saw white flight, vast job losses for Black teachers and administrators and increasingly baroque “racial balancing” plans that focused more on integration than high-quality education. He ultimately concluded that Black communities would have been better off had *Brown* not overruled *Plessy v. Ferguson*’s “separate but equal” precedent. Indeed, Bell devotes an entire chapter of his 2004 book *Silent Covenants: Brown v. Board of Education and the Unfulfilled Hopes for Racial Reform* to crafting an alternative, imaginary ruling that would have upheld *Plessy*, with an emphasis on enforcing its “but equal” provision in terms of providing resources to Black schools.

Declaring the wisdom of the *Brown* decision out-of-bounds as an academic topic is an error of incomprehensible magnitude. It would presumably rule out teaching Bell’s own work on critical race theory. And it would prevent students from reading valuable primary sources such as Zora Neale Hurston’s blistering [critique](#) of *Brown*, in which she regarded “the ruling of the U.S. Supreme Court as insulting rather than honoring my race.”

The authors’ views on campus speech have clearly been influenced by the work of the legal scholar Mari Matsuda, one of the authors of *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment*. As a result, Bérubé and Ruth are more receptive to regulating speech than one would expect of professors who have held leadership positions in the AAUP.

They take strong issue with the 1994 AAUP statement On Freedom of Expression and Campus Speech Codes, identifying two sections as especially problematic: “On a campus that is free and open, no idea can be banned or forbidden. No viewpoint or message may be deemed so hateful or disturbing that it may not be expressed.” And: “a college or university sets a perilous course if it seeks to differentiate between high-value and low-value speech.” The authors say this latter formulation grows “more and more absurd with each passing year,” calling it an “abdication of intellectual responsibility.”

As the authors point out, distinguishing between high-value and low-value speech is “what professors do every time they grade student papers, write student recommendations, evaluate the work of their colleagues (especially for tenure and promotion) or participate in routine committee work.” So far, so good. But they also say that the purpose of higher education “is not to ensure that all views be heard but to determine by careful and impartial review, which views merit a hearing and which serve no conceivable educational purpose.” There is a vast difference, it seems to me, between making judgments about the quality of an argument in the peer-review process and investing an administrative body with the authority to make judgments about whether a particular speech act is “hateful,” “disturbing,” or of high or low educational value. The latter is a recipe for making ill-considered judgment calls like banning debates about the *Brown v. Board* Supreme Court decision.

Speaking of ill-considered judgment calls, in a section on the negative effects of “hateful speech,” the authors quote Nadine Strossen as follows: “the best strategy for both mental and physical health is education about the fact that such speech is not necessarily harmful and about how to perceive such stressful situations as opportunities for positive personal development.” Bérubé and Ruth chide Strossen: “We have admired Nadine Strossen’s work for decades,” they say, “and are at a loss to account for the extraordinary arrogance and condescension involved in the words we have highlighted.”

But they neglect to note that the sentence they quote begins with “some psychologists argue that.” This excerpt is taken from Strossen’s 2018 book, *HATE: Why We Should Resist It With Free Speech, Not Censorship*. When you look at this quote in context, you will see that Strossen is referring to psychological studies that show a correlation between the belief that words can do harm and the degree of harm experienced. Citing the work of the psychologist Lisa Feldman Barrett, Strossen differentiates between “hate speech” that contributes to prolonged psychological distress such as persistent bullying and exposure to an “odious idea” or “an opinion you strongly oppose.” In an educational context, this distinction is vital; it’s the difference between hurling anti-

Semitic slurs at a Jewish student and that same student's learning about the horrific history of anti-Semitism in a course on Nazi Germany.

Taking words out of context is one thing. Putting words in someone else's mouth is another. Ruth and Bérubé do both.

In spite of the book's many egregious flaws, the authors make one significant recommendation that is worth taking seriously: Faculty should play a much more significant role in adjudicating instances of allegedly offensive or discriminatory speech. With diversity, equity, and inclusion offices and HR departments typically in charge of these investigations, the authors say the result is a "risk management" approach to speech controversies where "anxious" administrators make hasty decisions without appropriate context. In order to avoid the rush to judgment in cases that "infringe on academic and professional judgment," Bérubé and Ruth propose forming special faculty-led academic-freedom committees. More robust faculty governance, they argue, would result in fewer precipitous investigations of "defensible speech."

I think Bérubé and Ruth are right that the faculty must be on the front lines when it comes to defending the values of academic freedom. I just wish they had devoted more attention to why academic freedom even matters in the first place.

The authors sing the praises of academic freedom in service of the "common good," lamenting that language like the "free pursuit of knowledge" has supposedly displaced phrasing about the "common good" in AAUP documents. But what the "common good" actually means to them is unclear, apart from lofty statements that it should encompass "all its citizens, not just a white, moneyed, cisgendered subset of them." They fail to note that the AAUP's 1940 Statement of Principles on Academic Freedom and Tenure defends the value of academic freedom by inextricably linking the common good to knowledge-seeking. "The common good," the statement spells out, "depends upon the free search for truth and its free exposition."

The university, according to the AAUP's 1915 Declaration on Academic Freedom and Tenure, should be "an inviolable refuge" from the "tyranny of the ruler" and the "tyranny of public opinion." Both of these forces are converging in the raft of anti-CRT bills targeting higher education. These "educational gag orders," as PEN America aptly calls them, are the foremost threats to academic freedom today. With an emphasis on limiting instruction about racism, gender, and sexuality, fields like U.S. history, Black studies and gender studies are under particular threat. If we really care about a more expansive, inclusive vision of the "common good," mobilizing resistance to the anti-CRT movement seems much more vital than ridding campuses of what I expect is a vanishingly small minority of white-supremacist professors.

We welcome your thoughts and questions about this article. Please [email the editors](#) or [submit a letter](#) for publication.

ACADEMIC FREEDOM

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