

The Limits of Academic Freedom

by James Huffman

Academics from across the political spectrum have appropriately objected to some recently proposed laws as threats to academic freedom and thereby to higher education's historic mission—the discovery and dissemination of knowledge. The principle of academic freedom has long stood as the guarantor of the free and open inquiry requisite to the academic pursuit of truth and is widely understood to allow for no exceptions. But adherence to the principle does not preclude all limits on faculty conduct. Academic freedom does not require colleges and universities to tolerate bad teaching or incompetence. Nor should it protect professorial conduct that undermines open inquiry and pursuit of truth.

Although academic freedom is generally viewed from the perspective of the professor, students are among the principal beneficiaries. Students benefit from their professors' freedom to pursue every inquiry that might reveal truth while themselves being free to explore on their own. Thus, professors and students have a symbiotic relationship in

the pursuit of truth, but not as equals. Professors are presumed to have greater expertise and experience, although the good professor knows that he has much to learn from students as well.

Professors also have greater power than their students. They assess performance and issue grades. Over the last few decades, this imbalance of power has led to necessary constraints on personal relationships between teacher and student. Should the power differential impose other limits on professorial conduct? What if repeated faculty expressions of personal opinion, or advocacy for particular causes, are shown to discourage students from considering or expressing different opinions?

Numerous surveys find that a significant percentage of American college students self-censor. A 2020 Heterodox Academy survey found that 62 percent of students “agree the climate of their campus prevents students from saying things they believe.” In its 2021 free speech ranking of universities the Foundation for Individual Rights and Expression (FIRE) reported that 80 percent of

students self-censor often, sometimes, or occasionally. Skeptics have dismissed these worrying results as the product of flawed surveys or, counter-intuitively, as evidence of flourishing free speech on American campuses. But if even a small percentage of students are discouraged from addressing controversial subjects in class or in their academic assignments, advocates for academic freedom should be concerned.

Why do students self-censor? Peer pressure is one reason. Perhaps statements by the president or other university officials are another factor. But it is most likely that reluctance to speak in class and on academic assignments derives from fear of contradicting professors—the university officials with whom students have regular contact and who will assess student performance and assign grades. The 2022 annual survey of college students administered by the Buckley Institute at Yale University found that 58 percent of students “frequently” or “sometimes” feel intimidated to share ideas, opinions, or beliefs in class that differ from those of their professors. Does academic freedom require that universities and colleges tolerate and defend faculty conduct that discourages students from engaging in the very quest academic freedom is meant to advance—the pursuit of truth?

In early January of 2001 a contingent of first year law students visited my office with a complaint. At the time, I was dean of Lewis and Clark Law School in Portland, Oregon. The students’ complaint was that in every one of their

courses the professor had opined on the United States Supreme Court’s recent decision in *Bush v. Gore*. The students reported that their professors, without explaining their reasons or inviting contrary points of view, had condemned the Court’s intervention in Florida’s counting of the presidential election ballots.

I advised the students that, while I believed their professors exercised poor judgment in expressing their personal opinions about the Court’s decision, academic freedom allowed them full discretion in the content of their courses. The students pointed out that the Court’s decision had nothing to do with the subject matter of any of their courses (civil procedure, torts, property, contracts, criminal law, and legal writing), but as a teacher myself I was reluctant to intervene. Now, two decades later, in the midst of nationwide controversy over freedom of expression on university campuses, I believe I was mistaken to accept that academic freedom allows faculty free rein in their classrooms. Repeated expressions of personal opinions, without thoughtful consideration of other perspectives, is a form of indoctrination that undermines the very objectives of academic freedom, whether or not those opinions relate to the subject matter of the course.

To be clear, I’m a staunch advocate for free speech in the academy whether as a constitutional right or as a fundamental principle to which every university and college should adhere independent of constitutional guarantees. After decades of speech codes, safe spaces, speaker

cancellations, and occasional faculty firings, I celebrate that there has emerged some effective resistance. Effective because the resistance has been joined by individuals and organizations across the political spectrum (think the old American Civil Liberties Union). Organizations like the National Association of Scholars, the American Council of Trustees and Alumni, and the aforementioned Heterodox Academy and FIRE have recruited individuals of divergent views. They are joined by similarly diverse alumni groups at highly respected institutions like Princeton, Cornell, and MIT. These efforts put a lie to the claim that only reactionary conservatives are concerned about an academy in which topics of inquiry are forbidden and expression of disfavored ideas is suppressed if not punished—all undergirded by ideological institutional mission statements and policy pronouncements.

Much of the resistance has focused on freedom of expression, and rightly so. The core mission of higher education requires unfettered exchange of ideas with debate and reason sorting truth from fiction. Discomfort is not to be avoided but rather embraced as essential to understanding the complicated world in which we live and to working with people with whom we have fundamental disagreements.

Since 2014 the gold standard in university commitments to freedom of expression has been the Chicago Principles, now adopted by ninety-five colleges and universities according to FIRE. The report of a committee ap-

pointed by Chicago President Robert Zimmer and chaired by Professor Geoffrey Stone declared that “the University’s fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed.” As a corollary to this principle the committee declared that “the University has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it.”

Not mentioned in the Stone Committee’s report was the earlier and equally important 1967 report of another University of Chicago faculty committee appointed by President George Beadle. *The Report on the University’s Role in Political and Social Action*, generally referred to as the Kalven Report in recognition of the central role of law professor Harry Kalven, affirmed the University’s long history of institutional neutrality on matters unrelated to the university’s survival and pursuit of its mission of “discovery, improvement, and dissemination of knowledge.” The Kalven Report explains that “[t]he neutrality of the university as an institution arises . . . not from a lack of courage nor out of indifference and insensitivity. It arises out of respect for free inquiry and the obligation to cherish a diversity of viewpoints.”

Freedom of expression and institutional neutrality are, thus, of a piece.

When a university takes positions on issues of the day it chills the freedom of expression of those over whom the university exercises power, either as employer or as assessor of student performance. Even when significant majorities of students and faculty agree about questions of public concern or appropriate topics of inquiry, university affirmation of such agreement will suppress opposing views and thus undercut the university's mission.

It is the complementarity of the Chicago Principles of free expression and the Kalven Report's principle of institutional neutrality that got me thinking about the appropriate role of faculty in the classroom. The former "guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn." The latter serves that objective by precluding institutional biasing of the pursuit of truth. Students, faculty, and staff are all the beneficiaries, but the three constituencies are not similarly situated.

By definition, the principle of institutional neutrality constrains the expression of those who speak on behalf of the university. The university president cannot expound on public controversies unless the welfare of the university is directly affected. Nor can provosts, deans, vice deans or any staff member with authority to speak for the institution or its many departments. Abortion, guns, immigration, healthcare, even the war in Ukraine are off limits. Of course, all university officials are free to speak their

minds on their own time, although discretion is often the better part of valor.

Because they do not speak for the university, unless also serving in some official capacity, the Kalven Report's principle of institutional neutrality imposes no constraints on students. The Chicago Principles guarantee students freedom of expression limited only by laws that constrain the general public, or by time, place, and manner limits imposed by the university and its faculty to prevent disruption of the university's core mission to develop and disseminate knowledge.

On first consideration, faculty appear to be similarly situated to students. Certainly, the freedoms of inquiry and expression embraced in the Chicago Principles are as important to the work of faculty as to the work of students. But in their relation to students, faculty occupy a position of authority similar to that which calls for institutional neutrality in the case of university staff and leadership. Given the nature of the faculty-student relationship, professors are arguably more likely than academic administrators to chill freedom of thought and expression among students.

It cannot be assumed that student expression in class or on class assignments will not be chilled by professors who regularly express their opinions on controversial topics in their classes. The aforementioned survey results confirm just such a chilling effect. It would likely be less so if students were exposed to a diversity of philosophical and ideological perspectives in their various classes—if

there were not an orthodoxy of opinion across a faculty. But that is not the reality in most American universities today. Survey after survey has revealed the overwhelmingly liberal bent of faculties throughout the academy, leaving students little to choose from.

Harvard University President James Bryant Conant proposed a solution to this problem in his 1948 book *Education in a Divided World*:

“[A] condition necessary for maintaining free inquiry within our universities is to ask the scholars themselves to declare their own basic social philosophy. . . . [and] then be prepared in our universities to be sure that we have a variety of views represented and that in the classroom our teachers be careful scholars rather than propagandists.”

Conant’s proposal for maintaining intellectual diversity would be anathema on most campuses today, notwithstanding that the existing dominance of liberals on most faculties could only result from selection with an eye to ideology and social philosophy.

Academic freedom does not permit professors to do whatever they like in their courses. A law professor assigned to teach a contracts class is free to select what cases and other materials to study and what method to be employed in that study, but not to provide students with a syllabus devoted entirely or largely to constitutional law or to conduct class discussions in a foreign language. Nor is a professor free to devote most or all of a contracts class to commenting on the political issues of the day. Devoting five or ten minutes of a class to disparaging

a Supreme Court opinion on a topic unrelated to the course may appear harmless, but at some point such diversions become a failure to adequately perform one’s teaching assignment. Persistent expressions of personal opinions relating to the subject matter of the course can have the same effect of suppressing student inquiry and expression. It contradicts the rationale of academic freedom to contend that professors have the freedom to effectively indoctrinate their students. As Stanley Kurtz writes in *National Review*, “[m]ost of the academics screaming bloody murder over DeSantis and academic freedom are hypocrites They don’t believe in the classically liberal presumptions or practices on which academic freedom rests: resisting the temptation to indoctrinate students, willingness to explore competing points of view, hiring faculty based on competence rather than ideology.”

The widely embraced American Association of University Professors 1940 Statement of Principles on Academic Freedom and Tenure provides: “Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.” The passage serves to underscore the need for teachers to avoid persistently intruding unrelated material.

By way of analogy, neither the students’ right to free expression nor the institutions’ interest in vigorous debate allow for student comments in class on topics unrelated to the subject matter of

a course. For example, the right to free expression does not entitle a student in a mathematics course to comment on the Supreme Court's abortion jurisprudence. If students are free to express opinions on topics unrelated to the subject matter of a course, the professor will be unable to control and direct progress through the course syllabus. But professors must also have authority to limit student comments related to the subject of the course if they dominate the discussion and thus discourage expression of other points of view or disrupt the progress of the course. Is there any reason academic freedom should entitle professors to similarly disrupt their students' education?

It is unrealistic and unwise to insist that faculty avoid the sort of off-hand remarks common to human discourse. Revealing a bit of oneself encourages students to do the same. But when repeated off-hand remarks reveal a bias, the effect on students can lead to withdrawal rather than engagement. Better not to disagree with the professor lest he take it personally, even if the disagreement is unrelated to the class subject. If a professor's revealed bias is related to the subject of the course, the effect on students could be even more problematic.

Assume, for example, the professor is teaching a course on the history of American slavery. If the professor's recurrent theme in the course is that the institution of slavery is a peculiarly American failing, will students be dissuaded from inquiring about the long history of slavery across the world, or

about the participation by some Africans in the slave trade? If the professor dwells on the physical mistreatment of slaves and the students have read *Time on the Cross* by Robert Fogel and Stanley Engerman, will they be discouraged from suggesting that slave owners had economic reasons to treat slaves well?

Or take a less provocative topic like property law. If a professor makes frequent comments to the effect that community interests ought always to prevail over the interests of property owners, will students be dissuaded from inquiring about constitutional requirements for just compensation and public purpose? The topic is clearly relevant to the subject matter, but an oft-revealed bias of the professor will discourage many students from expressing their views or examining alternative positions.

Is arguing for one's own views a matter of teaching style, or is it simply bad teaching that should not be protected by academic freedom? Advocacy by faculty on matters students should be discussing and weighing for themselves is a slippery slope. If professorial advocacy for personal points of view discourages student consideration of alternative perspectives, it contradicts the purpose of academic freedom to insist that such teaching is protected by academic freedom.

Perhaps it is assumed that professors who choose to argue for their personal views are also making the case for competing points of view. But as John Stuart Mill observed in *On Liberty*, it is not enough that the student "should hear the

arguments of adversaries from his own teachers, presented as they state them, so accompanied by what they offer as refutations. . . . He must be able to hear them from persons who actually believe them; who defend them in earnest, and do their utmost for them." And even if, after stating his own opinion, the professor presents opposing views persuasively, he will have put a thumb on the scale in their students' evaluation of the competing answers. Worse, professors who argue for their personal views and fail to introduce their students to competing views are indoctrinating, not educating. Academic freedom is meant to advance the pursuit of truth. Professors who press their personal opinions are undercutting that objective. At best they are engaging in bad teaching.

A good teacher will seek to draw the students out, particularly on controversial topics. A good teacher will make clear that there are different perspectives, a complex array of relevant facts, many unknowns and several possible answers. Even in math and the hard sciences, the good teacher will encourage students to question what Thomas Kuhn labeled accepted paradigms of truth. If the students who express their views are of a single mind, a good teacher will propose a different view, whether or not it is his own.

In urging that the university assure a diversity of opinion among its faculty, Harvard President Conant also counseled that "in the classroom our teachers be careful scholars rather than propagandists." If keeping one's personal views to

oneself is an attribute of good teaching because it encourages students to keep an open mind in their exploration of the topic at hand, should the university or college be able to discipline faculty who overlay their courses with personal bias? The traditional view seems to be that academic freedom permits faculty to bring their personal biases to their classes—that it is a question of teaching style. But academic freedom does not protect faculty against discipline for bad teaching in other respects. Professors who miss classes without explanation, dwell on topics unrelated to the subject matter of the course, are rude to students, fail to return papers in a timely fashion, are never available to students outside of classes or are simply incompetent are not protected by academic freedom. Rather, they can be disciplined or fired (even with tenure) for failing to perform their duties as members of the faculty. Why should turning one's classes into exercises in indoctrination be less of a failure to perform one's duties?

Academic freedom for faculty, like freedom of expression for students, serves to advance the pursuit of truth. The principle of institutional neutrality does the same, by avoiding the chilling effect inherent in an institution's explicit and implicit powers over its employees and students. But from the perspective of students, professors exercise at least more obvious power over their futures than do our metastasizing administrative bureaucracies. Expecting a measure of neutrality in the classroom as an attribute of good teaching will not interfere

with the freedom of faculty to engage in free and open inquiry. And it will remove an impediment to student pursuit of the truth, wherever it leads. Appeals to academic freedom should be no defense for professors who abandon education in pursuit of advocacy.

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