

Academic Freedom and Controversial Speech about Campus Governance ——— *Rogers Brubaker*



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Classical definitions of academic freedom focused on freedom of research and teaching. In the American context, the right of professors to speak freely as citizens outside the university has also been emphasized. But many recent controversies over academic freedom in the US—and I limit my comments to the US—have turned on speech inside the university yet outside the traditional domains of research and teaching.

Research and teaching continue of course to be central to the defense of academic freedom in the face of external pressures, notably from private and public funders, government regulators, and the populist right. But I have been asked to address *internal* threats to academic freedom. And while some internal controversies have focused on the freedom of research and teaching, many have focused on other issues.

The most widely discussed of these controversies have concerned invitations to controversial outside speakers. Public attention has focused on efforts by the campus left to “disinvite” or “de-platform” speakers such as Charles Murray at Middlebury and Milo Yiannopoulos and Ann Coulter

at Berkeley. These widely publicized incidents have already generated a substantial backlash: several conservative state legislatures have passed campus speech bills.¹ The campus right has also sought to prevent or disrupt events involving controversial (especially pro-Palestinian) outside speakers.

But there is another kind of internal academic freedom controversy that I would like to highlight. This concerns the freedom to speak out about issues of campus governance. Consider three recent examples.

In March 2015, students at Northwestern marched carrying mattresses and pillows to protest an article by Professor Laura Kipnis, an outspoken feminist cultural critic. *The Chronicle of Higher Education* article criticized new institutional rules regulating intimate relationships between faculty and students and skewered what Kipnis called the mood of “sexual paranoia” on college campuses.² Students petitioned the administration for an “official condemnation” of the article. Subsequently, two students filed formal title IX complaints against Kipnis on the basis of the article.³ This triggered a prolonged, quasi-judicial official investigation that eventually exonerated Kipnis.

Later that year, Nicholas and Erica Christakis, the heads of one of Yale’s residential colleges, were the targets of massive student protests calling for their dismissal. The trigger was an email Erica Christakis wrote reflecting critically—but in a thoughtful, low-key way—on an earlier email that had been sent by Yale’s Intercultural Affairs Counsel to all Yale students. The earlier email had called on students to avoid “culturally unaware or

¹ Conor Friedersdorf, “The Campus-Speech Debate Spends Summer Break in Statehouses,” *The Atlantic*, September 3, 2017, <https://www.theatlantic.com/politics/archive/2017/08/the-campus-speech-debate-is-summering-in-statehouses/535608/>.

² Laura Kipnis, “Sexual Paranoia Strikes Academe,” *The Chronicle of Higher Education*, February 27, 2015, <http://www.chronicle.com/article/Sexual-Paranoia-Strikes/190351>.

³ “My Title IX Inquisition,” *The Chronicle of Higher Education*, May 29, 2015, <http://www.chronicle.com/article/My-Title-IX-Inquisition/230489>.



Students carry mattresses and pillows to protest Professor Kipnis' opinion piece. Illustration added by the editors, not the author

(source: <http://dailynorthwestern.com/2015/03/10/campus/students-carry-mattresses-pillows-to-protest-professors-controversial-article/>)

insensitive choices” in their Halloween costumes and provided guidance for avoiding “cultural appropriation and/or misrepresentation.” In response, Christakis acknowledged “genuine concerns about cultural and personal representation” but worried about universities becoming “places of censure and prohibition” and about the loss of confidence in students’ capacity to regulate their own conduct without bureaucratic guidance from above.⁴

My last example concerns the protests that engulfed Evergreen State College in Washington in May 2017. Here too the trigger was an email, this one circulated by biology professor Bret Weinstein. Weinstein’s email criticized an official invitation to “allies” of “people of color” to absent themselves from campus for a so-called “Day of Absence” in order to attend a full day of workshops and other events addressing “issues of race, equality, allyship, inclusion, and privilege” “from a majority culture or white perspective,” while the same issues would be addressed “from the perspective of people of color” in a full day of on-campus pro-

⁴ Christakis’ email can be read at <https://www.thefire.org/email-from-erika-christakis-dressing-yourself-email-to-silliman-college-yale-students-on-halloween-costumes/>

gramming. This was a new twist on a longstanding Evergreen tradition, originally inspired by a satirical 1965 play depicting the chaos that results when the white residents of a southern town must cope with the sudden disappearance of the town's black residents. In previous years, students, faculty, and staff of color had been invited to attend an off-campus program discussing such issues, while allies had been invited to discuss the issues at on-campus workshops. Weinstein supported this tradition, but objected to the reversal of format, which he interpreted as a call for white students, faculty, and staff to absent themselves from campus.⁵ Weinstein had earlier criticized a plan to require an "equity justification" or explanation for all faculty hires on the grounds that it would "[subordinate] all other characteristics of applicants to one thing." Students demanded that Weinstein be fired; police advised Weinstein that it wasn't safe for him to remain on campus; and 50 Evergreen faculty members signed a letter calling for a formal "disciplinary investigation" against Weinstein after he went to the media to tell his side of the story.



Tweets by Bret Weinstein in the aftermath of the Evergreen College incident. The lower one, depicting Weinstein himself. Illustration added by the editors, not the author

(Source: <https://twitter.com/BretWeinstein>)

⁵ Weinstein's email can be read at <http://www.theolympian.com/news/politics-government/article153826004.html>

The Evergreen State College Student Protests



Tweets by Bret Weinstein in the aftermath of the Evergreen College incident. The lower one, depicting Weinstein himself. Illustration added by the editors, not the author

(Source: <https://twitter.com/BretWeinstein>)

These controversies have several things in common. Unlike many other campus controversies, they originated not in a clash between the newly emboldened campus right and the left, or between liberals and conservatives, but in a clash between liberals and the identarian left. Each controversy began with the articulation of liberal reservations about self-consciously progressive policies or practices pursued in the name of fostering inclusiveness and diversity on campus. And in each case, protesters did not seek to argue with the liberal critiques; they sought instead to stigmatize, delegitimize, and punish those critiques, treating them as outside the bounds of legitimate discussion.

The calls for dismissal of the Christakises and Weinstains and the launching of a formal disciplinary investigation against Kipnis are in my view strong grounds for including in formulations of academic freedom an explicit and unambiguous defense of the freedom to speak out about issues of campus governance. Such speech should not simply be constitutionally protected, but *institutionally* protected, that is, free from threats of internal sanction. a vibrant notion of academic freedom should defend the *legitimacy* of such speech, not simply its *legality*.

These controversies about campus governance reveal fundamental debates about the particular kind of institution the university is and should be. Should universities be defined as spaces of freewheeling “debate, discussion and even disagreement” that may “at times (...) challenge you and even cause discomfort”? This was the view taken by a much-discussed University of Chicago letter to incoming students last August.⁶

Or should colleges and universities be defined as spaces of mutual respect and recognition, where speech is and should be carefully practiced and regulated out of respect for the sensibilities of vulnerable groups, so as to create a more truly inclusive and egalitarian learning environment?

The goal of creating a more inclusive and egalitarian learning environment is a noble and important one. But pursuing this goal by policing speech and protecting feelings strikes me as misguided and dangerous, for three reasons.

First, the paternalistic, subjectivist, and therapeutic stance that informs this approach—a stance that treats students as fragile beings whose feelings must be protected—risks limiting and disabling those it is intended to serve. A one-sided focus on protecting and respecting feelings is arguably much more limiting than a focus on cultivating and respecting capacities.

Second, the paternalistic stance is embodied and expressed in an increasingly influential and institutionalized discourse built on the concept of cumulative and systematic micro-aggressions. This discourse redefines and inflates the notions of “violence,” “trauma,” “assault,” and “safety” as well as “bias” and “discrimination”; it generates an ever-expanding cat-

⁶ From a letter of Jay Ellison, Dean of Students of the University of Chicago, to the class of 2020 students: http://www.intellectualtakeout.org/sites/ito/files/acceptance_letter.jpg

alog of harms caused by speech acts; and it cultivates and nurtures ever more exquisite forms of sensitivity to such harms. Most crucially, it makes feelings the ultimate arbiter of whether a harm has occurred.

Third, the new campus paternalism makes everyone in the university community responsible for anticipating—and thereby avoiding—the possible harms that their speech might cause. Failure to avoid the harms caused by speech acts—however unintended those harms might be—may be grounds for subjecting the speaker to disciplinary action. The proliferation of formal disciplinary investigations—often with minimal or inadequate procedural protections for the accused—has received considerable attention in the domain of sexual harassment,⁷ but investigatory bureaucracies have been expanding to other domains as well.

These tendencies point in an increasingly and disturbingly illiberal direction. They threaten to transform the university from a space of free and unencumbered exchange into a space of constrained, monitored, and inhibited exchange. They threaten to remake the university into a disciplinary institution in the Foucauldian sense, one that seeks—through an expanding array of training programs and through the proliferation and expansion of investigative and disciplinary bureaucracies—to produce docile subjects who will speak in institutionally correct ways.

But docile subjects are produced, most effectively, through anticipatory self-censorship. In a context in which harm has been redefined as subjective offense, in which everyone is obliged to anticipate the possible

⁷ See the statement issued by 28 members of the Harvard Law School faculty, voicing concerns about the new sexual harassment policies and procedures adopted by Harvard in 2014: Eugene Volokh, “28 Harvard Law Professors Condemn Harvard’s New Sexual Harassment Policy and Procedures,” *The Washington Post*, October 15, 2014, https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/10/15/28-harvard-law-professors-condemn-harvards-new-sexual-harassment-policy-and-procedures/?utm_term=.e7a4631bd6c0.

harms that their speech might cause to others, and in which that obligation is enforceable through formal and informal sanctions, self-policing and self-censorship become routine, and the exchange of ideas and opinions—in research, teaching, and discussions about campus governance—is restricted by the need to avoid any possibility of giving offense. This cannot help but have a massive chilling effect on campus speech.

What is to be done? This is a difficult question, especially in the present American context, where liberal visions of the university are threatened not only, or even especially, from within, but also by much more powerful forces without, especially corporatization, privatization, conservative state and federal legislatures, anti-intellectualist right-wing populism, and of course a newly energized Alt-Right. The question is complicated by the connection between the threat from within and the threat from without: needless to say, events like the Evergreen and Yale protests or the Berkeley and Middlebury disturbances are red meat for Breitbart, Fox News, and conservative state legislatures.

In this climate, it is difficult to find a space for a liberal critique. And liberal criticism of course risks being coopted by the right. Yet this is no reason for liberals to remain silent. As an unapologetic liberal, I believe liberals must become more visible and vocal in campus politics. I think we need to stand up and speak out on behalf of a liberal understanding of the university, rather than simply grumble privately about the slow erosion and marginalization of that understanding.