

Harvard Law vs. Free Inquiry

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May 17, 2010



Late last month, controversy erupted at Harvard Law School after a private email written in November was leaked to the law school community. In it, a third year student, clarifying her views after a dinner conversation with two close friends, explained to them that she wanted to understand the science and research on whether intelligence may have a genetic component and whether African Americans may be “less intelligent on a genetic level.”

Harvard Law School dean Martha Minow promptly responded by issuing a statement condemning the email and reminding students and faculty that the right to free speech comes with responsibilities. Unfortunately, the dean also reinforced the most common and serious prejudice at American universities today, which targets those who think, or who merely wish to examine critically, nonconforming or disfavored thoughts.

Dean Minow’s statement, moreover, failed to honor the scholar’s duty to restate accurately a view one is criticizing. According to Minow, the student’s email “suggested that black people are genetically inferior to white people.” That’s an incendiary revision.

What the student actually wrote is that she couldn’t “rule out the possibility that African Americans are, on average, genetically predisposed to be less intelligent.” Then, in the very next sentence, she entertained the possibility that there is no genetic variation in intelligence between the races: “I could also obviously be convinced that by controlling for the right variables, we would see that they are, in fact, as intelligent as white people under the same

circumstances.” The student went on to speculate that “cultural differences” are probably “the most important sources of disparate test scores.” And the student elaborated at length an argument from Harvard Law School professor Randall Kennedy that in the student’s judgment deftly showed, despite the absence of “quantifiable data,” that racial disparities for violent crimes were rooted in culture. In sum, the student clearly expressed the desire to set aside conclusions of the heart, and instead examine the scientific data and consider reasoned analysis concerning the genetic basis of intelligence.

Minow’s rewriting of the after-dinner email, however, turned the student’s competing hypotheses and interest in the scientific evidence into a crude racist claim about people’s relative moral worth. Unless, perhaps, Dean Minow assumes that interest in some empirical propositions is inherently racist. Or was it the dean’s even more illiberal and antidemocratic assumption that human moral worth is a function of IQ that justified her condemnation of the student?

Furthermore, the dean implicitly encouraged members of the law school community to regard the student as a pariah when she added that “circulation of one student’s comment does not reflect the views of the school or the overwhelming majority of the members of this community.”

While devoting the longest paragraph of her brief statement to praising the Black Law Students Association for the way it handled “the hurt” caused by the email, Minow did not counterbalance her distancing of the law school from the email’s student author by offering even a hint of reproach for the gross violation of the student’s privacy involved in distributing the email, or a word of caution about the difficulties in interpreting private comments that become fodder for public controversy.

In a statement posted on their website, the Harvard Black Law Students Association echoed Minow’s misrepresentation of the student’s views, further contending that the student’s characterization of African Americans as genetically inferior to white people was “racially inflammatory,” “deplorable,” and “offensive.”

By this time, as Dean Minow noted in her statement, the student had already issued an unequivocal apology: “I am deeply sorry for the pain caused by my email. I never intended to cause any harm, and I am heartbroken and devastated by the harm that has ensued. I would give anything to take it back.”

This saga has followed the same dispiriting trajectory as that of the Lawrence Summers affair. In 2005, the then president of Harvard University spoke at a private off-the-record seminar organized by the National Bureau of Economic Research to explore why women, who had made great strides throughout most of higher education, remained significantly underrepresented in sciences and engineering. One of the hypotheses that Summers considered—which he hedged with caveats while insisting that more research was needed—

was that fewer women than men were born with the extremely high levels of abstract theoretical intelligence that graduate study of science and engineering requires. Although he explicitly rejected it as the chief factor, Summers's tentative discussion proved too much for MIT biology professor Nancy Hopkins. She set off a national controversy by walking out of the meeting, informing the *Boston Globe* that if she hadn't, "I would've either blacked out or thrown up," and suggesting that Summers had argued that women were genetically inferior to men.

The controversy presented Summers with an opportunity to instruct Harvard and the larger public about the university's proper mission. He might have begun by pointing out that he had participated in the meeting because of his devotion to equal treatment for women and had argued that the most important factor explaining women's underrepresentation in the sciences is probably that many young women with the requisite intellectual gifts rationally choose to go into law, business, or medicine, which allows them to establish careers and begin families in much less time than in the sciences. And he should have concentrated on arguing that it is the special task of the university to expose a range of hypotheses, including unpopular ones, to rigorous analysis.

Instead, Summers issued one groveling apology after another, endorsing his critics' view that his remarks were false and insensitive. This was to no avail. He lost a no-confidence vote in the faculty of arts and sciences and within a year was ousted from Harvard's presidency.

It is not to be expected that a third-year law student, publicly accused by her dean of making hurtful, racist comments, would step up to defend herself in light of the university's proper mission. But it is to be lamented that Dean Minow, who sought to turn the controversy into a teachable moment, taught the wrong lesson.

For Minow, the lesson is that members of the university community must learn to be more sensitive. For fear of offending each other and causing hurt, students and faculty must not mention, even in private correspondence, a proposition that "resonates with old and hurtful misconceptions," even if the proposition itself—concerning the biological basis of intelligence—can be proven false through empirical investigation. This, though, is an intellectually stultifying obligation. In a complicated world, everything resonates with everything.

Contrary to Dean Minow, our students and faculty need to learn to be less sensitive. Instead, they need to develop the virtues of toleration and intellectual humility. The cultivation of sensitivity sharpens antennae for hurtful words and ideas, and encourages complaining whenever they sting. In contrast, toleration, particularly at universities, means suffering with equanimity the expression of disagreeable, even odious, opinions, provided that they are subject to reasoned analysis. The cultivation of humility fosters respect for others and their opinions and a willingness to follow logic, evidence, and experience—to consider that one might be wrong and to find in others' errors the occasion for improving one's own understanding.

The question of race and IQ is explosive. It has an ugly history, and it has been tied to cruel injustice. But the nefarious use of opinions about the biological basis of intelligence is no reason to denounce a student who advocates submitting competing claims to systematic inquiry.

In her statement to the Harvard Law School community, Dean Minow ought to have proclaimed that free speech on campus is very broad, that it is rooted in the freedom and equality of all human beings, and that its purpose is to protect the robust examination of ideas, including controversial ones, in order that the truth may emerge. She ought to have reminded students and faculty who cherish free inquiry that it is their responsibility to confront views that they deplore with better evidence and stronger arguments.

If Dean Minow's principle that hurtful opinions must go unspoken and unexamined were taken seriously and applied impartially, then law schools and universities would be obliged to close down the dispassionate investigation of an enormous range of important public issues, from the morality, law, and politics of abortion, affirmative action, and same-sex marriage to the causes of the financial crisis; from the efficiency and justice of health care reform to the rules governing the detention, interrogation, and prosecution of enemy combatants; from Middle East politics to immigration.

And that's no way to run a law school or a university.

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