

University's Free Speech Policy Is the Exception, Sadly

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The good news is that on January 6, the University of Chicago published the “Report of the Committee on Freedom of Expression.” Chaired by law professor Geoffrey R. Stone and consisting of six other professors, the committee forcefully affirmed the centrality to the university’s mission of the principles of free speech. The bad news is that the good news is news at all.

Sadly, the good news is news in part because of the massacre--perpetrated the day after the publication of the University of Chicago report--at the editorial offices of the Parisian satirical magazine Charlie Hebdo by Islamic extremists bent on executing the staff in retribution for publishing cartoons and pieces that mocked Muhammad.

The good news is also news because, regrettably, the admirable position the University of Chicago has embraced on freedom of speech distinguishes it from a majority of universities in the land. Not every American college and university aggressively discourages debate and independent thought with restrictive speech codes that forbid the expression of opinions at which anyone might take offense. Yet rare is the university that clearly articulates the principles of free speech and proudly stands behind them.

So when the president and provost of one of America’s preeminent institutions of higher learning appoint a special committee and assign it the task of “articulating the university’s overarching commitment to free, robust, and uninhibited debate and deliberation among all members of the University’s community,” it is worth taking notice.

Since its founding in 1892, the report states, the University of Chicago “has dedicated itself to the preservation and celebration of the freedom of expression as an essential element of the university’s culture.” Accordingly, “it guarantees to all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn.”

Although the university seeks to foster a climate of civility and mutual respect, for without them community members cannot benefit from the free exchange of ideas, the report stresses that “concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.”

Nonetheless, freedom of expression at the University of Chicago is not limitless.

“The University may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the University.” Also, “the University may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities of the University.” These restrictions, however, represent “narrow exceptions to the general principle of freedom of expression.”

In no case should these exceptions “be used in a manner that is inconsistent with the University’s commitment to a completely free and open discussion of ideas.” They must not be allowed to weaken “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.”

When opinions conflict, as they surely will, members of the community should question and contest the views with which they disagree, but they “may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe.” The University has a “solemn responsibility” both to *promote* free speech and to *protect* it.

A measure of how far the academy has let the commitment to free speech atrophy—and how much remedial work needs to be done to restore it—was the reaction of the editorial board of the student newspaper at the University of Chicago, who found the report lacking. An editorial published on January 9 agreed perfunctorily that “the University must protect open discourse.” But the student editors were underwhelmed by the report’s ringing affirmation of freedom of expression and they did not appear to share the committee’s sense of urgency in defending it.

Indeed, despite paying lip service to free speech, the main point of the students’ editorial was to endorse the very suppression of speech that the report argues is antithetical to the pursuit of knowledge.

The student editors criticized the report because it did not “clearly differentiate hate speech and offensive speech.” They also faulted Professor Stone’s committee for failing to “take the issues of diversity and inclusion into account when writing about the importance of free speech.”

To the Maroon journalists, free speech must be supplemented by a willingness to distinguish “between acceptable and unacceptable speech.” Speech that challenges one’s opinion is acceptable, but hate speech, which “seeks only to tear down, not to build up,” is unacceptable. “In order to forge an inclusive campus climate,” the students contended, “the University must maintain a consistent commitment to eradicating hate speech and harassment in campus discussion.”

It's strange that a newspaper would say such things, even a college newspaper, but in criticizing the University of Chicago report the student editors merely echoed the prevailing conventional campus ethos. It is University President Robert J. Zimmer, Provost Eric D. Isaacs, and Professor Stone and his committee who, in calling the university back to its best traditions, are the ones embracing bold reform.

These days, what is taken for cutting-edge educational philosophy holds that universities should regulate speech to put students at ease and make them feel comfortable, included, and at home. In designing curricula, conducting classroom discussions, and issuing invitations to guest lecturers, professors frequently work from the often-unstated assumption that the quest for inclusivity trumps the pursuit of knowledge.

The determination to justify regulation of speech has not only seized the minds of student editors, but spread to the highest levels of the academy. In 2012, for example, Harvard University Press published "The Harm in Hate Speech," by Jeremy Waldron, a professor of law at New York University and also a professor of social and political theory at All Souls College, Oxford. Like the student editors at the University of Chicago, Waldron, a pillar of the left-liberal intellectual establishment, leapt from the indisputable claim that speech can promulgate hatred and cause real harm to the unsubstantiated conclusion that government and universities can regulate speech effectively and justly.

Over the last 30 years, universities have decisively proved that they are not up to the dubious task. Sometimes comically so. Only last week the British newspaper The Telegraph reported "The Oxford University Press has warned its writers not to mention pigs, sausages or pork-related words in children's books, in an apparent bid to avoid offending Jews and Muslims." In response to widespread criticism and ridicule, a spokesman offered clueless boilerplate: "OUP's commitment to its mission of academic and educational excellence is absolute," he said. "Our materials are sold in nearly 200 countries, and as such, and without compromising our commitment in any way, we encourage some authors of educational materials respectfully to consider cultural differences and sensitivities."

Nor is the problem confined to foolish denizens of the university world. History unfailingly teaches that government authorities endowed with the power to police words and arguments will succumb to the temptation to find unacceptable those opinions they regard as irreverent or unorthodox and to infer hatefulness in opinions they regard as corrupt, wrong, or impious.

It is not only human fallibility in the making and the enforcement of laws abridging freedom of expression that should discourage the notion of entrusting professors and politicians with the power to define acceptable and unacceptable speech. It is also human fallibility in the acquisition of knowledge that, as John Stuart Mill argued in his 1859 essay, "On Liberty," demands the greatest possible liberty of thought and discussion.

When we are in the right, observed Mill, we benefit from free speech because the encounter with wrong opinions, even hateful ones, impels us to reacquaint ourselves with the grounds of our own convictions and drives us to formulate the case for them with greater vigor and precision. When we are in the wrong, Mill asserts, the encounter with other people's correct opinions enables us to replace our false ones with true ones. And--in what Mill emphasizes is the most common case--when our opinions and the opinions with which we disagree are a mixture of correct and incorrect, liberty of thought and discussion provides us the opportunity to discover the mistakes in our thinking and the truths in the thought of others.

We should not operate with illusions. Liberty of thought and discussion is a demanding enterprise. At the same time, we should never forget that the root meaning of toleration is to bear pain and endure hardship.

Yet contrary to the assumptions of current campus orthodoxy, the devotion to liberty of thought and discussion and the commitment to community and inclusiveness are not antithetical.

The community of those devoted to liberty of thought and discussion is exceptionally inclusive and diverse. It welcomes all individuals. It subjects all views equally to examination and criticism. And it encourages civility and mutual respect by supposing that--like worthwhile books and debates--conversations with those possessing perspectives at variance with our own present us with an opportunity to refine our understanding by learning from others. Fostering such a community is, as the University of Chicago's exemplary report on freedom of expression maintains, at the very heart of the university's mission.

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