IDEAS

An Attack on Free Speech at Harvard

Universities require a culture of open inquiry, viewpoint diversity, and constructive disagreement.

By Jeffrey Flier, June 21, 2024, The Atlantic

In a recent op-ed in *The Harvard Crimson*—"Faculty Speech Must Have Limits"—the university's dean of social science, Lawrence Bobo, made an extraordinary set of claims that seriously threaten academic freedom, including the chilling idea that faculty members who dare to criticize the university should be punished. Bobo is a senior administrator at Harvard, overseeing centers and departments including history, economics, sociology, and African and African American studies. When he writes about faculty free speech, those within and outside his division listen.

His essay reflects a poor appreciation of the norms and values that academic freedom was developed to protect. As the Council on Academic Freedom at Harvard—a faculty group of which I am co-president—has written, "A university must ensure that the work of its scholars receives robust, informed, and impartial appraisal that applies the best truth-seeking standards appropriate to their discipline—*without* pressure to bow to the opinions of the state, a corporation, a university administrator, or those (including students) who express feelings of outrage or harm about ideas they dislike." Further, members of the academic community "should be free from reprisal for positions they defend, questions they ask, or ideas they entertain." Stated another way, universities require a culture of open inquiry, viewpoint diversity, and constructive disagreement.

Bobo, for his part, presented two distinct scenarios in which he asserted that faculty speech should be restricted. His first example referenced prominent faculty members with large platforms for communicating their views who speak or write

to “excoriate University leadership, faculty, staff, or students with the intent to arouse external intervention in University business.” He concluded that such speech may deserve to be punished by the university. The prime example he described came from “a former University president”—an apparent allusion to former Harvard President Lawrence Summers—who strongly criticized the university leadership’s response to the Hamas attacks on October 7.

Bobo didn’t identify the nature of the sanctions he had in mind. But any sanction for the speech he referenced would be a frontal assault on academic freedom. The speech he proposed to target doesn’t trigger any of the well-recognized exceptions to free-speech protection, such as extortion, bribery, libel, and sexual harassment; violation of time, place, and manner restrictions; and dereliction of professional duties. That a leader of Harvard would sanction a faculty member—with or without a large platform—for criticizing the actions of other members of the Harvard community or the university itself is outrageous. That would be true even if a faculty member really did speak with the intent to encourage what Bobo identified as “external actors”—media, alumni, donors, and government—to “intervene” in Harvard affairs.

Each of the external constituencies Bobo identified has a legitimate interest in Harvard, and faculty should absolutely have the right to communicate their unhappiness with Harvard and its actions to these groups. Of course, such public criticisms may be right or wrong, well or poorly argued, and faculty risk reputational consequences based on the nature of their criticism. The appropriate response by university leaders who might disagree with such statements is to counter them with speech, as strongly and pointedly as those leaders wish, not to sanction them.

Two of the groups on Bobo’s list, however—alumni and donors—are part of the extended Harvard community, not simply external actors. The credentials and reputation of alumni are linked to the reputation of their alma mater, and donors have every right to weigh in on whether the beneficiary of their generosity is fulfilling its stated goals. Of course, these constituencies don’t speak with one voice, and the views of individuals or groups of alumni and donors may be reasonable or unreasonable. Leaders should listen to diverse inputs and, based on their considered judgment, choose and defend specific courses of action.

What if faculty statements are seen to promote government interventions in university affairs? A private university like Harvard has many well-defined points of intersection with government policy, including the need to conform with Titles VI and IX of the Civil Rights Act of 1964. Likewise, universities agree to conform with a range of embedded policies when they accept government grants and gain access to student loans. If government interventions cross the line, making specific demands regarding curriculum and other educational and research matters, then the university would need to resist the threat to its core values under applicable law. But a faculty member who expressed support for intrusive government actions should have their views vigorously countered by university leaders, not be punished for expressing them.

Bobo's second example of speech that needs limits involves faculty encouraging students to engage in campus activities that explicitly violate university rules of conduct, which raises distinct and more complicated issues. Of course, if a faculty member occupied a dean's office to demand a specific administrative action, they could be sanctioned even under existing policies. But what if a faculty member encouraged protesting students to violate university rules? And what does *encouragement* even mean in this context?

Many faculty members supported the protests against Israel's war in Gaza and communicated with students to provide advice and guidance, including on their rights as students and the nature and consequences of civil disobedience. Indeed, many law-school faculty members provided such advice and counsel in alignment with their professional roles, so the discussions were covered by attorney-client privilege. Such faculty speech should be fully protected.

But might there be instances where such faculty speech should not be protected? Free speech requires a very high bar for considering speech between a faculty member and a student protester to have crossed the line into conspiring to commit or aiding misconduct. I haven't heard of any instances where faculty at Harvard went beyond providing moral support and counsel, and actually encouraged or incited students to violate clearly articulated university rules.

So, how strong are the cases Bobo made for restricting faculty speech? His first category—speech publicly critical of the university by a prominent member of the faculty—should be fully protected, never sanctioned or threatened with sanctions. He provided no cogent argument to the contrary consistent with the core principles of academic freedom. His second category—sanctioning a faculty member for encouraging students to violate campus rules—involves conduct that it seems no one has actually documented. Regrettably, though, the essay is likely both to chill faculty speech and to suppress appropriate advisory interactions between faculty and students, not least because Bobo failed to stipulate that the views were his own and not a statement of policy for the division he administers.

To take an optimistic view, the current moment seems to have stimulated a valuable reaffirmation of the crucial importance of protecting campus speech and academic freedom. But Bobo's essay is a reminder that there is much work still to be done, and that the price of academic freedom is eternal vigilance.

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