

WHEN WORDS FLAIL

Most of us in universities want thinkers and speakers to enjoy as much freedom, as much give and take, as possible. This is not because we are generous. Rather, it is because we have an instinct for survival.

Some of us believe in the marketplace of ideas. Justices Holmes and Douglas affirmed so, riffing on Mill. Keen ideas best the rest.

A few of us believe in the evolution of ideas. We nourish many ideas. Most will die. Some will find a niche. One or two will thrive.

Probably, most of us accept the dialectic of ideas. Remember my hoodies, Plato and Hegel? Arguments clash. Assumptions are purged. Opposites merge. Theories with more queries emerge.

All three views suggest that if we barge in to select prematurely, we won't do as well.

Nonetheless, we also believe that some speech is worse than offensive. It imposes a deadening silence, except for itself. We want to stop such speech—yes, silence it. However, the view of what such speech is depends on your point of view or the point of view of you role.

These thoughts are from my point of view, not the provost's, not the president's. Of course, they can affect how we think in those roles, but they do not dictate to those roles.

STICKS AND STONES

Sticks and stones can break my bones, but words can never harm me. Oh, really? We have plenty of evidence to the contrary. How can mere words hurt anyone?

Some words just don't say; they do.

For example, there are dissing words, flaming words, harassing words, bullying words, threatening words, and silencing words.

J. L. Austin said words normally do not do. They state. What people state is in suspended animation, between their thinking and their acting, and their thinking and our reacting. We can inspect the words, judge their truth, and think. We do not have to duck, dive, and deter.

In this culture, in civil life, we are more tolerant of saying bad stuff than doing bad stuff. (Of course, this is a mirage. But that is for another day.) The verbal does not invade our space.

On occasion words perform deeds. I speak to my car, "Phone Sally." And it does phone her immediately. Sally and Sadie stand solemnly before a civil judge, who says, "I now pronounce you partners under the law." And they are, right then (except in Maricopa County, Arizona, I would guess).

But mechanical and performative speech acts are relatively rare. More often, we face a quandary. Do the tone, intent, volume, and misprision of words have an inexorable effect like a physical action?

Common sense answers, of course. Words have an undeniable impact. But something niggles. Thomas Jefferson got it. Defending free speech, he said words cannot pick my pocket. Still, if words defame you, they come damned close to picking your pocket. And words have made my flesh creep. They have made me sweat. They have made my heart race.

Despite certainty that words can be deeds, we have a hard time ascertaining when words cross the threshold to deeds. It would be helpful to have a clear idea of this threshold. That is tough when we are peaceful. When an exchange gets raucous and the dust rises, speakers rarely think clearly. “You suck!” is about as close as we can get to an argument.

When offensive words become hurtful deeds, they function like sticks and stones. People want the constabulary to lock up the offenders.

When should universities call in the constabulary, and to do what? We do not want to proscribe thinking and conversation, merely to regulate speech that we do not like. This difficulty is amplified in universities. We have a tradition of giving wide berth to what people think and how they say it.

PERMISSABLE, ADVISABLE?

There seem to be few bright lines. Even they blur in the fog of words and deeds. Here are some distinctions that we generally make. Professors must not electioneer for a specific candidate or measure while they teach class. That misuses the power in the position.

Advocacy for a cause is permissible, if the topic is appropriate to the course. The speaker must argue reasonably, not preach or persuade passionately. Such an advocate builds an argument and leaves the framework visible; it is consistent with teaching. Advocacy need not be balanced; it must be accurate.

To electioneer is to cajole, playing on emotion, using propaganda. The advocate tries to affect conviction through everyday logic. The electioneer kidnaps conviction for a joy ride to the polls.

Of course, the line between electioneering and advocacy is not always clear. Occasionally, it is hard to see where the classroom ends, and the public forum begins, especially in this digital world. When in doubt, we should extend the protection of academic freedom to speech in any form.

Many of our debates about the ethical properties of speech turn on locating this distinction. Does the speech invite inspection and reflection? Or does it push a button or pick a pocket?

From an administrative (i.e., crass) point of view, none of this is advisable. The public regularly confounds what a professor says with what a university upholds; and it concludes the worst about both. Many would believe that the university was electioneering.

Violations of privacy and state security are not permissible. In some states professors still must sign loyalty oaths before hiring. But such violations can be advisable. One can imagine situations when perceptions of a greater good will drive a person to wrestle with disclosure under free inquiry and pursuit of truth implicit in academic freedom. Advisability under this standard does not immunize a person from sanctions under legal standards. There is nothing new in this tragic collision between obligations to the state and higher goods.

OF CODES AND CONSTABLES

We proscribe and punish noxious behavior toward protected categories of people by race, ethnicity, creed, age, gender, sexual orientation, national origin, etc. It seems a logically prior step to prevent such behavior by banning hate speech. After all, campuses want to promote civility. Why not require it?

Noxious speech toward and even about such categories of people is not permissible on many campuses. It is hard to imagine, we think, how such speech could be advisable on any campus. Only under the most controlled, theatrical conditions could it be a means to promote constructive behavior and increase understanding.

But as quite a few universities have learned, a specific standard often is not legally enforceable when the harm is not tangible. It is painful to ask the next questions. Are we knowledgeable enough to predict how words will affect understanding and culture? Does it matter or not whether the offensive speech is part of a longer exchange, with many instances of ignorance, irritation, and inflammation?

A speech code tries to regulate speech before it is spoken; it converts advisability into a standard of permissibility that is ordained by *a deus ex machina*. Academic freedom, though, implies that speech is self-regulating and self-correcting by the academic community. Presumably the insights are so technical, the terminology so obscure that Minnie and Mickey Public should have no sway over it. Over time, this right due to research has been broadened to a license for barely bounded speech.

When academic freedom seems to be abused, it is the responsibility of other speakers to respond. If ethos and reason cannot prevail, then no standard will avail. To invoke a standard and a constable outside of dialogue in order to embargo speech within the dialogue often has unfortunate effect. It displaces give and take about the topic with argument about whether the speech conforms to a standard. Form wins over substance. Also, it yields control to others, not a wise move.

The primary task of individuals who intervene in public exchange gone awry is to re-establish ground-rules for civil discussion. It is helpful if speakers can distill from the heated fumes the essential disagreement, in cool terms. Generally, one should not assert privilege for one's comments, based on role or status. Such assertions silence reasoning, whereas reasoning should be restored.

I do not think that we need codes and constables. We need, as Paul Grice wrote in another context, a speech pragmatics. We need to observe, enact, and reclaim when flouted a *cooperative principle* in conversation. What does that mean? We take turns, making relevant, brief, and sincere additions to the conversation. The conversation can lead to consensus, but it need not to. In fact, it allows dissent to be heard and to multiply into dissents without splintering into silence. We join the cooperative principle because it allows us to learn through dialectic.

The cooperative principle guides the deliberative moment. There are other times, other tempers, and other talks in our lives. But the university and public policy live in this moment.

HATE SPEECH

Even so, we cannot flatly say that hate speech always has a pass because it is spoken. As is the case with harassment, hate words can be part of behavior that is invasive and discriminatory. When targeted against individuals and linked to credible threat, it becomes actionable under the law. These cases transfer the heat of hateful words to the heft of hateful conduct.

Particularly offensive in a classroom is hateful speech against protected groups, whether such groups are in the class or not and whether or not the speaker is the teacher or condoned by the teacher. The association of noxious words with the authority of the teacher is intimidating. It amounts to force. A reasonable person can claim that such speech deprives her of the right to speak freely; it also deprives her of a good, the capacity to experience what tuition purports to support.

Outside of the classroom, hate speech, is permissible; it is not at all advisable, in my book. It can have, I suppose, a role in forums that are clearly declamatory. People who organize forums in which declamation, vituperation, and damnation will be a la mode, have a special responsibility. They must be prepared to hose down the flames; and they must try to stop participants from carrying away embers that can spark conflagrations on the outside. Such tempering requires skill. To cite a standard of deliberation, as a means of suppression, will not work in this context. Deft paraphrasing that captures the intent without the barbs can interrupt the anger yet continue the exchange.

Over-heated speech is not an advisable tactic in settings such as most classrooms and academic lectures, where deliberation—tempered argument—is the norm. Besides getting angry over the issues, people get angry about the unexpected vehemence.

We should not assume that people carry with them a rhetorical handbook that specifies the speech genre, tropes, and tone that are suitable for a place. We can avoid some misunderstandings by making these guidelines clear at the start of events. Tonight's show will have frontal nudity. Are you ready?

And we should assume that a topic that some of us have pegged as suitable for deliberation will strike others as an occasion for vituperation. I have seen blood in the streets when academics discuss the role of algebra in the schools. Disruptions require respectful and neutral interruptions.

BULLY

Another vexing type of speech is bullying. Such speech intimidates, berates, isolates, and/or extorts individuals. Sometimes it occurs in private. Notoriously, it erupts in public, shaming and abusing victims and inciting bystanders to choose sides. Its weapons can be volume, repetition, misrepresentation, and tone. Its targets can be from the traditionally protected categories, but they need not be.

For example, to leverage a political dispute between departments, one party calls another party a racist in email blasts and on blogs, on the radio and in campus meetings. And persists in doing so, even when data paint a different picture. Few people will find a charge that is unsubstantiated by data tolerable. The question is, though, should it be punishable under a civility decree?

If the bullying is linked to discriminatory actions against a protected group, it is, but under another standard. After that, the scene gets murky. If there is the slightest filament of a correlation—say the department has below average number of X ethnicity—the speaker can be “justified” in making the charge. If the style of the accuser's speech or writing is clearly over the top, then the charge can be rationalized as just another rhetorical move. If the charge is made in a forum known for flaming, it can be extenuated on the grounds of genre. This news will not salve the burn, but it might help to avoid backfire. The courts have defined public figure broadly, in order to protect from sanction a broad range of people opposed to current policy.

The person unfairly accused or smeared in bullying at least has to show damage to reputation and health if s/he wants a campus judgment. There must be a high likelihood of cause between the action of verbal bullying and suffering.

However, I do not think that this linkage is enough to secure a finding from the university. A university standard and code protect the principles of the university, and incidentally the property and reputation of the professor. The professor is an asset of the university and a vehicle for learning. (I am trying to be blunt.) Can the accused professor or representative show the tangible effect of the calumny on the teaching of the accused and the learning of students? The evidence would have to convince a reasonable person, not just an empathetic one.

Administrators are bullied, too. If they want the university to rebuke an offender, their documentation must pass a very high standard. Otherwise, it can seem that we are “doubling-down” on dissidents. Administrators must show that they have exhausted alternatives: rebuttal, mediation, counseling, and etc. In all likelihood, a university would impose a reasonable observer standard. A reasonable observer must conclude that the vituperation and calumny surpassed anything that could be explained by genre, hyperbole, or context.

Of course, there are many problems with this approach. Imagine, peers review a fellow faculty’s teaching as inadequate. She adopts changes that produce worse results. She claims that peers used process and private discussions to bully her into failures. The reasonable person must conclude . . . what?

I sound like a broken record. (I am as old as one, too.) But I think that the best response to bullying words is cogent response by other faculty and other academic administrators. They enact then what we all preach: the self-correction of academic speech.

There really should not be an arbiter above the level of discourse itself. I am not arguing that administration sidestep the furor. I am suggesting that it engage appropriately. Further, I suspect that the number of instances when we can show that abusive words actively damaged the teaching and learning assets in the university will be small. That must be weighed against the likelihood of misuse of the standard.

ACADEMIC FREEDOM

Academic freedom inadvertently shelters some bullying. It shields individuals in the university and the university itself from censorship of and reprisals for critical speech (not just research), from either inside or outside its walls. This is a comparatively new position. The modern affirmation of academic privilege converges with the growing protection of civil speech from privilege.

The roots go back to the irresistible power of truth in classics like Milton’s *Areopagitica*, Locke’s *Letter Concerning Toleration*, Jefferson’s *Bill for Religious Freedom*, and Mill’s *On Liberty*. Fruits of this tree include the challenging words of the Free Speech Movement, the Civil Rights Movement, Women’s Rights Movement, and etc. They all exorcised the *status quo* with scorching words and chants so that the disenfranchised could exercise their rights.

By the middle of the twentieth century, thinkers understood that justifying free speech, academic or civic, by linking it to truth would not work. Truth was a useful fiction that stabilized reality, until it did not. The *rage for order* was in the mind; the courage to denounce power was in the heart. Thought and its expression were its vehicles and thus should be protected as academic freedom and academic speech.

There is no requirement that academic speech should give equal time to all sides in a controversy or that it be temperate. Certainly, bullying lives up to this low expectation; it does not give its subject the time of the day. We expect but do not demand accuracy. The bully will sacrifice facts in order to simplify and dramatize indictment. Bullying is classic misprision. It betrays and berates in order to bash. It exploits turn taking in order to stop an antagonist from taking a turn. It says, “Feh!” to dialectic.

Academic freedom can empower people to contain bullies. This requires that people see freedom as a duty. That duty can’t be offloaded on the university. The university must maintain impartiality for the academic freedom of the individual to be possible.

Society can assume—but not assure—that the investigator is sincere because the university is, in theory, agnostic. It does not have a point of view. It does not mandate the faculty and students’ opinions. Instead, it enables the points of view of others. If an investigator’s statement is challengeable, others can respond, without institutional prejudice.

Some people are in the habit of speaking in the stead of the university. Legal and fiduciary powers are invested in certain positions like presidents and trustees. In the exchange of ideas, though, universities do not speak. Unless specifically authorized by vote or enshrined document, a campus president can speak for himself/ herself and the administration, but neither the faculty nor students.

I think of the role of the university in this way. The university can fund the labs, if the faculty so decides; it does not choose the experiments and equipment. It resources the libraries; it does not shape the collection. It supports the faculty; it does not dictate their research, determine the content of their courses, and direct their associations.

That is not to say, of course, that faculty committees, accrediting bodies, and statutes do not have a say. They dictate that certain subjects be taught. Even they cannot abrogate a professor’s academic freedom to dissent from conventional wisdom, while discharging responsibility.

Obviously, a deconstructionist can have a field day with the claim to agnosticism. Universities all are entwined with the state and power, even as the faculty and students are critical of both. But we must suspend belief in complete disbelief to be functional.

In general, contentious speech should generate more speech, under the protection of academic freedom. It is inevitable that partisans, each believing to have exclusive possession of the truth, will discredit each other’s methods and conclusions. It is unfortunate when such discrediting escalates to delegitimizing one’s another’s speech, usually by claiming that a bright line has been crossed. And it can be disastrous when delegitimizing explodes into eradicating the speech exchange itself. The dialogue is indicted as subversive of beliefs that trump academic freedom.

SILENCE, THE VERB

These guidelines can illumine the next set of issues. These issues cluster around petitioning, silencing, and boycotting—all in the political realm. It is common these days to demand that authorities silence objectionable speech. I will get to the reasons why in a minute.

It is unlikely that I would support silencing political speech, no matter how heinous. However, I might criticize it. I might support penalizing it if the speaker knowingly and wilfully crossed the rules of place. Both responses are tactical, anticipating a next step. It is unlikely that I would support boycotting communication with cultural institutions, no matter how objectionable the culture or how revolting the activities of supporters of that institution. However, I might denounce policy and behavior; I might support divestiture and disinvestment.

I will support the right to circulate petitions to silence/ boycott and, of course, the right to discuss the petitions. Circulation and discussion are parts of expression. They oblige thinking. It is not enough to believe in the right of petition. One must respond to it. Otherwise, the right decays into rite. We need not reply to every petition to substantiate the right. We should respond to those that we see as crucial.

TALK BOYCOTTI, BOYCOTT TALK

In a university community, whatever one's assigned role, one can exchange ideas freely in discussions and forums, actual and virtual. The posting of pro-boycott material on a faculty/student/staff web page is permissible advocacy. The faculty page is distinguishable from a page on which the university, as an administrative entity, posts information. Faculty pages implicitly address a generalized audience, not just particular ones for classes. And the faculty page does not preclude contrary postings, although they are not required for balance. However, it is not advisable to include such material in a classroom, the subject of which is completely unrelated to the topic.

While academic decorum calls for tempered speech (including postings), it is not mandated. Expression can have rhetorical and emotional dimensions. Nonetheless, the *special position* of faculty imposes *special responsibilities* that they should follow, even if they are not required to (AAUP Statement). They should disambiguate their views from the university. They should speak with restraint and respect. After all, they will be viewed as representatives of both the university and the professoriate.

The role of the university in facilitating speech often is misrepresented by people on campus and off campus. Irritated by the mere presence of a speaker or course on a sensitive topic, they sometimes conclude that the university should silence all political speech since none of it is objective. Or, they claim that, merely by providing a room or allowing notices of events to be posted, the university is endorsing a political view inappropriately.

Usually, the call to silence is disingenuous. It is not a clarion call for objectivity. Rather, it is itself a power move. It is an effort to suppress dissent from a prevailing point of view that defenders do not want to expose to any criticism. Thou shalt not speak ill of the holy of holies. To prevail in the holy cause, zealots are willing to immolate political discussion on any topic.

It is difficult to imagine topics that should be exempted from critical commentary. Nation-states, institutions, and roles that are sectarian and/or ethnocentric by constitution are not immune, simply because, in the American context, religion and ethnicity are protected categories. Rather, the test is whether the critical language demeans and misrepresents people because of religion or ethnicity.

Claiming that the immediate community or society at large objects to a speaker can be a threat; it is not, though, a reason to preempt speech. The claim seeks to short-circuit serial speech acts. Serial speech acts are the most reliable means of gaining greater accuracy. These claims embargo information that can clarify what really is in dispute.

Another sort of silencing is boycotting, when people agree not to communicate with another group until certain conditions are satisfied. A boycott is a non-violent tool for settling specific grievance. It is tempting to embargo speech because of the symbolism. It suggests that the other side is getting close to withdrawing from the community of reasoning. A speech boycott is intended as a warning shot.

A speech boycott is viscerally satisfying. One wants desperately to do something meaningful when a government violates human rights or when members of a university develop chemical weapons. But this something is logically at odds with academic freedom. It assumes that the interdiction of dialogue will advance dialogue—and hence accuracy and equity.

Speech boycotters occasionally try to limit the damage to free speech and the advancement of knowledge. They want to silence the university, not its members, the state, not its citizens. So, they censure in this way only the leaders. The boycott becomes largely symbolic—and hypocritical—because most channels remain open. Or, organizers can develop tests and guidelines to determine a speaker's degree of complicity, but leave the application to local leaders. The boycott is widespread—and inconsistent—because implementation occurs locally.

The fundamental question is then whether infringing academic freedom is an effective way of leveraging political freedom. At an isolated moment in time, the academic freedom of a few seems to weigh less than the political freedom of the many. But put these values in motion over time; the perception changes. Not exchanging will inspire more positive change than exchanging, the boycott assumes. Insecurity will promote accuracy and equity more readily than security.

I can imagine, though, something that comes close to a boycott on speech. It is an extreme condition. I might conclude that a group's behavior was consistently barbaric, over time, in leadership and in the mass. A reasonable person would conclude that there was no evidence to

suggest that speech could redeem anything. The group already withdrew from civil discourse. Boycotting speech with them was a fait accompli.

However, a guiding principle of the academic profession is that security from reprisal and deprivation is a pre-condition for knowledgeable peers to advance ideas that criticize other ideas, on the way to ever greater clarity and accuracy. We are less likely to achieve clarity and justice by suspending academic freedom selectively than by observing it universally.

Harry Hellenbrand
Provost and Vice President for Academic Affairs
February 2014