

Academic Freedom

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Academic freedom, which allows members of institutions of higher learning to engage in intellectual pursuits without fear of censorship or retaliation, lies at the heart of the mission of the university.

Indeed, according to the American Association of University Professors, “Academic freedom is the indispensable requisite for unfettered teaching and research in institutions of higher education.”¹

Recent years have seen growing concerns about threats to academic freedom, many brought about from the changing norms of, and demands on, the university. A wide range of new issues—including content warnings, safe spaces, social media controversies, microaggressions, and no platforming—have given rise to loud cries, in both scholarly and popular contexts, that academic freedom is under serious attack. Despite this, there is surprisingly little philosophical work on the topic of academic freedom, and even less that directly takes up some of these new challenges. The present volume fills both of these gaps in the current literature by bringing together leading philosophers from a wide range of areas of expertise to weigh in on both traditional and timely issues involving academic freedom.

1. The Rationale for Academic Freedom

The rationale for academic freedom is often connected to the justification for free speech more broadly.² In *On Liberty*, John Stuart Mill famously defends free speech on the grounds that full and

¹ <https://www.aaup.org/our-work/protecting-academic-freedom>

² Post (2013) argues that, in fact, the norms of free speech are importantly different from the norms of academic freedom. Given the aims of teaching and research, for instance, there is speech that is tolerated in the broader public that would be at fundamental odds with the aims of the university, such as Holocaust

open discussion will promote the truth, maintaining that a society should not merely tolerate speech that is objectionable, but embrace it. He defends this conclusion with four arguments: first, because we are fallible, we must be open to the possibility that an opinion that deviates from the mainstream is true: “if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility” (Mill 1863, p. 101). Second, an opinion that is generally false may nonetheless contain a portion of the truth that is missing from the prevailing view.³ Third, “even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds” (Mill 1863, p. 102). And, fourth, in the absence of vigorous debate, “the meaning of the doctrine itself will be in danger of being lost or enfeebled, and deprived of its vital effect on the character and conduct; the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground and preventing the growth of any real and heartfelt conviction from reason or personal experience” (Mill 1863, p. 102).

While Mill’s truth-based justification focuses specifically on free speech, John Dewey offers a similar defense of academic freedom. The purpose of the university, Dewey tells us, is:

denial. See (Simpson and Srinivasan, this volume) for a detailed discussion of Post’s view, and an application of it to no platforming.

³ “[T]hrough the silenced opinion be an error, it may, and very commonly does, contain a portion of the truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied” (Mill 1863, pp. 101-2).

To investigate truth; critically to verify fact; to reach conclusions by means of the best methods at command, untrammelled by external fear or favor, to communicate this truth to the student, to interpret to him its bearing on questions he will have to face in life—that is precisely the aim and object of the university. To aim a blow at one of these operations is to deal a vital wound to the university itself. The university function is the truth-function.

(Dewey 1902, p. 3)

On this view, in order to fulfill the very mission of the university, which is the discovery and promotion of truth, academics need freedom to pursue their teaching and research without fear of sanction or retaliation.

In “Academic Freedom and the Politics of Truth,”⁴ Michael P. Lynch develops this truth-based view by showing the crucial political value of truth and the role it plays in justifying the ideals of academic freedom and democracy. Lynch begins by focusing on arguments offered by Louis Menand and Richard Rorty that an epistemological defense of academic freedom rests on an unwarranted assumption about politics and knowledge; namely, that the pursuit of knowledge and truth should, and could, be distinguished from politics. According to Menand, a central challenge to academic freedom:

...arises from the circumstance that the philosophical grounds on which the concept of academic freedom has traditionally rested are now regarded by many academics with skepticism. The notion that the pursuit of knowledge can be a disinterested, nonpartisan, apolitical endeavor, and that the goal of that pursuit should, or can be, something called “the truth” about a subject, is not only not widely shared; it is quite specifically the target of a great deal of contemporary academic writing. (Menand 1993, p. 12)

⁴ Lynch (this volume).

Similarly, Rorty claims that “Philosophers on my side of the argument think that if we stop trying to give epistemological justifications for academic freedom, and instead give socio-political justifications, we shall be both more honest and more clear-headed” (Rorty 1994, p. 55). From these sorts of considerations, Menand and Rorty draw the reductive conclusion that there is no epistemic justification for academic freedom.

Lynch rejects this view by arguing that the most compelling social-political justification of academic freedom does not replace the epistemological justification but, instead, crucially depends upon it. Drawing on Dewey’s work, Lynch provides a three-step defense of this conclusion. First, he claims that we should follow Dewey and hold that “The one thing that is inherent and essential [to the idea of a university] is the ideal of truth.”⁵ Second, Lynch claims that this is the case even if the kind of truth at issue is not always understood in terms of correspondence with objective reality. In particular, he argues that a more pluralist and common-sense theory of truth, according to which different kinds of inquiry aim at different kinds of truth, can be adopted. On this view, true beliefs are those that play the true-belief role, and some beliefs might play this role when, for instance, they accurately represent the physical world, while others might do so when they cohere over the long run with our other beliefs. Finally, Lynch argues that democracies should be spaces of reasons, and democratic politics requires the practice of giving and asking for reasons. Thus, the value of pursuing truth and knowledge, which is what justifies academic freedom, is a fundamental democratic value, and hence is far from being apolitical.

In addition to promoting the pursuit of truth, there are other values that are of importance to the flourishing of the university and its members, and Michele Moody-Adams looks at academic freedom through a justice-based lens in “Is There a Safe Space for Academic Freedom?” In

⁵ Lynch (this volume).

particular, she takes up the claim, one that is at work in justice-based arguments on behalf of intellectual “safe spaces” on campuses, that protecting academic freedom undermines equality of educational opportunities for students who are the targets of harmful expression. This view, Moody-Adams points out, echoes the position first defended by legal theorists, philosophers and political thinkers that, in some contexts, the harm done by certain kinds of expression can be serious enough to create a hostile environment that undermines equality. Moody-Adams notes, however, that this argument, which relies on the tension between liberty and equality, is often intertwined with fundamentally different concerns, including those grounded in market values, anti-intellectualism, the valorization of trauma, and offense-based claims.

Moody-Adams goes on to show that the justice-based argument for safe spaces assumes both the reality of expressive harm and the legitimacy of trying to regulate it, and she provides a detailed discussion of three distinct kinds of claims about the nature and source of this harm. *Trauma-based claims* maintain that expression can harm by “triggering” disabling experiences in people who are exposed to it. For instance, student requests that there be “trigger warnings” for class content that depicts violence or sexual assault fall within this category. *Stigma-based claims* challenge stigmatizing messages said to be found in campus-defining imagery and nomenclature on the grounds that they threaten to deny the equal worth of students. For instance, such claims have involved calls to remove names of slaveholders from prominent campus buildings and references to slavery and oppression from school crests and shields. *Unreflective inference claims* focus on expression that invokes equality-undermining stereotypes and bias. This category includes phenomena such as microaggressions and implicit bias.

Moody-Adams shows that with respect to each of these kinds of claims, providing robust protection of academic freedom is not only fully consistent with meeting the demands of justice, but also that satisfying the requests of safe space advocates would ultimately stifle the kind of debate

most likely to promote justice, particularly in the face of current challenges. Indeed, she argues that universities best prepare students for morally conscientious citizenship, not by providing them with the experience of feeling “at home,” but by helping them learn to cope with, and sometimes even to welcome, uncomfortable ideas and experiences. Moody-Adams concludes, then, that “the university can provide space for serious, intellectually independent reflection only if we ensure that it provides safe space for academic freedom.”⁶

Philip Pettit also takes up the relationship between free speech and academic freedom in “Two Concepts of Free Speech,” but he argues that it is the latter that should in fact provide the model for the former. He draws a distinction between two importantly different conceptions of free speech. *Unhindered speech*, on the one hand, is speech that does not face hindrance from other individuals or officials, such as authorities of the state or those in an institution that has its own internal government and regulations. Drawing on the work of Isaiah Berlin, Pettit claims that free speech in this sense is enjoyed to the extent that all of the relevant options, or doors, are open, not merely the ones that are preferred. As Berlin says, “The extent of a man’s negative freedom is, as it were, a function of what doors, and how many are open to him; upon what prospects they are open; and how open they are” (Berlin 1969, xlvi). *Protected speech*, on the other hand, is speech that is protected in the exercise of these options by public law or by the rules of an institution, like a university, which has its own government. According to Pettit, the distinction between unhindered and protected speech can be more fully appreciated when it is recognized that the point of protection is not to make interference less probable but, rather, to interfere with the very possibility of interference. Protecting speech means erecting obstacles to the interference of other people in any scenarios, however improbable they might be.

⁶ Moody-Adams (this volume).

This distinction between unhindered and protected speech is significant, according to Pettit, because it has far-reaching practical implications that bear on both the social meaning of free speech and on the political dimension of regulating it. Unlike free speech as protected, when free speech is understood as unhindered, it is a socially undemanding ideal, as it can be enjoyed simply by virtue of others not actually interfering with it. Unhindered speech is also politically more problematic insofar as any regulation, whether by officials of the state or of an institution like a university, will be hostile to the ideal of unhindered speech as it will itself constitute a hindrance. Pettit then argues that the conception of free speech as protected is preferable to that of unhindered, not only because it is socially more demanding, and more hospitable to the role of political regulation, but also for normative, sociological, and historical reasons.

Pettit then shows that while standard arguments for free speech typically concentrate on the overall virtues of unhindered speech, there are three important benefits that show the specific value of protected speech. In particular, publicly protecting speech is necessary for providing people with the status of being free speakers, for enabling them to communicate by their silence in addition to what they say, and for requiring them to assume personal responsibility for the attitudes they promote. Finally, Pettit shows how these benefits are nicely illustrated in the case of academic freedom, where protection is given to academics on matters relevant to their work against intrusions by state or institutional officials. In this way, academic freedom provides a successful model for a robust and effective conception of free speech.

2. The Parameters of Academic Freedom

The parameters of academic freedom—that is, what academic freedom does, and does not, cover—have gained increasing importance in the evolving landscape of the university. One set of questions

concerns the *scope of outside threats* to academic freedom, and what barriers ought to be in place to forestall them.

A central source of these concerns is the changing role of the internet in academic life and the new challenges to academic freedom that often result from this. For instance, many scholarly articles are now published online first, making academic work accessible not only in a timelier fashion, but also to a much broader audience than would have been true even a decade ago. Published articles themselves, for instance, are available to any academics whose institutions have online subscriptions to the journals in question, which enables far greater interdisciplinary exposure. Moreover, the increase of blogs and other forms of social media vastly increases the chances that ideas once restricted to discussions among only scholars will now find their way into broader public forums. If, say, a philosopher publishes a paper in an academic journal that is read by a political scientist, who then summarizes, or quotes from, it on her popular blog—one that has hundreds of non-academic readers—the ideas could easily attract a significant and diverse audience quite literally within days of publication.

This has many obvious benefits. Concerns that academic institutions are insular, with conversations taking place only within their confines, are certainly diminished. Greater value is placed on public engagement and on a more inclusive range of experiences and perspectives being brought to bear on questions once accessible to only a privileged minority. Both academics and non-academics alike are thus exposed to ideas and challenges of which they might have otherwise been ignorant.

But with these benefits come challenges, too. Greater exposure can bring along an increased chance of encountering disagreement and dissenting views, some of which might be expressed in ways that are insulting, degrading, racist, misogynist, upsetting, frightening, and perhaps even threatening. Indeed, a number of high-profile cases in which academics have been targets of public

backlash, sometimes rising to the level of threats, raises the question: what consequences does the increased role of the internet in scholarly work have for academic freedom?

In a recent paper, “New Threats to Academic Freedom,” Francesca Minerva draws on her own experience to argue that the scope of academic freedom needs to include safeguards from this sort of backlash. Minerva co-authored with Alberto Giubilini a paper in 2012, entitled “After Birth Abortion: Why Should the Baby Live?,” that was published “online first” in the *Journal of Medical Ethics*. In this paper, the authors argue that “‘after-birth abortion’ (killing a newborn) should be permissible in all the cases where abortion is, including cases where the newborn is not disabled” (Giubilini and Minerva 2012, p. 261). In response to the publication of the 2012 paper, Minerva reports that she received over two hundred hate emails—some of them including death threats—during the six months following its appearance, many of which were overtly misogynistic. In addition, newspapers, blogs, and television programs described the work with sensationalist titles, such as “Slaughter newborn kids, say academics,” which were followed by thousands of comments, such as “if it is OK to kill babies, then it must be OK to kill academics,” and “For your views on newborns not being people, you need to be eliminated along with your entire family. You are not human therefore you don’t have a right to live” (Minerva 2014, p. 157). Indeed, the hate-e-mails and death-threats even extended to the editors of the journal for publishing the paper and to the one colleague who was thanked in the acknowledgments for reading and commenting on an earlier draft of it.

There was also a significant impact on the authors’ professional lives in the wake of the media storm that followed the publication of their article. In addition to the toll that all of the negative reactions took on them as individuals:

1. A job offer for a position in an ethics committee made to [Giubilini] was rescinded a few days after the publication of the paper.

2. A permanent job in a philosophy department was not offered to [Minerva] because, as written in the [e-mail] a member of the interview panel sent..., some members of the department were strongly opposed to the views expressed in the paper and therefore to hiring [Minerva].
3. As the majority of the [emails Giubilini and Minerva] received were sent from people in the USA, [they were] advised against presenting talks in the States for the next year or so.
(Minerva 2014, p. 159)

Given all of this, there can be little doubt that there was a substantial cost to the authors for publishing their research.

Minerva takes this case study to show that the central role of the internet in much of academic life raises new threats for academic freedom. She relies on the following characterization of academic freedom to support this:

Academic freedom consists in the absence of, or protection from, such restraints or pressures (...) as are designed to create in minds of academic scholars (...) fears and anxieties that may inhibit them from freely studying and investigating whatever they are interested in, and from freely discussing, teaching or publishing whatever opinions they have reached. (Machlup 1955, pp. 753-4)

If academic freedom provides protection to scholars from pressures that aim to create fears that interfere with their teaching and research, then the sort of backlash that Minerva and her colleagues suffered in virtue of their published paper would certainly be covered. Indeed, a threat of physical harm by an internet troll could potentially be far more effective in silencing academics than the fear of, say, a minor sanction by an administrator.

While the Minerva case is particularly vivid, it is certainly not isolated. Among the recent high-profile cases of this sort is that of Tommy Curry, an Associate Professor of Philosophy at

Texas A&M University, who became the target of “widespread vilification on social media, extending to death threats taken seriously enough by law enforcement to warrant police protection.”⁷ This was in response to a comment he made about race relations in a podcast in 2012, but which was recently the subject of a piece in *The American Conservative*. As a critical race theorist, his comment undoubtedly fell within the scope of his research, and some of his colleagues published an op-ed that clearly drew a connection between what Curry was facing and academic freedom:

As an institution that supports the 1940 Statement of Principles on Academic Freedom and Tenure, Texas A&M University is committed to protecting Tommy Curry’s academic freedom, and we urge the university to fulfil its obligations in the face of a vicious attack on the academic values that are fundamental to our faculty and to our students.⁸

As with Minerva’s argument, there is a call here for the parameters of academic freedom to extend to protection from the sort of public attacks faced by Curry.

With both the Minerva and Curry cases, it is important to distinguish three features, especially when discussing how they relate to academic freedom. First, there are *institutional* repercussions that might result from academic work, such as sanctions, censorship, and retaliation. This might include anything from removal from a professional committee to loss of government funding for a project to termination. In the Minerva case, for instance, (1) and (2) above clearly fall in this category, as one author had a position on an ethics committee rescinded and another was denied a position, both of which resulted from backlash to the views expressed in their published

⁷ http://www.theeagle.com/opinion/columnists/texas-a-m-must-defend-academic-freedom/article_360c1e9c-37d3-11e7-b9cd-1b0f648e444c.html

⁸ http://www.theeagle.com/opinion/columnists/texas-a-m-must-defend-academic-freedom/article_360c1e9c-37d3-11e7-b9cd-1b0f648e444c.html

paper. In the Curry case, Texas A&M President, Michael K. Young, released a statement in which he called Curry's comments "disturbing" and standing "in stark contrast to Aggie core values – most notably those of respect, excellence, leadership and integrity – values that we hold true toward all of humanity."⁹

Second, there are *non-institutional* consequences that might come about from academic work. This includes a wide range of actions, events, and experiences, such as being the subject of insults, receiving hate mail, losing friendships with colleagues, and so on. In both the Minerva and Curry cases, much of the public outrage on social media falls in this category.

Finally, within both of these categories, there are consequences that might rise to the level of *criminal activity*, such as death threats, stalking, harassment, and so on. Obviously, the death threats to which both Minerva and Curry were subject fall here. For the purposes of this discussion, this last category can largely be set aside. While death threats that result from the publication of unpopular views, for instance, can certainly compromise academic freedom, there are additional mechanisms within law enforcement that provide protection from criminal activity.

With these points in mind, let's now take a closer look at the first two categories— institutional and non-institutional consequences that are due to academic work. Note, first, that some paradigmatic characterizations of academic freedom explicitly include protections from only the former. Ronald Dworkin, for instance, writes:

We begin reinterpreting academic freedom by reminding ourselves of what, historically, it has been understood to require and not to require. It imposes two levels of insulation. First, it insulates universities, colleges, and other institutions of higher education from political institutions like legislatures and courts and from economic powers like large corporations. A

⁹ <https://president.tamu.edu/messages/standing-for-our-core-values.html>

state legislature has, of course, the right to decide which state universities to establish—whether, for example, to add an agricultural or a liberal arts college to the existing university structure. But once political officials have established such an institution, fixed its academic character and its budget, and appointed its officials, they may not dictate how those they have appointed should interpret that character or who should teach what is to be taught, or how. Second, academic freedom insulates scholars from the administrators of their universities: university officials can appoint faculty, allocate budgets to departments, and in that way decide, within limits, what curriculum will be offered. But they cannot dictate how those who have been appointed will teach what has been decided will be taught. (Dworkin 1996, p. 183)

According to Dworkin, academic freedom provides two levels of insulation, both of which are institutional—it insulates academic institutions from political institutions, and it insulates scholars from institutional administrators. Nowhere is there any indication here that academic freedom extends to protection from non-institutional repercussions, such as insults or trolling from members of the public. Indeed, even in the definition of academic freedom from Machlup on which Minerva relies, there was a crucial phrase omitted from her quotation that clarifies the kinds of “restraints or pressures” at issue, which he says are

...chiefly in the form of sanctions threatened by state or church authorities or by the authorities, faculties, or students of colleges and universities, but occasionally also by other power groups in society.... (Machlup 1955, pp. 753-4)

Historically, then, it is clear that the protection provided by academic freedom is at least primarily from institutional censorship or retaliation, particularly that of the state and the administration.¹⁰

But one question that we face today is whether this protection is sufficient, especially against the background of the underlying rationale of academic freedom and the ever-changing challenges posed by online activity. For instance, Michele Moody-Adams writes:

In the “1915 Declaration of Principles” that became the charter for the American Association of University Professors (AAUP), philosopher Arthur Lovejoy and economist Edwin Seligman emphasized the connection between academic freedom and human achievement. Academic freedom, they argued, is necessary to protect the university as “an intellectual experiment station, where new ideas may germinate and where their fruit, though still distasteful to the community as a whole, may be allowed to ripen,” and they urged that the self-regulating university is essential to the realization of fundamental human goods. Lovejoy and Seligman thus understood that academic freedom is a good that any stable political society will rationally choose to protect. (Moody-Adams 2015, p. 98)

¹⁰ See, also, Moody-Adams (this volume): “...academic freedom provides a durable framework for these activities through a set of professional rights. The most important rights in that set are: (a) the right to determine the content of research and publication, (2) the right to make important decisions about the content and terms of teaching, and (3) the right to speak or write as citizens *without fear of institutional discipline or censorship*” (emphasis added). In addition, according to the Association of Governing Boards of Universities and Colleges, “Good research and creative activities need breathing space. People may be inhibited from doing their best work if they fear offending outside forces, such as politicians or donors, or inside authorities, such as trustees or senior administrators. Without academic freedom, our society would lose professors’ best inventions, scholarship, and creative products.”

If academic freedom is fundamental for the university to function as an intellectual experiment station, and yet one of the more effective means of silencing academics now is through means such as online insults and threats, then ensuring that the parameters of academic freedom extend to non-institutional repercussions seems necessary.

Both the Minerva and Curry cases raise questions about the scope of outside threats that academic freedom should cover, but they also involve speech that is clearly and directly connected to the research of the academics in question: in the former, the backlash resulted from a published article in an academic journal, and in the latter, it emerged from comments made in a podcast that were specifically on the topic of Curry's expertise. An additional issue about the parameters of academic freedom concerns whether it *should cover extramural speech*, particularly online activity, such as comments made on Facebook, Twitter, and other forms of social media.

As influentially defined in 1940 by the Association of American University Professors, academic freedom is said to cover not only research and teaching, but also extramural speech:

College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.¹¹

¹¹ <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>

Regarding the “special obligations” in question here, Brian Leiter notes that “[t]he AAUP itself, in a 1963 committee report on a controversy involving extramural speech by a faculty member at the University of Illinois, interpreted the ‘good manners’ provision ‘exclusively as an admonition addressed to the conscience of the faculty,’ although a plurality but not a majority of the committee thought it was not simply ‘a precatory statement’ but ‘was intended to recognize the legitimacy of university authority to discipline faculty members for violating norms of accuracy, self-restraint, and courtesy even in respect to professional unrelated extramural utterances.’”¹²

The extent to which academic freedom extends to extramural speech, and whether special obligations, such as “civility,” apply to such activity, is at the center of John Protevi’s discussion in “Realpolitik of Academic Freedom: The Steven Salaita Case.”¹³ Protevi offers a close analysis of Steven Salaita’s employment status at, and lawsuit against, the University of Illinois at Urbana-Champaign (UIUC). He particularly focuses on the role that extramural political speech plays in the history of academic freedom, showing how the “special obligations” as they relate to extramural statements developed into ones that fall under the purview of professional ethics rather than institutional enforcement. Indeed, in a recent paper, John K. Wilson argues that the 1964 position should be understood in terms of “a fundamental right of faculty to speak and a special obligation that rests on the conscience of individual faculty members rather than being imposed by the institution” (Wilson 2015).

From here, Protevi turns to examining the Salaita case through the lens of a Realpolitik view of academic freedom, according to which rights are enforceable claims and academics possess the right to academic freedom only to the extent that they can enforce claims to it. In this way, “the

¹² https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2943774

¹³ Protevi (this volume).

right to academic freedom” is an ideal to which faculty aspire, and the success of claims to academic freedom depend upon the force of individual legal actions and collective faculty pressure that are brought to bear on administrators and trustees. This pressure can take the concrete form of public statements, of boycotts by invited speakers, and of the refusal to apply for jobs or to accept job offers. Finally, Protevi explores some changes in practice relative to faculty extramural speech that might be inspired by the Salaita case, such as the adoption of university social media policies.

Another issue that arises with respect to the scope of academic freedom is the extent to which it provides protection for academics to explore or change to new research areas. For instance, in a recent article in *Chemical and Engineering News*, “Walking the Tenure Tightrope,” Judith Burstyn, Professor and Chair of Chemistry at the University of Wisconsin, Madison, says that tenure “is why people go into academia, so that you have freedom to pursue those research areas that excite you.” The article goes on to say, “Some scientists have found that freedom essential for exploring a new research direction. Neuroscientist Diane O’Dowd at the University of California, Irvine, is nationally known for her education research. Without tenure, O’Dowd says, she likely wouldn’t have made the move beyond neuroscience. Some of her colleagues disagreed when she said that her education work—complete with extensive data collection and analysis—was actually research. ‘Not everybody felt that should count,’ she remembers.”¹⁴

In “Freedom of Research Area,” Brian Weatherson takes up this question directly, exploring the relationship between academic freedom and the scope of the research area that academics must focus on in order to adequately discharge their professional responsibilities. His central target is the following widely accepted principle regarding this relationship:

¹⁴ <https://cen.acs.org/articles/94/i37/Walking-Tenure-Tightrope.html>

Freedom of Research Area within Department (FRAD) If part of an academic's job involves doing research, then the academic themselves gets to choose which areas they shall perform that research in, provided it is within the disciplinary boundaries of their home department. And provided solely that the quality of the work is sufficiently high, and that they work within these disciplinary boundaries, this research in their self-chosen area shall count as adequately discharging their duties to their academic employer, at least as they pertain to research.

Despite the widespread endorsement of FRAD, Weatherson argues that it is false, and should instead be replaced with what he calls "the elbow room standard," according to which academics are free to work on whatever research they like, provided that it is sufficiently similar to the work that they were hired to do. One reason for this is that it does not follow from the fact that an academic is an excellent candidate for being hired in one area that his or her work in another field will be of a similarly high quality. Indeed, were academics given free rein to work on whatever they wanted, then Weatherson argues that hires would be equivalent to awarding MacArthur Fellowships, and candidates would be evaluated based on whether they are geniuses. This is problematic, as it would encourage universities to focus more on features such as intelligence rather than on what academics have achieved and whether these achievements indicate future success in research. For this reason, among others, Weatherson concludes that academics ought to have elbow room with their research, but they should also do the work that they were hired to do.

3. Applications

If, as Mill tells us, open and vigorous discussion is needed to promote the truth, and if Dewey is right that the pursuit of truth is the core aim of the university, then silencing certain members of the community, or blocking particular voices from being heard, can be seen as fundamentally antithetical

to the mission of the university. Despite this, worries about dissenting voices on college campuses being silenced have been increasingly raised from a number of positions on the political spectrum. A 2017 Cato Free Speech and Tolerance Survey, for instance, reports that 71% of Americans “believe that political correctness has silenced important discussions our society needs to have” and “58% of Americans believe the political climate prevents them from sharing their own political beliefs.”¹⁵ In a recent article in *The Atlantic*, Alan Levinovitz, an Assistant Professor of Religious Studies at James Madison University, argues that trigger warnings and safe spaces “silence religious students.” He writes:

Trigger warnings and safe spaces are terms that reflect the values of the communities in which they’re used. The loudest, most prominent advocates of these practices are often the people most likely to condemn Western yoga as “cultural appropriation,” to view arguments about the inherent danger of Islam as hate speech, or to label arguments against affirmative action as impermissible microaggressions. These advocates routinely use the word “ally” to describe those who support their positions on race, gender, and religion, implying that anyone who disagrees is an “enemy.”

Understood in this broader context, trigger warnings and safe spaces are not merely about allowing traumatized students access to education. Whatever their original purpose may have been, trigger warnings are now used to mark discussions of racism, sexism, and U.S. imperialism. The logic of this more expansive use is straightforward: Any threat to one’s

¹⁵ <https://www.cato.org/blog/poll-71-americans-say-political-correctness-has-silenced-discussions-society-needs-have-58-have>

core identity, especially if that identity is marginalized, is a potential trigger that creates an unsafe space.¹⁶

In addition to the silencing that is said to take place within the classroom, campus protests and no-platforming against certain speakers are said to be excluding dissenting ideas from even being aired on college campuses, further contributing to an assault on free speech and academic freedom within the university.

In the last two parts of this volume, these particular charges will be taken up in detail. Jennifer Saul and Mary Kate McGowan both directly focus on the issue of silencing in connection with questions about political correctness and academic freedom. In “Beyond Just Silencing: A Call for Complexity in Discussions of Academic Free Speech,” Saul provides a detailed framework for evaluating freedom of speech in academic contexts that both expands upon, and goes beyond, existing work on silencing. She focuses on uncontroversial cases to draw a distinction between pernicious and non-pernicious silencing of academic speech, where these are distinguished by both their content and the institutional contexts in which they occur. Saul shows how both academics and students can be silenced, even in the classroom, in ways that are non-pernicious. For instance, professors cannot knowingly teach false information, such as that $2+2=5$, and students cannot talk about their dinner plans during a class discussion on, say, the moral permissibility of the death penalty. Non-pernicious silencing is thus understood as the prevention of utterances that interfere with the fulfillment of the educational goals that academics are reasonably expected to meet as part of their jobs.

Saul then explores whether speech, either general or specific, can be requested of academics without thereby infringing on their academic freedom. If the request is merely a suggestion, then she

¹⁶ <https://www.theatlantic.com/politics/archive/2016/08/silencing-religious-students-on-campus/497951/>

argues that it can never interfere with academic freedom. But even where it is a requirement, it need not be a problem. Academics are often required to provide syllabi that clearly state the course requirements, or even to include specific content, such as the university's plagiarism policy or the resources available to students with disabilities. Requiring speech in these sorts of cases does not infringe on academic freedom because this speech is necessary for the fulfillment of the requisite educational goals. It is when the speech in question is a requirement, and is at odds with the educational goals that academics have been hired to fulfill, that there is an infringement of academic freedom. This sort of infringement, however, clearly cannot be understood as a form of silencing.

Finally, Saul applies the new concepts developed in this framework to the controversial cases of content warnings and the calling-out of microaggressions, and she concludes that they do not pose a significant threat to academic freedom. She argues, however, that there is a legitimate reason why they are widely thought to do so, and this is the increasingly insecure employment structure of academia. In particular, a wide range of student preferences can encroach upon pedagogical freedom when employment is unstable. For instance, if a job depends on high student evaluations, then any kind of student requests, including those for content warnings, can become coercive. But according to Saul, the fault here is with the insecure employment structure rather than with the student preferences. The true threat to academic freedom is, therefore, precarious employment within academia.

In "On Political Correctness, Microaggressions, and Silencing in the Academy," Mary Kate McGowan also focuses on microaggressions, but she expands the discussion to include another phenomenon that allegedly silences people on academic campuses: politically correct culture. She develops specific examples involving each phenomenon, and shows how both involve speakers deciding against saying something because of their beliefs about how their contributions will be received by their audiences. She then considers whether this might itself constitute a form of

silencing, and she highlights four different types of cases in which this occurs. The first is simply where a speaker chooses to not say something because of anticipated disagreement. The second is when a person decides against speaking because she will be given a credibility deficit in virtue of her social identity, such as when a woman knows that her testimony will be regarded as less reliable in virtue of the fact that she is a woman.¹⁷ The third sort of case is where a speaker chooses to remain silent because she knows that her statement will reinforce unjust social hierarchies because of the incompetence of the audience, such as when a black woman does not report domestic violence for fear that it will perpetuate stereotypes about black men being violent.¹⁸ Finally, a person may decide to be quiet because of anticipated communicative failure, such as when a rape victim knows that her sincere testimony of being assaulted will be taken to be insincere.

McGowan then argues that unlike the first case of anticipated disagreement, the three other cases involve audience incompetence where the speaker's knowledge of this incompetence contributes to the decision to remain silent. In addition, she claims that these three cases all involve the distinct speech-related harm of silencing. These considerations are then applied to the original examples, and McGowan concludes that whereas the political correctness case is one where the speaker is not silenced because it involves anticipated disagreement, the microaggressions case does involve silencing because the speaker's knowledge of the incompetence of the audience is what leads to the speaker opting to be quiet. What all of this shows, then, is surface similarities between cases of speakers choosing to not speak might conceal deeper differences that are important to questions of freedom on academic campuses.

¹⁷ See Fricker (2007) for a discussion of this phenomenon as “testimonial injustice.”

¹⁸ See Dotson (2011) for the development of this sort of case as an instance of “testimonial smothering.”

Moving from phenomena that primarily involve what takes place in the classroom, such as content warnings and microaggressions, to what occurs more broadly on campuses, David Estlund looks at protests, Martha Nussbaum focuses on civil disobedience, and Robert Mark Simpson and Amia Srinivasan discuss no-platforming.

In “When Protest and Speech Collide,” David Estlund considers whether and when a protest that would otherwise be morally permissible is impermissible because it interferes with other speech in the form of publication or performance. He is particularly interested in *obstructive protests*, which are “acts of protest that intentionally interfere with the publication or performance of expression by others on the basis of antipathy with that speech’s viewpoint.”¹⁹ Obstructive speech is importantly different from censorship insofar as the latter is carried out by agents who are in positions of authority or formal power. Given this, traditional objections to censorship, such as that the state should not interfere with speech because it is unjust for it to exert control over criticism and scrutiny, do not apply to obstructive speech. Moreover, Estlund highlights how some obstructive speech not only fails to suppress the dissemination of the message, but actually serves to amplify it by drawing widespread attention to it.

Drawing on the work of Herbert Marcuse, Estlund, argues that the idea of countervailing deviation suggests a principled basis for the selective interference by some individuals with the ability of others whose message has unfair advantages. Marcuse famously argued against Mill’s conception of free speech on the grounds that:

Certain things cannot be said, certain ideas cannot be expressed, certain policies cannot be proposed, certain behavior cannot be permitted without making tolerance an instrument for the continuation of servitude. (Marcuse 1965, p. 88)

¹⁹ Estlund (this volume).

Following this, Estlund argues that the rationale of interfering with certain speech is to repair a severe structural flaw in a collective epistemic process of debate and discussion, rather than simply to promote one's own views or aims. Thus, in cases where certain points of view are systematically disadvantaged, either by abuses of institutional or other power, or by structural social features with similar effects, countervailing deviation provides a permitting rationale for obstructive protests.

While Martha C. Nussbaum also focuses on campus protests, she is interested more broadly in exploring the distinction between acts of civil disobedience and protected free speech in "Civil Disobedience and Free Speech in the Academy." According to the "classic account," developed by both Martin Luther King, Jr. and John Rawls, civil disobedience is a deliberate act, typically by a group of people, that breaks the law in a conscientious attempt to address the community on a pressing issue of justice. One question that naturally arises for this view is how protesters can justify violating the law while still showing respect for the rule of law. The solution to this problem, Nussbaum claims, is that protesters willingly submit themselves to the legal penalties that follow from their actions. For instance, a central difference between civil rights protesters and their segregationist opponents is that only the former expressed a conscientious willingness to go to jail for their actions, thereby showing a general respect for the rule of law. Nussbaum also draws a distinction between direct and indirect acts of civil disobedience, where only the former involve protesters violating the very law they deem unjust, such as King violating the Jim Crow laws against associational integration that the civil rights movement targeted.

With this conception of civil disobedience in mind, Nussbaum turns to her central goal of distinguishing it from protected speech. While both speech and acts of civil disobedience have an expressive component, the central difference is that the person who engages in civil disobedience deliberately breaks a law or laws, and does so with respect for the rule of law and with the express intention of accepting the legal penalty. Nussbaum grants that there might be a group of acts that lie

in the gray zone between protected speech and civil disobedience, such as flag burning, but most acts of civil disobedience are only on the latter side, as even the protesters grant that the enforcement against them of the laws being broken is legitimate.

Nussbaum then turns to the academy, focusing first on public universities since the Supreme Court has explicitly said that students enjoy First Amendment rights of speech on campus. She further notes, however, that the Court recognizes that a university has particular aims and needs, and thus the Court has “never denied a university’s authority to impose reasonable regulations compatible with that mission upon the use of its campus and facilities. We have not held, for example, that a campus must make all of its facilities available to students and nonstudents alike, or that a university must grant free access to all of its grounds and buildings.”²⁰ Given this, forms of protest that violate university rules regarding the use of buildings, for instance, are clearly acts of civil disobedience rather than protected free speech. Since private universities are far less constrained, this conclusion is even clearer, as there is not even a *prima facie* case that acts of civil disobedience that occur on the campus of a private university are protected by the First Amendment.

Finally, Nussbaum applies these considerations to three different cases at the University of Chicago, highlighting the ways in which civil disobedience must not be confused with protected free speech. For instance, Nussbaum looks at a letter of protest signed by over 150 members of the faculty of the University of Chicago regarding a case involving then-pending disciplinary action against student body president, Tyler Kissinger, in May of 2016. In an effort to occupy Levi Hall, the university’s administration building, Kissinger got past security by claiming official business as student body president, hid in a bathroom, and then used his backpack to prop open one of the

²⁰ Widmar v. Vincent, 454 U. S. 263, 268 n. 5.

locked doors of the building to let in other protesters. The June 9th faculty letter asked for all of the charges to be dismissed on the grounds that Kissinger's actions were protected by a "right to engage in peaceful protest." "Free speech, free access to university space, and dialogue among students, faculty, and administrators are essential to the university's educational mission."²¹ According to Nussbaum, however, Kissinger's actions are neither a clear case of civil disobedience, nor of protected free speech, and hence the faculty letter in his defense was misguided.

As with campus protests and civil disobedience, it has been argued that blocking individuals from speaking on campus poses a serious threat to academic freedom. In "No Platforming," Robert Mark Simpson and Amia Srinivasan take up this question and argue that no platforming, which is the practice of blocking, or attempting to block, an individual from speaking at a university because of his or her expressed moral or political views, can be reconciled with a liberal politics. In aiming to deny a voice on campus to certain speakers, no platforming initially appears to be at odds with the liberal ideals of tolerance, pluralism, and open public discourse. But Simpson and Srinivasan argue that even within the parameters of a liberal politics, this tension is merely apparent.

They first consider whether no platforming might be defended, at least in part, on the basis of Mill's harm principle, according to which "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others" (Mill 1863, p. 23). Simpson and Srinivasan then show that this strategy not only fails to be either theoretically or politically persuasive, but also involves granting the liberal critic's presupposition that the academic sphere is an extension of the public sphere, and is thus governed by general free speech principles.

²¹ Nussbaum (this volume).

Instead, Simpson and Srinivasan show that defenders of no platforming should focus, not on the norms of *free speech*, but the importantly difference norms of *academic freedom*. Universities are specialized institutions that have the purpose of teaching and research, and communicative norms and practices reflect this. Such norms and practices provide special protection to certain kinds of speech by those who engage in teaching and research, but they also give recognized disciplinary experts various kinds of control over the speech of others insofar as this is needed to uphold the standards and epistemic aims of the relevant disciplines. For instance, while the free speech of Holocaust and climate change deniers is tolerated in the public square, they would not be allowed to teach history or earth science classes in the university. Academic disciplines are thus justified in amplifying the speech of experts and marginalizing the speech of non-experts. Simpson and Srinivasan then apply this model of academic freedom to cases of no platforming, arguing that such a practice can be defended within a liberal politics when it is used to support the authority of disciplinary experts by blocking speakers whose incompetence would undermine that authority.

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