

Free Speech on College Campuses

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Overview

- Case study – Orange Coast College
- My research interests and background
- Some recent California higher education controversies
- Theories and approaches – irreconcilable differences?
- Back to OCC
- Paths forward?

Recent headlines:

THE ORANGE COUNTY REGISTER

Caught on video: Trump's election was an 'act of terrorism,' says Orange Coast College professor in class

OCC professor received threats, left the state after video of her anti-Trump comments

OCC student suspended after filming teacher saying Trump's election was 'an act of terrorism'

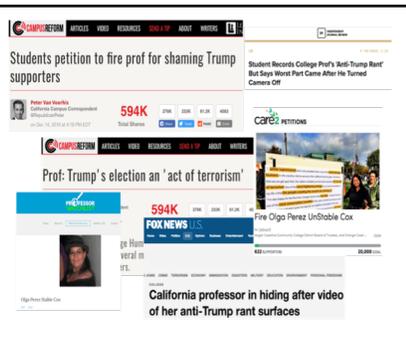
OCC should fire bully professor

Recall board if OCC student isn't reinstated

Republican club wants OCC trustees to reject faculty member of the year award for anti-Trump instructor



The conservative media outrage machine comes to Orange Coast College



Questions examined

1. Is a policy regulating professional conduct in regard to sexual harassment and expression in instructional settings necessary and/or appropriate?
2. What should be the balance between protecting academic freedom and ensuring a learning environment that is comfortable for a diverse student body?
3. Does the language of the current legislation and/or FPP Chapter 9 make the procedures to be followed in invoking the faculty legislation sufficiently clear and equitable?
4. Is the existing language unconstitutionally vague and/or overbroad?

Some legal/policy standards

For speech to be considered to be out of bounds, do:

- words have to be intentionally degrading
- judged by the average memory of the community, not the minority group
- with convincing clarity
- and no conceivable pedagogical justification?

No decision yet on faculty speech code



Our arguments against the speech code

We have a hard time believing there is a problem on this campus with offensive speech by faculty members.

The "Speech Code" has never been used in any disciplinary action since its adoption in 1989.

There are more effective ways to combat bigotry on campus.

The Majority's proposal will lead to unpredictable and inconsistent outcomes because it is too vague.

The Majority is too quick to assume that a faculty member is abusing his or her power if that faculty member expresses a scholarly belief that is hurtful.

The Majority's proposal will not effectively counter the power differential between faculty and students.

Lessons from victory

Courage to take unpopular stands

The political process matters

Substance of the ideas

- Balancing principles with pragmatism
- Argumentation and examples

Building allies

- Local groups, underground allies, student clubs, endorsements, open forums

Anticipating opposition and red herrings

Media attention/coverage



Censorship on college campuses

- Intolerance of dissent and debate on America's college campuses
- Campus censorship alive and thriving
- Some say administrators have convinced students freedom of speech is enemy of social progress



"New" First Amendment battles on campus

- Disinviting, disrupting invited speakers if someone is offended
- Student protests
- responses to violence, security costs, and "free speech zones"
- Student and faculty discipline for expression
- Title IX investigations; policing microaggressions; classroom "trigger warnings" with advance disclaimers about potential controversies; "safe spaces" free from intellectual conflict or offense; politicians and governance boards punishing or enforcing ideologies



California Higher Ed Controversies

Pierce College bans the constitution?

- Student Kevin Shaw suing Pierce College and Los Angeles Community College District over "free speech zone"
- Shaw stopped by administrator at Pierce College in Woodland Hills, CA, from passing out Spanish-language copies of U.S. Constitution
- Campus policy requires permit and limited access to "free speech zone"
 - 616 sq ft on a 426-acre campus
- LA Times: "when a public college or university squeezes the expression of political views into a tightly circumscribed area, it not only undermines its commitment to the free exchange of ideas; it runs afoul of the 1st Amendment."



Berkeley students riot over speaker

- UC Berkeley students rioted in February 2017 over planned talk by right-wing provocateur Milo Yiannopoulos
- Police cancelled speech and evacuated speaker
- LA Times: "a visual illustration of the academy's decline from a place of learning to a victimology hothouse"



Cal State LA sued over speaker event

- CSULA Young America's Foundation invited conservative author Ben Shapiro to speak on campus in Feb. 2016
- "When Diversity Becomes a Problem" – branded as a nationwide tour invading campus 'safe spaces'
- University initially rescinds invitation, says Shapiro can visit campus if part of a wider panel with viewpoint diversity
- University relents; requires student group to pay security costs, YAF sued, case settled in March 2017
- University agrees to cover security costs based on viewpoint of speakers



Play cancelled at Cal State Long Beach

Cal State Long Beach cancelled play in September 2016, called *N*GGER WETB*CK CH*NK (N*W*C*)*

Deliberately satirical play performed by Asian-American, Hispanic-American and African-American actors who share personal narratives about how race shapes personal identity while mocking stereotypes

- Michele Roberge, director of Richard & Karen Carpenter Performing Arts Center, resigned in protest of the cancellation
- "By censoring this show, we're depriving students of the opportunity from hearing a different point of view about race relations and making up their own minds about what in the news every day, from Black Lives Matter to police brutality"



Words not to say at UC schools

"Microaggressions are the everyday verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional, that communicate hostile, derogatory, or negative messages to target persons based solely upon their marginalized group membership."

Op-Ed UC's PC police



By Eugene Volokh
Is the University of California pulling earlier limits on free speech by faculty?

JUNE 23, 2015, 5:00 AM
Calling affirmative action "racist" is an example of a racial "microaggression," says the University of California administration. Other examples of supposed microaggressions: "America is a melting pot." "I believe the most qualified person should get the job." "Gender plays no part in who we hire" and "America is the land of opportunity."

CSUF prof suspended over protest incident

Cal State Fullerton lecturer suspended after altercation with College Republicans club during protest



Irreconcilable tensions?

Traditional framing of tensions

Free Speech

- Individual rights
- Right to express controversial views and ideas
- Tolerance
- Skepticism of authority
- Anti-censorship
- academic freedom

Inclusivity

- professional responsibility
- harassment-free environment
- Safe learning environments
- Appreciation for diversity
- Sensitivity to other

Academic freedom

American Association of University Professors "Declaration of Principles"

Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental to the protection of the rights of the teacher in teaching and of the student to freedom in learning.

Free speech

"The best test of truth is the power of the thought to get itself accepted in the competition of the market" (Abrams v. U.S., 1919)

"We should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death." (Abrams v. U.S., 1919)

"It is the function of speech to free men from the bondage of irrational fears" (Whitney v. California, 1927)

"Debate on public issues should be uninhibited, robust and wide-open" (New York Times v. Sullivan, 1964)

"Under the First Amendment, there is no such thing as a false idea" (Gertz v. Robert Welch, 1974)

"One man's vulgarity is another's lyric" (Cohen v. California, 1971)

"If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable" (Texas v. Johnson, 1989)

Limits on academic freedom?

Also from AAUP Declaration of Principles:

Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.

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

Versions of Academic Freedom: From Professionalism to Revolution (2014)

If academics are functioning not as academics, but as political advocates, then they do not merit academic freedom

Do you emphasize "academic" or "freedom"?

Is academic freedom a contribution to society's common good?

Does academic freedom authorize professors to critique the status quo, both inside and outside the university?

Is academic freedom an engine for revolution?



Academic freedom vs. free speech

Can defend both but recognize not always the same thing

Fish: "The First Amendment stands for the proposition that not all points of view must be given a hearing and none excluded; and while academic freedom also insists that ideas should be given a hearing, it erects a barrier that must be negotiated before a particular idea is welcomed into the conversation as a legitimate participant; it must pass muster before a body of credentialed experts; and if it does not, it will be sent away without apology and without any philosophical or moral anxieties. The academy is not a democracy; it is a structure of authority, and it is in the business of excluding what is judged to be unworthy."

Academic Freedom in an Age of Conformity (2016)

- Academic freedom allows scholars to challenge dominant orthodoxies and construct and deconstruct knowledge that is contestable and able to be superseded with intellectual advances are made
- What becomes of academic freedom when concepts of truth and objectivity are considered especially problematic?
- Explores the historical importance of academic freedom to the pursuit of knowledge



Kindly Inquisitors: The New Attacks on Free Thought

- Three great liberal social and political systems
 - Democracy (political liberalism)
 - Capitalism (economic liberalism)
 - Liberal science (intellectual liberalism)
- Liberal social system of sorting out truth from falsehood under threat
 - Authoritarians
 - Egalitarians
 - humanitarians



How do we sort out true beliefs from false ones?

- The Fundamentalist Principle:** Those who know the truth should decide who is right
- The Simple Egalitarian Principle:** All sincere persons' beliefs have equal claims to respect
- The Radical Egalitarian Principle:** Like the simple egalitarian principle, but the beliefs of persons in historically oppressed classes or groups get special consideration
- The Humanitarian Principle:** Any of the above, but with the condition that the first principle be to cause no hurt
- The Liberal Principle:** Checking of each by each through public criticism is the only legitimate way to decide who is right

Does liberal science deny 'words can wound'?

- "liberal science" - liberal intellectual system for sorting truth from falsehood
- Insists absolutely on freedom of belief and speech, but freedom of knowledge it rejects absolutely
- Method of skeptical inquiry and importance of intellectual humility
- Criticism is not violence
 - "the very notion of 'words that wound' or 'verbal harassment' is being repudiated and junked."

Hostile and harassing environments

Students deserve an environment in which they can thrive

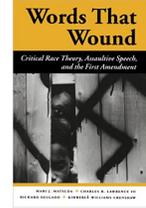
Federal law requires universities to maintain environments free from harassment and discrimination

Speech can be harassment if it is

- Severe or pervasive enough
- Hostile, abusive, offensive
- In work, educational, public education or housing
- To a reasonable person

Words that Wound: Critical Race Theory, Assaultive Speech and the First Amendment (1993)

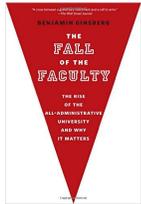
- Incidents of hate speech and racial harassment "have reached near epidemic proportions" on American college campuses
- Critical race theory – embrace subjectivity of perspective, avowedly political, focused on oppressed and subordinated groups
- First Amendment goal of maximizing public discourse is not attained in a marketplace of ideas distorted by coercion and privilege
- When words wound, speech can/should be banned/punished in some contexts



The rise of the administrative university

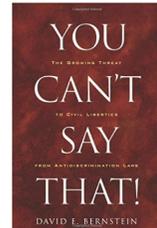
The Fall of the Faculty: The Rise of the All-Administrative University and Why it Matters (2011) by Benjamin Ginsberg, political science professor at Johns Hopkins University

- American universities were once led by faculties who prized intellectual production and pedagogy
- Non-academic administrators and staffs have taken over
 - Downplay importance of research and teaching in favor of "life skills"
 - Use groupthink and grievances to bolster power over faculty
- Tenure under threat across country
- Decline of tenure-track positions and rise of contingent faculty
- "There is no such thing as academic freedom for professors"



You Can't Say That! The Growing Threat to Civil Liberties From Antidiscrimination Laws (2003)

- Argues that civil liberties are under threat by interpretations of civil rights and anti-discrimination laws
 - Freedom of expression in workplace
 - Artistic freedom
 - Political speech as illegal discrimination
 - Censoring campus speech
 - Compelled speech
 - Threats to autonomy of private organizations and expressive associations
 - Regulating religious schools
 - Right to privacy



Back to OCC

The Professor's Defense

- Cox: class after election, intent was to calm students who feared what Trump's election meant for them, and that she empathized with them "as a woman, as a Latina, as a lesbian, as a refugee."
- "It was just a few moments to acknowledge an experience most of us were having ... I didn't say anything wrong or do anything wrong. I didn't say anything that thousands of Americans weren't feeling or saying. I don't regret it."



Cox's Words

- Vice president "one of the most anti-gay humans in this country"
- nation divided like "Civil War times" - "way beyond Republicans and Democrats"
- traces political divide in Orange County — "we are the majority, more of us voted to not have that kind of leadership"
- discusses coping skills, references statement of college president and state Legislature
- "We will protect you ... We are going to try to keep OCC safe. I'm going to always do my best to keep my classroom safe. If anyone of you get treated unfairly by anyone in this class ..."

Video Goes Viral

- OCC College Republicans
 - on the lookout to record acts of liberal bias
- Facebook
- Huff Post/LA area news
- Campus Reform
- Daily Caller
- Fox News



Outrage Machine on Fox News



Reactions

- student Caleb O'Neil: felt "bullied" by professor's comments
- president of OCC College Republicans: "left indoctrination in the classroom"
- retained lawyers, calls for discipline and dismissal
- threats to Cox led her to temporarily leave the state

Student Suspension

Caleb O'Neil suspended for spring and summer for violating university policy and state education code prohibiting unauthorized classroom recording

Orange County Register editorial page campaign to recall board of trustees

- O'Neil as a whistleblower
- #StandwithCaleb

Student Whistleblower Protection Act

- California Senate Bill 677 would have amended state ed code to protect students from discipline for filming campus activities that record potential law or policy violations.
- Opposed by educator groups. California Scholars for Academic Freedom: "It will give people and organizations with a political agenda the tool to smear at will anyone's academic reputation and gravely jeopardize academic freedom as a whole on university campuses."
- Senate Judiciary Committee analysis: "Allowing the covert recording of classrooms encourages a surveillance environment for teachers and students. Under surveillance, intellectual freedom and creativity languish."
- Died in committee in April 2017.

Outcomes

suspension withdrawn

- board: need more empathy and understanding of differences
- union: board capitulated to bullies; action undermines education

strong university and union support for faculty throughout

- union: "Harsh criticism of a politician ... is not discrimination. Surely, this current generation can listen to political statements they disagree with and not claim discrimination"

Cox named "Colleague of the Year"

4 Pillars of the Campus Expression Conundrum

Faculty Expression & Partisan Speech

- faculty have strong academic freedom rights to express partisan views but they are not absolute
- First Amendment protection of faculty expression in these situations is murky at best and needs to be more clearly defined
- irrespective of these rights, faculty have responsibilities involving partisan viewpoints in the classroom

Student Engagement in Learning

- students do not have a right to be protected from partisan speech by instructors or visitors
- students have a right to be protected from harassment or discrimination based on their political viewpoints
- context dictates whether students have a right to capture and disseminate video of classroom activities without permission

Responsibilities of Outside Advocates

- partisan advocates are an important check on the power of academia as an institution
- rise of social media has invited discipline against professors in ways that raise serious questions about academic freedom
- while advocates have rights to engage in these activities, they have responsibilities to truthfulness, authenticity, respect, equity and social impact

Institutional Necessities

- institutions have a responsibility to defend the academic freedom of faculty
- institutions have a responsibility to ensure openness to viewpoint diversity
- institutions are best served by common-sense responses to the rage machine

