

288. Discipline and Punish

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I've been associated with two disciplinary procedures at my university. The first was back in 2006, when a colleague was alleged to have discriminated against or harassed some students by posting the *Jyllands-Posten* Muhammad cartoons on his [office door](#). The second was my own case, which lasted from November 2020 to March 2021. I was alleged to have treated at least two people [disrespectfully](#). I had sent them (and others) a message in which, while arguing for candour and openness in classroom discussions, I mentioned a word that upset them.

One thing common to both cases was that the allegations were vague. In neither case did the university deign to explain *how* the professor's actions were supposed to have harassed or discriminated against anyone or to have constituted disrespect.

In my work with the Society for Academic Freedom and Scholarship, I've heard about cases of discipline at other universities, often in detail (and usually in confidence). I have not studied a large and random sample of cases in which universities have called professors on the carpet, so despite what I do know, I am not able to say much in general about what's going on with discipline at contemporary universities.

I've been looking in the academic journals for empirical studies of university discipline but have found none. (If you know of any, send me references.) I wish to know how often professors are brought to disciplinary procedures (and how often they are brought to conflict resolution and other sub-disciplinary procedures), what the allegations were, how long the procedure lasted, whether it went to arbitration, and how it ended. I'd also like to know how much universities are spending on lawyers in disciplinary procedures.

As well, I've been looking for theoretical discussions of discipline at universities. What is the nature and point of discipline and disciplinary procedures and what are the arguments that that *is* their proper nature or point? Again, I've found none, or none that were deep or rigorous. Administrators and the union at my university have also been unhelpful when I've asked them these questions. Discipline at universities seems woefully undiscussed.

Nonetheless, I've come to a few tentative conclusions. I don't think disciplinary procedures should be used: 1) to exact retribution or vengeance; 2) to recompense the aggrieved; 3) to mollify the complainant; 4) to deter others; 5) to signal the university's virtue or commitment; 6) to intimidate the professor; 7) to cause the professor hardship or suffering via the process itself; or 8) to reform the guilty. The only legitimate use of disciplinary procedures against a professor, it seems to me, is to get the professor to cease breaching an important formal university regulation. I also think that recourse to disciplinary procedures must only come after sincere non-disciplinary attempts to get the professor to stop have failed. I'm developing arguments for these conclusions in an academic paper I'm working on.

“The only *legitimate* use of disciplinary procedures”—that is, legitimate given that a university aspires to be a place of intellectual community in which people gather to fashion and critically examine understandings and interpretations of the things of the world. If I am right, many of the cases I know of in which disciplinary procedures were initiated against professors were illegitimate (including those that did not result in discipline).

In this article, I want to describe the opportunities for abuse of disciplinary procedures that the rules that govern them create. I’ll use the rules at my university. My claims, if correct, apply also to universities with similar rules and structures. I don’t think that changes in the rules will work to prevent abuses, at least not without creating other problems elsewhere. My conclusion is that only a culture of commitment to academic values over other values, and a commitment to that culture on the part of administrators, can prevent abuses or reduce their severity. That university administrators are happy to put diversity, inclusion and equity, for instance (as they understand them), before academic values and the academic mission of their university, implies that the misuse of discipline is bound to continue.

At my university, the president initiates disciplinary procedures, usually following a complaint, on the advice of the academic vice-president. The president and academic vice-president can, without independent investigation, level against a professor the allegation that that professor has breached a university document. The Collective Agreement requires that the professor receive a letter summoning him or her to a disciplinary meeting and that that meeting take place within about a month. That meeting is not a discussion and the professor does not get to question the administrators or to state a case. The professor simply answers questions. Though the meeting might end after just an hour, the “meeting” can be adjourned and might go on indefinitely while the lawyer for the university and the union’s lawyer see whether they can find a resolution. (My disciplinary meeting lasted three months. I can’t imagine that the lawyers spent more than three hours on it during that time.)

The president initiates disciplinary proceedings *usually* following a complaint. But he need not wait. “When the university through designated officers files a formal complaint on its own behalf...” ([Policy on Discrimination and Harassment](#), VIII f, p. 10.) The police may sign their own search warrants.

If at the end of the adjourned and resumed meeting, the two lawyers cannot find a resolution acceptable to the university, the union, and the professor, the university has a month in which to decide what to do. It can drop the thing (not likely at this point) or it can issue the professor a letter of warning. A letter of warning is not considered discipline and, thus, cannot be grieved by the union. Or it might require that the professor do something in exchange for it discontinuing the disciplinary procedures. (In my case, I agreed to send the university’s president a statement of regret.) Or it can issue discipline: a letter of reprimand, a suspension with pay, a suspension without pay, or termination.

Only once the university issues discipline and the union chooses to grieve is the matter heard by a disinterested party. Only then, only at arbitration, does the university assume the burden of proof and do the protections of natural justice come into play for the professor.

One thing that I knew about disciplinary procedures from other cases but hadn't quite taken in entirely until my own is just how unprincipled and arbitrary everything can be up until discipline is issued and the union grieves. The university simply doesn't have to have any reason to think that the professor breached a rule or that it would succeed at arbitration. This fact invites the university to use discipline to appease or coddle the complainant, to signal its commitment to some extra-academic value, or to penalize the professor, either by extracting something from him or her in exchange for discontinuing the procedures or by using the process as punishment (or both). Even if the procedure is discontinued with little extracted from the professor, the professor might now be too intimidated or leery to pursue his or her academic ends freely and fearlessly again. (I know that I am now going to think twice or three times before indulging my penchant for trying to improve my institution. Who needs the trouble that that can cause?)

I'll here leave aside the problems that attend confidentiality surrounding the complaint. I'd have quickly adapted my ways to the needs of the person who complained if I'd been told who that was and what was their complaint. But who complained and about what, exactly, were withheld from me. And I'll leave aside problems connected to the fact that the union takes carriage of the professor's defence from the summons to the end of arbitration. A union that lacks vigour in defending its member or elects not to grieve when it should contributes to the abuse of the system.

With the rules as they are, the university may initiate disciplinary procedures in order to secure some goal it has in mind even if it realizes that it cannot win against the professor at arbitration. The university is constrained in its pursuit of its goals only by how much time and money it is willing to spend. The university can do what it pleases so long as it manages a few deadlines and holds that one meeting. Again, it's not until arbitration that the university has to meet any standards of evidence or warrant.

While it is pleasant to imagine a university that has no disciplinary procedures but only the informal processes associated with what's called conflict resolution (or not even those), I don't think such a university could exist, people being people. Disciplinary procedures against professors should be very rare but I suppose, realistically, that some need to be in place just in case. So how, then, could the rules around disciplinary procedures be changed to minimize misuse and abuse?

I'm not sure they can. Disciplinary procedures must start somewhere and senior academic administrators seems the place. Other than getting rid of the provision that enables the university to initiate discipline in the absence of a complaint, there's not much that can be done, I fear.

A mechanism to ensure that disciplinary procedures are used only as a last resort would be good. Yet, at my university, the documents I was alleged to have breached do themselves require administrators to encourage complainants to contact the professor and to use informal methods first and discipline only later. My university's president and vice-president academic ignored those provisions without drawing the ire of my union.

If a system of discipline is indispensable and cannot but begin with high-ranking administrators leveling allegations following a complaint, then nothing stands in the way of the sorts of abuses I

have described—except the commitment of those high-ranking administrators to academic values. Academic freedom provisions in collective agreements typically include freedom of research and dissemination of research, freedom of teaching, freedom of discussion, freedom to criticize the university and the union, and respect for Charter rights to freedom of expression. Freedom of discussion and freedom of criticism are not the freedom to discuss or criticize so long as one is out of earshot. Another academic value is collegiality. Collegiality requires that members of the university community who happen to rub each other the wrong way have, first, to try to figure out how to get along by themselves, and to call in the administration only once things threaten to become intolerable.

The values of academic freedom and collegiality stem from an even deeper value. They express respect for intellectual and moral autonomy. Academics, as academics, are keen to believe and value for their own reasons, and not as the result of social or psychological pressures, and they want the other members of the university community to be able to believe and value for their own reasons, as well. If administrators also prized the intellectual and moral autonomy of professors, students and other administrators, they would not be tempted, or at least they would be able to resist the temptation, to serve other ends on campus at the expense of academic ends.

Yet, as [Jonathan Haidt](#) and many others have explained, a university cannot be both an academic institution and an instrument for use in the struggle for social justice (unless, perhaps, one's conception of social justice is a culture of intellectually and morally autonomous citizens). If, that is, an administrator's strongest allegiance is to anti-racism as understood in contemporary social justice movements, then if calling a professor on the carpet might promote that understanding of anti-racism, on the carpet the professor will be called, and academic values will go begging.

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