

314. Why Vile Speech Should Attract No Official Notice

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One argument that university administrators should have the power to sanction professors for what they say begins from the fact that not all expression is of academic significance. Mere assertion, for instance, in some cases adds nothing of value to inquiry or critical discussion. Invective is also a kind of speech that only rarely if ever contributes to research or teaching. Slogans, rhyming chants and taunts don't move the academic engagement forward.

Professors, we're told, must be willing to supply evidence or to respond to criticism if what they say is to be protected by the academic-freedom provisions in their collective agreements. They are required, that is, to use their freedom responsibly. A professor who engages in low-value speech that hurts people, encourages lawlessness or brings a university into disrepute may properly be brought to discipline. So may a professor whose low-value speech leads students or colleagues to believe he won't treat them fairly or with respect.

Those who use this argument are apt to insist on the distinction between freedom of expression and academic freedom. While as citizens we might be free from government interference or sanction to say stupid or vile things, as professors we have responsibilities not to do so, or at least to be temperate and open to criticism and correction when we do. It is, then, no violation of academic freedom to require, via threats of sanction, that professors live up to their responsibility to speak well.

We've heard this argument frequently in the months following the 7 October 2023 Hamas-lead attack on Israel. It was used in defence of both Langara College's treatment of Natalie Knight and the University of Guelph-Humber's treatment of Paul Finlayson. It has been used to urge universities to close and dismantle pro-Palestinian encampments on their campuses.

The argument, again, is that since university administrators have the responsibility to maintain the academic character of their institutions, they should have powers necessary or useful to fulfil this responsibility. Because expression that isn't of academic significance can, when it is racist or celebrates violence or denies a person's humanity, undermine a university's academic character, administrators should have the power to step in to stop it and to punish it.

The particular argument I've described applies only when expression is of low value academically. It is different from the argument that begins with the proposition that its academic mission is only one of a university's concerns. This other argument would grant administrators powers to interfere

and sanction even academically valuable expression, if that expression puts at risk values such as anti-racism or respect for indigenous ways of knowing.

One response to the argument that professors should be subject to sanction for vile or dangerous expression when what they say is of low academic value is that the university has no right to concern itself with a professor's off-duty behaviour. When a professor is tweeting on her own time, or speaking at a political rally, or stating an opinion in a letter to the editor, the professor is not at work and the employer lacks jurisdiction to interfere.

This is an important response, certainly from a practical perspective. It's good that the academic freedom clauses of collective agreements typically enjoin the employer to respect freedom of expression, for such clauses might deter the employer from overreaching. We might well want, as a tactical move, to make the point that the professor wasn't speaking on company time when a university administrator comes after one of us.

Of course, one weakness with the off-the-clock response is that it's no help when administrators come after a professor for something said on the clock.

The response that people should be free to say what they want when they are off the clock depends on a distinction not all professors wish to make. In my own case, I think of myself as a professor (a scholar, an intellectual) in all that I do. I don't think of myself as ever off the clock; I don't think there is a clock. I'm not paid with public money and student fees to teach and conduct research as though that were a job; I'm paid, rather, to be a professor, that is, to live the life of a scholar and intellectual. Now, I accept that this is a romantic view of things, and perhaps a minority view even among professors. It is certainly not how university administrators or faculty unions conceive of things. The claim that off-the-clock speech is no business of university administrators might supply us with our best practical response when a professor (or student) gets into trouble. But much more satisfying would be a response that appeals to the academic mission and the values that support it.

Before providing a response that appeals to academic values, I will state a practical argument for restricting contractually the ability of university administrators to interfere with or to sanction a professor's low-value speech, even when that speech is obnoxious or dangerous. This practical argument is based on an observation: university administrators have frequently got wrong the academic value of what a professor they then lay into has said. Many, if not most of them, will continue to get it wrong. Many administrators will continue to get it wrong because their concern is not with the academic mission of their university but with other things (pleasing certain constituencies, for instance). In getting it wrong, they cause hardship for the professor whose speech has been impugned and demoralize him and his colleagues. This is true even when administrative decisions are eventually corrected by arbitrators. On balance, then, the harm caused by administrators is greater than that caused by firebrand professors.

A further consideration is that some university administrators are given to initiate disciplinary procedures against professors as a management tool, even when they don't think the professor violated any rule and they intend to halt the procedures once they've mollified a complainant, signalled their virtue, intimidated the professor or otherwise achieved their end.

Because university administrators will often mistake academically valuable expression for low-value expression, it is better that they lack the power to intervene against professors (or students), even if that means that professors (or students) will get away now and again with celebrating murder or ignorantly denigrating indigenous knowledge.

Let me now state and defend the argument that freedom of expression is integral to the nature of the academic mission.

Some commentators suppose that this argument requires that we deny the distinction between academically valuable expression and low-value academic expression. We should, of course, be sceptical of this distinction, for anything a person says could in some way advance academic goals. Even a vile comment might stimulate thought and cause us to clarify our ideas or arguments, it might make us aware of what's at stake, or it might put us in mind of a fruitful connection we've missed. We should be grateful to whomever awakens us from our dogmatic slumbers, no matter how ungently. Moreover, it is frequently if not invariably false that professors engage in assertion, invective or sloganizing without defending their claims or actions. In most cases, they will give reasons unbiddenly; but they will certainly give them after they've been criticized or denounced. If the distinction between respectable and low-value academic speech turns on a professor's willingness to argue, then in fact very little speech is low value.

Despite our scepticism about the reality or usefulness of the high-academic-value/low-academic-value distinction, at least when placed in the hands of university administrators, we need not dismiss it in order to respond critically to the argument that administrators should have the power to police low-value expression. Let's suppose that the distinction is real and that the content of some low-value expressions can disturb, upset or appall members of a university community, or make them fearful about how that professor might treat them. Nonetheless, university administrators should have no power to intervene. Vile low-value expression should draw no administrative attention at all.

The reason is simply that administrative attacks on professors for what they say inhibit or deform inquiry and discussion. They do so by instilling fear among professors (and students) that they might themselves be called on the carpet. If the academic mission is to foster inquiry, and if open, free and candid discussion is useful to inquiry, then anything that inhibits discussion is contrary to the academic mission. To the extent that professors and students are committed to academic values, they will seek to apply no pressures or beliefs or values save the pressures of evidence and argument. The threat of sanction is a pressure apart from evidence and argument. Thus, the threat of sanction for saying something offends the academic mission of the university.

Professors (and students), again to the extent that they are committed to academic values, will be critical of expression of low academic value. They will explain openly and candidly why what a professor has said is false or implausible, why the arguments for it are weak, why it rests on unsound values or supports unsound attitudes or practices, or why it is confused or irrelevant to the matter at hand. And they will seek to develop better ideas. Bringing administrators in, on the other hand, removes what the professor has said from academic discussion and thereby corrals discussion.

An objection to the argument that the threat of sanction for saying vile things of low academic value inhibits inquiry is that the presence of vile ideas in an academic community creates a hostile environment and hostile environments are poor places for inquiry and discussion. But that someone perceives an environment as hostile speaks to that person's lack of commitment to academic values. For a committed academic, that someone has, say, celebrated murder or denied one's humanity is an opportunity to respond to ideas and arguments critically.

To the objection that Jewish, black, queer or indigenous students will not feel supported by a professor given what that professor has said, and might be worried about being treated poorly or unfairly by him, we must respond that the university will have grade appeal procedures and means by which students may seek redress for unfair treatment. A university committed to its academic mission will not institute prior restraints, but it will respond to violations of fairness. (This is not to say that the university will respond well. Administrators who lack commitment to academic values will abuse complaint procedures no matter how well structured they are. And at many universities, what it is to be unfair is specified by harassment or respectful-conduct policies that are themselves dubious academically.)

Must the university then give free reign to the firebrands and charlatans among its professors? No. Universities should have mechanisms for detecting and dealing with incompetent professors. A vice-president academic should be empowered to strike a panel of full professors to investigate a professor's teaching or research, even in cases in which fraud is not alleged. The first charge to such a panel would be to help the professor improve his performance, if the panel deems his performance sub-standard. But after two or three attempts to make things better, a vice-president academic should be able to recommend terminating the professor's contract. The point I wish to make for our present discussion, though, is that a professor's penchant for voicing, without evidence, anti-Semitic conspiracy theories is but an element a panel would consider within its total evaluation of the professor's competence and contribution to the academic mission. The responsibilities that come with academic freedom are discharged (or not) in the totality of a professor's work and career, for they are responsibilities to the academic mission as a whole. (Again, I pause to say that I am aware that properly constituted panels have in the past made terrible decisions about professors and have made them on anti-academic grounds.)

The argument that concern for the academic mission requires that university administrators have the power to sanction professors for low-value expression when that expression is vile or obnoxious fails, even if we grant the existence of low-value expression. A concern for the academic mission requires, instead, that we apply no pressures on beliefs or attitudes save the pressures of evidence and argument, and that we place no obstacles on the road of inquiry.

The scope of the specific argument I've criticized is narrow, for it says that the speech for which a professor can get into trouble must be of low value academically. The attraction of the argument for those who employ it is that it is supposed to be consistent with respect for the academic mission. But, as I mentioned earlier, a much more popular argument for increased oversight and control on campus lacks these limits. This other argument begins with the claims, true as they are, that academic values are just one set of values among others and that some things are more important than the academic mission. Academic values must give way to more important values when the

two sets conflict. This is the argument that we most need to address. It is the argument behind just about every successful administrator's attack on academic freedom, collegiality and other academic values from the Peter March case in 2006 to the Verushka Lieutenant-Duval, Frances Widdowson and Paul Vimitz cases continuing today.

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