

Scholars for Peace in the Middle East Legal Task Force Statement of Principles on Academic Freedom and the Freedom of Speech

No. 8339

August 22, 2011

Acknowledgement: Scholars for Peace in the Middle East and the Legal Taskforce wish to thank the Achelis and Bodeman Foundations for their generous support of this project.

Intramural and Extramural Speech

As a matter of proper university governance, professors and students should enjoy freedom of intramural and extramural expression regardless of how these freedoms are secured by external sources of law. This freedom must be secured on behalf of all members of the scholarly community with particular sensitivity to dissenting expression. These freedoms are inherent in the academic enterprise and are indispensable to facilitate the search for truth, the free exchange of ideas, and, by virtue of the University's role as an educator, the pursuit of democratic governance in society. The extent to which these freedoms are inscribed in law varies from jurisdiction to jurisdiction. Nevertheless, the underlying value of free inquiry and expression are universal in their centrality to the academic enterprise.

These principles take various forms in different parts and within different functions of the University. Thus, review of scholarship is governed by disciplinary standards and competence. Within the classroom and in other teaching situations, the need to reach students, students' right to academic freedom, their right to equal opportunity for achieving the standards of excellence appropriate to the institution, the pedagogical bounds set by a reasonable psychology of education, and the distinction between indoctrination and free inquiry may set reasonable limits upon faculty and student speech; by contrast graded work is subject to the standards of the discipline, including standards that recognize creativity. The housing and dining facilities within residential campuses, in which some students spend much of their private lives, may be governed by different and higher norms of privacy and personal dignity. Various public spaces will be governed by full free speech norms. Finally, we believe that the University also shelters public intellectuals whose extramural speech, outside of their primary disciplinary field, though still based on competence, serves an important public function.

Policies/Enforcement

The freedom of speech and doctrine of academic freedom must be carefully guarded and even-handedly enforced. Selective or inconsistent application creates unfair conditions, generates resentment, exacerbates conflict and undermines values essential to the academic enterprise. Even-handedness requires treating like cases similarly and unlike cases differently. Disparate treatment of protected groups is unacceptable. This does not, however, permit or require failure to respond in an appropriate manner to misconduct by members of any group.

Silencing/Intimidating Students

These rights entail correlative responsibilities. For example, members of the academic community should take care not to express themselves in a manner which threatens, intimidates or silences others; which tends to create a perception of unfairness or favoritism unrelated to excellence; or which foreseeably may chill the speech of students or less senior faculty members. The university must protect the conditions for a free exchange of ideas, which include not only the absence of formal restraints but also the absence of those forms of harassment or intimidation which foreseeably limit the equal right of all members and groups to individual and group self-expression. The manner in which these conditions are best protected will depend on context. For example, classroom speech should be regarded differently than coursework assignments or examination materials, since lessons give more scope to add professorial perspectives that are not contained within course material. In continental Europe this thought in the judiciary finds its expression in the adage, "la plume est serve, mais la parole est libre."

Bias/Discrimination/Hostile Environment

In general, *no one -- and especially* persons in positions of authority such as professors should exercise expressive freedom or their power in the classroom in a way that diminishes the rights of others; which entails discrimination or contributes to a hostile environment; or which undermines the mission of the university. Specifically, members of the academic community must not engage in expressive or non-expressive conduct in a manner that undermines the advancement of learning, the dissemination of knowledge, or the cultivation of an environment of respect free of harassment, retaliation or reprisal. In this respect, universities must protect not only freedom from infringements on faculty academic prerogatives but also students' affirmative rights to expression, learning, dignity and equality. These limitations follow generally from the academic freedom of students but also, at their most extreme, are necessary to protect the humanity of students.

Administrators and professors should be mindful of the danger that minority voices may be suppressed by the formation or continuance of hostile environments. In order to address this risk consistent with the freedom of expression and doctrine of academic freedom, universities must develop, enact and distribute policies which demarcate impermissible conduct in a manner which is clear, specific, and complete. Vague, overbroad or under broad policies may chill the expression of protected speech.

In particular, clear written and defensible definitions of harassment with specific examples must: be established and disseminated to all faculty, staff and students; provide the basis for training and testing of managers and supervisors; and be utilized in orientations for new faculty, staff and students. By way of example, universities should provide definitions and examples which contain the level of specificity to be found in the EUMC Working Definition of Anti-Semitism. The level of specificity provided in policies prohibiting racial, ethnic and religious discrimination and harassment must be no less extensive than that provided for the protection of other groups including policies regarding sexual harassment.

Persons of all viewpoints must receive equal protection of their freedom of speech, while members of all protected groups must receive equal educational, employment and housing opportunities throughout the university. Moreover, administrators and faculty should be mindful that intellectual homogeneity may give rise to suppression of minority viewpoints.

In some cases, ethnic or religious discrimination may be intertwined with discrimination on the basis of viewpoint. Professors must avoid engaging in conduct which could reasonably be construed to constitute intimidation on the basis of a suspect classification, viewpoint, or political affiliation. This includes, without limitation, intimidation on the basis of anti-Israelism, anti-Semitism or anti-Islamism. Conversely, faculty must not be subjected to ideological or political tests and should not be denied jobs or tenure based on external political pressure.

There is a distinction between environments which are hostile and those which are merely challenging, discomforting, or even subjectively offensive. Students have a right to academic freedom which must not be infringed by professors who stifle critical thinking and discourage intellectual diversity, or create a hostile environment on the basis of viewpoint or prohibited classification. This does not limit in any way the use of pedagogical methods, arguments, or rhetoric which challenge students to rethink deeply held convictions. In order to facilitate enforcement of such policies, the university should establish a complaint process for faculty, administrators, students, and staff which is fair, prompt and effective; which is well-managed, -funded and -staffed; and which commands the respect of the academic community. The integrity of this process requires that all members of the community be protected from frivolous complaints, unfounded allegations, defamatory statements, subjective biases, and improper manipulations. At the same time, complainants and witnesses must be protected from retaliation, whether formal or informal, by the university or any of its faculty or staff.

Outside Speakers

Administrators must avoid the actuality or appearance of viewpoint discrimination among student groups consistent with their obligation to maintain equal opportunity and, unless they have created a fund governed by norms of equal access, to use university funds to further standards of excellence. This requires, for example, that consistent rules for proper security be provided to all outside lecturers and their audiences, but also that security considerations not provide the pretext for the suppression of unpopular speakers. Similarly, administrators must not encourage the use of "hecklers' vetoes" by imposing disparate security costs on faculty or student groups which host outside lecturers with special security needs.

Respecting the Mission of the Academic Institution

The freedom of expression and the doctrine of academic freedom are also accompanied by a responsibility to respect the mission of the institution which ensures them. This does not limit the right of faculty and students to criticize the policies and practices of the university or of one another. It does, however, counsel the need for academic discourse, particularly classroom and intramural professorial speech, to be fair-minded and civil. Fair-mindedness in the classroom requires respectful consideration of opposing student perspectives and avoidance of bias among students or among faculty. Moreover, professors should be mindful in both classroom speech and written publications to maintain the scholarly standards of their discipline.

Compelled Speech

The freedom of expression includes a freedom from compelled speech. The right of faculty members to form labor unions must be respected to the extent guaranteed under

applicable laws. Professors must not be required to support with compulsory labor union dues speech with which they disagree but which is not directly related to the interests of their bargaining unit. For this reason, faculty unions should avoid engaging in speech, especially political speech, which may be controversial among their members but which does not directly advance the material interests of the bargaining unit. Where such speech is unavoidable, faculty should receive specific, detailed and timely advance notice; a fair opportunity to have their opposition heard and considered; and the right to a proportional reduction of their dues payments.

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