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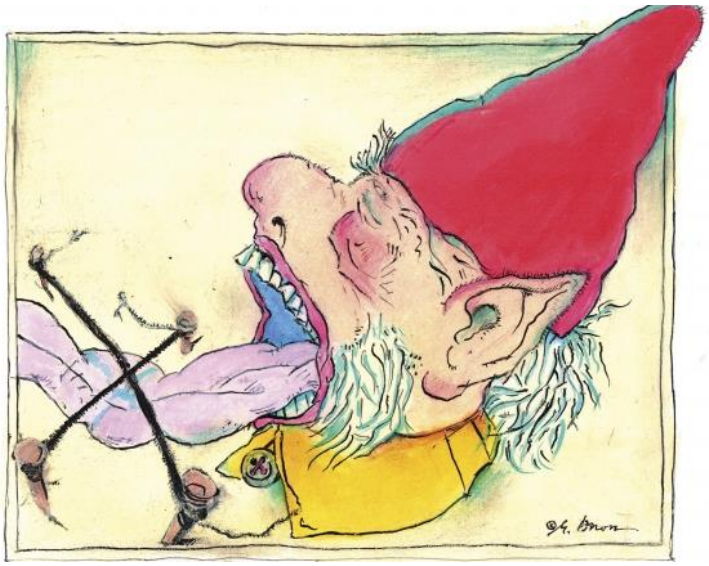
Free Speech Is Not an Academic Value



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By Stanley Fish MARCH 20, 2017 PREMIUM

Like everyone else these days, I've been reading and thinking about what's happening on campuses when invited speakers are shouted down by student protesters. And my mind keeps drifting back to a statement of principles issued last March by a faculty committee at the University of Minnesota. Principle No. 1 reads: "A public university must be absolutely committed to protecting free speech, both for constitutional and academic reasons." This statement is at best insufficiently nuanced and at worst false.

The constitutional status of free speech at public universities has been worked out in a series of court decisions. The jurisprudence is a bit complicated, but it boils down to a key distinction between speech on a matter of public concern and speech that is

personal or internal to the operations of the unit (i.e. a district attorney's office or an academic department). If the speech at issue falls under the first category, it is constitutionally protected; if it falls under the second, it can be regulated in the same way any employer can regulate speech that disrupts the core business of the workplace.

Justice Thurgood Marshall described the adjudicative task. We must, he said, "arrive at a balance between the interests of the teacher as a citizen in commenting on matters of public concern, and the interest of the State, as an employer, in promoting the efficiency of the public services it performs" (*Pickering v. Board of Education,* 1968). So, in what might seem to be a paradox, the public university is "absolutely committed to protecting free speech" only when the speech produced is nonacademic. When it is academic speech that is being produced the interest of the employer is paramount and speech is permitted only when it serves that interest.

But isn't that interest centered on speech because, as the Minnesota faculty put it in their draft recommendations, the university's "larger normative commitment [is] to the free exchange of ideas"? No, it isn't. The university's normative commitment is to freedom of inquiry, which is quite a different thing. The phrase "free exchange of ideas" suggests something like a Hyde Park corner or a town-hall meeting where people take turns offering their opinions on pressing social matters. The right to speak is held by all; no requirements (of rank, intelligence, professional standing, etc.) limit the number of those who have access to the microphone. (Limits of course may attach to time, manner, and place.)

The course of free inquiry in universities is not like that at all. Before one can speak, in a classroom or in the research seminar or in a journal publication, one will have been subjected to any number of vetting procedures — votes, auditions, presentations — designed largely to determine those who will not be allowed to speak. Whether it is a department, a college, a dean, a provost, a learned-journal editor, it is the business of the university to silence voices, not to license them indifferently. To put it another way, the free exchange of ideas between persons who want in on the conversation is a democratic ideal; but the university is not a democracy; it is (or is supposed to be) a meritocracy, one in which those who get to put their ideas forward are far outnumbered by those who don't. The process is more Darwinian than democratic.

This leads me to a conclusion implicit in the previous paragraphs: Freedom of speech is not an academic value. Accuracy of speech is an academic value; completeness of speech is an academic value; relevance of speech is an academic

value. Each of these values is directly related to the goal of academic inquiry: getting a matter of fact right. The operative commonplace is "following the evidence wherever it leads." You can't do that if your sources are suspect or nonexistent; you can't do that if you only consider evidence favorable to your biases; you can't do that if your evidence is far afield and hasn't been persuasively connected to the instant matter of fact.

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Nor can you follow the evidence wherever it leads if you are guided by a desire that it reach a conclusion friendly to your political views. If free speech is not an academic value because it is not the value guiding inquiry, free political speech is positively antithetical to inquiry: It skews inquiry in advance; you get where you wanted to get from the get-go. It is political speech if, when the material under consideration raises political/ethical questions, you believe it is your task to answer them, to take them seriously rather than academically. Any number of topics taken up in a classroom will contain moral and political issues, issues like discrimination, inequality, institutional racism. Those issues should be studied, analyzed, and historicized, but they shouldn't be debated with a view to fashioning and prosecuting a remedial agenda. The academic interrogation of an issue leads to an understanding of its complexity; it does not (or should not) lead to joining a party or marching down Main Street.
That is what I mean by saying that the issue shouldn't be taken seriously; taking it seriously would require following its paths and byways to the point where one embarks upon a course of action; taking it academically requires that one stop short of action and remain in the realm of deliberation so long as the academic context is in session; action, if it comes, comes later or after class.

So neither free speech — speech uttered by anyone who has something to say — nor political speech — speech intended to nudge students in one direction or the other — is a legitimate part of the academic scene. But both are part of the extracurricular scene: the rallies, workshops, panel discussions, and lectures about which we hear so much today. In those contexts partisan views are front and center, and they are aired by anyone and everyone in the room or the quad or the auditorium. And these views are being taken seriously. Speakers are not merely reflecting on the alternatives; they are strongly urging the alternatives, sometimes in apocalyptic terms: Unless we divest

from fossil-fuel stocks, the environment will be destroyed; unless we speak out against Israel, a new Nazi-ism will triumph; unless we stand up against microaggressions, racism will run rampant. Passions run high, the stakes are felt to be enormous, the fate of the republic hangs in the balance.

It's all so exciting, so exhilarating, so serious. But it is not a seriousness to which the university is a party. My contention that moral/political seriousness has no place in the university holds even in those areas in which moral/political seriousness is being performed to a fare-thee-well; for while that conversation (often very heated) is occurring within university precincts, the university is not actively presiding over it; rather, the university is, or should be, managing it, much as the proprietors of a sports stadium manage the crowds they invite in or as the proprietors of a Broadway theater manage the audiences they labor to attract. It's show business! The university lets this stuff go on, but it doesn't have a dog in the hunt; it neither affirms nor repudiates any of the positions that vie for attention in the circus it allows on its grounds; it doesn't take those positions seriously, and it shouldn't, for if it did so (by divesting from fossil fuels or policing microaggressions or declaring the entire campus a free-speech zone) it would no longer be in the education business; it would be in the partisan-politics business.

Not all universities understand the difference between curricular and extracurricular activities and the different responsibilities attendant on each. They are confused in both directions: They think that the partisan passion of the extracurricular sideshow has a place in the classroom, and they think that something genuinely academic is going on when speakers invited precisely because they are controversial become the occasion for controversy. They don't see that it is the administration's job, first, to ensure that the classroom is a safe space for intellectual deliberation (that's the only safe space I'm interested in), and, second — a very distant second — to maintain control of the energies that have been let loose once the decision to have a lecture or mount a panel discussion or allow a rally has been made.

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I put it that way so as to emphasize the fact that nothing requires the making of that decision; nothing requires that there be extracurricular activities at all. A university would still be one if all it contained were classrooms, a library, and facilities for

research. A university would not be one if all it contained was a quad with some tables on it, a student union with a food court, an auditorium and a bowling alley, a gymnasium with a swimming pool and some climbing walls. You could take away all those things, and along with them the student newspaper, the fraternities, the sororities, the concerts, the athletic events, the dances and everything else administered by the office of student affairs (which you could get rid of too), and the core of the university would be intact.

So if you're a college or a university, you don't have to saddle yourself with any of those extras. But once you've decided to add them on, it's your job to see that they work, which means, mostly, ensuring that events go smoothly and no one gets hurt. If that's the assignment, many colleges and universities deserve a failing grade.

Consider an example much in the news these days: Middlebury College. The facts are well known. The controversial sociologist Charles Murray, co-author of *The Bell Curve*, was invited by the American Enterprise Institute Club to speak at Middlebury about his 2013 book *Coming Apart.* The event was co-sponsored by the political science department and one of its members, Allison Stanger, was scheduled to engage Murray in dialogue after his talk. That never happened, because as soon as Murray rose to speak student protesters turned their backs on him and began a nonstop serial chant featuring slogans like "Racist, sexist, anti-gay, Charles Murray go away" and "Your message is hatred; we will not tolerate it." After 20 minutes a university administrator announced that the event would be moved to another location where Murray would give his talk, and that he and Professor Stanger would engage in a live-streamed conversation. That did happen, but as Murray and Stanger were exiting the new venue they were harassed and assaulted; Stanger suffered a neck injury and spent a short time in a hospital.

What happened here? Well, according to many commentators, something disturbing and dangerous happened. That is the suggestion of an article headline in *The Atlantic:* "A Violent Attack on Free Speech at Middlebury." But whose free speech was attacked? If you're thinking First Amendment (inapplicable to a private school like Middlebury anyway), no government or government agency prevented Murray from speaking. If you're thinking First Amendment values like the value of a free exchange of ideas, that's not what the students wanted, and it was their show (after they took it away from the AEI club). And if it is what the Middlebury administration wanted, as President Laurie L. Patton said it was, then it was up to the administration to take the steps necessary to bring about the outcome it desired.

If you were to ask me, "What would those steps be?" I would reply that I don't know, but it's not my job to know; it's the job of the Middlebury administrators, and they failed to do it. In its account of the affair, Inside Higher Ed reports that "College officials said the size and intensity of the protest surprised them." Really? What planet were they living on? Didn't they read the job description when they signed up?

Some Middlebury faculty and many outside observers blamed the students for the debacle, and there is no doubt that their actions and ideas were unattractive enough to qualify them for the position of whipping boy. When an earnest representative of the AEI Club told the students that he looked forward to hearing their opinions, one of them immediately corrected him: "These are truths." In other words, you and Charles Murray have opinions, but we are in possession of the truth, and it is a waste of our time to listen to views we have already rejected and know to be worthless. Now that's a nice brew of arrogance and ignorance, which, in combination with the obstructionism that followed, explains why the students are getting such a bad press. They are obnoxious, self-righteous, self-preening, shallow, short-sighted, intolerant, and generally impossible, which means that they are students, doing what students do. What they don't do is police themselves or respect the institution's protocols or temper their youthful enthusiasm with a dash of mature wisdom. That, again, is what administrations are supposed to do and what they are paid to do: Set up procedures for establishing, maintaining, and managing the various enterprises, academic and nonacademic, that fall within their purview. Pillorying the students while muttering something about the decline of civility and truth-seeking in a radical PC culture makes good copy for radio, TV, and newspaper pundits; however, it misses the point, which is not some piously invoked abstraction like free speech or democratic rational debate, but something much smaller and more practically consequential: the obligation of college and university administrators to know what they are supposed to do and then to actually do it. How's that for a plan?

My advice to administrators: Stop thinking of yourselves as in-house philosophers or free-speech champions or dispensers of moral wisdom, and accept your responsibility as managers of crowd-control, an art with its own history and analytical tools, and one that you had better learn and learn quickly.

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