

Professors are losing their freedom of expression



By Howard Gillman and Erwin Chemerinsky November 15 at 1:18 PM

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With so much attention focused on whether controversial speakers such as Milo Yiannopoulos or Richard Spencer should be allowed to appear on campus, an even more basic issue has been obscured: universities punishing faculty who, outside of professional settings, express views that are considered controversial or even offensive.

There are many recent examples of this. A year ago, a University of Oregon law professor was suspended for wearing blackface at a Halloween party held at her house. Twenty-three law school faculty members wrote a letter urging the professor to resign. A campus investigation found that by wearing this costume at a party in her home she had engaged in “discriminatory harassment.”

A few years ago, the University of Illinois rescinded an offer to professor Steven Salaita for his anti-Israel tweets. (Ultimately, a court upheld Salaita's First Amendment claims and the university settled his lawsuit.)

And when George Ciccariello-Maher, associate professor of politics and global studies at Drexel University, tweeted last December, “All I want for Christmas is white genocide,” there was pressure to fire him. The university resisted. After some tweets about white male entitlement following the Las Vegas mass shooting, the Daily Caller called his remarks “absolutely unforgiveable” (sic) and the conservative rage machine unleashed a barrage of hate mail and death threats. The university placed him on administrative leave, expressing concern for his safety and the safety of the Drexel community.

In responding to those who would silence or censor speakers, many people, especially on the right, argue that, at universities, all ideas should be expressible, and if someone doesn't like particular ideas, the response should be to engage and rebut the speakers rather than harass them or shout them down. These same sentiments should apply when faculty members express controversial opinions.

Vital for the rise of modern American colleges and universities has been the development of “academic freedom” protections for faculty. When college administrators were empowered to fire faculty who held controversial opinions, American higher education was an entirely close-minded arena for indoctrination into accepted opinion, rather than a place where all ideas could be put to the test and where it was acceptable, even desirable, to challenge prevailing wisdom.

It took a long time for the idea of academic freedom to gain a foothold. For decades after the publication of Darwin's “On the Origin of Species,” many college and university leaders prohibited the teaching of evolution. In 1900, when Stanford professor Edward Ross was judged to be unacceptably radical because of his support for unions and the “free silver” movement, university co-founder Jane Stanford

forced his firing. There were scores of examples in the early 1900s of controversial faculty being summarily fired because they expressed controversial viewpoints in public settings. In the 1950s it was still considered common wisdom that universities could fire people simply because it was discovered that they were communists. The presidents of Harvard and Yale announced that they would not hire communists on their faculties, with Yale President Charles Seymour clarifying, “There will be no witch-hunts at Yale, because there will be no witches.”

The earlier purges of faculty lead to the creation of the Association of American University Professors (AAUP) in 1915, and their “Declaration of Principles on Academic Freedom and Academic Tenure” insisted on the right of faculty to express themselves “to students and to the general public, without fear or favor” as long as they maintained “standards of professional character” when they were doing their jobs. The modern restatement notes that “a faculty member’s expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member’s unfitness for his or her position.”

Of course, campuses must evaluate the quality of a professor’s teaching or scholarship, which inherently involves assessing their speech. But universities must not use a professor’s statements in other settings as a basis for “excommunicating” an otherwise qualified professor.

Campus leaders who are declaring their commitment to protect controversial speakers should also make it clear that they will not take unilateral actions against faculty — or students — for the views they express as long as they act appropriately within the campus’s professional settings.

There are people on the right who decry the violent harassment of conservative speakers but encourage the harassment of left-wing faculty. There are also people on the left who believe we should censor or harass certain right-wing speakers but object when left-wing faculty become targets of vitriol or worse.

We think a consistent rule is better: On campuses, no one should be censored or punished merely because of the ideas they express, and we should all stand against threats, harassment and violence.

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