

Academic Ethics: Defending Faculty Speech

chroniclevitae.com/news/1783-academic-ethics-defending-faculty-speech



April 28, 2017

By Brian Leiter

In recent years, there has been a vigorous cottage industry of websites and publications (most but not all on the political right) trying to generate controversy about college professors who say or believe things outside the rather narrow mainstream of public opinion.

The Daily Caller, *The Washington Times*, *Campus Watch*, *The College Fix*, *Breitbart*, and *College Insurrection*, among others, devote themselves with some regularity to policing faculty speech, and then presenting it — sometimes accurately, mostly inaccurately — in order to inflame public outrage and incite harassment of academics who expressed verboten views. Because American law gives very wide latitude to malicious speech for partisan political ends, there is little legal recourse for faculty members subjected to such harassment. But we may still ask: How ought colleges and universities respond to these (often orchestrated) onslaughts against professors?

Consider four cases from recent years.

- In 2011, my University of Chicago colleague, John Mearsheimer, an eminent scholar of international politics, blurbled a book about Zionist ideology written by Gilad Atzmon, a former Israeli soldier and rabid anti-Zionist frequently accused of anti-Semitism because of his polemical excesses. The usual suspects — from [Alan Dershowitz](#) to [Jeffrey Goldberg](#) at *The Atlantic* — denounced Mearsheimer in the mass media, and he [defended himself](#), persuasively [in my view](#), in *Foreign Policy*. During the entire affair, the University of Chicago was silent, making no comment about any of it. A couple of years later, Professor Mearsheimer, a popular teacher, was the featured lecturer at an event for admitted undergraduates — signaling, appropriately, his stature as a teacher and scholar at the university.
- In 2012, Steven Landsburg, an economics professor at the University of Rochester, came to the defense of [Rush Limbaugh's vicious attack](#) on a Georgetown University student who testified before Congress about the importance of access to birth control. Landsburg is a [serial provocateur](#) against decency and good sense.

Joel Seligman — the university's president and a former law professor, though an expert in securities not Constitutional law — subsequently issued a [strongly worded rebuke](#): "Professor Landsburg has the right to express his views under our university's deep commitment to academic freedom. ... I also have the right to express my views. I am outraged that any professor would demean a student in this fashion."

- In 2014, Lawrence Torcello, an associate professor of philosophy at the Rochester Institute of Technology who specializes in applied ethics (including issues about climate change), published [an opinion piece](#) querying whether there might be legal liability for spreading misinformation about climate change. His essay was then misrepresented by Breitbart as calling for climate skeptics to be jailed — a charge then repeated on Fox News, resulting in a campaign to get Torcello fired. RIT, correctly, defended Torcello's academic freedom from the start. But some philosophers (including me) [called on the institute](#) to make a stronger statement, one noting that the misrepresentation of Torcello's views was part of a pattern of harassment of climate-change scholars. To its credit, RIT issued [a second, strong statement](#) defending the professor, noting that he had been misrepresented, and affirming the scientific consensus on climate change.
- Finally, just last year, George Ciccariello-Maher, an associate professor of politics at Drexel University, who studies, among other topics, racist political movements, jokingly tweeted that he wanted "White Genocide" for Christmas, [mocking](#) the paranoid racist right that views any threat to white supremacy — such as racial intermarriage — as "genocide." Drexel [defended](#) the professor's free speech rights, but denounced his remarks, though in a second statement the university softened its criticism, noting the context of the remarks and observing that the author's satirical intent was not easily discernible.

According to the Association of American University Professors' [influential statement on academic freedom](#), faculty enjoy freedom in teaching, in research, and in their extramural speech about matters of public concern. There are more limitations on the first two freedoms than many academics realize — a point to which I will return in a subsequent column. But the most remarkable, and controversial, of the freedoms is the third. Why should university professors — unlike other educated professionals — enjoy the right to pontificate in the public sphere without professional consequence, even when they are speaking on topics well beyond the scope of their disciplinary expertise? That is an important ethical question, but not obviously relevant in our examples here. Mearsheimer and Torcello were clearly expressing views within the core of their academic expertise, and, arguably, so, too, were Ciccariello-Maher and Landsburg. (The latter two cases are trickier, because of the somewhat porous borders of the disciplines in question.) In each case, none of the four professors were sanctioned by their universities (at least as far as we know). In those instances, academic freedom triumphed.

Yet the response of university administrators in each case differed quite a bit. Drexel initially reprimanded its faculty member, then softened its stance in a second statement. Rochester, through its president, condemned the faculty member in question, while affirming his right to express his views. Chicago remained silent, simply ignoring the critics. Finally, RIT affirmatively defended its faculty member from attack.

Failing marks here go to Seligman, Rochester's president. He, wrongly, invoked his own academic freedom to condemn remarks made by a member of the university's faculty. But academic freedom does not protect the speech of administrators in their administrative capacities, nor should it: Administrators are not charged with applying disciplinary expertise to discover the truth, they are charged with administering, including sustaining an academic environment in which faculty can pursue knowledge without fear of censure.

Indeed, a federal appeals court [has even ruled](#) that a public college did not violate academic freedom by removing a professor from his administrative post (as chair) because of inflammatory speech he made off campus. (The professor did retain his tenured position on the faculty.) The trustees at Rochester would have been well within their rights to remove the president for publicly humiliating a faculty member who had engaged in protected speech. Had they done so, Seligman would have had no defense on academic-freedom grounds.

Drexel discharged its obligations to protect academic freedom somewhat better than Rochester, by retracting its inappropriate criticism of its faculty member. Drexel still erred, however, in taking an institutional position on the

professor's speech, implicitly chiding a faculty member for having communicated ineffectively. At the same time, the university's second statement correctly noted that the point of the tweet had been misrepresented.

RIT performed better than Drexel, noting from the start that its professor was well within his rights to question whether climate denialists should face legal liability. University officials never criticized the professor's remarks (how could they?). More important, RIT subsequently came aggressively to the defense of its faculty member against the media misrepresentation.

Part of the story here may be about institutional status. I am fortunate to work at the University of Chicago — a wealthy, internationally respected university — that does not have to answer to partisan media or websites. Rochester, RIT, and Drexel — rightly or wrongly — clearly felt more vulnerable to public outcry. All three institutions honored academic freedom in the end, but only RIT discharged that commitment in a way that deserves emulation.

Brian Leiter is a professor of jurisprudence and director of the Center for Law, Philosophy & Human Values at the University of Chicago.