



The Essential Relationship of Academic Freedom to Human Liberty

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16 August, 2006

I am deeply moved to be here, and, given my views on the world compared to those of most of the prior and remarkably distinguished speakers in this series, I am deeply privileged to be here as a mark of your own open-mindedness and commitment to intellectual pluralism. In the 1970s, in a late-night evening of beer and historical reflection with students, someone asked me after I had opined that history could not predict what would happen in the future if I believed that it might predict what would not happen. I replied, with sadness, that the heirs of Stalin never would lose their power, so adept were they at keeping it; that no Russia ever would permit the reunification of Germany; and that South Africa never would establish legal equality without a bloodbath of the most horrific kind. I've not been back to Eastern Europe since their own revolutions; I've not been back to Germany since the Wall fell; but here I stand in a South Africa that I had declared impossible, misunderstanding the role of human will and the nature of its people. I am humbled to be before you in these circumstances, and the opportunity to address issues of academic and human freedom with you touches me to the marrow of my being.

American student activists of the late '60s and early '70s claimed that they wanted freedom of speech, association, and conscience, but, in fact, too many wanted these merely as means to advance their own partisan, political agenda. The students who followed them, however, did not look up to the aging heirs of the 60s as gurus or as moral and political leaders. For the heirs of the 60s, then, these students had to be saved from themselves and from American society. Freedom and fairness were the first things to be sacrificed to that self-assigned redemptive mission.

Thus, these heirs of the sixties (and their acolytes) have moved at more and more American campuses from the celebrated Free Speech Movement born at Berkeley to their current speech codes, from their own struggle against mandatory religious chapel to their own current imposition of mandatory political diversity education and sensitivity seminars, from their struggle for racial integration to their current creation of ever newer forms of separate racial programs. American students are victims of a generational swindle of truly epic proportions.

American universities have a sadly impoverished notion of what they term "diversity" race, sex, and sexuality, as if each of these had but one appropriate worldview and but one appropriate voice. Exhibiting a deep racialism and misogyny of their own, they also believe that blacks, women, gays, and lesbians stand in need of special protections not afforded to others. Where all these groups, in fact, have struggled so fiercely and at such cost for legal equality, our academic leaders believe that they must be protected from arguments or even from the punch lines of jokes, as if these heroic souls were too weak to live with freedom. So let us state the obvious, which South Africans know better than any peoples on earth: no one who tells you that you are too weak to live with freedom and individual responsibility is your friend.

The assignment of official group identity always worsens, not betters, human relations at campuses and in the broader society, creating barriers and defensiveness along with injustice. South Africa indeed will decide for itself what compensatory behaviors, practices, and policies it deems necessary to undo prior and unspeakable injustice, but let the goal be a society of liberated individuals, associating across an immeasurable number of affinities beyond blood and history, who individuate, by their own lights, free of external coercion and impositions. It is the right of all free men and women to decide for themselves the meaning and importance (or relative unimportance) of their race, ethnicity, religion, and sex. South Africa of course must deal with the variables of race and ethnicity in a manner appropriate to its history, development, and both moral and practical accounting, but surely the goal should remain Nelson Mandela's extraordinary address to the court: "I have fought against



white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if needs be, it is an ideal for which I am prepared to die." He was and is "a man for all seasons", and you have the truly singular and extraordinary world-historical opportunity to carry out that vision.

I am aware that there are two domains involved in all discussions of academic freedom in South Africa: 1) institutional autonomy from the state and other outside institutions; and 2) the appropriate model and climate of rightfully free teaching, learning, criticism, and debate within a university. On the first, I believe that voters and taxpayers obviously have claims upon state-supported education and obviously are under no formal obligation to support with funding what they do not support in practice. However, it is, in fact, in the profound and long-term interest of the citizens and posterity of any free and progressive society to have within limits about which reasonable and well-intentioned people may disagree autonomous institutions of higher education. It also is a fact that governmental power is the hardest of all powers to control, contain, let alone to reduce, and that power, indeed, corrupts. Thus, in the American culture wars, while I am a critic of political correctness, I reject as a cure worse than the disease the intrusion of government over the internal decisions of higher education.

On the issue of the appropriate form of academic freedom for an institution voluntarily to choose, I shall seek to share a proper model of academic freedom. I believe, however, that one often recognizes good models in contradistinction to bad models. After a brief observation on the ambiguity of the University of Cape Town's written policies, which will illustrate the pitfalls of defining freedom and responsibility, let me offer you a model that you do not wish to imitate. Everyone always announces the intention rightly or wrongly to learn from America's mistakes. Here is an actual, very concrete opportunity to do so.

The University of Cape Town's statement on "Academic Freedom and University Autonomy" forcefully asserts that "Freedom of speech is a necessary condition for academic freedom", undiminished by "whether or not ... the views they express, are contentious, politically or in other ways". Well, apparently not all "other ways" are equal. Such freedom, according to UCT's policy, "must be responsibly used and not abused to encourage racism or violence". Since incitement to violence a violation of almost every nation's criminal code, the question that would have to be decided within the University, by someone or some body with ultimate power, is what encourages "racism", in which case such freedom of expression is not granted. The policy, note well, does not say "should", but "must". The implicit meaning of that limitation is given fuller expression by rule RCS 6.7 in the Rules of Student Conduct: "A student must not abuse or otherwise interfere with any member of the University community in any manner which contributes to the creation of an intimidating, hostile or demeaning environment for staff or students in general and specifically in relation to the person's race, gender, beliefs or sexual orientation."

For a moment, think about not the desirability of such an end - as in, "a student should not" - but about the broad and potentially ambiguous meaning of such a rule as part of an actionable list of offenses. "Intimidating" is likely determinable by any body of reasonable minds. "Hostile" and "demeaning", however, are in the eye of the beholder, and are invitations to conflating sincere or provocative social criticism with "hate speech". They are overly broad and overly vague. Further, both terms are invitations to a compensatory double standard that may seem just at first, but that is the antithesis of that legal equality for which so many sacrificed and, indeed, died. Given the list of protected categories, the Code virtually demands such double standards, as is obvious, for example, from the inclusion of both "beliefs" and "sexual orientation". Posit a gay student and an Evangelical student in discussion or debate. The former says, "Evangelical Christianity is abhorrent and has led to the suicides and suffering of countless gays and lesbians." The Evangelical student replies, "Homosexuality is an abomination unto the Lord and will be punished by eternal damnation." Who has been hostile or demeaning to the other? Both? Only one? Neither? Are both subject to having that adjudicated in evolving case law by changing tribunals? Given the risks of such prosecutions, do both students refrain from expressing their sincere beliefs? Does silence now replace frank exchange and learning about how others think? Does one student know that the rule is meant for the other, but not for himself or herself? Is that, rather than people knowing what each other truly believe, what you



really want? How you educate students informally as well as formally expresses the notion of freedom you wish them to have.

Double standards invite the worst abuses of all, as you all know full well from the entire history of the twentieth century. Content-neutrality and viewpoint-neutrality should be the foundation of all regulations affecting speech, whose restrictions should be those of time, place, and manner, equally applicable to all. Most great cultures have found their way to some equivalent of a rule by which when we legislate rules and restrictions for someone else, we are legislating them for ourselves as well. Legal equality means that we are all either protected by or all potential victims of the same laws. No theorist has come up with a better mechanism to achieve fairness than that of forcing us all to live under the rules that we impose upon others.

Understandably, American society and American higher education, when ending positive discrimination on grounds of race, sex, and sexuality, worried that it would be meaningless to end such discrimination if blacks, women, and gays were so harassed in the classroom, dormitory, or workplace that they could not work effectively and were denied the fruits of ending discrimination. Instead of defining such harassment behaviorally and clearly, however, most campuses opted to shield "protected groups" not only from harassment as understood in the common law - a substantive interference, discernable by reasonable men and women, with one's ability to go about one's work and business - but also from an "offensive or hostile environment". From there to the absurdity of current speech codes was a small step.

American academic speech codes must be heard to be believed. Thomas Hobbes observed that to the learned, it is given to be absurd in a learned fashion. Speech codes illustrate that truth painfully. Here are some that governed campuses on and off during the past ten years: Bowdoin College banned jokes and stories "experienced" by others as "harassing". Brown University banned "verbal behavior" that produces "feelings of impotence, anger, or disenfranchisement", whether "intentional or unintentional". Colby College outlawed speech that causes "a vague sense of danger" or a loss of "self-esteem". The University of Connecticut outlawed "inconsiderate jokes", "stereotyping", and even "inappropriately directed laughter". Syracuse University outlawed "offensive remarks... sexually suggesting staring... [and] sexual, sexist, or heterosexist remarks or jokes". The University of Maryland criminalized "idle chatter of a sexual nature... pseudo-medical advice [about sex]... and holding or eating food provocatively". West Virginia University told incoming students faculty that they must "use language that is not gender specific... Instead of referring to anyone's romantic partner as 'girlfriend' or 'boyfriend', use positive generic terms such as 'friend', 'lover,' or 'partner'".

Speech codes form a barrier to that freedom in which, alone, an education worthy of free men and women can occur: disagreement; speaking about what others would deem unthinkable; the right to heterodoxy and eccentricity and passions. They deny the dignity and strength of meeting speech that one abhors with further speech, reason, evidence, cold contempt, or moral outrage and witness. A free society needs to develop, in civil society, not in recourse to Big Brother (or Big Sister), the means and habits of response to speech and expression it finds morally repellent. Prejudice and ignorance do not disappear when their expression is suppressed; rather, they simply go deeper into people's souls, and no one has the chance to know how people think, and to respond in appropriate form. Sunlight, as the late U.S. Supreme Court Justice Brandeis correctly observed, is the best disinfectant. Sunlight, not coercion.

I take exception, thus, if my hosts will pardon me, with the recommendations of the University's Academic Freedom Committee, recorded in Principal's Circular, June 2005, concerning "the dampening effect that unfounded charges of racism have on campus debate about important University and social issues in which race is or is perceived to be an element". The Committee urges individuals not to level "ill-considered and unfounded accusations of racism" and not to use such accusations to reply ad hominem rather than ad rem to real differences of opinion. So far, so good. It further "urges" witnesses to ill-founded accusations of racism to speak out against such labeling. So far, so good. That is all voluntary and part of the debate within a free society. Finally, however, to protect "the free exchange of ideas", and to prevent the "dampening effect" of such charges on "open debate", the Committee urges those who believe themselves falsely labeled "to lodge a complaint with



the University Discrimination and Harassment Office", which transfers the debate over the use and abuse of terms from free civil society into a coercive tribunal or into some official agency. If I have a right to oppose vague speech codes, then someone else has an equal right to term me racist for doing so, even if that term injures me to the center of my being. Free men and women should not want and do not need their political rhetoric policed by coercive authority. One person's verbal injury is another person's truth. The world works that way, and the answer to speech and labels we find ill-considered and abusive is always more speech and moral witness. Coercion, not speech, is the enemy of freedom.

True academic freedom, then, begins with the university in loco parentis (standing in the place of parents), and it extends to all aspects of professorial and student academic life. The clearest formulation of that larger academic freedom evolved in the principles articulated by the American Association of University Professors - the AAUP - between 1915 and 1967. Designed initially to protect individual professors from arbitrary administrators, and to protect anti-war or left-wing professors from improper and unseemly pressures, these principles transcended their contextual purposes and articulated a coherent vision of freedom in the academy. After carving out an exception for religious institutions whose openly stated mission was the propagation of this or that orthodoxy, the AAUP, in 1915 defined "the first condition of progress" in the advancement of human inquiry and knowledge as "a complete and unlimited freedom to pursue inquiry and publish its results", free of any tyranny over the mind, whether from the state, university governors, or public opinion. Barring incompetence or neglect, a professor was free to teach his or her field without interference as to content, without the right to introduce matters extraneous to the course. (Teaching French grammar, for example, did not give a professor the right to hold forth for or against abortion. That was an abuse of the classroom). Further, there was one powerful exception relating to any student: a professor must avoid "indoctrinating him with the teacher's own opinions before the student has had an opportunity fairly to examine other opinions upon the matters in question". In 1940, the AAUP updated its principles, arguing that it was "the common good", and not in the guild interest of professors, to have universities engaged "upon the free search for truth and its free expression". The advancement of human knowledge - a public good - depended upon that freedom. In 1967, the AAUP's new guidelines reiterated these themes, but now emphasized as well the rights of students. Students had a right to seek their own truth, and professors had an obligation "to encourage free discussion, inquiry, and expression" in the classroom. Students who demonstrated mastery of the materials of a course "should be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion". The student press should be free of censorship. Further, both students and faculty deserved consistent and coherent due process at any hearings, designed to elicit the truth or falsity of charges based on evidence and rules designed for fairness.

In several Supreme Court cases, academic freedom became linked inextricably to the rights and welfare of the nation (as it wonderfully is in the Constitution of South Africa). The most crucial case, perhaps, was *Sweezy v. New Hampshire* (1957), in response to the state of New Hampshire's own McCarthyite Subversive Activities Act. *Sweezy* had been summoned by the state legislature to answer questions about his Marxist lectures. *Sweezy* rejected the right of the state to interrogate the content of his lectures, and was cited for contempt of the legislature, and jailed. In its decision overturning that conviction, the Supreme Court spoke of "the essentiality of freedom in the community of American universities" as virtually "self-evident": "To impose any straitjacket upon the intellectual leaders in our colleges and universities", the Justices warned, "would imperil the future of our Nation". It doesn't get any more basic than that. In the landmark case of *Keyishian v. Board of Regents of the University of the State of New York* (1967), the U.S. Supreme Court overturned a state loyalty law, again directed against a man of the left, holding that "our Nation is deeply committed to safeguarding academic freedom, a transcendent value to all of us and not merely to the teachers concerned". The First Amendment to the U.S. Constitution, the Court held, which guarantees freedom of speech, "does not tolerate laws that cast a pall of orthodoxy over the classroom... which is peculiarly the marketplace of ideas".

In holding to such views, of course, the Court was essentially placing academic freedom under the protections that John Stuart Mill, in *On Liberty* (1859), had urged for human liberty, freedom of thought, freedom of lifestyle, and freedom of expression in general. Whatever the short-term gain of



this or that suppression, the benefit to humanity of free minds defining their own truths was not only far greater, but, indeed, "indispensable to mankind as a free and progressive being." Against the spirit of Mill, Herbert Marcuse would argue, in his influential 1965 essay, "Repressive Tolerance," that neutrality toward thought would always serve the status quo, would always be, in his term, "partisan," and he urged "the withdrawal of toleration of speech and assembly from groups and movements which promote aggressive policies, armament, chauvinism, discrimination on the grounds of race and religion, or which oppose the extension of public services, social security, medical care, etc." (That is a frightening "etcetera".) As Mill had noted in 1859, everyone claims to believe in freedom and expression, but everyone draws his or her own boundaries at the obviously worthless, dangerous, and wrong, even if they differ about those categories.

Why, Mill asked, should we tolerate speech that offends our sense of essential value, security, and truth? First, he replied, to silence an opinion that might be true is to assume our own infallibility; second, even an erroneous opinion might contain a portion of the truth; third, he replied, if our own opinions are never contested, we hold them only "in the manner of a prejudice", as formulae repeated by rote, "preventing the growth of any real and heartfelt conviction, from reason or personal experience". Above all, for Mill, it mattered not only what human beings did and accomplished, but what manner of human beings did them, and free, individuated humans, jealous of authority, and independent in judgment, were the hope of a progressive mankind. Conformity and custom, whatever their virtues, were the antitheses of a progressive force. It did not surprise me, reading Howard Zinn's 1982 T.B. Davie Memorial Lecture, when he reminisced about his black students at a segregated Spellman College in the American South before integration. Gaining access to the public library, they asked for two books, above all: John Locke's Essay Concerning Human Understanding and John Stuart Mill's On Liberty. The first teaches that we learn and progress by sorting out human experience; the second teaches that we only do so successfully in an atmosphere of freedom and respect for individual rights.

These views should inform the spirit of academic freedom in the behavior of universities. Uniform political orthodoxies, learned by rote, only deaden the mind and spirit. The premise of research and of the pursuit of knowledge of the world in which we find ourselves is the belief that there is a reality that exists independently of mere human wish and will. To gain systematic knowledge of that reality - or to learn from our failures to gain it - is an immeasurable gift of higher education to the society and the humankind around it, but it entails a willingness to pursue knowledge pluralistically, from a great diversity of perspectives, on guard always against the desire to clone oneself and to create a closed fiefdom of interpretation.

Academic freedom assumes both the force of inherited human experience and knowledge and the imperfection of human claims of knowledge. Higher education must teach students to know the legacies of cultures and traditions, and, as well, it must teach minds how to learn for themselves, how to develop the deep and vital habits of a willingness to submit one's own and one's civilization's own claims of knowledge and sources of pride to the test of evidence, reason, and historical experience. This task so precious for humanity cannot be done without academic freedom writ large. The politicizing of education and the sense that dissidence is uncollegial within fields let alone the establishment of political litmus tests are the enemy of rightful humility, tolerance, human promise, and academic freedom.

As Francis Bacon noted in his cautions against "the Idols of the Mind", in his profoundly influential seventeenth-century work *The Novum Organum* *The New Instrument of Knowledge* we are so prone to error: from the limits of human powers; from individual bias; from the equivocation of our words; from the inveterate flaws of those inherited human theories that we take as nature's own. To overcome these propensities for self-deception and illusion, we need to guard, above all, against those things we wish to believe, to devise tests of precisely the hypotheses to which we are drawn, and, an essential part of true academic freedom, to encourage the presence of those who disagree with us, even indeed, above all sharply.

When I was an undergraduate at Princeton University in the 1960s I took a large course on Modern Europe, taught by an ardent Marxist who gave us lots of grounds to disagree with him. On the day he



returned the midterms, he told us that the class had shamed him by only telling him what it thought he wanted to hear. He said, "I'm assigning, for the final, the book with which I most disagree about the twentieth century. I'll not ask you to evaluate it, but to re-create its arguments empathetically and with understanding... to make sure that you've read it with an effort to think from his perspectives." The book was Friedrich Hayek's *The Road to Serfdom*. How many professors teach that way today? How much do we sacrifice by tendentiousness and lack of intellectual pluralism and openness? What a betrayal it is that so many teachers would prefer clones and disciples to open and critical minds.

I should like to suggest some means toward a freer higher education. First, fields must be defined by subjects and questions, not by theoretical commitments, and certainly not by politics or answers. The history of sex and sexuality, for example, should be open to study from a wholly pluralistic array of perspectives: gender-feminism, yes, but also sociobiology, class and status analysis, functionalist social theory, free market theory, and a comprehensive "etcetera". The analysis of power, to say the least, is not a radical preserve. Both conservatives and radicals often forget that Mosca, Pareto and Michels, well before Gramsci, and from the Right, sought to demystify and decode the myths by which power justified itself. Our universities need intense debates and intellectual competition among a diversity of methodological and interpretive schools and theories on the crucial issues of power and natural order.

Second, work must be evaluated for its descriptive, analytic, or explanatory force, not for its political origins, not for its political good faith, and certainly not for its political use and implications. Scholars should be most appalled, in fact, by sloppy and self-indulgent work done by those whose goals and commitments they share. The academic world, however, is not only tolerating often egregiously partial and prepossessed or prejudiced work these days for ideological reasons, but it is failing to reward, support, or even tolerate, on wholly inappropriate ideological grounds, often compelling and insightful work. No one should be subsidizing that or letting it pass as if such behaviors were acceptable and not beyond the pale. Curricular formation, course design, hiring, tenure, promotion, and peer review should be moments when all of us bend over backwards to be intellectually pluralistic, judging work by its intellectual power, its provocation of vital debate, and its shedding of light on human and natural phenomena, even if we ourselves should choose to shed that light from other directions. We have a right to demand probative research, rigorous inquiry, and logical relationship of explanation or theory to data, but not to demand ideological, theoretical, or political commitments. It is a privilege to be part of academic life. With it come responsibilities. Among those responsibilities are a devotion to and understanding of an academic freedom that we extend as freely to others as to ourselves and our allies.

Academic freedom, at institutions that the future leaders of society attend, must teach by practice the views and values indispensable to full human dignity: that all human beings are free to define themselves by their own lights; that every free man and woman possesses individual rights and bears individual responsibility; that legal equality is a foundational right; and that liberty of opinion, speech, and expression is indispensable to a free and, in the deepest sense, decent and dynamic society. If these truths are betrayed on our campuses, they will not long survive in the hearts of our students or our society. A nation that educates in contempt for liberty will not long preserve it, and will not even know when it has lost it.