

HARVARD UNIVERSITY
FACULTY OF ARTS AND SCIENCES

FREE SPEECH GUIDELINES

As adopted by the
Faculty of Arts and Sciences on
February 13 and May 15, 1990

FREE SPEECH GUIDELINES

Free speech is uniquely important to the University because we are a community committed to reason and rational discourse. Free interchange of ideas is vital for our primary function of discovering and disseminating ideas through research, teaching, and learning. Curtailed free speech undercuts the intellectual freedom that defines our purpose. It also deprives some individuals of the right to express unpopular views and others of the right to listen to unpopular views.

Because no other community defines itself so much in terms of knowledge, few others place such a high priority on freedom of speech. As a community, we take certain risks by assigning such a high priority to free speech. We assume that the long term benefits to our community will outweigh the short term unpleasant effects of sometimes noxious views. Because we are a community united by a commitment to rational processes, we do not permit censorship of noxious ideas. We are committed to maintaining a climate in which reason and speech provide the correct response to a disagreeable idea.

Members of the University do not share similar political or philosophical views, nor would such agreement be desirable. They do share, however, a concern for the community defined in terms of free inquiry and dissemination of ideas. Thus they share commitment to policies that allow diverse opinions to flourish and to be heard. In the words of the Resolution on Rights and Responsibilities, the University must protect "the rights of its members to organize and join political associations, convene and conduct public meetings, publicly demonstrate and picket in orderly fashion, advocate and publicize opinion by print, sign, and voice."

There is a broad consensus about the central principles of free speech in this community. But there is often ambiguity about where the line should be drawn in terms of the rights of speakers, protestors, and audience. These guidelines are intended to supplement and clarify the administration of the Faculty of Arts and Sciences' Resolution on Rights and Responsibilities.* [* The Resolution on Rights and Responsibilities is provided immediately after the Report.] Clearer procedures are needed to assist student organizations wishing to sponsor speakers as well as to inform students of the acceptable limits of protest. In addition, this Faculty must be prepared to pay for extra security to protect controversial speakers, to make provisions for reconvening a disrupted speech, and to ensure that new members of the community are aware of and have an opportunity to discuss their obligations.

Speech is privileged in the University community. We are equally committed to the individual's pursuit of inquiry and education. There are obligations of civility and respect for others that underlie rational discourse. Racial, sexual, and intense personal harassment not only show grave disrespect for the dignity of others, but also prevent rational discourse. Behavior evidently intended to dishonor such characteristics as race, gender, ethnic group, religious belief, or sexual orientation is contrary to the pursuit of inquiry and education. Such grave disrespect for the dignity of others can be punished under existing procedures because it violates a balance of rights on which the University is based. It is expected that when there is a need to weigh the right of freedom of expression against other rights, the balance will be struck after a careful review of all relevant facts and will be consistent with established First Amendment standards.

Hard choices regarding appropriate time, place, and manner should have a presumption favoring free speech. For example, concerns about time, place, and manner should ordinarily not be interpreted to prevent signs or expressions of political views that are not disruptive or pose no threat to maintaining public order at athletic events. While the following guidelines deal primarily with the problems of disruption of speech, it is important to note that there are other policies (for example, those relating to racial and sexual harassment) relevant to the administration of the Resolution on Rights and Responsibilities.

The following guidelines are intended to apply to all gatherings under the auspices of the Faculty of Arts and Sciences, but they are not intended to govern classroom procedures. The classroom is a special forum, and the teacher should be the one who determines the agenda of discourse in the classroom.

GUIDELINES

I. Expression and Dissent

A. Within the context described in the preamble, the speaker's right of expression and the audience's right to listen take precedence. After all, the event occurred because the audience came to hear the speaker. The University's procedures should maximize the room for dissent without curtailing the speaker's ability to communicate.

B. Our definition of disruption has two components:

1. The length of time of the action -- in order for an action to be deemed a disruption, it must extend over an unreasonable period of time. Thus, the first condition for disruption is that the action is repeated or continuous, extending over an unacceptable period of time.
2. The importance of creating an environment in which the audience can hear the speaker -- a disruptive action effectively prevents members of the audience from adequately hearing or seeing the speaker. If a person interrupts the speaker every few words, s/he prevents members of the audience from hearing the speech. The speaker must be allowed to proceed at a reasonable pace, to make coherent progress in the expression of his or her ideas.

Thus, the definition of disruption is any repeated or continuous action which effectively prevents members of the audience from adequately hearing or seeing the event.

C. Because the definition of disruption is subject to interpretation, a single warning procedure would avoid confusion about what constitutes disruption. By issuing a warning, the disrupters are told that their actions are unacceptable and must stop. Members of the audience will learn where they stand; they will know where the line is. If people cross that declared line again, they cannot claim not to have realized they were disruptive.

D. At events in which there are a large number of disrupters, the officers or moderator should try to approach the most disruptive individuals first. The officer or moderator has three types of warning at his disposal:

1. A warning directed at a specific individual.
2. A warning directed at a small, specifically indicated group.
3. A warning to the entire audience. Because this warning entails interrupting the speech, it should be employed only when the other warnings are inappropriate.

E. A warning is not needed in cases of physical violence. Individuals who commit such acts should be ejected from the event immediately. Any act or threat of physical violence must be regarded as a complete lack of respect for the deepest values that unite the community.

F. The University should back up the warning by removing the disrupter if s/he does not heed the warning. Within the constraints of prudence and safety, if the disrupter refuses to leave, officers of the University should try to remove him or her. If that proves impossible, they should adjourn the meeting and try to reconvene it in another room where security forces can control admission. A disrupter who resists removal and persists in causing disruption should be subject to severe disciplinary measures.

G. Audience's Responsibility: The audience, like the host and the speaker, must respect the right to dissent. A member of the audience or the host organization who substantially interferes with acceptable dissent is violating these guidelines in the same way as a dissenter who violates the rights of the speaker or audience.

H. Question and Answer Periods in Open Meetings: In open meetings, the sponsoring organization should make every effort to arrange with the speaker to assure a reasonable opportunity for a question and answer period.

I. Punishments should be decided only on the basis of the specific infraction of the rules which has been committed, not on the political content of the transgression. In cases of obstruction, for example, the offenders should be punished for breaking the law of trespassing or rules against interfering with freedom of movement, not for the content of their political expression. It is important that punishments not be used to discourage the specific content of legitimate political dissent as defined in these guidelines.

II. Use of a Moderator

A. Determination of Need: Administration officials may determine that the protection of free speech at an open meeting requires a Moderator, or a group may request it.

B. Selection: The sponsoring organization will select a member of the Faculty or Administration to be Moderator and will notify the University administration of its selection, which will normally be approved if the person is broadly perceived in the community to be capable of acting in a neutral and non-partisan manner on the issue. In case of deadlock, students may appeal to the Free Speech Committee described below, and ultimately to the Faculty Council. The Moderator's task shall be to preserve the University's concern for the protection of free speech. In carrying out this role, the Moderator should be aware of the danger of curtailing free speech because of audience dissent.

C. Role

1. The Moderator should make clear at the meeting that his/her role reflects no position for or against the views of the speaker or the sponsoring organization.
2. At the event, final decisions regarding balancing the rights of the speaker with the rights of those who disagree will be made by the Moderator. These decisions include, but are not limited to:
 - a. Asking a speaker to refrain from the use of slurs or epithets.
 - b. Ejecting a disrupter from the room.
 - c. Suspending a speech temporarily if disruption occurs.
 - d. Moving an event because of disruption or security concerns.
 - e. Canceling an event because of a clear threat of physical violence or to University property.
3. When there is not incitement of violence or University property is not threatened, the Moderator should ordinarily not cancel an event. If a Moderator must adjourn an event, efforts should be made promptly to reconvene it, if possible, in a setting where free speech can be protected. (It is understood that the police always have emergency powers, and that nothing in these Guidelines questions the University's legal responsibility for safety on campus. If it becomes necessary to use such residual powers, a University official should normally attempt first to consult with the Moderator.)

III. Meetings to be Designated as Open or Closed

A. Gatherings on campus may be considered closed under traditions of privacy. A meeting to which a speaker is invited may be designated "open" or "closed." In either case, incidental University facilities such as room and utilities may be used.

B. The press may be excluded when a meeting is closed. The chair or moderator of a meeting may ask the press to treat a speaker's remarks as "off the record."

C. If a student organization or group uses University funds for other than incidentals, the meeting must be designated and treated as open. Use of room and utilities is considered "incidental" and therefore available for a closed meeting; all expenses of substance (e.g., a speaker's travel expenses or provision of more than de minimis refreshments) are not considered "incidental," and may only be paid from University funds if the meeting is open.

D. In considering closure of a meeting against the wishes of the sponsoring organization, University officials or moderators should try to keep the speech open if adequate security resources are available.

E. Closed Meetings

1. A closed meeting may be limited to membership in the organization, or by invitation to designated persons or groups, but cannot be closed on the basis of any category which is discrimination in violation of the University's published antidiscrimination policies.
2. To the extent that a closed meeting is advertised to those who are not invited to attend, there must be clear disclosure that the meeting is closed.

F. Open Meetings

1. A meeting is considered open even though the sponsoring organization limits the audience to members of the University community, or to portions thereof, unrelated to the sponsoring organization.

IV. Identification

A. Attendees may be required to produce identification, so long as:

1. Advance notice is given as to what specific types of ID will be required.
2. Identification procedures are enforced consistently and uniformly.

B. When required in an open meeting, identification and, when appropriate, press credentials should be checked by an official perceived to be neutral (e.g., an administrator or a designated general student monitor), not by a member of the sponsoring organization or by any person perceived as partisan.

V. Security

A. University officials shall determine, either on their own or after hearing from student organizations or groups, whether the protection of free speech at an open meeting requires security measures.

B. Upon making this determination that security measures are required, University officials, in consultation with the University Police, will have and will exercise the responsibility to determine the nature and extent of such measures. The University will fund these measures. They may include but are not limited to:

1. Bags and other containers may be subject to search by University Police, and may be required to be put in a checkroom before entrance to the event.
2. Coats or outerwear may be required to be put in a checkroom before entrance.
3. Videotaping of the event may be done, with notice to the audience.

C. For closed meetings, the sponsoring organization will ordinarily be responsible for planning, obtaining, and funding its own security.

D. Provision for security measures should be planned with the University Police. Only the police may use force as a security measure.

VI. Sanctions: Violation of the free speech rights of any person, as protected in these guidelines, will be treated seriously. Sanctions may include:

1. Expulsion from the meeting or event.
2. Arrest or other legal action.
3. Disciplinary proceedings before the Judicial Board, which may lead to:

- a. Warning
- b. Written reprimand.
- c. Probation
- d. Required to withdraw
- e. Pursuant to existing procedures, these sanctions may be noted on the student's record.

4. While the disciplinary bodies are charged with determining appropriate penalties, it is our recommendation that the appropriate boards discuss the range of penalties and make them widely known in the University Community. (Some illustrative recommendations are in Appendix A.)

VII. Advisory Committee on Free Speech: Some form of student-faculty advisory committee on free speech should be established by the Faculty Council. It should involve both undergraduate and graduate students. Its tasks would be to discuss ambiguities which may arise in applying these Guidelines in the future and to introduce these values to new generations of the University Community. This could include meetings with administrators and others to discuss the difficulty of striking appropriate balances of rights in hard cases. Protection of free speech in our community requires not only guidelines but a process for continuing a moral discourse that is vital to our existence.

Joseph Nye, Chairman
Henry Ehrenreich
Michael Sandel

APPENDIX A PENALTY RECOMMENDATIONS

Case

Suggested Range

I. Warned, asked to leave, leaves voluntarily without disruption

No punishment to admonishment.

II. Warned, asked to leave, leaves voluntarily though disruptively

Admonishment to semester probation

III. Warned, asked to leave, refuses to leave, or must be escorted by police

Admonishment or semester probation to one year probation.

IV. Warned, asked to leave, refuses to leave, and effectively prevents free speech

Depending upon severity of disruption, one year probation to one year withdrawal

V. Immediately ejected due to physical attack

At least one year withdrawal to no upper limit.

These recommended punishments are prototypical examples. They should not be interpreted as preventing lesser penalties in exonerating circumstances or greater penalties in aggravating circumstances. The University also has the option of pressing criminal charges. These categories suggest higher ranges of punishment for effective disruption of free speech or violence. The difference between categories II and III relates to refusing to obey the moderator who has the right to determine that protest has crossed the line defined in this report. The difference between categories III and IV relates to the effective prevention of free speech. The difference between categories IV and V relates to the use of violence.

RESOLUTION ON RIGHTS AND RESPONSIBILITIES

The central functions of an academic community are learning, teaching, research and scholarship. By accepting membership in the University, an individual joins a community ideally characterized by free expression, free inquiry, intellectual honesty, respect for the dignity of others, and openness to constructive change. The rights and responsibilities exercised within the community must be compatible with these qualities.

The rights of members of the University are not fundamentally different from those of other members of society. The University, however, has a special autonomy and reasoned dissent plays a particularly vital part in its existence. All members of the University have the right to press for action on matters of concern by any appropriate means. The University must affirm, assure and protect the rights of its members to organize and join political associations, convene and conduct public meetings, publicly demonstrate and picket in an orderly fashion, advocate and publicize opinion by print, sign and voice.

The University places special emphasis, as well, upon certain values which are essential to its nature as an academic community. Among these are freedom of speech and academic freedom, freedom from personal force and violence, and freedom of movement. Interference with any of these freedoms must be regarded as a serious violation of the personal rights upon which the community is based. Furthermore, although the administrative processes and activities of the University cannot be ends in themselves, such functions are vital to the orderly pursuit of the work of all members of the University. Therefore, interference with members of the University in performance of their normal duties and activities must be regarded as unacceptable obstruction of the essential processes of the University. Theft or willful destruction of the property of the University or its members must also be considered an unacceptable violation of the rights of individuals or of the community as a whole.

Moreover, it is the responsibility of all members of the academic community to maintain an atmosphere in which violations of rights are unlikely to occur and to develop processes by which these rights are fully assured. In particular, it is the responsibility of officers of administration and instruction to be alert to the needs of the University community; to give full and fair hearing to reasoned expressions of grievances; and to respond promptly and in good faith to such expressions and to widely-expressed needs for change. In making decisions which concern the community as a whole or any part of the community, officers are expected to consult those affected by the decisions. Failures to meet these responsibilities may be profoundly damaging to the life of the University. Therefore, the University community has the right to establish orderly procedures consistent with the imperatives of academic freedom to assess the policies and assure the responsibility of those whose decisions affect the life of the University.

No violation of the rights of members of the University, nor any failure to meet responsibilities, should be interpreted as justifying any violation of the rights of members of the University. All members of the community - students and officers alike - should uphold the rights and responsibilities expressed in this Resolution if the University is to be characterized by mutual respect and trust.

Interpretation:

The Faculty regards it as implicit in the language of the Resolution on Rights and Responsibilities that intense personal harassment of such a character as to amount to grave disrespect for the dignity of others be regarded as an unacceptable violation of the personal rights on which the University is based.