SCHOLARS AT RISK NETWORK
protection advocacy learning

Observations on recent events on US campuses (May 2024)

Old challenges, new risks

Recent events on many US campuses draw on long-standing debates in US higher education and society, and are complicated by a number of social and cultural factors which together have led over several years to incidents involving violence, threats, intimidation and harassment of faculty and students; targeting on grounds of belief, race, gender, identity, or political or social group; and executive, legislative, and in some cases institutional interventions that undermine academic freedom and university autonomy. From SAR's perspective, the recent events are an extension of these incidents and interventions, and we will continue to report on them as such in our Academic Freedom Media Review and annual Free to Think reports.

In the past, however, the US often modeled practices that respected academic freedom. Today we are concerned that the US is becoming an exporter of bad models that, if not corrected, will contribute to a decrease in intellectual and creative freedom worldwide. We are concerned that just as those in the US witnessing recent events will draw incorrect lessons that will further decrease academic freedom on US campuses, international audiences, especially public officials and university leaders, observing the messaging and methods deployed on some US campuses, will use such actions as validation for restrictive and repressive measures against faculty and students in their countries.

Observations on recent events

To prevent these harms the higher education community must draw more accurate and constructive lessons. Toward that end, while we lack enough information to comment on any specific incident or campus, we offer observations on recent events in the US, as seen through the lens of SAR's work defending academic freedom in all world regions:

1. **Academic freedom, freedom of expression (free speech), and protest are important but distinct concepts.** Each serves a particular function in a healthy democratic society, and each is protected to varying degrees by international human rights standards and US domestic law.

    - We observe in recent events a tendency to conflate these distinct concepts, whether disingenuously or by imprecision in language or thinking. This causes substantial confusion that undermines academic freedom, in particular, as well as university autonomy and public support for higher education.

    - We observe that higher education leadership and faculty would benefit from doing more to clarify for their communities the distinctions between academic freedom, free expression, and protest, and whenever possible encourage academic freedom-focused approaches to disputes and controversies that may arise on campus.

2. **Academic freedom is foremost about processes, not ideas,** specifically processes that promote truth-seeking and transmission of knowledge, as determined by peers of similar training and expertise, and according to accepted standards of professional responsibility and ethics. These processes shape the university community, and in turn depend on that community to understand,

SCHOLARS AT RISK
411 Lafayette Street 3rd Floor
New York, NY 10003, USA
www.scholarsatrisk.org
EMAIL: scholarsatrisk@nyu.edu
TEL: +1 212-998-4427
@scholarsatrisk

SAR EUROPE
c/o MUSSI, Maynooth University
Maynooth, Co. Kildare, Ireland
www.maynoothuniversity.ie/sar-europe
EMAIL: sareurope@mu.ie
TEL: +353 1 7086177
@sar_europe

transmit, and uphold them. The university especially has an affirmative obligation to promote the widest expression of academic freedom, insofar as this leads to the greatest quantum of knowledge and truth-seeking. This includes an obligation to defend the processes of academic inquiry and discourse (as distinguished from any given idea or opinion), including an obligation to speak publicly in their defense.

- We observe in recent events a failure by some higher education leaders, including senior administrators and trustees, to effectively and vigorously defend the processes of academic inquiry and discourse, in some cases even joining persons outside the academy in threatening the university, or in publicly targeting specific academics and students.

- We observe that higher education institutions, faculty, students, and the public would greatly benefit from those in higher education leadership embracing the role of frontline defenders of academic freedom and the university, especially against actors outside the university, especially in times of tension or controversy.

- We also observe a failure by some faculty and students to bring their academic training, experience, and expertise to bear when engaging with the complex, sensitive, and challenging questions raised by recent events. We remind faculty and students of their own responsibilities as defenders of academic freedom, even while engaging in free expression or protest.

3. **Free expression is primarily about ideas and opinions** and does not include any of the evidentiary or other professional obligations of academic freedom. Free expression includes only a baseline responsibility to refrain from direct or threatened harm to others. The university has a negative obligation not to interfere unreasonably with free expression (including not to sanction members of the community for their non-threatening expression), but generally has no affirmative obligation to endorse or oppose free expression that does not cross the line of harm or threat (and in most cases, but not all, the university would be wise to refrain from doing so).

   - We observe in recent events some institutional leaders commenting negatively on expression on campus in ways that seem intended to placate actors outside the university. We caution that history strongly suggests, and SAR's experience with many hundreds of at-risk scholars affirms, that bending to outside pressures will not protect the university in the near-term and will reduce the space for free inquiry and expression in the long term.

   - We also observe a related and dangerous movement toward demands for overbroad university "neutrality," which asserts that the university should never speak on matters deemed 'political' or 'sensitive'. In the worst cases, these demands are attempts to silence the university and limit its role in sharing knowledge with the public. In the best cases, they are intended to protect the university from controversy that might erode public support, but go too far when they transform an otherwise generally admirable restraint from endorsing one idea over another into a blanket rule of silence. Broad demands for neutrality abdicate the university's affirmative obligation to promote and defend the processes of academic inquiry and discourse. That is, while properly asserting that the university should not be a scorekeeper, awarding points in the contest of ideas to one voice over another, broad neutrality demands abdicate the university's responsibility to mediate and referee the processes of truth-seeking, leaving the campus and ultimately society with no guarantor, intellectually speaking, of fair play.

- Rather than a rule of blanket public neutrality, we observe that the university has an affirmative responsibility to speak and to act in support of the background conditions and values from which the university and its truth-seeking processes derive, and to refrain from expression or action which undermines those conditions and values. This responsibility may include speaking or acting against violence, hatreds, exclusions, or injustices which interfere with truth-seeking and the dissemination of knowledge. This responsibility may also include disassociating the university from acts or actors deemed contrary to its values. This responsibility is not removed by the difficulty of crafting reasonable, fair, and transparent processes for determining whether or when the university should or should not speak or disassociate. The fact that it may be hard to do it right is not an argument against trying to meet this responsibility, but rather a reminder to do so thoughtfully.

4. **Protest is the subset of expression intended to command attention** to an idea or opinion, often physically, as with marches, posters, rallies, and other visible or audible acts which are intellectually, psychologically, emotionally, or ethically challenging. Protest may be particularly important when a power imbalance blocks or otherwise frustrates the transmission of ideas or opinions that challenge a status quo. Protest does not necessarily involve breaking any policies, regulations, or laws, but there is a long tradition of nonviolent protest (civil disobedience) aimed at challenging unjust proscriptions. Acts of harm, violence, threat, or destruction within or adjacent to protest are outside of this tradition. That said, fairness and fidelity to truth-seeking suggest that the violent or destructive acts of some protesters should not be imputed to all. As with free expression, the university has a negative obligation not to interfere unreasonably with protest that is not overly disruptive and that does not cross the line of harm or threat. But given the attention-demanding nature of protest, the space for protest in the university may be more circumscribed than that of free expression, provided that the university does not disfavor particular expression or protest.

    - We observe that some methods of protest used in recent events are consistent with academic freedom principles, including teach-ins, position papers, and public lectures and debates, both in person and online. We observe that these methods generally did not attract significant attention or controversy, such that they were less visible to outside observers. This contributed to a dangerous, false impression that evidence-based discourse on campus has all but ceased, when in fact it continues on most campuses, for most issues, most of the time.

    - We also observe that some methods of protest used in recent events may be consistent with free expression, including marches, songs, and slogans and posters, but these at times approached or crossed the line into direct or threatened harm to others, while others crossed the line from attention-grabbing to materially disrupting the operations of the university and truth-seeking of other students, faculty, or community members.

5. **The location of conduct or expression does not by itself determine academic freedom protection.** While more traditional 'academic' locations (e.g., on campus vs. off campus, in classrooms and labs vs. quads and dining halls, in academic journals vs. social media feeds) may give rise to a reasonable presumption, academic freedom protection arises not from the locus but from the application of training, experience, and expertise, according to accepted standards of professional responsibility and ethics; in other words, it comes from wearing the "academic hat."

    - We observe that on many campuses faculty and students organized lectures, panels, and reading sessions in in-person and online classrooms, while in other cases tent "encampments" or other

physical protest locations were the sites of reasoned, evidence-based, non-threatening inquiry and discourse. Both scenarios would generally warrant academic freedom protection.

6. **Antisemitism and anti-Arab, anti-Muslim hatred are real and contrary to academic freedom.** They are all linked to forms of discrimination and inequality and must be condemned not only on moral grounds, but from an academic freedom perspective as impediments to truth-seeking. Violence or threats based on ideologies or hatreds have the effect of excluding, silencing, denying, or destroying unique knowledge and sources of knowledge, including people and communities, thereby impoverishing the academic mission.

    - We observe that some incidents and protests have included expression that should, by any objective standard, be considered antisemitic, anti-Arab, or anti-Muslim. This includes primarily expression directing violent or dehumanizing language at individuals or groups because of these identities. These incidents should be addressed in the first instance by the nearest appropriate actors, including fellow protesters, student or faculty leaders, or administrative leadership, as has occurred in many cases. Where these incidents are addressed administratively, it must be according to consistent, fair, and transparent policies, and any sanctions or consequences must be tailored to the individual and the conduct, and not disproportionate or excessive.

    - We observe that any sanctions or consequences should also reflect understanding that the university has a special obligation to provide information, guidance, and opportunities for young people and others in the community to take in and assess new information, to adapt their thinking and conduct, should they so choose, and to correct or make amends for any transgressions. Failure to offer such opportunities, as in the imposition of permanent condemnation or sanctions for less than egregious conduct, constitutes a failure of the pedagogical mission of the university.

    - Beyond explicit and objectively discriminatory or hateful expression, we observe a range of statements whose meaning may not be clear or universally agreed upon, even within aligned groups, even while they may be contested, deeply distrusted, and considering threatening by others. While such situations pose a significant challenge, the university should be well-suited to meet it, certainly more so than media or politics. This is because a primary function of the university is to practice, teach, and model the processes by which contested experiences and meanings are transformed into mutual understanding (though not necessarily agreement).

    - When attempting to build understanding around contested and purportedly offensive or hurtful expression, the university must address both the objective and subjective experiences of the community. This includes taking reasonable measures to safeguard the safety of persons on campus against an objective assessment of physical risks. This also includes taking reasonable measures to accommodate subjective expressions of insecurity from members of the community, while not infringing on objectively non-threatening inquiry and discourse of others. Such measures might include adjustments in schedules, locations, or policies that create opportunities for those affected by expression or protest to avoid exposure or conflict. Whenever possible, the university, including faculty and students, should encourage resort to the processes of academic inquiry and discourse to address contested and purportedly offensive or hurtful expression. These processes are designed to incorporate the subjective experience of the learner as part of the pedagogical experience, while providing an objective basis for collectively engaging with contested material through structured, mediated, and evidence-based examination.

7. **The risk of injury or harm during protest, intended or not, is real and should not be underestimated. But neither should it be exaggerated or disingenuously manipulated** by actors inside or outside the university seeking to limit academic freedom, free expression, or protest, or to advance their professional, political, or personal agendas. Aggressive or militarized "security" strategies and "safety" protocols should be avoided because of their destructive impact on campus communities and the general environment for truth-seeking, and because of their tendency to escalate tensions. SAR's *Free to Think* reporting on incidents worldwide shows that the risk of on-campus protesters causing harm to persons or property is substantially lower than the risks from overly aggressive or disproportionate force by campus security, police, state security, or military interventions. When they must occur, security interventions should be closely monitored by campus leadership, should emphasize de-escalation, and should be used only as a last resort and only to maintain or restore safe conditions, not for the purpose of ending a protest or detaining or otherwise punishing nonviolent protesters.

    - We observe that in some cases, campus administrations appear to have exercised patience and discretion in engaging with faculty, students, and student-protesters to examine harmful or challenging conduct or expression, sometimes with positive results. In some cases, faculty played mediating roles in such engagements. In many of these cases, student and student leaders similarly demonstrated a willingness to engage in reasonable dialogue and negotiation. These efforts at direct, nonpunitive communication among leadership, administrators, faculty, students, and protest leaders should be encouraged as a means of minimizing risks of injury or harm.

    - We observe in some other examples, campus administrations appear to have unilaterally altered, misapplied, or selectively applied policies against faculty, students, or student-protesters, in some cases apparently based on identity or viewpoint. In some cases, they rejected constructive engagement with faculty, students, or student-protesters, turning more quickly to punitive or coercive measures. These were often accompanied by public posturing seemingly more directed to audiences outside of campus than within. In some cases, faculty and students or student leaders similarly failed to contribute to constructive dialogue or negotiation. Together, these failures of communication and lack of good faith negotiation increase the risks of injury or harm.

8. **Academic freedom cannot be guaranteed without respect for university autonomy.** State officials must ensure the security and integrity of the university, while refraining from militarization, surveillance, financial penalties, interference with hiring and admissions, interference in the methods or content of teaching or research, and other coercive measures which undermine the truth-seeking function. Laws, policies, and practices concerning the appointment, tenure and removal of institutional leaders, oversight boards, and governing councils must respect the principle of self-governance, which is an essential component of autonomy. At the same time, autonomy should not be used by higher education leaders as a pretext to limit the exercise of academic freedom inside the university, including by punishing staff or students for the content of their research, teaching, or discourse, or restricting the right of faculty, staff, or students to express freely their opinions.

    - We observe an erosion of autonomy, exacerbating a decades-long trend, including prominent examples of federal and state executive and legislative officials threatening to cut funding, fire faculty or staff, expel students, and shut down programs to silence research, teaching, or discourse that does not meet their approval. This may be the most harmful and longest-lasting damage arising out of the recent events.

- We observe that other actors outside of the university have contributed to this erosion of autonomy and academic freedom by bringing undue pressure on university leadership, faculty, and students. These include many in the media who have exaggerated, distorted, or misrepresented incidents on campuses to cultivate outrage and attract audiences. These also include many private interests, including some alumni and donors, and some political actors, who have manipulated public impressions of recent events for their own agendas, without regard for the impact on academic freedom, the university, faculty, and especially students and the public.

- As noted earlier, this has contributed to a dangerous misimpression that evidence-based discourse on campus has all but ceased, and that major disturbances have been experienced at most US campuses involving the majority of students as direct participants. This misimpression is used to support the narratives of crisis and insecurity, that in turn are used to justify restrictions on autonomy, academic freedom, and free expression.

- On the contrary, we observe that evidence-based research, teaching, and discourse continue on campus, and that while there have been many protests, in fact the majority of campuses and individuals are not involved, and the majority of those that have participated have done so peacefully and without notable incidents. Recognizing this, calls for hearings, investigations, reforms, or similar actions that threaten to reduce university autonomy should be presumed to be offered in bad faith, absent clear evidence to the contrary.

Next steps

We hope that these observations might help higher education leaders, faculty, and students to navigate this moment and develop policies and practices that respect academic freedom and free expression on campus. We hope they might help media, alumni, donors, policymakers, and others outside the university to understand academic freedom more, and to better defend it.

Looking ahead, we invite feedback using this brief online survey, especially suggestions for how SAR might help campuses respond now and in the future, including, for example, by offering workshops or webinars; model templates, policies or practice guides; campus consulting; and discussion groups. We welcome other ideas and appreciate any feedback.