

The Unique Role and Culture of Universities

*and how they shape universities'
responses to offensive expression*

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*Vice President for Student Affairs
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Guided by questions!

Why do universities care so much about diversity?

- Diversity enhances learning

Diversity enhances learning



On the Importance of Diversity in Higher Education

- *Diversity enriches the educational experience.* We learn from those whose experiences, beliefs, and perspectives are different from our own, and these lessons can be taught best in a richly diverse intellectual and social environment.
- *It promotes personal growth and a healthy society.* Diversity challenges stereotyped preconceptions; it encourages critical thinking; and it helps students learn to communicate effectively with people of varied backgrounds.
- *It strengthens communities and the workplace.* Education within a diverse setting prepares students to become good citizens in an increasingly complex, pluralistic society; it fosters mutual respect and teamwork; and it helps build communities whose members are judged by the quality of their character and their contributions.
- *It enhances America's economic competitiveness.* Sustaining the nation's prosperity in the 21st century requires us to make effective use of the talents and abilities of all our citizens, in work settings that bring together individuals from diverse backgrounds and cultures.

ACE Board of Directors, June 2012



Diversity enhances learning

Chapman University Statement on Diversity & Inclusion

Chapman University is deeply committed to enriching diversity and inclusion through on-going efforts to cultivate a welcoming campus climate for all members of the Chapman community. We strive to provide an inclusive academic curriculum, promote equity and access in recruitment and retention and develop meaningful outreach programs and partnerships with our diverse local communities. *We value diversity and inclusion in the learning environment and believe it is vital to the fulfillment of the university mission. It is our conviction that an inclusive learning environment facilitates complex, critical and creative thinking and that differences in identities, values, beliefs and perspectives are fundamental to a comprehensive education.*

At Chapman the term diversity implies a respect for all and an understanding of individual differences including race, color, religion, sex, gender identity, gender expression, pregnancy, national origin, ancestry, citizenship status, age, marital status, physical disability, mental disability, medical condition, sexual orientation, military or veteran status, genetic information and any other characteristic protected by applicable state or federal law, so that all members of the community are treated at all times with dignity and respect.



Today's key question:

- *If diversity and inclusion are vital to students' education, why do universities permit expression that is perceived as racist or offensive?*

Related questions we also will address:

- *Is there any expression that is prohibited?*
- *How can we respond to offensive expression in an academic community?*

Not just a challenge at Chapman



Cornell Law School

Faculty

William A. Jacobson

Clinical Professor and Director of the Securities Law Clinic



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Not just a challenge at Chapman

Fears Of BLM/Antifa Violence Prompt DC Businesses To Board Up Ahead Of Tuesday's Election

Posted by [Fuzzy Slippers](#) • Saturday, October 31, 2020 at 4:00pm



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Northwestern | McCORMICK SCHOOL OF
ENGINEERING

FACULTY DIRECTORY

Arthur Butz



Associate Professor of Electrical
and Computer Engineering

Education

Ph.D. Control Sciences, University of Minnesota, St. Paul, MN

E.E. Electrical Engineering, MIT, Cambridge, MA

M.S. Electrical Engineering, MIT, Cambridge, MA

B.S. Electrical Engineering, MIT, Cambridge, MA

Research Interests

Digital signal processing; median and related filtering. The present emphasis is a return to my earlier focus on space-filling curves (diverse applications).



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Not just a challenge at Chapman

ARTHUR BUTZ

Northwestern University

Arthur Butz is an associate professor of Electrical and Computer Engineering at Northwestern University. Butz is an open Holocaust denier and has authored a number of books and articles denying that millions of Jews perished in Nazi concentration camps.

Antisemitism

In his book, *The Hoax of the 20th-Century*, Butz claims that there is no proof of any intent by the Nazis to exterminate Europe's Jews. Butz states,

**“THE ALLEGED SLAUGHTER OF MILLIONS OF
JEWS BY THE GERMANS, DURING WORLD WAR
II, DID NOT HAPPEN.**

-ARTHUR BUTZ”



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Key question:

- *If diversity and inclusion are vital to students' education, why do universities permit expression that is perceived as racist or offensive?*

Introductory context

- Corporations – Profit
- Community organizations – Cause
- Universities – Academic/educational mission
 - Chapman original articles of incorporation: “This corporation is formed for the purpose of education”

How are universities unique?

- Shared governance

What is shared governance

- Faculty Senate

- Faculty governance at Chapman University is coordinated by the Faculty Senate and its subgroups. All academic units elect representatives (Senators) and provide additional representation on the various Faculty Councils and Committees of the Senate.

Shared governance

• Faculty Senate

- Undergraduate Academic Council oversees general education requirements, library resources, and creation of new undergraduate programs/majors/minors
 - Undergraduate Student Standards Committee: Determines and upholds policies concerning academic standards
 - General Education Committee: Develops and implements the general education plan, and approves courses submitted for inclusion in the GE program
- Graduate Academic Council: Supports and assists academic units with developing and upholding policies that relate to graduate education and programs
- Faculty Personnel Council: Makes recommendations concerning faculty tenure, promotions, and critical year reviews, and the policies which govern these processes

How are universities unique?

- Shared governance
- Role of the faculty
 - American Association of University Professors
 - 1940 Statements on Academic Freedom, Tenure, and Political Activity

What is unique about faculty?

- AAUP Statements on Academic Freedom, Tenure, and Political Activity
 - Teachers and scholars
 - College or university teachers are citizens, members of a learned profession, and officers of an educational institution

What is academic freedom?

- AAUP Statements on Academic Freedom, Tenure, and Political Activity
 - Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties
 - Teachers are entitled to freedom in the classroom in discussing their subject

What is tenure and why does it exist?

• Tenure

- AAUP Statements on Academic Freedom, Tenure, and Political Activity
 - After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except under extraordinary circumstances because of financial exigencies

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Statement by Northwestern University President Henry S. Bienen Regarding Associate Professor Arthur Butz

February 6, 2006

Northwestern University Associate Professor Arthur Butz recently issued a statement commending Iranian President Ahmadinejad's assertion that the Holocaust never happened. Butz is a Holocaust denier who has made similar assertions previously. His latest statement, like his earlier writings and pronouncements, is a contemptible insult to all decent and feeling people. While I hope everyone understands that Butz's opinions are his own and in no way represent the views of the University or me personally, his reprehensible opinions on this issue are an embarrassment to Northwestern.

There is no question that the Holocaust is a well-documented historical fact. The University has a professorship in Holocaust Studies endowed by the Holocaust Educational Foundation. Northwestern offers courses in Holocaust Studies and organizes conferences of academic scholars who teach in areas relating to the Holocaust. In addition, Northwestern hosts a summer Institute for Holocaust and Jewish Civilization. And most recently, a fellowship in the political science department has been established in my name by the Holocaust Educational Foundation. In short, Northwestern University has contributed significantly to the scholarly research of the Holocaust and remains committed to doing so.

Butz is a tenured associate professor in electrical engineering. Like all faculty members, he is entitled to express his personal views, including on his personal web pages, as long as he does not represent such opinions as the views of the University. Butz has made clear that his opinions are his own and at no time has he discussed those views in class or made them part of his class curriculum. Therefore, we cannot take action based on the content of what Butz says regarding the Holocaust – however odious it may be – without undermining the vital principle of intellectual freedom that all academic institutions serve to protect.



Academic freedom and expression

- Freedom of expression
 - Not the same as free speech!
 - Free speech is a constitutional right intended to protect people from punishment by the government for what they say
 - Freedom of expression is an academic value that advances the mission of the university

Why is freedom of expression so important at universities?

- Society relies on the university to serve as a marketplace of ideas
- AAUP
 - Freedom of thought and expression is essential to any institution of higher learning. Universities and colleges exist not only to transmit knowledge. Equally, they interpret, explore, and expand that knowledge by testing the old and proposing the new. This mission guides learning outside the classroom quite as much as in class, and often inspires vigorous debate on those social, economic, and political issues that arouse the strongest passions.
 - In 1940 almost all faculty were White men, so expression considered offensive or controversial at that time would have been primarily political, not identity-based
 - Nonetheless, this fundamental tenet of freedom of expression has continued to be reaffirmed even in today's climate
- Chapman has a statement, too

How are universities unique?

- Society relies on the university to serve as a marketplace of ideas
 - Not just our opinion....

Sweezy v. New Hampshire (1957)

- Justice Frankfurter wrote:
 - The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die

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Healy v. James (1972)

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 - Yet, the precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools”

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Freedom of expression

- How does all of this relate to our key question:
 - *If diversity and inclusion are vital to students' education, why do universities permit expression that is perceived as racist or offensive?*

Academic freedom

- Universities are about the pursuit of truth, not the declaration of truth
- The principle of academic freedom holds that faculty and students (but not necessarily staff) should not face disciplinary action for expressing ideas, even offensive ones.
- Therefore, we should be providing opportunities for students to learn about and process issues for themselves and not force preferred perspectives on them

Academic freedom

- ***Rosenberger v. Rectors and Visitors of the University of Virginia (1995)***
- Justice Kennedy wrote:
 - The quality and creative power of student intellectual life to this day remains a vital measure of a school's influence and attainment. For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses

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Academic freedom reality check

- The role of the University is to provide a wide spectrum of perspectives for students to consider
 - With such a wide spectrum, it is not expected the University can simultaneously support all perspectives
 - It is understood that individual faculty and students speak for themselves, not the University or their fellow faculty or students
- Academic freedom makes it inappropriate to expect faculty and students to speak only with the support of the university administration
- Academic freedom does not just protect the rights of the speaker, but also the rights of all students to determine for themselves what ideas they choose to hear or consider

Freedom of expression: Reality check

- This freedom also makes us vulnerable to offensive expression
 - Especially for persons from historically-marginalized identities
- Nadine Strossen: Policies that censor speech would be a short-lived victory
 - Ultimately, all policies will be used by those in power against those who are not

Unique role and culture of universities

- Shared governance
- Role of the faculty
- Tenure
- Freedom of expression
- Role in society

Unique role and culture of universities

- Shared governance
- Role of the faculty
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- Freedom of expression
- Role in society

Key question:

If diversity and inclusion are vital to students' education, why do universities permit expression that is perceived as racist or offensive?

Does academic freedom protect all speech?

- *Is there any expression that is prohibited?*

The Law

- Student policies related to expression
 - Student Conduct Code
 - Threats (abusive behavior)
 - Harassment/sexual harassment (including sexual exploitation)
 - Disruption
 - Engaging in classroom conduct prohibited by the faculty member

But what about hate speech?

- The term hate speech is used to describe certain expression
 - But it is not a category of prohibited expression

Academic freedom (and the Law)

- AAUP Statement on Freedom of Expression and Campus Speech Codes (1994)
 - On a campus that is free and open, no idea can be banned or forbidden. No viewpoint or message may be deemed so hateful or disturbing that it may not be expressed.
 - In response to verbal assaults and use of hateful language, some campuses have felt it necessary to forbid the expression of racist, sexist, homophobic, or ethnically demeaning speech, along with conduct or behavior that harasses.... They claim that the academic progress of minority and majority alike may suffer if fears, tensions, and conflicts spawned by slurs and insults create an environment inimical to learning.
 - An institution of higher learning fails to fulfill its mission if it asserts the power to proscribe ideas – and racial or ethnic slurs, sexist epithets, or homophobic insults almost always express ideas, however repugnant. Indeed, *by proscribing any ideas, a university sets an example that profoundly disserves its academic mission.*
- Leonard Law
 - California's Leonard Law extends first amendment rights to students at California private universities

The Law

- Student policies
- Faculty policies
 - Faculty Manual

Faculty Manual

- Disciplinary action may occur at any time during the term of a faculty member's appointment for any of the following reasons:
 - Incompetence or a pattern of failure to perform duties
 - A pattern of neglect of duty, including the failure to adhere to class or examination schedules, the failure to attend faculty or committee meetings, and the failure to prepare and grade examinations in a timely fashion
 - Violation of University rules and policies
 - Disruptive behavior or breaches of confidentiality
 - Professional misconduct, including but not limited to plagiarism and research misconduct
 - Material misrepresentation in securing an appointment or promotion
 - Sexual harassment or unlawful conduct based on an individual's race, sex, religion, age, disability, or any other basis protected by law
 - The final conviction of a state or federal crime, or disbarment from the practice of law. Lesser professional sanctions imposed by an external authority, depending upon the circumstances surrounding the imposition of sanctions

Faculty Manual

- The focus is on quality of work, not content of expression
 - Incompetence or a pattern of failure to perform duties
 - A pattern of neglect of duty, including the failure to adhere to class or examination schedules, the failure to attend faculty or committee meetings, and the failure to prepare and grade examinations in a timely fashion
 - Violation of University rules and policies
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Legal factors

- Student policies
- Faculty policies
- Employee policies

Employee policies

- Non-faculty employees are subject to the same policies regarding harassment, sexual-harassment, threats, etc.
- Do not have same academic freedom as faculty and students

The Law

- Student policies – Conduct Code
 - Faculty policies – Faculty Manual
 - Employee policies
-
- While these are Chapman documents, the policies therein are grounded in state and federal legal requirements

The Law

- Complaint/Disciplinary process

Complaint/Disciplinary process

- The legal concept of fundamental fairness for the accused
- Requires us to extend a number of rights to students and faculty who allegedly have violated university policy
- At Chapman, these rights are established in the Student Conduct Code, Faculty Manual, and University employment policies

What is fundamental fairness?

- Persons who are accused are allowed to
 - Review and respond to the allegations
 - Prepare their defense
 - Secure witnesses
 - Review and respond to witness statements and other evidence
 - Prepare for their hearing
 - Submit an appeal
- Universities also have an obligation to consider the educational needs of the accused

The Law

- Transparency/confidentiality

What can we know about the outcome of an allegation?

- Federal laws (including FERPA, Title IX, health and counseling regulations) prohibit the disclosure of students' educational records without their consent
 - Disciplinary records are considered part of those educational records
- Federal and state employment laws require that any disciplinary action against an employee must remain confidential
 - In most cases, even the complainant cannot be informed of the outcome of their complaint (complaints of sexual misconduct may be an exception)

Why do cases take so long?

- Persons who are accused are allowed to
 - Review and respond to the allegations
 - Prepare their defense
 - Secure witnesses
 - Review and respond to witness statements and other evidence
 - Prepare for their hearing
 - Submit an appeal
- Process timeline
 - Since each of these stages can take 1-2 weeks, it is not uncommon for the disciplinary process to take several months to conclude
 - Universities are by design collaborative, deliberative bodies
 - Often slows decision-making process

Unique role and culture of universities

- Academic freedom
- Freedom of expression
- The Law

Key question:

If diversity and inclusion are vital to students' education, why do universities permit expression that is perceived as racist or offensive?

Key questions:

- *If diversity and inclusion are vital to students' education, why do universities permit expression that is perceived as racist or offensive?*
- *Is there any expression that is prohibited?*
- *How can we respond to offensive expression in an academic community?*

What are permitted and effective ways to respond to offensive expression?

- Counter-expression
 - Universities are not activist organizations, but they should facilitate opportunities for activism
 - Add your voice to the conversation
 - Recognize and embrace your role as a vital member of the university community
 - Don't delegate your voice to the university administration
 - Programs and protests that present an opposing perspective
 - "Beat them on the battlefield of ideas"

What are permitted and effective ways to respond to offensive expression?

- Offer support for those affected by the offensive expression
 - CERT
- Report concerning behavior
 - It may be a violation of university policy
 - An educational response may be appropriate for those involved

Thank you!

Questions??

