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‘The Chicago Canon on Free Inquiry and Expression’ Review: Learning and Liberty

The principles of freedom of speech have a special place in the world of the university. How institutions enact them has itself been a subject of debate.

By Daniel Diermeier

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Review of the book “The Chicago Canon on Free Inquiry and Expression’ Review: Learning and Liberty” by Tony Banout and Tom Ginsburg, Editores – University of Chicago Press

Last year’s protests against the war in Gaza produced a state of turmoil on college campuses not seen since the 1960s. The outcry also raised a question as central to that earlier era as to our own: What does free expression mean at a university.

With that query still lingering everywhere from university quadrangles to congressional committee rooms, Tony Banout and Tom Ginsburg give us “The Chicago Canon on Free Inquiry and Expression,” a welcome collection of foundational documents that have long shaped the terms of the debate over free expression on campus and that, decades after the documents were first published, still offer principled guidance and clarity on the issue.

Setting aside the unfortunate title—“canon” is the wrong choice for a book whose content argues against orthodoxy—the volume is an important resource, bringing together both well-known texts and new discoveries. Following an insightful introduction by Messrs. Banout and Ginsburg, who together lead the University of Chicago Forum for Free Inquiry and Expression, the text is organized into three parts. The first includes speeches and statements by University of Chicago presidents and other past and current leaders at the institution. The second is a sampling of faculty

speeches to incoming students. The third contains reports by faculty committees.

It is these reports that are the heart and soul of the collection. Commissioned by various presidents of the university over the decades, the reports have often shaped not only the University of Chicago's policies and practices but also those of other institutions.

One of the best examples is the codification of the university's commitment to free speech in its 2015 "Report of the Committee on Freedom of Expression," sometimes referred to as the Stone Report—after Geoffrey R. Stone, a law professor and the committee's chair—but best known in academia as the Chicago Principles. The commitment to free speech articulated in the report was not new. It could be traced back to William Rainey Harper, who served as the university's first president, from 1891 to 1906, and forcefully articulated over the decades by subsequent leaders. But so clear and resonant was the Stone Report's argument for "completely free and open discussion of ideas"—coming at a moment of speaker shout-downs and debates about "safe spaces"—that the principles it espouses have since been adopted by dozens of other universities.

An earlier report has been slower to take root. Likewise named for the law professor who chaired the committee that issued it, Harry Kalven Jr., the 1967 Kalven Report introduced the concept of institutional neutrality—the commitment of a university and its leaders to refrain from taking public positions on controversial issues unless that issue directly affects the core mission and functioning of the university. The report points out that when universities and their leaders stake out official positions, they risk stifling debate—the lifeblood of education and research.

Before last spring's campus unrest, only a few universities had adopted the principle of institutional neutrality. Vanderbilt, the university I lead, was one of them, thanks in large part to its fifth chancellor, G. Alexander Heard, who served during the tumult of the 1960s and '70s. "The social values of open forum and free inquiry," Heard said, "cannot be realized without the political neutrality of the university as an institution, except where the university itself is the issue." He, like the authors of the Kalven Report, knew that the purpose of a university is to encourage debate, not settle it.

It is worth emphasizing here that the principle of institutional neutrality does not preclude positions taken by students and faculty. Indeed, the

primary purpose of neutrality is to create a more open environment for students and faculty to question, debate and voice their opinions.

Since Hamas's Oct. 7, 2023, attack on Israel, after which many universities faced a backlash for what they did or did not say in response, calls for the practice of institutional neutrality have increased. The Academic Freedom Alliance, Heterodox Academy, and the Foundation for Individual Rights and Expression issued a letter in February 2024 calling on universities to adopt neutrality. A number of universities—including Harvard, the University of Pennsylvania, Johns Hopkins, Cornell, Stanford, the University of Southern California and the University of Texas system—have done so. But measured against the reasoning at the core of the Kalven Report, their commitments don't always go far enough. For example, the University of Chicago, like Vanderbilt, has always interpreted the principle as being applicable not only to the top university leaders but also to the leaders of official academic units such as individual schools, departments and research centers. The reasoning is the same: Political position-taking implies that everyone within a school, department, center or program is of one mind, leaving little room for dissenting views or the practice of academic freedom.

Leaders at Chicago and Vanderbilt have also maintained that the principle of institutional neutrality should apply not only to speech but actions, too, and have firmly resisted calls to divest or join boycotts, whether the cause at hand is climate change, the war in Sudan or the plight of Gazans. "Those who demand divestment want the University to make a *statement* about what is morally, politically, and socially 'right,'" Mr. Stone wrote in 2007 about Chicago's decision not to divest from Darfur. "And that is precisely what the University should not do." Here, too, more universities should follow the University of Chicago's example to unequivocally defend against the creeping politicization of their campuses by not using their endowment for position taking.

There is more in "The Chicago Canon" that should be mandatory reading. Topping the list is the Shils Report (1970), which provides criteria for the hiring and promotion of faculty. Most important to our current moment are its prohibitions against political or ideological litmus tests. "The candidate's past or current conduct," the report's authors explained, "should be considered only insofar as it conveys information relative to the assessment of his excellence as an investigator, the quality of the publications which he lays before the academic community, the fruitfulness of his teaching and

the steadfastness of his adherence to the highest standards of intellectual performance, professional probity, and the humanity and mutual tolerance which must prevail among scholars.” In other words, hiring and promotion must take into account academic excellence and nothing else.

Finally, Chicago has long recognized that, to ensure an environment of free expression, disruptions that prevent others from speaking must be prohibited; there is no room on a college campus for a heckler’s veto. To ensure compliance with these rules, functioning disciplinary processes need to be in place, as well as shared norms to guarantee a culture of civil discourse. “Norms of respect, civility, openness and inclusion are essential to enable speech from everyone at the University,” note the authors of “Report of the Committee on University Discipline for Disruptive Conduct” (2017). “A restrictive, hostile, unwelcoming climate will shrink expression, while a rich, friendly, inclusive climate will enable speech to thrive.”

The speeches and statements in the book, by faculty and university leaders alike, further illustrate the collection’s main themes. They also show that the Chicago approach is not a fixed doctrine but a tradition of thought that is constantly discussed and interpreted. It is particularly instructive to see the parallels and differences between the 1949 testimony of Chancellor Robert Maynard Hutchins before a commission investigating supposed communist influences at the university and, in 2017, President Robert J. Zimmer’s commitment to maintaining room for all voices in an era when some were attempting to shut out conservative opinions.

In showing us these interpretations of free expression at differing points in time, the book’s editors illustrate the very point of free speech and open dialogue on a university campus. It is the means by which ideas and conventional wisdom are continually challenged and tested, and how universities fulfill their purpose of providing transformative education and pathbreaking research.

The collection is a welcome reminder of the importance of clear thinking on the issue of free expression when too many universities are still trying to muddle through. Clear principles will never be without controversy, but they provide a much-needed North Star in today’s environment.

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