

University Governance: The Ethics of Answering to Two Bosses

SIGAL BEN-PORATH*

TABLE OF CONTENTS

I. YES, HIGHER EDUCATION LEADERS SHOULD PROTECT STUDENTS FROM HARM	795
II. NO, HIGHER EDUCATION LEADERS SHOULD NOT PROTECT STUDENTS FROM HARM	797
III. HARM AND WRONG	799
IV. HARM, WRONG, AND COMPASSION.	800

University leaders sit at the helm of institutions that serve important public roles: preparing citizens, workers, and leaders who are able to join and transform existing social and economic structures. They are guided in fulfilling these roles by public officials, including Boards and elected officials, who fund and regulate the operation of their colleges and universities. At the same time, university leaders are charged with educating young people, whom they serve as the top officers of the institutions where they learn (and often live), and who sometimes have competing views about the best ways for their institutions to serve them. How should university leaders prioritize the competing interests and demands of their two bosses?¹

In this short essay, I focus on one key question on which the ‘two bosses’ clash, namely, whether universities should protect students from emotional and discursive harm. While this is a pressing matter, as I will illustrate, it is important to remember that it is an outlier: the expectations of these two bosses commonly align. The public (trustees, alums, boards, and sometimes the public discourse), and the students (including their families), are broadly interested in attending,

* Sigal Ben-Porath is the MRMJJ Presidential Professor of Education at the University of Pennsylvania, where she is also a member of the philosophy and the political science departments, and the faculty director of the SNF Paideia Program for civic dialogue. I am grateful to John Hasnas, Michael Douma, Hollis Robbins, and the 2023 attendees at GISME for their thoughtful engagement with this paper. Ariana Zetlin provided excellent research assistance. © 2024, Sigal Ben-Porath.

1. I acknowledge that some would add the faculty to the list of legitimate stakeholders. I do not include them here, because (1) in the simple employer-employee relations, the ethical discussion is not necessarily unique to universities; (2) in their capacity as teachers and separately in their capacity as researchers their relevant interests are reflected in the public and students’ demands, and (3) the different tracks of faculty, those who are more and less protected in their job security as well as their academic freedom, make their interests too diverse to discuss in this short essay.

supporting, and funding higher education institutions that prepare students for their diverse roles in society through high quality educational experiences.² The details of how to do that, and what qualifies as high quality education, are sometimes differently interpreted both across and within these two groups. But some of the most pressing areas of contention in recent years have focused on questions of regulating the increasing partisan interpretation of the boundary of expression, especially as it relates to practices that are meant to address students' diverse identities, experiences, and needs.

The public's expectations can shift over time with evolving priorities and ideological visions. Thus, a greater focus on preparation for the technology sector, for participating in civil society, or for the development of inclusive attitudes can animate the public's aggregate expectations from higher education. To abide by these demands, higher education leaders initiate or wind down programs, realign general education requirements, or make investment decisions in alignment with public goals. For example, when they face demands to address racism in society, they might reconsider hiring practices, or appoint an administrator to supervise relevant programming; or when new technologies emerge, they might open new labs or schools that teach and study those technologies.

Students' expectations can be satisfied by some of these same decisions, but often students express further views regarding the school's climate and the ways in which the school cares for students' lives. This includes areas such as housing and dining, sports and other clubs, teaching practices, course selection, and matters concerning belonging and wellbeing. Students' harm-related demands have become more salient in recent years. Increasingly, students express to school administrators that exclusive, derogatory, dismissive and similar forms of expression by their instructors, staff, or peers, stands in the way of their success and wellbeing.

With the growing attention among administrators to the expanding harm-related demands from students, contrasting expectations from some parts of the public, including state-level legislators, have hardened. Within the context of growing polarization, and generational differences in partisan ideological leaning and in views about key social issues (including LGBTQ rights, responding to racial concerns and other matters), the rift between the public expectations and the demands from students have been widening. This rift is discussed in this paper with a focus on views that typify the two sides in recent years, namely, students' focus on harm-prevention, and public representatives' focus on speech protection. More recently the focus flipped in the context of protests around the conflict in the Middle East, with some public representatives demanding protection – particularly for Jewish students – from antisemitic expression and hurtful language used in protests; and some of the students using this language demanding

2. Public support for higher education has waned as the sector has become more politicized, and relatedly, as politicians use attacks on higher education as a tool for political expediency. Some of these changing views are reflected in the discussion below.

protection for their expression (as well as protection from hurtful statements against their members). The challenging landscape of expression around Jews, Israel, and Palestine, has long been taken as an exception to positions about speech; beyond the details of such speech, which I discuss elsewhere, the rift between the two sides continues to widen, regardless of which group is leading the charge for protection.

Higher education leaders are increasingly facing an ethical dilemma. Broadly, how should they address competing demands from their two main ‘bosses’? I illustrate this concern with one key and pressing question that this tension raises, namely, do university leaders have an ethical commitment to protect students from harm?

I. YES, HIGHER EDUCATION LEADERS SHOULD PROTECT STUDENTS FROM HARM

University leaders might bear an ethical commitment to protect students from harm because of the students’ reasonable expectations that arise from their admission to the university. Students are admitted, and choose to attend, an institution of higher learning with the assumption that their investment of time and effort will be met with a parallel effort on the part of the university. A significant part of this parallel effort is related to providing appropriate academic offerings and opportunities, and supporting learning in a way that would enable the student to complete their preferred course of study. Along with those academic expectations, students can have reasonable expectations that have to do with the learning environment, and in the case of residential colleges, also with the living environment. For example, they can reasonably expect that they will be provided with opportunities for housing, athletic activities and artistic expression, labs and research, or any other relevant learning and engagement opportunities that the school’s mission and communications have promised.

Today, leaders of public institutions in many states increasingly must enforce limitations on course content, particularly in accordance with ‘divisive concepts’ laws.³ Those are presented as ways to avoid discomfort and prevent students from feeling ‘shame or anguish’ over their identities. The convergence of the language in these statutes, which tends to be spurred by conservative politicians, and that of students who tend to raise egalitarian concerns about identity-based harm, require campus leaders to navigate a rocky terrain of restrictions.

Creating campuses that are safe and welcoming for all students is indispensable for successful learning and is therefore a requirement for ethical university leadership. Thus, colleges are justified in maintaining policies meant to ensure a safe and welcoming environment, as well as offering various services that may

3. See Linda K. Wertheimer, *Teachers Struggle to Teach the Holocaust Without Running Afoul of New ‘Divisive Concepts’ Rules*, THE HECHINGER REPORT (Sept. 28, 2023), <https://hechingerreport.org/teachers-struggle-to-teach-the-holocaust-without-running-afoul-of-new-divisive-concepts-rules/> [https://perma.cc/EPK9-MKNE].

enhance feelings of security, such as mental health care.⁴ Colleges also engage in action directed at preventing racism, exclusion and microaggressions that members of minority groups may be exposed to on campus.⁵ In addition to being unpleasant and harmful to student wellbeing, such behaviors take a toll on the academic success of minority students⁶ and undermine their dignitary safety—the sense of being an equal member of the community and of being invited to contribute to the discussion as a valued participant.⁷ Dignitary safety, a precondition to epistemic equality, and a framework that focuses on wrongs rather than merely on harms, is crucial for students’ intellectual development. The lack of it interferes with their ability to live and learn on campus.⁸ Policies that ensure dignitary safety have positive effects on minority students’ sense of belonging, and consequently on their ability to thrive in college.

Part of this reasonable expectation, which relates to a duty and obligation on the part of the school, is the assurance to the admitted student that they will be treated as an epistemic equal to their peers. As the proliferation of scholarship on epistemic equality⁹ illustrates, the necessity of establishing and maintaining conditions of epistemic equality animates many actors in the higher education sector. Being seen and understood as an equal contributor to the core project of the university, that of developing and disseminating knowledge, of teaching and learning, is a necessary condition for all members of the university community. Without the conditions of epistemic equality, some members of the community would be seen by others – and subsequently will see themselves – as having no place in the university and in the scholarly community.

The assumption of epistemic equality is not an obvious one, and it has been an ongoing struggle for various groups. For a long time, women admitted to selective co-ed institutions were assumed to aspire to find a suitable husband there (or the title of ‘Mrs.’). Historically, racial minorities and particularly Black and African

4. See Brian A. Carlisle, *The Evolution of “in loco parentis” Plus*, 49 CHANGE 48, 50–51 (2017); Rene Couture et al., *Helicopter colleges: A return to in loco parentis?*, 51 COLL. STUDENT J. 398, 405 (2024).

5. See SUE RANKIN ET AL., 2010 STATE OF HIGHER EDUCATION FOR LESBIAN GAY BISEXUAL & TRANSGENDER PEOPLE 5, 13 (2010); Joshua Moon Johnson, *Back to the Basic: Meeting the Needs of Marginalized Populations on Campus*, 35 THE VERMONT CONNECTION 137, 142 (2014).

6. See Nicholas Bowman et al., *The forgotten minority: examining religious affiliation and university satisfaction*, 65 HIGHER EDUCATION 745 (2013) (citing numerous studies concerning microaggressions that racial minorities face including subtle insults, jokes, stereotypes etc. and the mental emotional and physical strain that these cause); James M. Ellis, et al., *Examining First-Generation College Students Lived Experiences with Microaggressions and Microaffirmations at a Predominantly White Public Research University*, 25 CULTURAL DIVERSITY AND ETHNIC MINORITY PSYCHOLOGY 266, 267, 268 (2019); Nancy K. Schlossberg, *Marginality and mattering: Key issues in building community*, NEW DIRECTIONS FOR STUDENT SERVICES 5–15 (1989).

7. See Eamonn Callan, *Education in Safe and Unsafe Spaces*, 24 PHIL. INQUIRY EDUC. 64 (2016). SIGAL BEN-PORATH, *FREE SPEECH ON CAMPUS* (2017).

8. Courtney Stevens et al., *Racial/Ethnic Disparities in US College Students’ Experience: Discrimination as an Impediment to Academic Performance*, 66 J. AM. COLL. HEALTH 665, 665–66 (2018).

9. Since the publication of MIRANDA FRICKER, *EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING* (2007).

American students were not seen by all as belonging in elite or selective contexts, and had (or at times have) reason to suspect that they are not perceived as epistemic equals.

Being perceived as less than an epistemic equal can have detrimental effects on individual and groups of students. Expressions of bigotry, even if subtle, can be hurtful, and can lead to silencing, shame, and stereotype threat. Moreover, for some, the mention of biased and hurtful positions and words (especially slurs), even when those are clearly mentioned rather than used,¹⁰ or when said in jest,¹¹ can trigger a sense of stress and depress performance.

An additional reason to maintain a climate free of harm on campus is particularly related to residential campuses. When a place of study and work is also a place of residence, as these campuses tend to be for at least a few years, students have reasonable expectations to be able to enjoy a space where they can pursue relationships, activities, and downtime that do not challenge, push, and harm them. Some spaces on campus, notably dorms and at least some social and extracurricular clubs, can reasonably be expected to be spaces of comfort and connection rather than debate and challenge. To accomplish this more limited expectation, university leaders need to attend to matters of harm raised by students.

But students exceedingly call attention to concerns about harm beyond these comfortable spaces, namely in learning spaces, as a way of establishing their belonging and epistemic equality. Hence, many students demand that university administrators create equitable conditions free of harm by requiring that faculty avoid harmful and hurtful language, by allowing students flexibility in responding to the possibility or reality of harm, and by using other measures to ensure that all students are able to benefit from learning opportunities.

II. NO, HIGHER EDUCATION LEADERS SHOULD NOT PROTECT STUDENTS FROM HARM

For some advocates, including many who sit on governor and trustee boards and those who serve in alum leadership roles, the suggestion that leaders are ethically required to protect students from harm is not only ludicrous but also is one that undermines the core scholarly mission of a university. Some scholars and advocates agree with this stance. The Chicago freshman letter proudly declared the University of Chicago will not “condone safe spaces or trigger warning” thus espousing a rough-and-tumble, no holds barred atmosphere of open inquiry and expression. This demand has a long history, going back at least to Teddy Roosevelt and his exhortation that colleges stop turning out ‘mollycoddles’ who are unprepared for the ‘hurly burly’ of the real world.¹² Protection from harm,

10. Randall L. Kennedy & Eugene Volokh, *The New Taboo: Quoting Epithets in the Classroom and Beyond*, 49 CAP. UNIV. L. REV. 1, 8 (2021).

11. See Luvell Anderson, *Why So Serious? An Inquiry on Racist Jokes*, 54 J. SOC. PHIL. 370, 370–71, 384 (2023).

12. KEVIN P. MURPHY, *POLITICAL MANHOOD: RED BLOODS, MOLLYCODDLES, AND THE POLITICS OF PROGRESSIVE ERA REFORM* 1 (2008).

and the effort to establish leaning spaces free of harm and hurt feelings, undermines leaning in a few key ways. First and foremost, it restricts open expression, and thus stands in opposition to speech protections and to academic freedom, both fundamental principles of academic exchanges.¹³ If students' concerns about harm are taken seriously, we might find ourselves dismissing instructors who pose such threats in a broad variety of cases, from demonstrating taboo language¹⁴ to teaching James Baldwin.¹⁵

Moreover, the notion of harm is diffuse and inherently subjective. What is funny for one person, or slides off their backs, is deeply hurtful to another due to sensitivities, histories, or personal traits. Attempting to account for everything that would hurt anyone will leave little room for an open, honest, exploring and probing academic exchange. It would make it unlikely that knowledge can openly be developed and disseminated, or that new areas of thought could be freely explored.

Finally, the very focus on harm, and the intentional effort to avoid harm, can produce unproductive contexts for learning. Thus for example trigger warnings can anchor students' attention to their feelings and concerns rather than to the intellectual mission at hand, and they may deepen the attention to harm and the experience of hurt feelings more than assuage them, if they have any impact at all.¹⁶ When we center and prioritize concerns about harm, and when we define too many forms of interaction as 'violence,' we narrow the domain of permissible interaction while expanding and hastening the focus on the possibility and danger of imminent harm. In so doing, we prime students to worry about whether they might be harmed by an exchange, instead of focusing on how they might benefit from it.¹⁷

13. See KEITH WHITTINGTON, *SPEAK FREELY* 1,8 (2019); ERWIN CHERMERINSKY & HOWARD GILLMAN, *FREE SPEECH ON CAMPUS* 65,74 (2017); Zachary Schermele, *College Presidents are Planning 'Urgent Action' to Defend Free Speech*, THE CHRONICLE OF HIGHER EDUCATION (Aug. 15, 2023), <https://www.chronicle.com/article/college-presidents-are-planning-urgent-action-to-defend-free-speech> [https://perma.cc/8NVD-DWK9].

14. LAWRENCE ROSEN, *LEGITIMACY CRISIS: CASE STUDIES IN AMERICAN POLITICAL CULTURE* (2023); see also Geoffrey Stone's discussion of his decision to quit mentioned racial slurs in class Colleen Flaherty, *A Free Speech Purist Opts not to Use the N-word* (Mar. 7, 2019), <https://www.insidehighered.com/news/2019/03/08/first-amendment-scholar-geoffrey-stone-whos-previously-defended-use-n-word-classroom> [permalink].

15. For example, in Minnesota See Colleen Flaherty, *Too Taboo for Class?*, INSIDE HIGHER ED (Jan. 31, 2019), <https://www.insidehighered.com/news/2019/02/01/professor-suspended-using-n-word-class-discussion-language-james-baldwin-essay> [https://perma.cc/4F9G-7ZGR]; Colleen Flaherty, *N-Word at the New School*, INSIDE HIGHER ED (Aug. 6, 2019), <https://www.insidehighered.com/news/2019/08/07/another-professor-under-fire-using-n-word-class-while-discussing-james-baldwin> [https://perma.cc/432H-ZR29].

16. Mevagh Sanson et al., *Trigger Warnings Are Trivially Helpful at Reducing Negative Affect, Intrusive Thoughts, and Avoidance*,7 CLINICAL PSYCHOLOGICAL SCIENCE 778, 793 (2018).

17. Some critics of contemporary higher education have suggested that this might even contribute to a competition of pain, where the ability to demonstrate the harmful effects of an exchange proves useful to social interactions, in that it garners both greater attention and priority consideration in framing the interaction. I am leaving aside this suggestion for the current discussion, as I am not sure I can consider it outside the attention economy of politicized discussion.

Advocates against accommodating harm concerns are often committed to a narrow mission for the university, one that is focused on open inquiry. They see responsiveness to harm-related demands as caving to childish sensitivities, ones that are best addressed by a tough stance and a redoubling of the commitment to open expression. The students should be encouraged to grow up, to toughen up, rather than be coddled with attention to their demands. Oftentimes this demand fondly brings up some years of yore. More significantly, advocates demand a commitment to an ideal of the university reflected in documents like the Calverton Report of the recent Princeton Principles, in which a free exchange of ideas can occur unencumbered.

III. HARM AND WRONG

As the previous section suggests, an ethical commitment to protect students from harm is both hard to justify and hard to enact. But does that mean that university leaders have no responsibility in this domain at all? Should they ignore students' concerns, and align themselves with the common call from Boards, elected officials, and many in the public who demand that they prepare students for the harsh realities of the 'real world' by ensuring that they toughen up, grow up, stop complaining? And should this stance hold when the expectations are reversed, and some Board members ask for greater restrictions and protection, while some students demand more freedom to express controversial, and hurtful, positions?

In a way, university leaders' fiduciary duties require that they prevent harm to students. But given the fungibility and related complications with the notion of harm, it might be suggested that at the very least they have an ethical commitment to prevent students from being wronged.¹⁸ Being wronged would entail being unjustly harmed. Some forms of harm can be justified by principles or goals more central to the core goals of the university, or which otherwise provide grounds to justify the harm, or dismiss or minimize the concern about it. If such justifications do not hold, the harmed person is also wronged. For instance, if I have a misguided belief, and that belief is challenged during class, I might feel a significant sense of discomfort that can be described as a sense of harm. One of my students described such an instance of being rattled and alarmed when she realized that not everyone around her was a true believer in Christ (in the same way that she continued to be, or at all). The push to realign her worldview in light of this new information about people she otherwise was growing to respect and trust was difficult and painful. It did not change her core religious beliefs, but it did cause her to revisit her views about the broader moral order. Similarly, a student who is raised to dismiss climate science, and then encounters the broad agreement among scientists on the matter and the reason behind this broad

18. See SIGAL BEN-PORATH, *CANCEL WARS* 59, 68 (2023).

agreement, might find themselves unmoored, insecure, questioning. These can all be described as feelings that are akin to harm, but these students cannot claim to have been wronged.

On the other hand, a student who is presented with views that question their belonging in class, or who is asked to reconsider whether someone who belongs to their identity group is as capable as others to achieve the core mission of learning and developing knowledge at the university, might experience a sense of harm but might also reasonably claim that they were wronged.

Protecting a robust domain of free exchange requires setting broad guidelines for academic exchanges, based on the goal of preventing or amending wrongs to students. Campus leaders have traditionally had limited impact on classroom interaction and syllabus content, due to academic freedom protections. Campus events pose a separate set of considerations for campus leaders, one in which nominally they have some more regulatory power, though they are also constrained by associational freedom considerations and protections for student clubs and academic freedom protections for campus units (such as departments and centers which organize events).

Beyond those broad boundaries, university leaders should be charged with defending instructors from the encroachment of ever-expanding demands that they restrict content and discussion in response to either of the bosses to whom campus leaders answer.

IV. HARM, WRONG, AND COMPASSION

University leadership should, of course, be bound by legal guidance. Along with that, ethical leadership of higher education institutions requires attending to the expectations and visions of those who are served by the institution. In the case of higher education institutions, I suggested here that the two main constituencies demanding attention are the public through its representatives, and the students at their institutions.

Such ethical guidance leads to protecting students from being wronged, by ensuring that the institution operates in its capacity as a home for students, as a learning space, and as a context for research, in a way that acknowledges the demands of dignitary safety and epistemic equality. Simple claims of harm may not rise to the level of demanding a response, let alone a policy or regulatory response meant to prevent or ameliorate such harm.

But such lower-level claims of harm can still merit lower-level institutional attention. Consider the matter of respecting a trans student's pronouns. The courts have allowed professors to opt out from doing so if they have a religious objection to using the correct pronouns (and honorifics, if they use them) of trans students. The legal matter might still be reconsidered, but it seems to me that reasonable relational expectations would reject the reliance of such guidance, as it would result in humiliating and hurting students, an outcome that is generally undesirable, and is unjustified in this case. As Tobias Wolff notes, "Humility. . .

calls us to exhibit compassion: a commitment not to do needless harm as we navigate the workplace, the marketplace, and public institutions alongside people who walk with us even as they follow different paths.”¹⁹

19. Tobias Wolff, *Teacher's Student Pronoun Case Puts Dogma Before Compassion*, BLOOMBERG LAW (Aug. 11, 2023), <https://news.bloomberglaw.com/us-law-week/teachers-student-pronoun-case-puts-dogma-before-compassion> [<https://perma.cc/Q5FH-XQ4Z>].