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# Protest and Civil Disobedience Are Two Different Things

Students and administrators need clear sets of principles about campus activism.



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THE REVIEW | OPINION

By *Keith E. Whittington*

APRIL 23, 2024

Last week when a contingent of representatives from Columbia University, including the president, Nemat (Minouche) Shafik, sat before the House Committee on Education and Workforce, they at least managed to avoid the disastrous optics of their predecessors from Harvard, Penn, and MIT in December. They did so, however, by denouncing controversial speech on campus and suggesting that such speech could be punished — at Alexander Hamilton’s alma mater, no less. The police arrived the next day to clear protesters from the “liberated zone” on the South Lawn of the Morningside Heights campus. If Shafik hoped that move would turn down the temperature at Columbia and reduce the scrutiny under which the university has found itself, those hopes are yet to be realized.

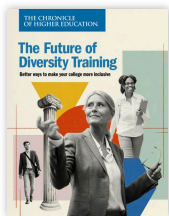
**Rules surrounding expressive activities on campus must be even-handed not only in how they are written but also in how they are effected and enforced.**

Shafik’s actions in New York City may have repercussions across the country as students elsewhere hold their own rallies in sympathy with the protesters at Columbia. College leaders should be thinking hard about what principles will guide their own response to such protests and whether Shafik’s example should be a model.

Every college needs a set of policies balancing the need to provide ample opportunity for free expression on campus with the need to preserve the efficient and effective functioning of the university. In the language of First Amendment jurisprudence, that means the establishment of time, place, and manner regulations. The critical feature of such regulations is that they be content- and viewpoint-neutral. They do not distinguish between expressive activities on the basis of the messages being purveyed. Rather, they circumscribe how expressive activities can be conducted so that they do not unnecessarily interfere with the activities of other members of the campus community.

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Such regulations should be in place before any particular incident arises, because campus officials should be deliberate in identifying what kinds of activities might in fact be problematic for normal operations and what might merely be inconvenient or annoying but not actually obstructive. Members of the campus community must also think carefully about what kind of expressive activities they are willing to accommodate not only when it is engaged in by those with whom they might be in sympathy but also by those with whom they might be in opposition. If campus officials imagine that they can accept dozens, scores, or hundreds of chanting pro-Palestinian protesters setting up tents on a campus quad, would they show the same grace toward students wearing MAGA hats engaged in the same behavior? If students in their tents were being visited and encouraged by Steve Bannon rather than Susan Sarandon, would campus officials be prepared to treat the students the same way?

The university has itself been caught in a moment of transition. Columbia has long had a [relatively detailed](#) policy in place distinguishing between “simple” and “serious” violations of rules regarding demonstrations on campus. But the [Task Force on Antisemitism](#), dissatisfied with the abstract requirement that demonstrations not disrupt university functions, recommended in March that the university strictly prohibit demonstrations inside and around buildings. An [interim demonstration policy](#) allowed students to reserve outdoor spaces during designated times for expressive activities, while [university policies](#) restrict the overnight use of such spaces and prohibit personal tents.

Rules surrounding expressive activities on campus must be even-handed not only in how they are written but also in how they are effected and enforced. It is often reasonable for colleges to be flexible in their tolerance of nondisruptive protest activity. But rules cannot be bent in wildly inconsistent ways. Colleges cannot pursue strict enforcement in cases in which they disagree with the speech or when some students find the speech disturbing or offensive but allow lax enforcement in cases where many students and administrators are more aligned with the message being expressed.

**I**t is particularly appropriate to bend rules with respect to outdoor protests that are unlikely to be immediately disruptive to college operations. If such protests do not, for example, interfere with the conduct of classes or the regular use of residence halls and dining facilities or the ability of people to move unobstructed across campus, then prudential tolerance might be sensible. But note that when rules are bent to tolerate expressive activities that are technically prohibited, doing so is not out of regard for any *right* of free speech held by the students. The students are in violation of appropriate and known codes of conduct. There is no free-speech right to have such rules waived or the violation of such rules ignored.

If students are not immediately disruptive but merely out of compliance with rules

guided by the need to uphold the conditions for the free exchange of ideas at the college generally. If expressive activities that violate college codes of conduct could simply be tolerated indefinitely, that indicates the rules themselves were always more restrictive than they needed to be to maintain the effective functioning of the campus. Temporary exceptions, on the other hand, are necessarily temporary and must eventually be brought to an end.

It is a frequent category error to imagine that such protests should be tolerated so long as they are nonviolent. The purpose of time, place, and manner regulations is not to stave off violence but to coordinate socially beneficial activities. Protests need to be stopped not only when they become violent but also when they interfere with the ability of others to use the campus for their own purposes.

Unfortunately, violence and harassment can all too often accompany expressive activities about divisive political and social issues. The events since October 7 have increasingly put colleges in the position of trying to regulate speech and counterspeech in ways that can tax even law-enforcement agencies. Mass protests on heated issues tend to draw counterprotesters. When such events occur in public spaces, it is critical to keep the sides separated so that passions do not spill over into violence. A [notorious failing](#) in Charlottesville in 2017 was that law-enforcement agencies did not sufficiently mobilize to keep hostile crowds apart, which resulted in frequent violent clashes, injuries, and a murder. Colleges must create buffers between competing demonstrators so as to prevent the kind of scuffles that can lead to injuries, such as what allegedly happened at [Yale University](#) on Saturday, when a student filming a protest says she was jabbed in the eye with a pro-Palestinian protest sign. The impossibility of maintaining such preventative measures indefinitely on a college campus is part of what justifies rules against the creation of “[liberation zones](#)” and “[encampments](#).”

In order to prevent such demonstrations from getting out of hand, college must take

The tactics of organized political street violence that have been deployed in American cities over the past few years are beginning to appear on college campuses, whether used by students or outsiders. Protesters who form human barricades to obstruct campus pathways, shelter violent agitators, or hinder law enforcement require prompt and firm intervention on the part of campus officials.

**T**he purpose of the university is to foster the free exchange of ideas. As I wrote in [Speak Freely](#), protests can further the mission of the university “by calling attention to a neglected set of concerns and ideas,” but if “they never get to the point of entering into reasoned debate, then they contribute little to the intellectual life and ultimate mission of a university.” Colleges should strive to accommodate students seeking to pursue that purpose and can often do so through open communication with student organizers.

But the exchange of ideas is not always the purpose of protest. For some, “[disruption is the point](#).” The goal is to exert pressure to force change, to “[become ungovernable](#).” There may well be occasions when such actions are morally justified, but there are also costs to be paid. The guiding principle is provided by civil disobedience, not free speech. In order to preserve their own mission, colleges should try to make space for the latter but not the former.

Students too often imagine that protests and civil disobedience are indistinguishable, and it is part of the college’s educational mission to provide clarity on such matters. Students are free to express themselves within the confines of neutral rules designed to coordinate the activities of the many members of the campus community, each of whom have their own purposes to pursue and their own ideas to advance and each of whom is equally entitled to enjoy the benefits and use of the campus. Students who instead wish to commandeer campus spaces to impose costs on others and prevent them from pursuing their own activities should expect to face discipline and potentially be removed from campus, whether temporarily or permanently.

Colleges have too often failed to inform students of the principles and rules that should guide their conduct. They should do better. This semester, it might well be too late to do so. But in the calm before the next storm — which might be arriving this fall — students and other members of the campus community should be clearly warned about the potential consequences of their actions and given the opportunity to choose accordingly.

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