

DEREK BOK  
Protecting Freedom of Expression on the Campus  
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*Derek Bok was born on 1930 in Bryn Mawr, Pennsylvania, and educated at Stanford University and Harvard University, where he received a law degree. From 1971 to 1991 he served as president of Harvard University. The following essay, first published in the Boston Globe in 1991, was prompted by the display of Confederate flags hung from a window of a Harvard dormitory.*

For several years, universities have been struggling with the problem of trying to reconcile the rights of free speech with the desire to avoid racial tension. In recent weeks, such a controversy has sprung up at Harvard. Two students hung Confederate flags in public view, upsetting students who equate the Confederacy with slavery. A third student tried to protest the flags by displaying a swastika. [1]

These incidents have provoked much discussion and disagreement. Some students have urged that Harvard require the removal of symbols that offend many members of the community. Others reply that such symbols are a form of free speech and should be protected. [2]

Different universities have resolved similar conflicts in different ways. Some have enacted codes to protect their communities from forms of speech that are deemed to be insensitive to the feelings of other groups. Some have refused to impose such restrictions. [3]

It is important to distinguish between the appropriateness of such communications and their status under the First Amendment. The fact that speech is protected under the First Amendment does not necessarily mean that it is right, proper, or civil. I am sure that the vast majority of Harvard students believe that hanging a Confederate flag in public view—or displaying a swastika in response—is insensitive and unwise because any satisfaction it gives to the students who display these symbols is far outweighed by the discomfort it causes to many others. [4]

I share this view and regret that the students involved saw fit to behave in this fashion. Whether or not they merely wished to manifest their pride in the South—or to demonstrate the insensitivity of hanging Confederate flags by mounting another offensive symbol in return—they must have known that they would upset many fellow students and ignore the decent regard for the feelings of others so essential to building and preserving a strong and harmonious community. [5]

To disapprove of a particular form of communication, however, is not enough to justify prohibiting it. We are faced with a clear example of the conflict between our commitment to free speech and our desire to foster a community founded on mutual respect. Our society has wrestled with this problem for many years. Interpreting the First Amendment, the Supreme Court has clearly struck the balance in favor of free speech. [6]

While communities do have the right to regulate speech in order to uphold aesthetic standards (avoiding defacement of buildings) or to protect the public from disturbing noise, rules of this kind must be applied across the board and cannot be enforced selectively to prohibit certain kinds of messages but not others. [7]

Under the Supreme Court's rulings, as I read them, the display of swastikas or Confederate flags clearly falls within the protection of the free-speech clause of the First Amendment and cannot be forbidden simply because it offends the feelings of many members of the community. These rulings apply to all agencies of government, including public universities. [8]

Although it is unclear to what extent the First Amendment is enforceable against private institutions, I have difficulty understanding why a university such as Harvard should have less free speech than the surrounding society—or than a public university. [9]

One reason why the power of censorship is so dangerous is that it is extremely difficult to decide when a particular communication is offensive enough to warrant prohibition or to weigh the degree of offensiveness against the potential value of communication. If we begin to forbid flags, it is only a short step to prohibiting offensive speakers. [10]

I suspect that no community will become humane and caring by restricting what its members can say. The worst offenders will simply find other ways to irritate and insult. [11]

In addition, once we start to declare certain things "offensive," with all the excitement and attention that will follow, I fear that much ingenuity will be exerted trying to test the limits, much time will be expended trying to draw tenuous distinctions, and the resulting publicity will eventually attract more attention to the offensive material than would ever have occurred otherwise. [12]

Rather than prohibit such communications, with all the resulting risks, it would be better to ignore them, since students would then have little reason to create such displays and would soon abandon them. If this response is not possible—and one can understand why—the wisest course is to speak with those who perform insensitive acts and try to help them understand the effects of their actions on others. [13]

Appropriate officials and faculty members should take the lead, as the Harvard House Masters have already done in this case. In talking with students, they should seek to educate and persuade, rather than resort to ridicule or intimidation, recognizing that only persuasion is likely to produce a lasting, beneficial effect. Through such efforts, I believe that we act in the manner most consistent with our ideals as an educational institution and most calculated to help us create a truly understanding, supportive community. [14]