

Speech Codes Threaten Free Speech on College Campuses

 *Free Speech*, 2000

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Combatants in the culture wars of today's contemporary universities generally focus on issues of curriculum and scholarship, and critics of these prevailing practices have a great deal to target: a so-called multiculturalism that generally is merely a celebration of the cultural Left, wherever it is found; the spread of a pedagogy that seeks disciples rather than critically minded inquirers; the elevation by literary studies of pathology into high theory; the degradation of whole fields of the humanities and social sciences into tendentious "oppression studies"; and scholarship in which one no longer can distinguish between parody and the real thing.

These are not my themes today, however, because of the very phrases that I was forced to use to describe them—combatants, curriculum, scholarship, and critics—all of which denote agents and phenomena that appear in the open, subject to debate. Universities have personnel committees and curricular committees with, almost everywhere, college-wide participation by scholars and teachers who know better and are free to act, but who simply have abandoned their intellectual responsibilities....

Folly without coercive power is not the direct enemy of liberty. Rather, those things that threaten free and open debate and those things that threaten academic freedom are the direct enemy of liberty. Such threats exist most dangerously at universities not in curriculum and scholarship, but in the new university *in loco parentis* (the university standing in the place of parents), where our nation's colleges and universities, across the board, are teaching contempt for liberty and its components: freedom of expression and inquiry; individual rights and responsibilities over group rights and entitlements; equal justice under law; and the rights of private conscience. *That* assault upon liberty is occurring not in the sunlight of open decisions and advertised agendas, but in the shadows of an unaccountable middle-administration that has been given coercive authority over the lives, speech, consciences, and voluntary individuation and association of students.

Speech Codes

Almost all colleges and universities, for example, have "harassment" policies that prohibit selective "verbal behavior" or "verbal conduct," but almost none has the honesty to call these "speech codes." These policies, adopted from employment law and catastrophic for universities, are applied to faculty and students, the latter not even being employees of a university, but, in fact, its clients. The core of these codes is the prohibition of the creation of "a hostile or offensive environment," with the remarkable variations and embellishments that follow from Thomas Hobbes's observation that to the learned it is given to be learnedly foolish. Within very recent times, Bowdoin College chose to outlaw jokes and ways of telling stories "experienced by others as harassing." Brown University banned verbal behavior that produced "feelings of impotence ... anger ... or disenfranchisement ... [whether] intentional or unintentional." Colby prohibited speech that caused loss of "self-esteem." The University of Connecticut prohibited "inconsiderate jokes," "stereotyping," and even

"inappropriately directed laughter." Indeed, a student at Sarah Lawrence College recently was convicted of laughing at something that someone else said, and was ordered as a condition of remaining in the college, for his laughter, to read a book entitled *Homophobia on Campus*, see a movie about "homophobia," and write a paper about "homophobia." Rutgers University included within the forbidden and "heinous act" of harassment, "communication" that is "in any manner likely to cause annoyance or alarm," which causes *me* a great deal of annoyance *and* alarm. The University of Maryland-College Park outlaws not only "idle chatter of a sexual nature" and "comments or questions about the sensuality of a person," but pointedly explains that these verbal behaviors "do not necessarily have to be specifically directed at an individual to constitute sexual harassment." Expression goes well beyond the verbal, however, because the University of Maryland also prohibits "gestures ... that are expressive of an idea, opinion, or emotion," including "sexual looks such as leering and ogling with suggestive overtones; licking lips or teeth; holding or eating food provocatively."

At Carnegie Mellon University, a student called his female opponent in an election for the Graduate Student Organization a "megalomaniac." He was charged with sexual harassment. The Dean of Students explained the deeper meaning of calling a woman a megalomaniac, citing a vast body of what he termed feminist "victim theory" on the the plaintiff's behalf, and the associate provost submitted a brief that stated, "I have no doubt that this has created a hostile environment which impacts Lara's productivity as a student leader and as a graduate student."

Many universities, such as Berkeley itself, no less, adopted speech codes that outlawed "fighting words." That term is taken from the U.S. Supreme Court decision of the 1940s, *Chaplinsky v. New Hampshire* (a decision surely mooted by later Supreme Court decisions), in which, leftists take note, the unprotected fighting word was, of all things, "fascist." Many universities also leave the determination of whether something was a fighting word or created a hostile environment to the plaintiff. Thus, the University of Puget Sound states that harassment "depends on the point of view of the person to whom the conduct is unwelcome." The City University of New York warns that "sexual harassment is not defined by intentions, but by its impact on the subject." "No one," Bowdoin College warns, "is entitled to engage in behavior that is experienced by others as harassing." At the University of Connecticut, criticising someone's limits of tolerance toward the speech of others is itself harassment: its code bans "attributing objections to any of the above [instances of harassment] to 'hypersensitivity' of the targeted individual or group."

Codes Applied Unequally

West Virginia University prohibited, among many other things, "insults, humor, jokes, and/or anecdotes that belittle or demean an individual's or a groups' sexuality or sex," and, try this one on for vagueness, "inappropriate displays of sexually suggestive objects or pictures which may include but are not limited to posters, pin-ups, and calendars." If applied equally, of course, such a policy would leave no sex or race safe in its conversations or humor, let alone in its artistic taste, but such policies never are applied equally. Thus, students at West Virginia received the official policies of the "Executive Officer for Social Justice," who stated the institutional orthodoxy about "homophobia" and "sexism." The Officer of Social Justice warned that "feelings" about gays and lesbians could not become "attitudes": "Regardless of how a person feels about others, negative actions or attitudes based on misconceptions and/or ignorance constitute prejudice, which contradicts everything for which an institution of higher leaning stands." Among those prejudices it listed "heterosexism ... the assumption that everyone is heterosexual, or, if they aren't, they should be." This, of course, outlawed specific religious inner convictions about sexuality. Because everyone had the right to be free from "harassment," the policy specified "behaviors to avoid." These prohibitions affected speech and voluntary associations based upon beliefs. Thus, "DO NOT [in capital letters] tolerate 'jokes' which are potentially injurious to gays, lesbians and bisexuals.... DO NOT determine whether you will interact with someone by virtue of his or her sexual orientation." The policy also commanded specific prescriptions: "value alternate lifestyles ... challenge homophobic remarks ... [and] use language that is not gender specific.... Instead of referring to anyone's romantic partner as 'girlfriend' or 'boyfriend,' use positive generic terms such as a 'friend,' 'lover,' or 'partner.' Speak of your own romantic partner similarly." The "homophobia" policy ended with the warning that "harassment" or "discrimination" based on sexual preference was subject to penalties that ranged "from reprimand ... to expulsion and

termination, and including public service and educational remediation." "Educational remediation," note well, is an academic euphemism for thought reform. Made aware of what their own university was doing, a coalition of faculty members threatened to expose West Virginia University for its obvious violations of the state and federal constitutions, and to sue the administration if need be. The University has removed the offending codes from its freshmen orientation packages and from its website. We shall see if it has removed them from its operational policies....

A Repressive Atmosphere

Many in the academy insist that the entire phenomenon labeled "political correctness" is the mythical fabrication of opponents of "progressive" change. The authors of an American Association of University Professors' special committee report, the "Statement on the 'Political Correctness' Controversy" (1991), insisted, without irony, that claims of "political correctness" were merely smoke-screens to hide the true agenda of such critics—a racist and sexist desire to thwart the aspirations of minorities and women in the academic enterprise.

It is, in fact, almost inconceivable that anyone of good faith could live on a college campus unaware of the repression, legal inequality, intrusions into private conscience, and malignant double standards that hold sway there. In the Left's history of McCarthyism, the firing or dismissal of one professor or student, the inquisition into the private beliefs of one individual, let alone the demands for a demonstration of fealty to community standards, stand out as intolerable oppressions that coerced people into silence, hypocrisy, betrayal, and tyranny.

In fact, in today's assault on liberty on college campuses, there is not a small number of cases, speech codes, nor apparatuses of repression and thought reform. Number aside, however, a climate of repression succeeds not by statistical frequency, but by sapping the courage, autonomy, and conscience of individuals who otherwise might remember or revive what liberty could be.

The Right of Never Being Offended

Most students respect disagreement and difference, and they do not bring charges of harassment against those whose opinions or expressions "offend" them. The universities themselves, however, encourage such charges to be brought. At almost every college and university, students deemed members of "historically oppressed groups"—above all, women, blacks, gays, and Hispanics—are informed during orientations that their campuses are teeming with illegal or intolerable violations of their "right" not to be offended. To believe many new-student orientations would be to believe that there was a racial or sexual bigot, to borrow the mocking phrase of McCarthy's critics, "under every bed." At almost every college and university, students are presented with lists of a vast array of places to which they should submit charges of such verbal "harassment," and they are promised "victim support," "confidentiality," and sympathetic understanding when they file such complaints.

What an astonishing expectation to give to students: the belief that, if they belong to a protected category and have the correct beliefs, they have a right to four years of never being offended. What an extraordinary power to give to administrative tribunals: the prerogative to punish the free speech and expression of people to whom they assign the stains of historical oppression, while being free, themselves, to use whatever rhetoric they wish against the bearers of such stains. While the world looks at issues of curriculum and scholarship, above all, to analyze and evaluate American colleges and universities, it is, in fact, the silencing and punishment of belief, expression, and individuality that ought to concern yet more deeply those who care about what universities are and could be. Most cases never reach the public, because most individuals accused of "verbal" harassment sadly (but understandably) accept plea-bargains that diminish their freedom but spare them Draconian penalties, including expulsion. Those settlements almost invariably involve "sensitivity training," an

appalling term, "training," to hear in matters of the human mind and spirit. Even so, the files on prosecutions under speech codes are, alas, overflowing.

Thought Reform

"Settlements," by the way, are one of the best-kept and most frightening secrets of American academic life, almost always assigned with an insistence upon confidentiality. They are nothing less than an American version of thought reform from benighted offender into a politically correct bearer, in fact or in appearance, of an ideology that is the regnant orthodoxy of our universities *in loco parentis*.

From this perspective, American history is a tale of the oppression of all "others" by white, heterosexual, Eurocentric males, punctuated by the struggles of the oppressed. "Beneficiaries" see their lives as good and as natural, and falsely view America as a boon to humankind. Worse, most "victims" of "oppression" accept the values of their oppressors. A central task of education, then, is to "demystify" such arbitrary power. Whites, males, and heterosexuals must recognize and renounce the injustice of their "privilege." Nonwhites, women, gays, and lesbians must recognize and struggle against their victimization, both in their beliefs and in their behaviors.

Such "demystification" has found a welcome home in a large number of courses in the humanities and social sciences, but for the true believers, this is insufficient, because most courses remain optional, many professors resist the temptation to proselytize, and students, for the most part, choose majors that take them far from oppression studies.

Indeed, students forever disappoint the ideologues. Men and women generally see themselves neither as oppressor nor oppressed, and, far from engaging in class warfare, often quite love each other. Most women refuse to identify themselves as "feminists." Group-identity centers—although they can rally support at moments of crisis—attract few students overall, because invitees busily go about the business of learning, making friends, pursuing interests, and seeking love—all the things that 18-to-22-year-olds have done from time immemorial. Attendance at group-identity organizations is often minuscule as a percentage of the intended population, and militant leaders complain endlessly about "apathy." Whites don't feel particularly guilty about being white, and almost no designated "victims" adopt truly radical politics. Most undergraduates unabashedly seek their portion of American freedom, legal equality, and bounty. What to do with such benighted students? Increasingly, the answer to that question is to use the *in loco parentis* apparatus of the university to reform their private consciences and minds. For the generation that once said, "Don't trust anyone *over* 30," the motto now is "Don't trust anyone *under* 30." Increasingly, Offices of Student Life, Residence Offices, and residence advisors have become agencies of progressive social engineering whose mission is to bring students to mandatory political enlightenment.

Violating Private Conscience and Belief

Such practices violate far more than honest education. Recognition of the sanctity of conscience is the single most essential respect given to individual autonomy. There are purely practical arguments for the right to avoid self-incrimination or to choose religious (or other) creeds, but there is none deeper than restraining power from intruding upon the privacy of the self. Universities and colleges that commit the scandal of sentencing students (and faculty) to "sensitivity therapy" do not even permit individuals to choose their therapists. The Christian may not consult his or her chosen counselor, but must follow the regime of the social worker selected by the Women's Center or by the Office of Student Life.

Examine, for example, a plea bargain rejected by a student at the University of Pennsylvania in April of 1992. The student took his chances with the ordeal of a hearing, where he was acquitted of sexual harassment. It took courage to take that chance when accepting a plea bargain would have ended the matter. The proposed settlement, typical of what occurs at so

many universities (now you will know what is meant by "educational not punitive settlements") was equally chilling in its command over time and private conscience, and in its authoritarian and partisan supervision. An attorney in the Office of General Counsel confirmed that he had "signed off on scores" of identical settlements:

You are to participate in a comprehensive program on sexual harassment, except for the time you are attending classes ... or [at] employment. Said programming shall include ... assignments ... each week in which classes are in session through the Spring 1992 term. You [must] present written evidence of completion of assignments, and a satisfactory performance must be documented by Elena DiLapi, Director of the Women's Center, or her representative, before your transcript can be released.

From the Inquisition to Soviet psychiatry, history has taught us the nightmare of violating the ultimate refuges of self-consciousness, conscience, and private beliefs. In Friedrich von Schiller's *Don Carlos*, Alba observes that even "A slave can keep his feelings from a king. It is his only right." The final horror of 1984 was the Party's goal of changing Winston's consciousness against his will. The song of the "peat bog soldiers" sent by the Nazis to work until they died was, appropriately, "Die Gedanken sind frei"—"Thoughts are free"—for that truly is the final atom of liberty. No moral person would pursue another human being there. Colleges and universities do....

Repressing Unpopular Speech

Speech codes, with all of their formal clauses, are in fact a parody of the rule of law, but we should not obsess on them. Freedom dies in the heart and will before it dies in the law. Speech codes merely formalize the will to censor and to devalue liberty of thought and speech. Even without invoking codes, universities have found ways to silence or to chill freedom of opinion and expression. Indeed, defenders of free speech at our colleges and universities become tarred by the sorts of speech they must defend if they wish to defend freedom in general. No one who defends trial by jury over popular justice in a murder trial is called a defender of murder; such a person is seen, by all, as a defender of trial by jury. The defender of free speech, however, is forever being told, on American campuses, that he or she is seeking, specifically, to make the campus safe for "racism," "sexism," or "homophobia." That is true if what one means is that the defender of free speech seeks to make the campus safe for the expression of all views, and for the clash of visions, ideas, and passions. The issue is not the protection of this or that person's rights by our subjective criteria of who deserves freedom, but the protection of freedom itself.

The speech-code provisions of harassment policies are merely symptoms of the willful assault on liberty on our campuses: the suppression and punishment of controversial and unpopular ideas; the banning of terms that offend listeners invested with special rights; and the outlawing of discourse that, in the eyes of the defenders of the new orthodoxies, "creates a hostile environment." The essential purpose of a speech code is to repress speech. It may serve other ends, such as making its framers feel moral, powerful, or simply safe from the attacks of those who would criticize them. It also demonstrates, for all to observe, who controls the symbolic environment of a place—a heady feeling for the wielders of power, and a demonstration, of course, that also succeeds in silencing others.

If colleges and universities were beset not by the current "political orthodoxy," but by some other claim for the unequal assignment of protections and rights—"religious orthodoxy," or "patriotic orthodoxy," for example—victims of those calls for repression and double standards would find the evil obvious. Imagine secular, skeptical, or Left-wing faculty and students confronted by a religious harassment code that prohibited "denigration" of evangelical or Catholic beliefs, or that made the classroom or campus a space where evangelical or Catholic students must be protected against feeling "intimidated," "offended," or, by their own subjective experience, victims of "a hostile environment." Imagine a university of patriotic "loyalty oaths" where Leftists were deemed responsible for the tens of millions of victims of Communism, and where postmodernists were prohibited from creating a hostile environment for patriots, or from offending that "minority" of individuals who are descended from Korean War or Vietnam War veterans. Imagine, as well, that for every "case" that

became public, there were scores or hundreds of cases in which the "offender" or "victimizer," desperate to preserve a job or gain a degree, accepted a confidential plea-bargain that included a semester's or a year's reeducation in "religious sensitivity" or "patriotic sensitivity" seminars run by the university's "Evangelical Center," "Patriotic Center," or "Office of Religious and Patriotic Compliance." What praise of liberty we would see then.

Imagine a campus on which being denounced for "irreligious bigotry" or "un-Americanism" carried the same stigma that being denounced for "racism," "sexism," and "homophobia" now carries in the academic world, so that in such hearings or trials, the burden of proof invariably fell upon the "offender." The common sign at prochoice rallies, "Keep your rosaries off our ovaries," would be prima facie evidence of language used as a weapon to degrade and marginalize, and the common term of abuse, "born-again bigot," would be compelling evidence of the choice to create a hostile environment for evangelicals. What panegyrics to liberty and free expression we would hear in opposition to any proposed code to protect the "religious" or the "patriotic" from "offense" and "incivility." Yet what deafening silence we have heard, in these times, in the campus acceptance of the speech provisions of so-called harassment codes.

The Struggle for Liberty and Equality

The goal of a speech code, then, is to suppress speech one doesn't like. The goal of liberty and equal justice is to permit us to live in a complex but peaceful world of difference, disagreement, debate, moral witness, and efforts of persuasion—without coercion and violence. Liberty and legal equality are hard-won, precious, and, indeed—because the social world is often discomfiting—profoundly complex and troublesome ways of being human. They require, for their sustenance, men and women who would abhor their own power of censorship and their own special legal privileges as much as they abhor those of others. In enacting and enforcing speech codes, universities, for their own partisan reasons, have chosen to betray the human vision of freedom and legal equality. It was malignant to impose or permit such speech codes; to deny their oppressive effects while living in the midst of those effects is beyond the moral pale.

On virtually any college campus, for all of its rules of "civility" and all of its prohibitions of "hostile environment," assimilationist black men and women live daily with the terms "Uncle Tom" and "Oreo" said with impunity, while their tormentors live with special protections from offense. White students daily hear themselves, their friends, and their parents denounced as "racists" and "oppressors," while their tormentors live with special protections from offense. Believing Christians hear their beliefs ridiculed and see their sacred symbols traduced—virtually nothing, in the name of freedom, may not be said against them in the classroom, at rallies, and in personal encounters—while their tormentors live with special protection from offense. Men hear their sex abused, find themselves blamed for all the evils of the world, and enter classrooms whose very goal is to make them feel discomfort, while their tormentors live with special protections from "a hostile environment."

It is our liberty, above all else, that defines us as human beings, capable of ethics and responsibility. The struggle for liberty on American campuses is one of the defining struggles of the age in which we find ourselves. A nation that does not educate in freedom will not survive in freedom, and will not even know when it has lost it. Individuals too often convince themselves that they are caught up in moments of history that they cannot affect. That history, however, is made by their will and moral choices. There is a moral crisis in higher education. It will not be resolved unless we choose and act to resolve it.

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