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“Speech Codes” On The Campus And Problems Of Free Speech

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During three years of reporting on anti-free-speech tendencies in higher education, I’ve been at more than twenty colleges and universities—from Washington and Lee and Columbia to Mesa State in Colorado and Stanford.

On this voyage of initially reverse expectations—with liberals fiercely advocating censorship of “offensive” speech and conservatives merrily taking the moral high ground as champions of free expression—the most dismaying moment of revelation took place at Stanford.

In the course of a two-year debate on whether Stanford, like many other universities, should have a speech code punishing language that might wound minorities, women, and gays, a letter appeared in the *Stanford Daily*. Signed by the African-American Law Students Association, the Asian-American Law Student Association, and the Jewish Law Students Association, the letter called for a harsh code. It reflected the letter and the spirit of an earlier declaration by Canetta Ivy, a black leader of student government at Stanford during the period of the grand debate. “We don’t put as many restrictions on freedom of speech,” she said, “as we should.”

Reading the letter by this rare ecumenical body of law students (so pressing was the situation that even Jews were allowed in), I thought of twenty, thirty years from now. From so bright a cadre of graduates, from so prestigious a law school would come some of the law professors, civic leaders, college presidents, and even maybe a Supreme Court Justice of the future. And many of them would have learned—like so many other university students in the land—that censorship is okay provided your motives are okay.

The debate at Stanford ended when the president, Donald Kennedy, following the prevailing winds, surrendered his previous position that once you start telling people what they can’t say, you will end up telling them what they can’t think. Stanford now has a speech code. This is not to say that these gags on speech—every one of them so overboard and vague that a student can violate a code without knowing he or she has done so—are invariably imposed by student demand. At most colleges, it is the administration that sets up the code. Because there have been racist or sexist or homophobic taunts, anonymous notes or graffiti, the administration feels it must do something. The cheapest, quickest way to demonstrate that it cares is to appear to suppress racist, sexist, homophobic speech.

Usually, the leading opposition among the faculty consists of conservatives—when there is opposition. An exception at Stanford was law professor Gerald Gunther, arguably the nation’s leading authority on constitutional law. But Gunther did not have much support among other faculty members, conservative or liberal.

At the University of Buffalo Law School, which has a code restricting speech, I could find just one faculty member who was against it. A liberal, he spoke only on condition that I not use his name. He did not want to be categorized as a racist.

On another campus, a political science professor for whom I had great respect after meeting and talking with him years ago, has been silent—students told me—on what

Justice William Brennan once called “the pall of orthodoxy” that has fallen on his campus.

When I talked to him, the professor said, “It doesn’t happen in my class. There’s no ‘politically correct’ orthodoxy here. It may happen in other places at this university, but I don’t know about that.” He said no more.

One of the myths about the rise of P. C. (politically correct) is that, coming from the left, it is primarily intimidating conservatives on campus. Quite the contrary. At almost every college I’ve been, conservative students have their own newspaper, usually quite lively and fired by a muckraking glee at exposing “politically correct” follies on campus.

By and large, those most intimidated—not so much by the speech codes themselves but by the Madame Defarge-like spirit behind them—are liberal students and those who can be called politically moderate.

I’ve talked to many of them, and they no longer get involved in class discussions where their views would go against the grain of P. C. righteousness. Many, for instance, have questions about certain kinds of affirmative action. They are not partisans of Jesse Helms or David Duke, but they wonder whether progeny of middle-class black families should get scholarship preference. Others have a question about abortion. Most are not pro-life, but they believe that fathers should have a say in whether the fetus should be sent off into eternity.

Jeff Shesol, a recent graduate of Brown and now a Rhodes scholar at Oxford, became nationally known while at Brown because of his comic strip, “Thatch,” which, not too kindly, parodied P. C. students. At a forum on free speech at Brown before he left, Shesol said he wished he could tell the new students at Brown to have no fear of speaking freely. But he couldn’t tell them that, he said, advising the new students to stay clear of talking critically about affirmative action or abortion, among other things, in public.

At that forum, Shesol told me, he said that those members of the left who regard dissent from their views as racist and sexist should realize that they are discrediting their goals. “They’re honorable goals,” said Shesol, “and I agree with them. I’m against racism and sexism. But these people’s tactics are obscuring the goals. And they’ve resulted in Brown no longer being an open-minded place.” There were hisses from the audience.

Students at New York University Law School have also told me that they censor themselves in class. The kind of chilling atmosphere they describe was exemplified last year as a case assigned for a moot court competition became subject to denunciation when a sizable number of law students said it was too “offensive” and would hurt the feelings of gay and lesbian students. The case concerned a divorced father’s attempt to gain custody of his children on the grounds that their mother had become a lesbian. It was against P. C. to represent the father.

Although some of the faculty responded by insisting that you learn to be a lawyer by dealing with all kinds of cases, including those you personally find offensive, other faculty members supported the rebellious students, praising them for their sensitivity. There was little public opposition from the other students to the attempt to suppress the case. A leading dissenter was a member of the conservative Federalist Society.

What is P. C. to white students is not necessarily P. C. to black students. Most of the latter did not get involved in the N. Y. U. protest, but throughout the country many black students do support speech codes. A vigorous exception was a black Harvard law school student during a debate on whether the law school should start punishing speech. A white student got up and said that the codes are necessary because without them, black students would be driven away from colleges and thereby deprived of the equal opportunity to get an education.

A black student rose and said that the white student had a hell of a nerve to assume that he—in the face of racist speech—would pack up his books and go home. He’s been familiar with that kind of speech all his life, and he had never felt the need to run away from it. He’d handled it before and he could again.

The black student then looked at his white colleague and said that it was condescending to say that blacks have to be “protected” from racist speech. “It is more racist and insulting,” he emphasized, “to say that to me than to call me a nigger.”

But that would appear to be a minority view among black students. Most are convinced they do need to be protected from wounding language. On the other hand, a good many black student organizations on campus do not feel that Jews have to be protected from wounding language. Though it’s not much written about in reports of the language wars on campuses, there is a strong strain of anti-Semitism among some—not all, by any means—black students. They invite such speakers as Louis Farrakhan, the former Stokely Carmichael (now Kwame Toure), and such lesser but still burning bushes as Steve Cokely, the Chicago commentator who has declared that Jewish doctors inject the AIDS virus into black babies. That distinguished leader was invited to speak at the University of Michigan.

The black student organization at Columbia University brought to the campus Dr. Khallid Abdul Muhammad. He began his address by saying: “My leader, my teacher, my guide is the honorable Louis Farrakhan. I thought that should be said at Columbia Jewniversity.”

Many Jewish students have not censored themselves in reacting to this form of political correctness among some blacks. A Columbia student, Rachel Stoll, wrote a letter to the Columbia Spectator: “I have an idea. As a white Jewish American, I’ll just stand in the middle of a circle comprising. . . . Khallid Abdul Muhammad and assorted members of the Black Students Organization and let them all hurl large stones at me. From recent events and statements made on this campus, I gather this will be a good cheap method of making these people feel good.”

At UCLA, a black student magazine printed an article indicating there is considerable truth to the Protocols of the Elders of Zion. For months, the black faculty, when asked their reactions, preferred not to comment. One of them did say that the black students already considered the black faculty to be insufficiently militant, and the professors didn’t want to make the gap any wider. Like white liberal faculty members on other campuses, they want to be liked—or at least not too disliked.

Along with quiet white liberal faculty members, most black professors have not opposed the speech codes. But unlike the white liberals, many honestly do believe that minority students have to be insulated from barbed language. They do not believe—as I have found out in a number of conversations—that an essential part of an education is to learn to demystify language, to strip it of its ability to demonize and stigmatize you. They

do not believe that the way to deal with bigoted language is to answer it with more and better language of your own. This seems very elementary to me, but not to the defenders, black and white, of the speech codes.

Consider University of California president David Gardner. He has imposed a speech code on all the campuses in his university system. Students are to be punished—and this is characteristic of the other codes around the country—if they use “fighting words”—derogatory references to “race, sex, sexual orientation, or disability.”

The term “fighting words” comes from a 1942 Supreme Court decision, *Chaplinsky v. New Hampshire*, which ruled that “fighting words” are not protected by the First Amendment. That decision, however, has been in disuse at the High Court for many years. But it is thriving on college campuses.

In the California code, a word becomes “fighting” if it is directly addressed to “any ordinary person” (presumably, extraordinary people are above all this). These are the kinds of words that are “inherently likely to provoke a violent reaction, whether or not they actually do.” (Emphasis added).

Moreover, he or she who fires a fighting word at any ordinary person can be reprimanded or dismissed from the university because the perpetrator should “reasonably know” that what he or she has said will interfere with the “victim’s ability to pursue effectively his or her education or otherwise participate fully in university programs and activities.”

Asked Gary Murikami, chairman of the Gay and Lesbian Association at the University of California, Berkeley: “What does it mean?”

Among those—faculty, law professors, college administrators—who insist such codes are essential to the university’s purpose of making students feel at home and thereby able to concentrate on their work, there has been a celebratory resort to the Fourteenth Amendment.

That amendment guarantees “equal protection of the laws” to all, and that means to all students on campus. Accordingly, when the First Amendment rights of those engaging in offensive speech clash with the equality rights of their targets under the Fourteenth Amendment, the First Amendment must give way.

This is the thesis, by the way, of John Powell, legal director of the American Civil Liberties Union, even though that organization has now formally opposed all college speech codes—after a considerable civil war among and within its affiliates.

The battle of the amendments continues, and when harsher codes are called for at some campuses, you can expect the Fourteenth Amendment—which was not intended to censor speech—will rise again.

A precedent has been set at, of all places, colleges and universities, that the principle of free speech is merely situational. As college administrators change, so will the extent of free speech on campus. And invariably, permissible speech will become more and more narrowly defined. Once speech can be limited in such subjective ways, more and more expression will be included in what is forbidden.

One of the exceedingly few college presidents who speaks out on the consequences of the anti-free-speech movement is Yale University’s Benno Schmidt:

Freedom of thought must be Yale’s central commitment. It is not easy to embrace. It is, indeed, the effort of a lifetime. . . . Much expression that is

free may deserve our contempt. We may well be moved to exercise our own freedom to counter it or to ignore it. But universities cannot censor or suppress speech, no matter how obnoxious in content, without violating their justification for existence. . . .

On some other campuses in this country, values of civility and community have been offered by some as paramount values of the university, even to the extent of superseding freedom of expression.

Such a view is wrong in principle and, if extended, is disastrous to freedom of thought. . . . The chilling effects on speech of the vagueness and open-ended nature of many universities' prohibitions . . . are compounded by the fact that these codes are typically enforced by faculty and students who commonly assert that vague notions of community are more important to the academy than freedom of thought and expression. . . .

This is a flabby and uncertain time for freedom in the United States.

On the Public Broadcasting System in June, I was part of a Fred Friendly panel at Stanford University in a debate on speech codes versus freedom of expression. The three black panelists strongly supported the codes. So did the one Asian-American on the panel. But then so did Stanford law professor, Thomas Grey, who wrote the Stanford code, and Stanford president Donald Kennedy, who first opposed and then embraced the code. We have a new ecumenicism of those who would control speech for the greater good. It is hardly a new idea, but the mix of advocates is rather new.

But there are other voices. In the national board debate at the ACLU on college speech codes, the first speaker-and I think she had a lot to do with making the final vote against codes unanimous-was Gwen Thomas.

A black community college administrator from Colorado, she is a fiercely persistent exposé of racial discrimination.

She started by saying, "I have always felt as a minority person that we have to protect the rights of all because if we infringe on the rights of any persons, we'll be next."

"As for providing a nonintimidating educational environment, our young people have to learn to grow up on college campuses. We have to teach them how to deal with adversarial situations. They have to learn how to survive offensive speech they find wounding and hurtful."