CHAPTER 13

The University Élite and Political Correctness: The Proposed University of Massachusetts Speech Code

One of the strongest appeals that colleges and universities have is their image as islands of pure idealism—a place where thoughts and ideas are given the highest institutional priority. Academic freedom means allowing students to develop their minds to the fullest extent, unencumbered by fear that their expression would be punished if it wasn’t rationally thought out or popular.

In recent years, there have been calls to protect certain groups from hateful or at least hurtful speech. The culmination of these efforts has sometimes led to “speech codes” being set up on campuses. The intent has been to create an academic environment where learning could take place free from any form of discrimination.

In 1995, the University of Massachusetts at Amherst announced a speech code. In the reading, UMass economics professor Robert Costrell describes his reaction to the proposal and the potential it could have on curbing free speech and learning on the campus.

Are there certain subjects that you feel never get brought up in classes because they are too controversial? What alternative methods, besides speech codes, can colleges use to help create an atmosphere of tolerance and respect?

A NEW SPEECH CODE PROPOSED AT THE UNIVERSITY OF MASSACHUSETTS

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When we arrived at our offices on October 18–19, the UMass faculty found that an attempted coup d’état, to curtail campus civil liberties, is apparently now underway. Our mailboxes held a document, dated a month earlier, proposing to circumscribe the freedom of speech on campus. Incredibly, the proposal represents the fruits of one and one-half years of negotiations between the administration and the Graduate Employee Organization (GEO), a union of teaching assistants organized in 1991 by the United Auto Workers. Almost as an afterthought, the faculty and the rest of the University community were given three weeks to react to a document which has already obtained unanimous consent from a group of administrators, including two deans. Faced with a virtual fait accompli, the faculty is informed by the administration that this document will serve as the basis for a revised policy to be implemented by the spring.

While I have seen many strange things at UMass in my eighteen years here, one never ceases to be amazed at the misuse or outright abdication of authority among those charged with running the campus. In the present instance, Orwell’s Animal Farm clearly comes to mind. Why on earth would the administration negotiate a speech code with a group of graduate student activists, bringing the faculty in only as a postscript? Surely the protection of academic freedom, to which the document gives truly Orwellian lip service, is first and foremost the responsibility of the faculty. A responsible administration, with the students’ true interests at heart, would have gently, but firmly persuaded these n-th year grad students to write their dissertations instead of speech codes. Instead, the administration sat down with them to regulate the rest of us.

It should be no surprise that such a fundamentally flawed process would produce a document which is so entirely unacceptable. As Professor Herbert Gintis and Professor Daphne Patai have argued elsewhere, the proposed policy attempts to regulate that which cannot be regulated in the area of such verbal conduct as “negative stereotypes,” and regulates that which is already regulated in the area of threats, assaults, and intimidation. The policy elevates group status

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to equal or greater importance than individual status, completely contrary to the principles of American Constitutional government, and thereby exacerbates the very stereotyping the document intends to combat.

Contrary to the administration’s presumption, this palpably unconstitutional document cannot be revised, and it should be discarded forthwith. Indeed, we have been given no explanation whatsoever regarding any putative rationale for such a document, other than pressure from the graduate student union. The basis for discarding this document is fundamental, and does not rest on one passage or another. However, to illustrate its illiberal cast, I will examine some excerpts from this fourteen-page document, which reads like an amateur version of the Federal Register (though with approximately the same vane).

For starters, the document is embarrassingly flawed by such elementary errors as circular definitions (“harassment is defined as verbal or physical conduct . . . that serves to harass”) and inconsistent stipulations (classroom conduct is actionable in one passage and protected in another).

The proposed code defines offenses in the vaguest, most open-ended, fashion, including, but “not limited to” epithets, “negative stereotyping,” and unspecified “ritual and unspoken behaviors.” The operative passage, hopelessly amorphous, proscribes verbal conduct which might be judged by a member of one group or another to “discriminatorily alter the condition” of participation in the University. While it remains unclear whether white males have standing to grieve against negative stereotyping under this document [see Note], it is quite clear that virtually everyone else does, given the incredibly expansive, self-parodying list of protected categories. The list not only includes the usual categories, but also “citizenship, culture, HIV status, language, parental status . . . and pregnancy status.” GEO wants these added, while the administration believes they are already covered.

To take but one example, consider “parental status” and “pregnancy status.” Heaven only knows what the code-writers had in mind here, but that’s exactly the point: who knows what is proscribed? A reasonably intelligent reading of these protections might well infer that, taken together with “marital status,” they provide the basis for grievance against negative stereotyping of unwed mothers, absent fathers, or perhaps their children.

Suppose an unwed mother overcomes the odds against her and manages to arrive on the UMass campus. Now suppose she is present at a classroom or lunchroom discussion of family breakdown. She may well hear a statement like the following:

Quite likely, and quite understandably, she will find this an upsetting experience. She might well find the speech so stigmatizing that it bothers her the rest of the day, or longer, and disturbs her concentration in doing her course work. Referring to the proposed code, a “reasonable person” might well conclude that such a speech had indeed “altered the conditions” of her participation at the University. Is this “discriminatorily,” and therefore actionable? In short, could Daniel Patrick Moynihan (author of the above 1965 statement) teach at UMass? Could he visit here and eat lunch with students? Could his host be punished? Could he offer such views as a student here? Who knows?

Unfortunately, this example is all too realistic: in 1991, the economics profession received “guidelines” from a similarly illiberal (though unofficial) committee of “bias” arbiters. Among other things, the committee explicitly warned us against introducing Moynihan-type analyses of female-headed households into our teaching and research.

To be sure, one passage of the UMass code protects classroom speech “which the instructor deems relevant.” But outside the classroom, all bets are off. More importantly, student speech inside the classroom is not protected if the student’s judgment differs from the instructor regarding relevance. Suppose the instructor attributes high crime rates to economic deprivation, but a student argues that high rates of illegitimacy are more important. A dogmatic instructor (unfortunately, there are a few around) may well judge the student’s argument irrelevant, or worse (“blaming the victim”). The student may not only be at risk of actionably offending on the basis of parental and marital status, but also stereotyping a different “culture,” which is yet another protected category.

Given the uncertainty, the prudent choice might be to steer clear of the topics of family breakdown. Thus, with a stroke of the pen, this document could chill or still discussion of one of our era’s most pressing social problems. The codemakers’ intent here is unknown, but ultimately irrelevant. The basic problem is the unavoidable uncertainty created by any such speech code, which can stifle legitimate discourse whether or not it is, in any meaningful sense, “harassing.”

As another indication of the brave new jurisprudence which the administration would impose on this campus, consider this curiosum from the “scope” of who is covered by the code: on the one hand, individuals whose visitors run afoul of the code will themselves be held culpable (guilt by association?); by contrast, if the visiting bigot is invited to address a public forum on campus, then anything goes. The administration’s message is clear: if you’re going to bring a bigot to campus, you had better do it big-time.

Now consider the elaborate bureaucratic machinery established by this code to process charges. The procedure seems designed to maximize the probability of conviction, with little regard to due process. Charges can be filed as long as twelve months after the alleged event, long after witnesses may have graduated and disappeared. The standard of proof is “preponderance of evidence,” which simply means “more likely than not,” rather than the much stricter “beyond a reasonable doubt.”
Moreover, charges under even this weak standard of proof are to be adjudicated by a simple majority of a three- or five-member Hearing Panel, under the aegis of the Affective Action Office. Defendants are specifically NOT to be judged by juries of their peers. For example, a custodian could readily be hauled before a panel with a majority of students. So could a faculty member, in flat violation of the American Association of University Professors (AAUP) guidelines.

Lest any defendants consider challenging the proceedings, one finds they may have only “supervised access” to the tapes of the hearings—they are not to be given copies. Nor does the policy stipulate that any other records of the proceedings be made available to the defendant—only to various administrators. UMass thus proposes to advance from Orwell to Kafka.

Once convicted, the proposed code threatens an open-ended host of sanctions including, but “not limited to,” suspension without pay or even dismissal. The administration asks us to trust them to implement such sanctions in accord with “the severity of the violation,” which, of course, is left totally unspecified.

Once could easily continue dissecting this document, but the whole exercise strikes one as somewhat disconnected from the world-at-large. Is no one in the UMass administration aware of the enormous difficulties similar codes have caused at major universities across the country? At the University of Pennsylvania, charges were brought against a student for calling other students “water buffaloes,” when their loud socializing disrupted the midnight study efforts of dorm residents. Penn pressed this case for months, putting the student’s future at risk, until eventually the case was dropped due to public ridicule. Penn subsequently scrapped their speech code. The courts have struck down similar codes at Stanford and the Universities of Michigan and Wisconsin.

No such speech code is compatible with free speech and academic freedom. This proposed code will not stand, nor should it. The only question is how it will fall. One might yet hope that the administration will quickly withdraw the proposal as it sees the light of day. But the latest pronouncement from Chancellor Scott offers little hope in this direction. Indeed, he informs us that this policy is just the first of a whole set of such policies that will shortly be presented for our perusal, including “guidelines for gender-neutral language in publications, and a Statement on Religious Displays and Religious Holidays.” We are asked to consider these documents’ “relationship to one another and the totality of the statement that they make about the kind of institution we want UMass Amherst to be.”

Fortunately, the “kind of institution” UMass Amherst will be is still constrained, for the better, by the more freedom-loving institutions of American society. Prior to the court roll-back of campus speech codes, some American universities were described as “islands of repression in a sea of liberty.” It is sad to say, at this late date, that the liberation of UMass from the attempted coup that is underway will probably have to come from beyond the confines of