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## Speech pathology

Campus speech codes sacrifice academic freedom in a misguided effort to prevent hurt feelings

BY HARVEY A. SILVERGLATE AND CARL TAKEI



JUST AS LAW is too important always to leave to judges and lawyers, academic freedom and freedom of speech on campus are too important to leave to college administrators and professors. Sadly, we have learned this much in recent years. A lawsuit initiated last month by a campus civil-liberties group tells the tale —a tale that may be replicated soon at a University of Massachusetts campus near you. Late in April, the Philadelphia-based nonprofit Foundation for Individual Rights in Education (FIRE) filed suit against Shippensburg University in US District Court in Pennsylvania, arguing that the state school's breathtakingly broad restrictions on speech unconstitutionally impinge on students' rights to freedom of expression, freedom of assembly, freedom of religion, and due process of law. The case is the first in a series of legal challenges to campus speech codes that FIRE plans to pursue in courts across the country.

Looking for a place where you get clean hallways and an untroubled emotional life, but also severe restrictions on "collective expressions of opinion," as well as on what you can think and how you may express it? Then you might want to enroll at Shippensburg, where the Student Code of Conduct declares that a "clean, well-maintained" environment and freedom from "emotional abuse" are "primary rights" that take priority over the "secondary right" to "express a personal belief system." At first glance, the code seems like it was written for a drug-treatment center, or even a psychiatric hospital complete with "quiet rooms" and other soothing facilities for the severely disturbed. But Shippensburg is a real university —and while its speech code is more frank than many others, its elevation of student comfort over intellectual and academic freedom is characteristic of college campuses nationwide.

At Shippensburg, "collective expressions of opinion" are restricted to two locations on campus near the science library. Holding a rally, teach-in, or other "collective expression" anywhere else subjects students to disciplinary action. Within the residence halls, it is verboten to post anything on the walls that "can be interpreted as ... promoting discrimination of others" on the basis of a long list of attributes, including age, "lifestyles," and "political characteristics." And in private conversations, community members are specifically warned not to use "presumptive statements" or "discriminatory semantics" that reflect their "unconscious attitudes toward individuals." (This brings to mind a witticism

attributed to the French Revolutionary figure Talleyrand. Asked late in his life how he had managed to survive so many violent regime changes, the wily politician replied that he had learned early on that words are meant to cover up one's true feelings rather than to express them.)

The student handbook says that Shippensburg values the "freedoms necessary for the pursuit of knowledge and truth," but baldly asserts that the university will protect these freedoms only if they are exercised in a manner that is "not inflammatory, demeaning, or harmful to others." In other words, feel free to say what you really believe, as long as it does not upset anybody.

So, where did Shippensburg's breathtakingly restrictive rules on speech come from? Campus administrators claim to have instituted this code out of a paternalistic desire to protect students from the pernicious effects of racist and sexist views. They apparently believed that by barring students from expressing opinions that others could find offensive or hurtful, they were somehow advancing civil rights—that is, making the campus a "safe space" (to use the jargon of campus administrators) for members of minority or historically disadvantaged groups. Judging from the results, they apparently felt few qualms about inflicting severe collateral damage on civil liberties along the way.

Most legal scholars—even those who support restrictions on racist or sexist speech—would probably agree that the resulting scorched-earth approach to the Constitution went too far. Shippensburg's refusal to protect the search for truth or the unfettered expression of one's views undermines the very foundation of a university's purpose, curtailing honest discussion in the areas where it is most needed and denying the university's core mission of intellectual exploration. Many colleges and universities today try to dress up such codes by defining unwelcome speech as "harassment," but the disguise does not work very well. Shippensburg's code happens to be one of the nation's worst, but it shares many characteristics with codes found elsewhere.

Advocates of other, less draconian campus speech codes should not be confident that they will escape similar legal scrutiny. Here in the Bay State, a careful reading of the University of Massachusetts's code of student conduct reveals provisions strikingly similar to Shippensburg's paternalistic speech restrictions. Under UMass's surprisingly prudish rules, students can be disciplined for speaking in ways that create a "sexually offensive working or academic environment," for using "sexual terms to describe an individual," or even for engaging in symbolic speech that involves "offensive or sexually suggestive" pictures, cartoons, or posters. Put more simply, basic expressive activity is banned.

The restrictions at Shippensburg and UMass are similar because administrators at both schools share the same flawed, but rarely questioned, assumption underlying most speech codes: namely, that there is a serious conflict between civil rights and civil liberties, and that members of diverse groups will never have full civil rights to an equal education without muzzling ideas that might make the campus feel less welcoming.

This "civil rights vs. civil liberties" paradigm rests on the belief that when a person feels discomfort as a result of exposure to racist, sexist, homophobic, or other unpleasant words and ideas, such discomfort is, in and of itself, a civil-rights injury equivalent to being turned away from the lunch counter for being black, denied a job for being a woman, or beaten up for being gay. In this view, emotional discomfort is the essential element of a civil-rights injury. Thus, students have a right not to be offended or hurt by exposure to ideas that could diminish their feelings of self-esteem; they are—as a matter of civil rights—entitled to a comfortable and "safe" emotional environment free of such ideas.

This bizarre and dangerous expansion of commonly accepted notions of civil rights distorts the debate over free speech on campus. What is at stake here is not, properly speaking, a conflict between civil rights and civil liberties: rather, it is a question of whether protection from emotional discomfort deserves independent status as a "right"—and, if so, whether it is a *fundamental* right that should compete with or (as has happened at Shippensburg and the vast majority of colleges and universities today) supersede a university's core intellectual mission. When college administrators say that students are entitled to a "safe" environment, they mean something very different from what people in the world outside the ivy

walls mean by "safe." Indeed, for at least two decades now, it has been permissible to say things in Harvard Square that would be punishable if said in Harvard Yard.

There is, of course, nothing wrong with a university striving to create a comfortable environment —emotional or otherwise —for its students. After all, universities provide all kinds of amenities and services to make their students feel comfortable: late-night dining halls, cable TV, student social spaces, and so on. However, such comforts are just that —comforts —and their provision should not lead us to confuse niceties with real civil rights: important protections from violence, brute threats of force, intimidation, racial discrimination, and the like. The mere fact that ideas can sometimes make people uncomfortable does not grant anyone a right not to have their feelings hurt.

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