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Forum on
Academic Freedom

Consulting All Sides on "Speech Codes"

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Few controversies have polarized higher education more than that of Ward Churchill at the University of Colorado (CU). Many conservatives, including Governor Bill Owens of Colorado and Newt Gingrich, have demanded that Churchill be dismissed for characterizing the victims of 9/11 as "Little Eichmanns." Professors and students at CU and elsewhere have responded with rallies and petitions to defend Churchill's academic freedom. They emphasize that the health of the academy rests on the toleration of controversial, even repellant, ideas. Joining in, the faculty of Evergreen State College has boldly proclaimed that "to flourish, university life needs to be an environment where people are prepared to search for the truth, wherever it may lead and whomever it may offend" (1).

Confident promises to man the barricades for academic freedom and to embrace a cacophony of a thousand diverse voices, stirring though they may be, will justly be dismissed as empty words if not applied equally and consistently. If the defenders of Churchill hope to be taken seriously, they have an obligation to show that they will not play favorites in their defense of academic freedom.

At least for those on the political left, the question of campus speech codes now looms large as a litmus test of whether this will happen. Variants of these restrictions exist on most campuses in the United States. If literally enforced, many would suppress nearly all controversial, and much non-controversial, campus speech. For example, Brown University prohibits "verbal behavior" that leads to "feelings of impotence, anger, or disenfranchisement," whether "intentional or unintentional." Colby College proscribes words that cause a "vague sense of danger" or threaten loss of "self-esteem." Until recently, West Virginia University, which imposes similar restrictions, confined public demonstrations to a small and inaccessible "free speech zone." In 2004, the Faculty Senate of the University of Alabama (where one of the authors, David T. Beito, teaches) proposed sweeping rules denying university funds for "any behavior which demeans or reduces an individual based on group affiliation or personal characteristics, or which promotes hate or discrimination, in any approved University program or activity." Would this all-inclusive language apply to fans who heckle Auburn players or students at football games? It is hard to see why it would not (2).

When campus administrators enforce speech codes and related rules, conservatives and libertarians often bear the brunt of the attack. In January 2003, for example, the Judicial Affairs Council of the California Polytechnic State University (Cal Poly), San Luis Obispo, subjected Steve Hinkle, the president of the Cal Poly College Republican Club, to a grueling seven-hour hearing after a student accused him of "offensive" speech. Hinkle had done nothing more than attempt to post a flier in the school's multicultural center that advertised a speech by Mason Weaver, a black conservative and author of the book, *It's OK to Leave the Plantation*. The Council pronounced Hinkle guilty of "disruption of a campus event" and commanded that he write a letter of apology to a student. At CU, a year prior to the Churchill imbroglio, administrators issued a ban on an "affirmative action bake sale" in which the College Republicans sold cookies at "suggested" lower prices to racial minorities. More recently, the University of Oregon derecognized and defunded *The Commentator*, a conservative campus newspaper, after it published an article satirizing a transgendered student senator (3).

Just as troubling is the case of Hans Hermann-Hoppe, a professor of economics at the University of Nevada at Las Vegas (UNLV). In 2004, a student complained to administrators that Hoppe's assertion in lecture that homosexuals were more likely to have higher time preferences (that is, favor present-day consumption over long-term savings and investment) constituted hate speech. In February 2005, UNLV Provost Raymond W. Alden III sent Hoppe a "letter of instruction" that announced a reprimand and suspension without pay for a week for creating a "hostile learning environment." Alden stated that Hoppe's statements were improper because they "were not supported by peer reviewed academic literature" and "not qualified as opinions, theories without experimental/statistical support." The fallacies of such a standard are obvious, or at least should be obvious. What professor can claim (at least with a straight face) that he or she has not violated this peer-review rule in lecture, not just once but many times(4)?

While the forces of academic freedom eventually triumphed in most of these cases, it was only because outside organizations, especially the Foundation for Individual Rights in Education (FIRE), stirred up adverse publicity or threatened lawsuits. In the meantime, the administrators had displayed to the world an appalling disdain for campus free speech while all too many faculty, by not speaking out, showed either failure of nerve or outright complicity in injustice. It is impossible to escape the conclusion that these attitudes can be traced, at least in part, to the fact that the victims of repression were often conservatives and libertarians (5).

When the Organization of American Historians appointed its Ad Hoc Committee on Academic Freedom in 2004 to be chaired by David Montgomery, we hoped that a prominent force in the academy might finally breach this wall of silence. In an e-mail to Montgomery, Beito included a proposal he had written for Liberty and Power, a group blog at the History News Network (HNN). It urged the Committee to exploit a golden opportunity to address the issue of speech codes. Ralph E. Luker, a

member of Cliopatria, a group blog at HNN, supported this effort. Beito suggested that if the Committee came out vigorously for academic freedom across-the-board, it might lay the foundation for a powerful left/right constituency to better protect campus free speech for everyone. He thought Montgomery might be receptive because they both were supporters of the Historians Against the War and had shared concerns about the suppression of antiwar dissent (6).

While Montgomery courteously promised that the Committee would consider these concerns, the final report showed no evidence that it did. It said nothing about speech codes or, for that matter, even hinted that administrators or faculty have ever violated the academic freedom of conservatives or libertarians. Instead it showcased a long parade of leftist victims and rightist victimizers. Some examples highlighted by the report had merit but others were highly strained, such as a lament that "a New Jersey high school administration devoted the entire week of teacher preparation for the coming term to celebration of the legacy of Ronald Reagan." Meanwhile, Steve Hinkle, who could have used the Committee's recognition in a genuine free speech grievance, was suffering harassment at the hands of Cal Poly administrators (7).

The enemies of academic freedom span the political spectrum. Whether they are on the left or right, they share one trait in common: contempt for the free marketplace of ideas on campus. If the ravings of Ward Churchill deserve protection (and they do), it becomes impossible to rationalize restrictions on the comparatively mild statements and actions of Hoppe, Hinkle, and the bake sale organizers at CU. Thus, if leftists who have spoken up so boldly for academic freedom in the Churchill affair are sincere in their claims to tolerate "offensive" speech, they will exert themselves to form common cause with conservatives and libertarians in the fight against speech codes.

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Endnotes

1. "Senate Joins House in Blasting Churchill," *The Denver Post*, February 3, 2005; "Fallout Continues Over 'Little Eichmann' Remarks," *MSNBC News*, March 18, 2005, <<http://msnbc.msn.com/id/7233416/>>; and David French, "Newt's Follies," *The Torch*, February 28, 2005, <<http://www.thefire.org/index.php/article/5366.html>>; and "Academic Freedom Resolution Passed at the Evergreen State College," March 1, 2005, <<http://politicalaffairs.net>>, <<http://www.politicalaffairs.net/article/articleview/723/1/80/>>.
2. "About Speechcodes.org," Speechcodes.org, <http://www.speechcodes.org/about.php>; Marlin Caddell, "Speech Resolution Draws Ire," *The Crimson White*, November 15, 2004; and "University of Alabama Faculty Senate 'Hate Speech' Resolution,"

<<http://www.thefire.org/index.php/article/5043.html>>.

3. Jean-Paul Renaud, "Cal Poly Settles Suit by Student," *Los Angeles Times*, May 6, 2004; "Major Victory for Free Speech at Cal Poly," FIRE Press Release, May 6, 2004,

<<http://www.thefire.org/index.php/article/152.html>>;

Katherine Crowell and Scott Heiser, "CU GOP Fights Off Administration for Affirmative Action Bake Sale," *The Colorado Daily*, February 11, 2004; "Twin Victories for Free Speech on Campus," FIRE Press Release, February 13, 2004,

<<http://www.thefire.org/index.php/article/15.html>>; Ayisha Yahya, March 1, 2005, "Disputed Journal's Budget Approved," *The Oregon Daily Emerald*, March 2, 2005; and "Victory for Freedom of the Press at University of Oregon," FIRE Press Release, March 3, 2005,

<<http://www.thefire.org/index.php/article/5383.html>>.

4. David Glenn, "Professor Who Was Accused of Making Derogatory Remarks in Class Wants UNLV to Clear His Record," *The Chronicle of Higher Education*, February 14, 2005,

<<http://chronicle.com/free/2005/02/2005021406n.htm>>; and

Raymond W. Alden, III to Hans-Hermann Hoppe, February 9, 2005, <<http://blog.mises.org/hoppe/>>.

5. Jean-Paul Renaud, "Cal Poly Settles Suit by Student," *The Los Angeles Times*, May 2, 2004; Ayisha Yahya, March 1, 2005,

"Disputed Journal's Budget Approved," *The Oregon Daily*

Emerald, March 2, 2005; Carol Harter to Hans-Hermann

Hoppe, February 18, 2005, <<http://blog.mises.org/hoppe/>>;

and Katherine Crowell and Scott Heiser, "CU GOP Fights Off Administration for Affirmative Action Bake Sale," *The Colorado Daily*, February 11, 2004.

6. David T. Beito, "The OAH and Speech Codes: An Opportunity," Liberty and Power: Group Blog, April 1, 2004, The History News Network,

<http://hnn.us/blogs/entries/4411.html>; and Ralph E. Luker,

"Not That The Others *Aren't* Smart, You Understand...",

Cliopatria: A Group Blog, March 19, 2004, HNN,

<<http://hnn.us/blogs/entries/4407.html>>.

7. David Montgomery to Beito, April 1, 2004, e-mail; and [OAH](#)

[Committee on Academic Freedom](#), *OAH Newsletter* 32

(November 2004),

<<http://www.oah.org/pubs/nl/2004nov/montgomery.html>>.

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