

# Society

## Speech Codes and the Future of Education

*Fear of offending freezes free speech on growing number of campuses.*

**A**merican colleges and universities have long weathered attacks from outside groups seeking to limit academic self-expression. But, according to some free-speech advocates, the newest threat to open dialogue on campuses comes from inside the university system itself.

A trend toward the enactment of speech codes at universities has been evolving steadily since the 1980s, according to Donald Alexander Downs, a professor of political science, law, and journalism at the University of Wisconsin-Madison. "In 1987," he notes, "Michigan, Stanford, and other schools promulgating new measures restricting speech that caused a new type of harm, [what was being called] 'discriminatory expression.'"

"By 1992 at least 300 universities had enacted speech codes," writes Downs in his recent book, *Restoring Free Speech and Liberty on Campus* (2005).

Downs points to heightened cultural sensitivity on the part of school administrators as the primary impetus for campus speech codes. School administrators, he claims, are often more willing to punish speech that may offend minority-status individuals even though such suppression is contrary to the principle of open debate—and the First Amendment.

"First, there is a heightened consciousness of historical oppression based on race, gender, and sexual preference," Downs writes. "Through the filter of this consciousness, people who hold this view interpret individual cases as extensions of manifestations of broader societal and historical discrimination." In

other words, if a student of minority status takes offense at an article published in a student newspaper, or a comment made during a class, administrators are more likely to censor the comment or punish the offending individual. The status of the person taking offense affects how severely many administrations treat alleged offenses. "This theory is not without merit," Downs cautions. "The difficulty with this way of thinking arises when the facts of the actual individual case are ignored or are overshadowed by the broader meaning. Individuals may become scapegoats for the transgressions of others."

### Fear of Offending

"Today's students are doubtless aware that speech which offends anyone can get them in serious trouble," says Greg Lukianoff, director of legal and public advocacy for the Foundation for Individual Rights in Education (FIRE). He cites several colleges and universities where students and faculty have been punished for engaging in what would be protected speech off campus. Sanctions included eviction from housing, suspension, mandatory psychological counseling, and threats of expulsion. Another disturbing and more recent trend is the quarantining of mass demonstrations to so-called free-speech zones, which in the case of Texas Tech was literally a small wooden gazebo.

Lukianoff maintains that many free-speech policies arise out of fear on the part of administrators that students who encounter offensive material or who take offense at some remark may in turn sue the univer-

sity. Defending against even a frivolous lawsuit, Lukianoff claims, may cost a university hundreds of thousands of dollars.

Most campus speech codes cite harassment as justification for censoring self-expression. The ambiguity of U.S. antiharassment laws is what allows college administrators to punish or prohibit lawful speech. "Harassment is a badly abused term in higher education," Lukianoff says, since it is often applied loosely to punish merely "offensive" speech. "The solution is not to expand the definition of harassment or intimidation, but rather to make sure those terms are not used to hamper free expression, and then to let the students and groups slug it out in the realm of classroom debate, campus activism, and public scrutiny."

The danger of speech codes, according to Lukianoff, is that they not only prohibit students from practicing their constitutionally protected rights, but they also undermine the very mission of higher education.

"For the sake of the liberty of future generations," he says, "we must educate the current generation about the value of free speech, not just about its perceived 'downside.' People who believe in free speech and uninhibited debate on campus must stop feeling that they need to qualify or apologize for those essential beliefs. The messy, loud, chaotic and, yes, sometimes-offensive nature of a college campus is what makes the college experience compelling and unique. College administrators' time would be far better spent preparing students for how to live in and take full advantage of this chaotic paradise." —Patrick Tucker

Sources: *Restoring Free Speech and Liberty on Campus* by Donald Alexander Downs. The Independent Institute. 2005. 318 pages. \$28.98.

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