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UK's speech codes drown our freedom of expression

By: [Andrew Martin](#)

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College administrators beware: Any attempt to quash the constitutionally protected rights of students could spark FIRE - that is, the Foundation for Individual Rights in Education.

The catalyst for its founding came in 1998 when a book by University of Pennsylvania history professor Alan Charles Kors and Boston attorney Harvey A. Silverglate, "The Shadow University: The Betrayal of Liberty on America's Campuses," provoked impassioned pleas from students who were denied their constitutional rights on campus. In response, Kors and Silverglate two started FIRE, a non-partisan, non-profit educational foundation in Philadelphia, to protect students from subversive campus policies, according to the organization's Web site, www.thefire.org.

At a time when American universities are becoming increasingly partisan, FIRE seeks to ensure students enjoy their constitutionally protected rights - freedom of speech, legal equality, due process, religious freedom and sanctity of conscience among them.

Its approach is two-pronged: an Individual Rights Defense Program, which is a legal network that provides access to pro-bono lawyers for students and professors whose civil liberties have been violated; and the Individual Rights Education Program, which focuses on educating students about their rights through handbooks, a blog and other online publications.

Many students may find themselves consternated that civil liberties are being undermined on college campuses, of all places. But it happens all the time. FIRE has defended students, professors and groups on the right and the left, from conservative religious groups to PETA.

Our working concept of free speech is to allow all expression unless it violates the rights of another individual. Perhaps the most problematic area of free speech in which to adjudicate is harassment. Most colleges have chosen to deal with this problem by enacting speech codes, which have been the source of endless controversy and conflict.

FIRE has rated the speech codes of many universities. Each school's code is given a "green," "yellow" or "red" light, red being worst. UK

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has a yellow, which means its speech code bans a significant amount constitutionally protected expression. According to the FIRE Guide to Free Speech on Campus, administrators have simply confused the notion of what is and isn't "discriminatory harassment."

While federal law prevents discriminatory harassment, the scrutiny that must be met in order to trump constitutional protection of speech is substantial. There are two forms of discriminatory harassment prohibited by law: hostile environment discriminatory harassment and quid pro quo harassment.

The former deals with discriminatory behavior and ensures legal protections for minorities and other groups that typically experience discrimination. Quid pro quo is a Latin term that means "something given for something received." Such discrimination occurs when a person offers a service or favor in exchange for something like a sexual favor. If a professor promises an "A" to a student on the condition the student has sex with him, he is engaging in extortion, which is de facto discrimination. This sort of discrimination usually involves sexual harassment.

When looking at UK's racial and sexual harassment policies, one can see FIRE's concerns. UK considers "name calling, verbal abuse, epithets, derogatory comments, threats, slurs, unwelcome remarks, or innuendoes in attributing an individual's personal conduct, habit or lifestyle to his/her racial or ethnic affiliation" forms of verbal harassment in its pamphlet on racial harassment.

No one considers any such action pleasant. But, as the FIRE guide explains, such acts committed in isolation rarely equate to harassment in the legal sense. Calling someone an uncouth name or racial epithet is crass but hardly enough to cause the ordinary student to consider dropping out of school, but a person could be the target of UK's speech code if administrators were willing to pursue him or her.

Far from being apologists for bigots and ignorance, FIRE is worried students could fall victim to a vague code with expansive breadth just because someone dislikes what a student or professor has to say. Such employment of the code would undoubtedly have a chilling effect on free speech on campus. And opinions about race, ethnicity or sexuality, inasmuch as they don't transgress the rights of others, cannot be governed by fiat.

Similar issues exist with UK's sexual harassment codes. There is a provision within that states "unwelcome remarks about a person's clothing or body" is a violation of university policy. What if I were to innocently remark to the girl in class that she looked nice? Would I be punished by UK if she filed a complaint against me? When a preacher in the free speech area declares a girl wearing a sorority shirt to be a whore (however ridiculous the claim), is he sexually harassing her?

Last week, The Kernel ran a story about the American Association of University Women's report that 62 percent of surveyed students had been sexually harassed. Such a number struck me as grossly inflated. If that many people had been sexually harassed, then why isn't walking on campus an act of abject terror?

"Real harassment is a real problem, but the AAUW conflates harassment with any expression deemed sexually 'offensive' and thus endangers free expression while trivializing actual harassment," said Greg Lukianoff, FIRE's interim president.

Racism and sexual harassment are hardly bygone problems, but universities must be careful not to confuse the "offensive" with a violation of someone's constitutional rights, lest they end up violating someone else's First Amendment rights, however devoid of virtue a racist or sexually predatory person may be.

The FIRE guide ultimately notes that many campus speech codes have been overturned in court, and the organization has concluded that the aforementioned parts of UK's speech code are unconstitutional.

Do we have any challengers?

Andrew Martin is a journalism and political science senior. E-mail amartin@kykernel.com.

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