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## **Should Universities Police Student Behaviour at Private Events?**

### *An Unregulated, Unconstitutional and Ineffective Approach*

In “Definition of a University”, Northrop Frye states that a university “defines our real social vision as that of a democracy devoted to the ideals of freedom and equality, which disappears when society is taken over by a conspiracy against these things.” Indeed, in such a place of learning where open discussion, and freedom of thought and speech should take precedence, we instead find an institutional body intent on regulating and directing every aspect of their students’ lives, ultimately to protect its own standing and agenda. Firstly, it’s paramount to recognize that the alarming involvement of universities in students’ private lives rebel against the very Charter of Rights and Freedoms that is so fundamental to Canadian democratic society. Secondly, punitive measures to police student behaviour are not only overly harsh, but might also be ineffective in helping students learn and stay safe. Thirdly, many universities forbid actions that might reasonably harm the university’s functioning or reputation, but the nature of which makes objective evaluation of these actions difficult. Without standardized proceedings or external evaluations, universities essentially have ultimate power over students, to impose harsh academic punishments solely on subjective and obscure reasoning. These trends are concerning to say the least, and for some, considerably unconstitutional and unjustifiable.

The Code of Conduct that Universities require students to sign and uphold serves, among other things, to further strengthen the hold that Universities have over their students. A number of clauses have been found restricting student activity not to prioritize student safety or wellbeing, but merely keep the University’s image squeaky clean. The Code of Conduct for students of Memorial University forbade any conduct that “may damage the reputation of the University.”<sup>1</sup> University of Windsor students cannot act or behave in any way that might “be

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<sup>1</sup> “Student Code of Conduct.” Memorial University, <https://www.mun.ca/student/supports-and-resources/respectful-campus/student-code-of-conduct.php>.

seen to have a negative impact on the University.”<sup>2</sup> To illustrate the absurdity of the Universities’ stance, consider the idea that preventing students from saying or doing anything that the school deems might have a negative effect on the institution essential makes the University campus and anywhere else their students travel, a charter-free zone, stripping their students of their basic rights and freedoms, and the ability to raise any critique against the school. Ironically, given that Universities are a place of learning and free-thought, meant to teach the Charter and the protections it guarantees, the University instead undermines it.

It might be expected, and even reasonable, that universities might have concerns over their reputation and standing in the community, but is it reasonable for the university to control student behaviour 24 hours a day and 7 days a week, regardless of where the supposed misconduct is located and whether it even concerns the institution at all? It cannot be justified that the liberty and freedom of choice of the student body can be threatened simply because their institution might simply deem it inappropriate. In fact, the Code of Student Conduct for St. Thomas University explicitly states that students “are held responsible for their conduct at all times.”<sup>3</sup> Additionally, the recent expansion of Western University’s student code of conduct from only applying to events on university premises and university-sponsored events, to now extending to any off-campus event that might “be seen to have a direct or indirect association with the University”<sup>4</sup> signifies a downward spiral towards setting exceedingly restrictive measures on tens of thousands of students’ private lives.

The doctrine of *In loco parentis* had been prominent in higher education in America up until the 1960s.<sup>5</sup> It referred to the recognition that the university would take on in some aspects the role of a parent, able to place restrictions on the personal lives of their students, which included their speech, associations, and movements, and inflict punishment at will. To illustrate the magnitude of these ideas, take for instance a case from the early 20<sup>th</sup> century involving several students who had been expelled from Berea College, a private institution located in

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<sup>2</sup> “Addressing Non-Academic Misconduct.” University of Windsor, <http://www.uwindsor.ca/studentexperience/337/addressing-non-academic-misconduct>.

<sup>3</sup> “D. Codes of Student Conduct (Academic and Non-Academic Misconduct).” St. Thomas University, [https://www.stu.ca/media/stu/site-content/current-students/registrarx27s-office/academic-calendar/2017-2018/codes\\_student\\_conduct1718.pdf](https://www.stu.ca/media/stu/site-content/current-students/registrarx27s-office/academic-calendar/2017-2018/codes_student_conduct1718.pdf).

<sup>4</sup> Lebel, Jacquelyn. “Western University’s board approves penalties for student misconduct during Fake Homecoming.” Global News, 25 April 2019, <https://globalnews.ca/news/5203671/western-universitys-board-approves-penalties-for-student-misconduct-during-fake-homecoming/>.

<sup>5</sup> Lee, P. (2011). The curious life of in loco parentis in American universities. *Higher Education in Review*, 8, 65-90.

Kentucky State, United States, for visiting a restaurant located across from the college because of a rule the institution had instated, prohibiting students from “eating houses and places of amusement in Berea, not controlled by the College.”<sup>5</sup> The rule was challenged by the restaurant owner, but the Courts at the time supported the institution’s decision.

The turning point came when Alabama State College expelled a group of students without notice for participating in a civil rights demonstration.<sup>5</sup> When the students challenged the expulsion on the premise that it violated their constitutional rights, the Courts ruled in favour of the students, stating that public colleges could not simply expel students, at least without due process.<sup>5</sup> Indeed, it was around this time an increasing awareness for the constitutional protection of student rights and freedoms brought into question the legitimacy of in loco parentis ideas, which were quickly eradicated soon after. While the idea of in loco parentis may seem outdated and downright unconstitutional in modern society, the system of what had been common practice is not so different from some of the cases we see today. The archaic ideas of universities standing in loco parentis have been creeping back under the guise of stewardship, when the very basis its removal had been on the count that it infringed upon the basic human rights that are considered to be so fundamental in our modern democratic society. It begs the question then, why we have allowed this ideology which was clearly so unconstitutional that it was removed, to return to the forefront of post-secondary education? Assuredly not for the sake of advancing student rights, yet failing to acknowledge these transgressions against these very rights is dangerous and it will be the students who will face the consequences.

While concerns over student safety are valid, issues concerning criminal behaviour or illegal activity lie beyond the university’s realm of authority, and the decision to exact punishment is, to put it simply, not the university’s decision to make. If a student were to break the law, it would be under the jurisdiction of the state, police officials and judicial officers to take control of the situation and impose a punishment, if necessary, as has been decided by legitimate judicial proceedings. In 2012, eight students from Fanshawe College in London, Ontario were implicated in a St. Patrick’s Day riot. They were swiftly suspended from school and faced expulsion, despite the fact that their criminal proceedings were still ongoing.<sup>6</sup> By

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<sup>6</sup> Sniderman, Andrew Stobo. “Crime and the new punishment for university students.” *Maclean’s*, 12 Dec. 2012, <https://www.macleans.ca/news/canada/crime-and-the-new-punishment/>.

instating their own punishments, separate from the judicial process and sometimes before an official decision has been made, Universities attempt to play the roles of judge, jury and executioner. Universities should leave the “policing” to police, and instead focus on what they are meant to do – teach. While punitive measures like expulsion might be effective in the short-term at ridding the school of an association that might otherwise tarnish their reputation, doing so takes away from the student’s learning, the very education that the university is meant to provide, and forfeits the opportunity to have a meaningful and productive discussion.

The infamous “Fake Homecoming” or “FoCo” street party event at Western University draws students out onto the streets, with the most recent “FoCo” drawing a record of 20,000 people. That year, an email threatening disciplinary action for all attendees had been sent out to the entire school, but it did nothing more than to spur on the party-goers, piquing the interests of the incoming freshmen and creating a buzz of excitement and anticipation. Neither the threats of academic penalties, nor the strict reminders from the school to not attend, did anything to dispel the crowds that showed up that day. These punitive measures were clearly ineffective and not only did it breed animosity among the student body towards administration, but it only served to exacerbate the issue. Harsh academic punishments such as suspensions and expulsions are shown to be ineffective in changing a student’s conduct, and instead, bring about disengagement and resentment in the school community.<sup>7,8</sup>

Evidently, exacting strict academic punishments towards what schools consider to be “misbehaviours” have not proven to be effective. In the case of “FoCo”, Western University continues to attempt to curb the street parties with reminders on the stipulations outlined by the student code of conduct, and continuous threats of academic consequences for transgressors. However, the school has also begun to take steps away from forcibly regulating student off-campus activity by using alternative measures, such as hosting a university-sanctioned event on the same day called “Purple Fest” and strategic scheduling of mid-term examinations, to some success. Instead of policing students, perhaps the university’s focus should be on discussion, on

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<sup>7</sup> Sullivan, Anna. “Schools’ tough approach to bad behaviour isn’t working – and may escalate problems.” *The Conversation*, 26 May 2016, <https://theconversation.com/schools-tough-approach-to-bad-behaviour-isnt-working-and-may-escalate-problems-56737>.

<sup>8</sup> Armstrong, David. “Why suspending or expelling students often does more harm than good.” *The Conversation*, 4 April 2018, <https://theconversation.com/why-suspending-or-expelling-students-often-does-more-harm-than-good-93279>.

awareness, and tactical measures that will bring about change internally from within the student body, not forced upon them by threats and harsh punishments.

A classic psychological study where the expectations of teachers on how well each student would perform corresponded with how the student actually performed.<sup>9</sup> Behaviour can be considered somewhat of a self-fulfilling prophecy, and if schools continue to treat their adult students as children in need of constant supervision and restrictions on their day-to-day activities, their students would neither welcome the unwarranted intrusion, nor thrive in such an environment. Learning is better achieved when people are given the freedom to choose, rather than simply being directed to the correct answer or told what to do. Making conscious and informed choices encourages engagement and discussion,<sup>10</sup> which is hugely more productive than passive acceptance. A major part of the university experience for most students transitioning out of secondary education into the “adult world” is being able to make these choices on their own. If universities intend to help students become creative and critical thinkers, problem-solvers, and independent, functioning members of society, then it does students a major disservice to place restrictions on essential aspects of their lives.

A major issue that opens the doors for unjust proceedings in the eyes of the law is the subjectivity of what may or may not be perceived as harmful to the university. Firstly, each school seems to have a different set of expectations for their students under the student code of conduct, and the need for an evaluation on a case-by-case basis raises concerns about the disparity between institutions. There are no established standard or set procedures, and no way for external evaluation to ensure that any of these proceedings are even fair. For some schools such as Brock University, a breach of student non-academic code of conduct involves interfering another’s ability to participate in university activities,<sup>11</sup> whereas others simply require the action having an “adverse effect” on the functioning of the university,<sup>12</sup> whatever that might entail. Secondly, the very nature of these guidelines and the behaviour they seek to control makes it

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<sup>9</sup> LoBue, Vanessa. “Expect the Best: On the Power of Expectation.” *Psychology Today*, 10 Sept. 2018, <https://www.psychologytoday.com/ca/blog/the-baby-scientist/201809/expect-the-best-the-power-expectation>.

<sup>10</sup> Anderson, Mike. “Chapter 1. The Key Benefits of Choice.” ASCD, April 2016, <http://www.ascd.org/publications/books/116015/chapters/The-Key-Benefits-of-Choice.aspx>.

<sup>11</sup> “Student Code of Conduct.” Brock University, <https://brocku.ca/student-life/wp-content/uploads/sites/34/Student-Code-of-Conduct.pdf>.

<sup>12</sup> “12.3 Non-Academic Student Code of Conduct.” Wilfred Laurier University, <https://www.wlu.ca/about/governance/assets/resources/12.3-non-academic-student-code-of-conduct.html>.

effectively impossible to maintain an objective and standardized approach to every case. What might be considered an “adverse effect” to the university to one individual, or at least enough to breach the code of conduct, might not be considered so to another. The Code of Student Rights and Responsibilities for York University requires that students “uphold an atmosphere of civility”, which needless to say, can be interpreted in countless ways. Consequently, the university now holds a great deal of power in setting these subjective standards and it is the students and their rights that are now at risk. This sets a dangerous precedent for universities policing not only actions and behaviours that might be harmful to the university, but any actions that the university might deem inappropriate. For instance, recently, rising senior Nick Lutz was suspended from Florida University after tweeting out his ex-girlfriend’s apology note, an act which the university deemed morally “harmful”.<sup>13</sup> The Code of Conduct at Florida University was used, not to ensure the safety of its students, but instead to quash a public discussion that in all intents and purposes, was legal. The post was a testament to Mr. Lutz’ frustration at a private relationship – it’s difficult to say how the University felt it could insert itself in a situation that really, has no concrete relevance to the institution.

Of course, the added complexity of social media makes doling out swift punishment for these cases problematic. In the past, students have faced consequences from schools for simply liking other posts, or for private messages that were made public. Some have even been disciplined for forwarding offensive posts, even if their intention was to denounce them.<sup>14</sup> It’s a slippery slope that can very easily lead to inhibition of the expression of free thoughts and ideas, shutting down what might have been a genuine conversation about a difficult or controversial issue. It’s ironic, given that universities are meant to be open spaces for the discussion of ideas. That universities have strayed so far from that original purpose, only goes to show that true discussion has been neglected in favour of maintaining the university’s squeaky clean reputation.

The idea that a university could so openly defy the democratic principles that form the basis of our country is absurd, and absolutely cannot be entertained given the importance of what’s at stake. Shutting down discussion and inflicting harsh punishments without due

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<sup>13</sup> Mettler, Katie. “Student suspended from Florida university for tweeting ex-girlfriend’s apology note.” Nation & World, Chicago Tribune, 19 Jul. 2017, <https://www.chicagotribune.com/nation-world/ct-florida-student-tweet-20170719-story.html>.

<sup>14</sup> Stark, Lisa. “Schools are watching students’ social media, raising questions about free speech.” PBS, 20 Jun. 2017, <https://www.pbs.org/newshour/show/schools-watching-students-social-media-raising-questions-free-speech>.

proceedings are not conducive to learning and in fact, breed resentment and disengagement. Ultimately, universities should turn their attention towards what they were meant to do: to disseminate knowledge, insight academic curiosity, and instill in their students a life-long passion for learning. University should not attempt to extend so far beyond the realm of their authority to insert themselves in private situations and events. Doing so would not only be unconstitutional and ineffective, but counter-productive as well. The manner in which individuals choose to conduct their lives is entirely up to that individual - that is the beauty of the free country in which we live in and that does not change for students.