

Comments (excerpts) on UBC's draft statement concerning freedom of expression, sent to Margaret Wente (November 2017).

UBC's draft statement:

<http://faculty-staff.ubc.ca/2017/11/08/freedom-of-expression-draft-statement/>

Wente's article in *GLOBE & MAIL*, November 2017:

What's so scary about free speech on campus?

<https://beta.theglobeandmail.com/opinion/whats-so-scary-about-free-speech-on-campus/article36948480/>

November 12, 2017

... In my view this is a feeble and troubling document that is unworthy of a university that wants to be taken seriously. What strikes me, in the first place, is that far from being a document that is emphasizing the need to protect free speech from illegitimate encroachment and restrictions, it gives lip service to the value of free speech and moves directly on to place heavy emphasis on the need for restricting it in face of competing claims. While the draft is titled "Freedom of Expression Matters", a more accurate title would be "Freedom of Expression Matters... BUT so do many other things".

Apart from the heavy emphasis on considerations that serve to restrict and limit free speech, the considerations and claims cited are so loosely and vaguely described that they could well include claims not to cause distress, offend or even question and challenge the deeply held views of others. What constitutes being "threatened", "caused distress", or damaging a person's "wellbeing" has no significant content or boundaries. A massive wedge is opened up that could be seriously abused. The document may also be understood as suggesting that ideas and positions that are (subjectively) found to be "objectionable" (i.e. both in content and/or manner of

expression) are prima facie subject to restriction - rather than protected unless harmful or disruptive under some clear interpretation.

Here are a couple of concrete examples that I think make clear that this document is dangerously vague:

1. I teach both philosophy of religion and political philosophy at UBC and often take up controversial and sensitive issues and topics. Someone might make a remark to the effect that "Muslim belief gives little or no proper weight to the value of freedom of expression". Given the vague qualifications and conditions attached to free speech and the ways in which it may be restricted, this document could easily be read as suggesting that remarks of this kind should be condemned and prohibited in the context of the university. Whether one finds comments of this kind sensible and credible or not, it is plainly the right of students and faculty to express views of this sort - although they will certainly offend and cause discomfort to those in the Muslim community, among others. It is significant that many who would object to remarks of this sort would not object to remarks such as "the Catholic religion/ Christian Evangelicals/ Conservative Party gives insufficient value to the importance of free speech." The principles and boundaries here are arbitrary and a matter of a person's own ideological preferences and prejudices - the stance taken breeds and encourages hypocrisy of every kind.

2. It is also ironic to find all the usual clichés about "reconciliation" with Indigenous people and other such marginalized groups inserted into this document. However, much one may sympathize with some of these ideals and goals, it misses the crucial point at issue. Not everyone shares these ideals and goals, much less how they should be interpreted and implemented. Even if these critics are mistaken and misguided about these matters they have a right to express their views (subject to doing no harm or injury or being merely abusive). The draft document leaves the door wide open for

individuals and groups to challenge and suppress all such discussion and debate on the ground that it is disrespectful, offensive, and contrary to the goals and aims of “reconciliation”. The point of free speech is not primarily to achieve reconciliation but to allow divergent and contrary views to be heard and considered so that each individual may decide and judge for themselves where truth and reason rests.

In sum, the document says too much and too little at the same time. It is, in my view, an Orwellian monument to everything that is confused and evasive about the current understanding of free speech issues on the university campus. It camouflages the real problems and lends itself to serious abuse by those who are all too willing to limit and restrict free speech for their own ideological ends.

The above is a summary of my own assessment of this document.

.... You also asked why there's such an emphasis on words as weapons that can somehow inflict damage on people's equality rights? This has, of course, been a major theme in feminist legal theory over the past few decades. I would agree that comments and remarks can certainly be hurtful, distressing and malicious. It is not obvious that the university needs some special set of protections regarding speech that is slanderous, threatening or incites violence or physical harm of some kind, given that this is already covered by the law. I would agree, nevertheless, that there is a gap whereby members of the university community may use language that is legally protected but is plainly disruptive of civil and constructive discussion and merely abusive. What needs to be emphasized here, however, contrary to the weight of the UBC draft document, is that while such boundaries should be drawn, they should not be abused in an effort to curtail free speech and impose views on others. In contrast with the UBC document the Chicago Principles seem much clearer and more reliable on this matter:

Excerpt from the University of Chicago “Statement on Principles of Free Expression”

"This is not to say that this freedom is absolute. In narrowly-defined circumstances, the University may properly restrict expression, for example, that violates the law, is threatening, harassing, or defamatory, or invades substantial privacy or confidentiality interests. Moreover, the University may reasonably regulate the time, place and manner of expression to ensure that it does not disrupt the ordinary activities of the University.

Fundamentally, however, the University is committed to the principle that it may not restrict debate or deliberation because the ideas put forth are thought to be offensive, unwise, immoral, or wrong-headed. It is for the members of the University community to make those judgments for themselves.

As a corollary to this commitment, members of the University community must also act in conformity with this principle. Although faculty, students and staff are free to criticize, contest and condemn the views expressed on campus, they may not obstruct, disrupt, or otherwise interfere with the freedom of others to express views they reject or even loathe.

For members of the University community, as for the University itself, the proper response to ideas they find offensive, unwarranted and dangerous is not interference, obstruction, or suppression. It is, instead, to engage in robust counter-speech that challenges the merits of those ideas and exposes them for what they are. To this end, the University has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it."

<https://freexpression.uchicago.edu/page/statement-principles-free-expression>

(It is worth mentioning that the UBC administration has been encouraged to endorse and embrace the Chicago Principles but it is unwilling to do so – which makes one wonder what it is that they find objectionable it?)

When I was a child the old adage was "sticks and stones may break my bones...", which was meant to emphasize that there was a real and significant difference between physical violence and threats and words and language that was merely abusive and offensive. This distinction allowed for a real measure of tolerance and freedom of expression. While this adage may well be too simple, if it is replaced by the equally superficial adage that "words can be used as weapons", we will lurch to the other end of things and fail to recognize the significant differences in the harms involved and the sort of circumstances in which freedom of expression may or may not be restricted and curtailed.

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