

Accommodating U:

*A Contrarian's Sincerely-held Beliefs Regarding the
University of Utah Accommodations Policy*

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The Good News...

- The views presented tonight are my own—
uncensored, unfiltered, & (dare I say it)
unaccommodating
 - They do *not* represent the official views of the University of Utah

The Bad News...

- The views presented tonight are my own—
uncensored, unfiltered, & (dare I say it)
unaccommodating
 - They do *not* represent the official views of the University of Utah)
- ...Actually, that's somewhat of an exaggeration

The Good News...

- There are several aspects of the Accommodations Policy that are appropriate and correct
 - *“Instructors are not required to grant [course] content accommodations, as long as the subject course requirement has a reasonable relationship to a legitimate pedagogical goal”*
 - *“Personal disagreement with these ideas and theories or their implications is not sufficient grounds for requesting an accommodation. Accommodations requested on such grounds will not be granted.”*

...The Bad News

- The Accommodations Policy still errs fundamentally
 - It institutionalizes the principle that legitimate course content may be censored simply and expressly to avoid conflict with students' personal beliefs, even when
 - Those beliefs may not be evaluated
 - Those beliefs bear no reasonable relationship to any legitimate pedagogical goal
- These are not appropriate criteria for altering legitimate course content
 - Much as they are not appropriate criteria for altering:
 - Grades
 - Research results
 - Scholarly or pedagogical publications
- “By compromising basic academic principles, universities tamper with ideals that give meaning to the scholarly community and win respect from the public”
 - *Derek Bok*, former President of Harvard University, cited in: *Ethics*, 2004 Annual Report, U of U Office of the VP for Research (comments on research)

Some More Good News...

- The process used in the later stages of policy development often exemplified the merits of seeking and evaluating diverse viewpoints
 - Accommodations Policy Committee (K. Coles, Chair)
 - Academic Senate, and Senate President Larry DeVries
- (Ironically, these are the very processes that the Accommodations Policy itself would ultimately compromise)

...And Bad News

- ...Unfortunately, this was **NOT** always the case
 - Initial settlement agreement
 - Developed without major input from defendants or awareness of most faculty, who learned of it in the public media
 - University President Michael Young (as described below)

And Still More Good News...

- You don't have to take notes

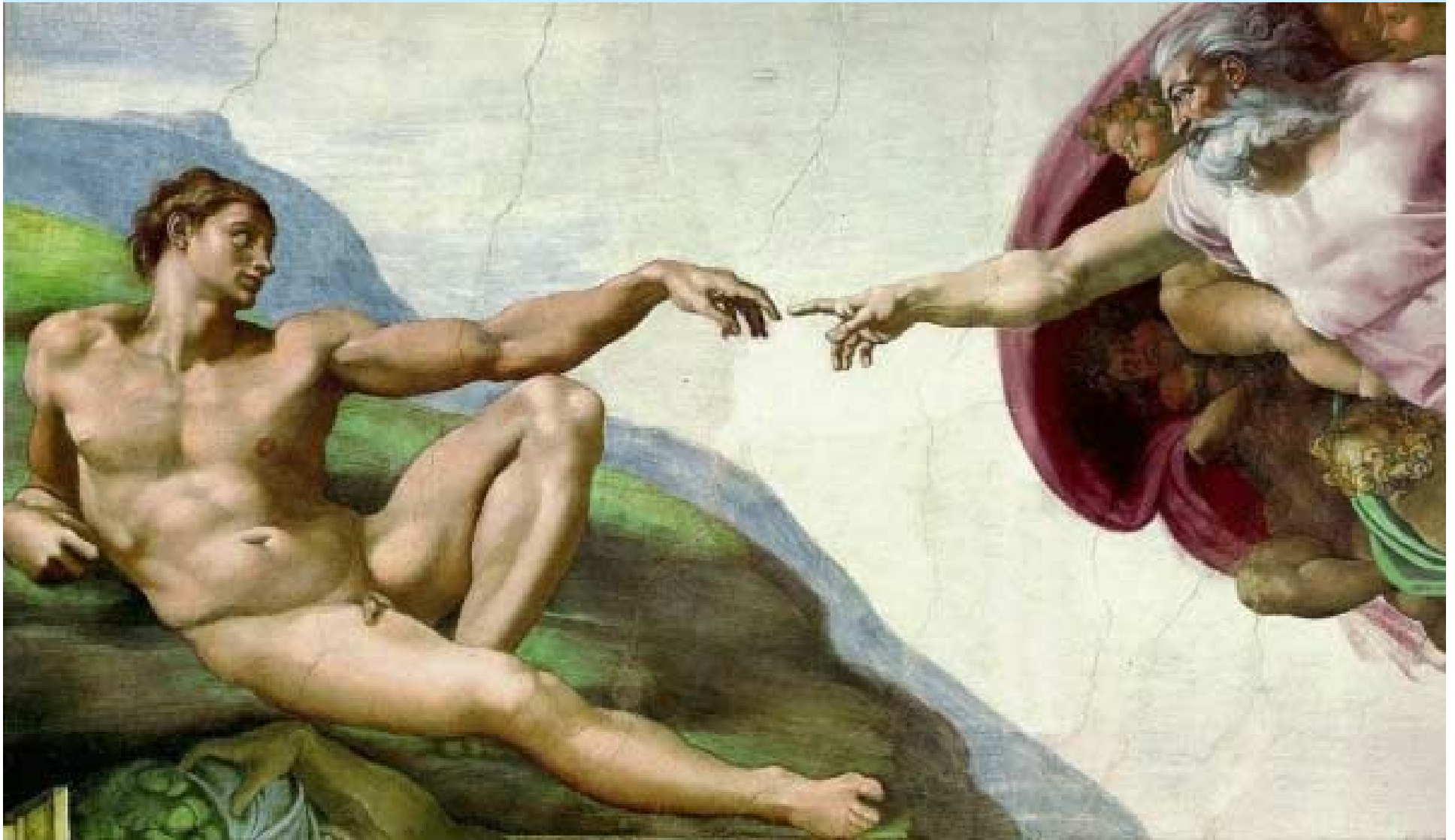
...And Bad News

- There will be a quiz at the end
 - (No joke!)

Goals

- History & context of Accommodations Policy
 - How it got started
 - How it got modified along the way
 - How it ended up
- A Contrarian's view
 - Arguments for and against various versions of the policy

In the Beginning...



Chronology

- Christina Axson-Flynn auditions for Actors Training Program
- Enters Actors Training Program
- Assigned script she considered offensive
- Suit filed
- Suit lost
- Suit appealed to 10th Circuit Court
- Case remanded to lower court for facts
- Young selected but not yet appointed President
- University initiates settlement
 - Agrees to establish accommodation policy
 - \$250K paid (via insurer) to Axson-Flynn's lawyers

Lower Court Ruling Against Axson-Flynn

“Were this a First Amendment violation, then a believer in ‘creationism’ could not be required to discuss and master the theory of evolution in a science class; a neo-Nazi could refuse to discuss, write or consider the Holocaust in a critical manner in a history class. Indeed, a Catholic law student could not be required to make an argument in favor of capital punishment during an in-class exercise designed to enable law students to argue cases they find unsympathetic. Just as it is reasonable for law school faculty to find that such an ability is necessary for competent would-be lawyers, so is it reasonable for an acting program faculty to use such exercises to foster an actor’s ability to take on roles of persons they might find disagreeable.”

10th Circuit Court of Appeals

- Some important principles confirmed
- Case remanded to lower court on issues of fact

Settlement Agreement & The Hound of the Baskervilles

At its core, the case is a dispute about whether the plaintiff student was illegally required to perform classroom exercises that violated or offended her deeply held and sincere religious beliefs. The case involves two separate issues which the Court of Appeals for the Tenth Circuit resolved as follows:

- a. “[The Court] may override an educator’s judgment where the proffered goal or methodology was a sham pretext for an impermissible ulterior motive... [such as religious bias]”
- b. “[W]here a [University’s] facially neutral rule contains a system of individualized exemptions, a state ‘may not refuse to extend that system to cases of ‘religious hardship’ without compelling reason’.”

Agreed:

- Instructors should not proffer legitimate academic goals as a sham pretext for religious bias
- Students should have recourse in cases of “rogue” professors
- But...
- What's missing???

Selected Other Principles Omitted from Settlement Agreement

“...the First Amendment does not require an educator to change the assignment to suit the student's opinion...‘so long as their actions are reasonably related to legitimate pedagogical concerns.’”

- 10th Circuit Court of Appeals

Selected Other Principles Omitted from Settlement Agreement

“...schools also routinely require students to express a viewpoint that is not their own in order to teach the students to think critically:

For example, a college history teacher may demand a paper defending Prohibition, and a law-school professor may assign students to write ‘opinions’ showing how Justices Ginsburg and Scalia would analyze a particular Fourth Amendment question. . . . Such requirements are part of the teachers’ curricular mission to encourage critical thinking (in the hypothetical examples) and to conform to professional norms (in this case).”

- 10th Circuit Court of Appeals

Selected Other Principles Omitted from Settlement Agreement

"students are inevitably required to support the expression of personally offensive viewpoints in ways that cannot be thought constitutionally objectionable unless one is prepared to deny the University its choice over what to teach. . ."

- 10th Circuit Court of Appeals

Selected Other Principles Omitted from Settlement Agreement

"Requiring an acting student, in the context of a classroom exercise, to speak the words of a script as written is **no different than requiring that a law or history student argue a position with which he disagrees.** (13) Both types of restriction on student speech, if not pretextual, can meet the Hazelwood standard...The school's methodology may not be necessary to the achievement of its goals and it may not even be the most effective means of teaching, but it can still be 'reasonably related' to pedagogical concerns. **A more stringent standard would effectively give each student veto power** over curricular requirements, subjecting the curricular decisions of teachers to the whims of what a particular student does or does not feel like learning on a given day. This we decline to do."

- 10th Circuit Court of Appeals

Both highlighted texts will become very relevant!

Selected Other Principles Omitted from Settlement Agreement

“The religious nature of Axson-Flynn's refusal to say the offensive words is not determinative of our disposition of her free speech claim. The Supreme Court has never held that religious speech is entitled to more protection than non-religious speech... (‘Religious speech is speech, entitled to exactly the same protection from government restriction as any other kind of speech--no more and no less.’).”

- 10th Circuit Court of Appeals

Accommodations Policy: November Draft

Instructors are not required to grant content accommodations, as long as the subject course requirement has a reasonable relationship to a legitimate pedagogical goal, but they may do so after considering:

- a. the difficulty of administering an accommodation;
- b the burden on the student's sincerely-held core beliefs;
- c. the importance of the particular requirement to the course;
- d. the availability of reasonable alternative means of satisfying the curricular objective while respecting the student's sincerely-held core beliefs.

In considering whether or not to make an accommodation, the faculty member may evaluate the sincerity but not the validity of the student's belief. If an instructor in a course makes content accommodations for any reason other than those covered under Section II.C of this policy, the instructor must similarly consider requests for accommodations based on conflict with sincerely-held core beliefs.

Framing the Issue

The answer depends on the question

“The central conceptual issue at hand is not one of students' rights vs. faculties' rights, or of academic freedom vs. religious freedom, or of a particular set of religious beliefs vs. another. It would be unfortunate if policy, or our community, were to become polarized along such lines.

Rather, the central issue is what constitutes the appropriate criteria for determining the content of an academic curriculum.

The key guiding principle is straightforward: Curricular decisions should be based on legitimate pedagogical concerns.”

G. Clark, *Salt Lake Tribune*, Dec 12 2005

Framing the Issue

“...as an educator, I do not have the right to alter my courses' academic content, my teaching, or my grading simply to accommodate my personal, non-pedagogical religious or secular beliefs - or the beliefs of others, including students, colleagues and the populace at large.

“This is true irrespective of whether those beliefs are popular or unpopular, whether or not alternatives are available, and whether or not accommodation is mutually agreeable to faculty and student. The proposed accommodations policy violates this central principle.”

G. Clark, *Salt Lake Tribune*, Dec 12 2005

Another (More Practical) Argument Against the Accommodations Policy: The “Chilling Effect”

- Animal rights
- Evolution
- Other

Counter-Arguments in Favor of Policy

- Academic freedom
- Religious freedom
- Distress
- Respect, tolerance, courtesy

Counter-Arguments in Favor of Policy

- Academic freedom vs. integrity

- “Accommodations Policy

- I. INTRODUCTION

- The values held most strongly by the University of Utah community are those of academic freedom and integrity...”

- But notice that these are two valueS. So what should one do when these two values are in conflict?

- There are those who argue that

- “Academic freedom is never in conflict with academic integrity”
 - “Undermining academic freedom in the end always undermines academic integrity” (K. Coles, *Daily Utah Chronicle*, February 8, 2005)

- “Academic freedom” bills

Counter-Arguments in Favor of Policy

- Religious freedom...

"I'm still a very, very strong believer in academic freedom — that faculty members should be able to teach those things they feel are important for the students to know," DeVries said. "But on the other hand, I'm also a strong believer in religious freedom."

Deseret Morning News, Dec 2, 2004

Counter-Arguments in Favor of Policy

- Distress

There are those who argue that students should be allowed to avoid legitimate academic material if it is “distressing”, because otherwise faculty “could never take a risk and could only select readings that were never offensive to students.” Senator Leslie Francis, *Daily Utah Chronicle*, February 8, 2005

Counter-Arguments in Favor of Policy

- Respect, tolerance, courtesy

“I think this policy has a very laudatory objective, which is to be respectful and tolerant of students who have different views or beliefs,’ said Trustee Randy Dryer.”

Daily Utah Chronicle, March 22, 2005

“Young said the U.'s efforts to come up with a policy may be seen as a "vanguard" among institutions trying to create communities where ‘everyone feels welcome.’”

Deseret Morning News, 18 Feb 2005

But...

Counter-Arguments in Favor of Policy

- Respect, tolerance, courtesy?!

"What point is there in an education if it is to be censored and circumscribed at any moment by the demands of students that they be allowed to maintain the views they already have?" asked Jon M. Bauman, a lawyer and adjunct law professor at the University of Idaho College of Law.

U. President Michael K. Young called Bauman's basis for criticism a "willful misreading" of the policy. . . Young added that anyone "stupid enough" to say the policy affords students a "veto" on classroom content and that the document derails the education process, "hardly deserves a response."

Deseret Morning News, 18 Feb 2005

Is *this* how to create a community where "everyone feels welcome"?

Counter-Counter Arguments

Consider if you will a hypothetical policy that would permit instructors to modify grades in exchange for money or sexual favors, or explicitly to advance a student's post-graduate career. Or consider a hypothetical policy that would explicitly permit faculty to deliberately omit selected legitimate information not only from curricula, but also from textbooks and primary research reports, simply and expressly to avoid conflict with personal beliefs.

Would you vote for institutional University sanction of these policies on the oft-cited grounds that:

- The policies would not *require* faculty to engage in such practices, it would only allow them to do so;
- Prohibiting such practices would impinge upon academic freedom;
- Such practices are already occurring at the University, and therefore should be allowed to continue;
- Such practices would probably not occur frequently, and therefore the policy would have little practical effect;
- One could find alternatives to substitute in lieu of the censored information;
- It would be a popular policy with the public?

G. Clark, letter to Academic Senate

Clark Amendment

January Academic Senate Meeting

Revise Section III.B.3. of the proposed Accommodations Policy to state:

...Instructors are not required to grant content accommodations, even when the subject course requirement places a burden on the student's sincerely-held core beliefs, as long as the requirement has a reasonable relationship to a legitimate pedagogical goal.

However, they may grant a content accommodation, as long as the motivation for, and anticipated consequence of, granting the accommodation have a reasonable relationship to a legitimate pedagogical goal, and they have considered:

- a. the difficulty of administering the accommodation;...

Thanks to Senator Jim Martin!

Result of January Senate Meeting

- Clark Amendment defeated
- Debate to be continued at subsequent Senate meeting...

Policy: Post-January Meeting Version

. . . *Instructors are not required to grant content accommodations, as long as the subject course requirement has a reasonable relationship to a legitimate pedagogical goal, but they may do so, only if a reasonable alternative means of satisfying the curricular requirement is available, after considering the following:*

- a. the difficulty of administering an accommodation;
- b. the burden on the student's sincerely-held core beliefs;
- c. the importance of the particular requirement to the course;
- d. [deleted; language inserted in underlined section above]

Date: January 26th, 2005

Saam/Gerton Amendment Proposed (+ Clark & Golic Letters)

“Individualized adjustments to the content of a course based on conflicts with sincerely-held beliefs, or any other reason not covered in Section II.C of this policy, **will not be granted**; *all students within a course must be subject to equivalent course requirements.*”

Ekdale Amendment Proposed

- In Section 4 (first paragraph), after the words “..... but they may do so, only if a reasonable alternative means of satisfying the curricular requirement is available,”
- INSERT the following phrase: “and only if that alternative is fully appropriate for meeting the academic objectives of the course,”

Results of Feb Senate Meeting

- Saam/Gerton amendment fails resoundingly
- Ekdale amendment accepted as “friendly”
- Debate continues till scheduled end of session
- And then...

A “Proud to be a Ute” Moment: The DeVries Tie Break

- General vote taken to extend or end Accommodations Policy debate
- Vote is a tie
- Senate President DeVries votes only in case of tie
- DeVries (apparently) favors approval of policy, which would likely pass, as is, if he votes to end debate, but...
- He extends debate till next session, on grounds that he wants to ensure that everyone’s concerns be adequately addressed
- A fine example of considering, rather than suppressing, viewpoints that may conflict with one’s own beliefs!!

Southern Utah Univ. Takes a Stance

- SUU English Dept. passes “a resolution saying they will not make content accommodations of any sort and will not offer alternative text” (*Daily Utah Chronicle*, March 1, 2005)
- Concerned about trickle-down effect from potential precedent established by UofU
 - “if this [February 9, 2005 version of the] policy is passed, we in the lower tiers will have to follow suit. Consistency throughout the system is a major goal of the Regents.”

New Provision

- Seemingly represents a substantive improvement over previous versions of proposed policy
- But...
- What does the rest of the policy (still) say???

“Disagreement” vs. “Burden”: What’s the Difference?

Not much, if any?

- *“Requiring an acting student, in the context of a classroom exercise, to speak the words of a script as written is NO DIFFERENT than requiring that a law or history student argue a position with which he DISAGREES.”* (10th Circuit Court, emphases added.)
- University Counsel’s explanation: That’s what lawyers love about the language—it’s ambiguous

March Senate Meeting Result

- Policy passes easily
- Policy subsequently & quickly approved by Trustees

Overview

- Policy substantively improved since initial version
- Many policy provisions are correct
- But policy still errs fundamentally in allowing deletion of legitimate academic material simply because it “burdens” or “conflicts with” personal beliefs
- These are not appropriate criteria for altering legitimate course content
 - Much as they are not appropriate criteria for altering:
 - Grades
 - Research results
 - Scholarly or pedagogical publications

Accommodating U

by

Stu Pidenuff

The Daily Utah Chronicle

April 1, 2005

Available at:

<http://www.dailyutahchronicle.com/news/2005/04/01/News/Accommodating.U.New.Policy.Established.For.Grading.And.Research-909864.shtml>

- Distinguishing between fact and fiction has been left as an exercise for the reader
- Hint: Sadly, more true than not
- (Readings of selected passages)

Postscript

There is a perception that agreeing will equal a better grade, and it must be quashed immediately. "If you leave it out there, you will see people parroting back your beliefs," Cassell says.

Naegle was relieved he didn't have to do that in Martinez' courses. He remembers listening to her on the first day of class and thinking "here is more of the same. I'm going to have to write a lot of papers that are pro-choice and pro-women." "I didn't end up having or wanting to, but I did end up actually agreeing with things I thought I'd never agree with before."

Now Naegle considers Martinez' advocacy-filled courses his most educational. "Education should be about seeing other people's point of view and opening new doors," he says. "That should be the most important aspect."

STRIKING A BALANCE

The U of U reflects a variety of views on `objectivity' in teaching- an issue of discussion nationally by *Lori Bona Hunt*