

Comments of the Concerned Alumni On University Assembly Resolution #7

Pursuant to the vote of the University Assembly (UA) seeking public comment on the draft text of UA [Resolution #7](#), the Concerned Alumni, an *ad hoc* group of alumni interested in protecting freedom of expression at Cornell, file these comments.

1. The Right to Protest

The resolution asserts that “right to protest is enshrined in the First Amendment of the United States Constitution, and like other great academic institutions, has been one of the core values of Cornell University since its founding.” (lines 8-10) It also references “the right to protest and demonstrate” (line 27) and “large scale demonstrations and protests, as well as sitting in and speaking out around campus.” (lines 32-33). But the resolution does not define the right to protest. Indeed, the word “protest” does not appear in Cornell’s [core values](#) that is the opening part of the Student Code.

The current [Student Code of Conduct](#) defines the right to protest in the negative as anything that is *not prohibited* such as “Assault or Endangerment”, “Disorderly Conduct”, “Disruption of University Activities”, “Failure to Comply”, “Harassment”, or “Property Damage.” Since each of these is defined very broadly, it does not leave very much in terms of a right to protest.

The [Campus Code of Conduct](#), which the UA had jurisdiction over for the 50 years preceding August 2021, did a much better job of protecting the right to protest and had four pages of text addressing those rights. (Title I, Article III(A) and (B)) However, some students argued that this was too “legalistic” for their liking and are now left with a very crimped “right to protest.”

In addition, the [Henderson Law](#) requires Cornell and all other colleges in New York State to adopt rules for the maintenance of public order that apply equally to students, faculty, staff and guests. So, even if students, faculty and staff gather for a common protest, all are subject to those regulations. Historically, the UA had jurisdiction over the provisions of Cornell’s Rules for the Maintenance of Public Order.

Finally, to the extent that a labor union, or people seeking to organize a labor union, seek to demonstrate, they are protected by provision of the National Labor Relations Act.

A major flaw in the current draft of Resolution #7 is that it is assuming that it is writing on a blank slate, with some future dialog reaching an agreement “where to draw the line” between the right to protest and freedom of expression. However, there are many detailed, legalistic rules and university policies in place which Resolution #7 cannot ignore. Either Resolution #7 explicitly advocates changes or a detailed re-examination, or it implicitly endorses the *status quo*.

For example, Resolution #7 specifically says “sit ins” are a form of protest. Yet, the past “sit ins,” sometimes accompanied by burning of newspapers and/or books, in the middle of the intersection of Tower Road and Feeney Way are not protected, and people who deliberately block traffic are subject to arrest. If Resolution #7 seeks to change that, it should be more clear. Otherwise, it is giving false hope to people considering that form of protest.

Another issue not addressed directly by Resolution #7 is the impact of non-violent protest by a prospective student on being admitted to Cornell. In 2018, Cornell issued a [statement](#), but the UA has not taken a stance on that.

Of relevance to the current debate is whether a “[heckler’s veto](#)” of a speaker lecturing on campus (such as Ann Coulter ‘84) is allowed. The [case law under the First Amendment](#), as well as Cornell policies, protect a speaker’s right to speak as well as the audience’s right to listen. Resolution #7 dances close to this issue without acknowledging the current rules. The resolution properly demands, “efforts by student, faculty, and employee groups to bring the issue of free expression and the right to protest to the forefront demand the support and promotion of our shared governance system and administration;” (lines 35-37). Does that include the efforts to make clear that the “heckler’s veto” has no proper place on the Cornell campus or the efforts to offer a *post hoc* justification for those disruptive actions? Resolution #7 is sending mixed signals.

2. Freedom of Expression

Resolution #7 can be read as a two-fold attack on freedom of expression. This should be corrected before its final adoption.

a. Speaking Out Against Hate

The resolution demands, “any kind of communication that attacks or discriminates against a person or a group based on who they are, such as their race, religion, gender, gender identity, sexual orientation, ethnicity, socioeconomic status, or national origin, always violates our values and Cornell’s Code of Conduct, and should be condemned wherever and whenever it occurs;” (line 39-43). Again, there are time, place and manner restrictions on all speech, including speech reacting to hateful expressions. So, students are not free to disrupt a calculus class to shout a denunciation of Donald Trump’s latest tweet. The idea being expressed in terms of a condemnation of “hate” does not give it a free license to disrupt or exercise the “heckler’s veto.”

This “whereas” is also troubling because there is no time or place connection between the objectionable communication and the subsequent condemnation. So, the Student Assembly recently believed it appropriate to pass a [resolution](#) condemning statements made by President Jacob Gould Shurman in 1899, without a proper understanding of the terminology and context of his remarks. Similarly, Ann Coulter was attacked and prevented from speaking on campus based upon “hateful” remarks made years before and not in response to her current views. Freedom of expression includes the idea of respectful dialog. If you don’t believe that a person has anything useful to say, just avoid attending their lecture. Cornellians should not appoint themselves as the “speech police” to “cancel” the free rights of others “whenever it occurs.”

There must be due process before anyone speaking or protesting can be “held accountable” for the alleged problematic actions. The current Code spells that out, but Resolution #7 would deputize each individual to hold others “accountable” outside any procedures.

b. Thinking for Oneself vs. Cornell-imposed Orthodoxy

The most valuable skill students can learn at Cornell is to think for themselves and for each individual to make their own reasoned judgments on the ideas presented by others. Freedom of expression is designed to protect that – nobody can tell Cornellians what they must think.

Resolution #7 resolves, “the University Assembly wholeheartedly supports efforts to ensure accountability across the Cornell community for speech that violates our values and our Code of Conduct;” (lines 74-76). So, it is saying that if a listener thinks that what a speaker is saying somehow “violates our values,” the listener must hold the speaker accountable for his or her “words.” That implies that there is an enforceable orthodoxy at Cornell. There is not and never has been. The idea of a such orthodoxy, indeed, is contrary to the very ideal of any university and certainly contrary to the ethos of a university promising “any study.”

The faculty has the right to impose graduation requirements, such as the physical education requirement, and students have the right to write letters to the editor of the *Sun* explaining why they hate it. But Cornell cannot hold those students “accountable” for their words. A student should be able to speak contemptuously of the Student Assembly, without being subject to the inquisition that Galileo faced for saying the Sun was the center of the solar system. Resolution #7 assumes that there are a clear set of undebatable “values” which can never be challenged. That contradicts the definition of a university. Further, it assumes that the Code can be enforced in a way that varies with the content of the speech. Under the First Amendment, all regulation of speech must be content-neutral.

Universities have struggled with this problem because their role is to host a community of scholars, who typically never agree. Those debates and disagreements produce scholarship and a search for truth, unconstrained by orthodoxy. In 2019, after extensive discussions, Cornell adopted a [mission statement](#) and [core values](#). How to apply those values or how to make more detailed value judgments on the issue of the day is open for debate. Each member of the community can decide for himself or herself. Day Hall cannot dictate the answers.

The University of Chicago, in 1967, addressed this point by adopting the [Kalven Report](#). In order to avoid infringing upon the free expression and academic freedom of the campus, the University should refrain from adopting an official position on the political and social issues of the day. If the UA wants a meaningful right to protest and freedom of expression, it should also adopt the Kalven Report to make clear that there is no orthodoxy of mandatory views at Cornell.

3. Recommended Actions

- a. Throughout the resolution, change “right to protest” to “right to lawful protest.”**

- b. Reaffirm the Campus Code of Conduct text pertaining to freedom of expression and the scope of protests in Title I Article III(A) and (B).**
- c. Add a resolved clause that the “heckler’s veto” is currently not allowed under the Student Code or under the First Amendment case law.**
- d. Endorse the Kalven Report.**

Respectfully submitted,

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