The Vilification of Nancy Shurtz.docx

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I don’t know Oregon law professor Nancy Shurtz. But I do know that no American law professor at this point in time would knowingly or intentionally use racist language or dress up in “blackface” as a demonstration of personal racial bias against Americans of African ancestry. I believe her when she says what she was doing was intended as the opposite of racial disparagement and that it represented her intention to bring out to colleagues at a social gathering the continuing discrimination and denial of opportunity that blacks in America still disproportionately suffer. Professor Shurtz’s attempted message about the continuing effects of racial discrimination obviously fell flat.

Perhaps, unlike most law professors, Shurtz’s social skills need work. After all, she teaches tax and we know that many tax faculty members tend to be a bit “different”. One thing I have no difficulty concluding, however, is that while her execution wasn’t the smartest thing to do, her intentions were good (and perhaps even noble). I also have no doubt that given the attacks on her professional and personal character by some extremely vocal and hyper-sensitive law students, by the “usual suspects” who feed on accusations of racial bias, and by “trusted colleagues” at the law school and in the University of Oregon’s administration bleating about “sensitivity”, “inclusiveness”, “offensiveness” and the like that Nancy Shurtz has been dehumanized and objectified to such a degree that she must feel she is traveling the “road to Hell” regardless of her intentions.

Perhaps the only good thing out of this mess is that if the University of Oregon’s law school were in Salem rather than Eugene, the response by the “community” condemning Shurtz might have been even more tragic. As it is, what appears to have been a good faith but misguided attempt on her part to advance racial awareness has been turned into an emotionally traumatic anti-Shurtz “witch hunt” in which “the mob” has threatened her career and her personally given the climate of violent condemnation and threats sweeping America. Our inability to talk, discuss, understand, refrain from attributing the worst intentions and motives to our actions is, if you will forgive the potentially politically incorrect mode of my expression, insane. It is evidence of emotional instability on the part of the members of the upwelling “collectives” that have figuratively tied Nancy Shurtz to the stake and piled kindling about her. I want to say this behavior has got to stop but unfortunately I have little doubt it will get even worse.

My position is this. Granting any political faction the power of the State—whether formal or informal or through the rules of a university such as in Oregon—in ways that allow a special interest group to intimidate, shape and suppress speech because it subjectively offends, purportedly makes someone “feel bad”, supposedly incites others to violence, or is simply rude or “insensitive” is a corruption of Western democracy and the principle that freedom of speech is a core element of the civil discourse that strengthens the overall system through new ideas and the airing of grievances.

As tragically demonstrated by the situation at the University of Oregon, our so-called social discourse about truly fundamental issues such as race has become dehumanizing, paranoid
and malicious. Any word or action that can possibly be used as a means to gain and exercise power is now seen as a weapon by groups who may well have real grievances but are applying “ends justify the means” strategies that allow them to use innocent human beings as nothing more than “things” to advance their agendas. The vilification of an individual such as Nancy Shurtz, who may have done something well-intentioned but a bit unwise in the politically intolerant culture we now inhabit, particularly in an ultraliberal academic culture whose members are professional critics capable of “reading” others’ minds and the underlying intentions of their behavior, is a witch hunt.

The unbalanced and highly politicized use of the power to accuse and condemn creates divisiveness, tribalism and social aggressiveness. On the scale and with the intensity it is now occurring this behavior destroys the ability of individuals to trust, learn from each other and compromise. Little wonder that American society has devolved to its current state or that the strategies that rely on accusations of “hate”, “insult”, and “insensitivity” have produced a society in which hate has intensified, insult is seen everywhere, and insensitivity and discourtesy abound.

I, for one, am “offended” [but no one cares] by the claims that essentially say that: “all white males are the source of all evil in the world wherever found”. This assertion seems to paint reality with a “slightly” too large brush. Yet some variation on this theme can be found in many places including what seems to be a new movement attacking males as “toxic” beings in need of being “re-engineered”. Note that I didn’t even bother to mention the amusing episode in which a member of a university faculty indicated that all he wanted for Christmas was “a white genocide”.

One problem is that while America prides itself on its diversity its social order has devolved into sects and tribes. These identity groups aren’t trying to communicate but are seeking to dominate by obtaining or preserving power and obtaining desired allocations of social goods and benefits. The fact that we lack the ability and willingness to talk with each other is unsurprising. Jung warned that: “Rational argument can be conducted with some prospect of success only so long as the emotionality of a given situation does not exceed a certain critical degree. If the affective temperature rises above this level, the possibility of reason’s having any effect ceases and its place is taken by slogans and chimerical wish-fantasies.”

This “emotionality” and high “affective temperature” is what we are witnessing in the strange and unfortunate case of Nancy Shurtz. She has become a “human voodoo doll” stuck with the “pins and needles” of those who benefit from the attacks whether by increasing their access to power or through demonstrating that they are “socially virtuous”.

As Jung suggests, it has always been extremely difficult to have fully rational or honest discourse in a complex community. Emotions, ignorance, bias and self-interest all erect barriers to discourse and they are barriers we seldom if ever transcend in any matter of consequence. It may be impossible to have real discourse because the deep value systems on which our individually chosen systems of ultimate truth are grounded are not

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1 C.G. Jung, *The Undiscovered Self* 12, 13 (Mentor 1957). Translated from the German by R.F.C. Hull.
themselves rational and we tend to hold them in separated self-contained clusters that allow us to behave hypocritically while being unaware of that fact. In *The Folklore of Capitalism* Thurman Arnold wrote: “[H]ow do men actually choose … creeds? The answer is that they do not choose them. Men become bound by loyalties and enthusiasms to existing organizations. If they are successful in obtaining prestige and security from these organizations, they come to regard them as the ultimate in spiritual and moral perfection. This attitude is necessary for the morale of these institutions.”

One of the hardest questions to answer in the face of such a dynamic is--if honest discourse is not possible do we fight to keep that unachievable ideal or restructure the community to reflect the new reality of group politics? This dilemma is at the core of our current struggle over language and behavior. This conflict is a vital one for universities, academics, intellectuals and political leaders. Unfortunately, it can only be dealt with through confrontation and resistance.

The invention of “hate speech” has been one of the most disastrous developments of our recent history and among the most divisive. The problem we are experiencing is that in virtually any situation where someone disagrees with a faction’s or sect’s interests or world view, we immediately hear that the person is a “hater” or “hates” or has seriously “offended” some vulnerable person’s sensitivities and must be “done away with”. This includes being fired from one’s job or seeing their livelihood or career destroyed as people are attempting to do with Nancy Shurtz.

Peter Drucker described what is happening as the “new realities” of an increasingly pluralist democracy. He explains that: “The new pluralism … focuses on power. It is a pluralism of single-cause, single-interest groups—the “mass movements” of small but highly disciplined minorities. Each of them tries to obtain through power what it could not obtain through numbers or through persuasion. Each is exclusively political.” Forcing others to operate within their linguistic and behavioral agenda and therefore being shaped into that identity construct and set of dominant values and way of perceiving the world is at the core of the strategies.

Truth is not of much consequence in this “strange new world” of propaganda and ideological struggle. In the *Yale Journal of Law and the Humanities* Stuart Alan Clarke remarked that when Patricia Williams was challenged on the accuracy of personal victimization stories when teaching at Stanford that Williams took refuge “in the shadow of Tawana Brawley.” Brawley concocted a story of being sexually assaulted by police that was subsequently disproved even to the point that a very substantial jury award for damages was made against her for her lies. Clarke describes that Williams wrote: “When students … believed and then claimed that I had made… up [her personal victimization stories], they put me in a position like that of Tawana Brawley.” Indeed, Brawley, whom Williams beatifies as the patron saint of victimized black women, is the perfect symbol of the movement: as Brawley’s supporters on the radical left would have it, *it didn’t matter if her*

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story of racial brutalization wasn’t actually true, because it could have happened that way.” If Nancy Shurtz did not intend her “blackface” presentation as racial bias it doesn’t matter because “she could have intended the act the way she has been accused of portraying”. Shurtz then provides a useful, and intimidating, object lesson warning all university faculty members everywhere that they are under the control of any appropriately positioned identity group and had better be certain not to give offense no matter how “micro” or well intentioned it might be.

Social Re-Engineering Through Language Control

The “social re-engineering” of the human through an almost Pavlovian control of language and behavior is being done through a wide-ranging variety of techniques. These include outright criminalization of speech, interpretations of civil and regulatory laws consistent with the disfavored speech that consider language as a verbal act, media-driven “political correctness” in which stories are being selected and slanted to create subjective impressions, and organized strategies by aggressive special interest and identity groups. A critical element in what is occurring involves the transfer to private identity groups of the subjective unilateral ability to condemn and sanction disfavored speech. This variation can be termed the “privatization” of the power of “linguistic cleansing”. This is occurring both through large-scale and coordinated use of the Internet and through special rules created by government that confer what is in essence “public” power on the groups.

A common tactic of the identity groups is to react venomously to any speech considered within their particular subjective perspective to be “offensive”, insulting, insensitive, or “phobic” or that simply challenges their views and agendas. The quite unpleasant reality is that in many ways there is a close similarity between the practitioners of “linguistic cleansing” of both the Left and Right and the behavior of fanatics. Gabriel Marcel warns of the improbability of having effective discourse in a politically polarized environment. “The ... fanatic never sees himself as a fanatic; it is only the non-fanatic who can recognize him as a fanatic; so that when this judgment, or this accusation, is made the fanatic can always say that he is misunderstood and slandered.”

Taken together these strategies have coalesced into the large scale “privatization” of speech repression. This occurs even though much of the strategy is only made possible through use of the Internet as a vehicle functioning through public airways in much the same way as radio and television broadcasts that are subject to regulation. This Internet-based organization and vilification is done through a combination of intimidation, propaganda and “linguistic cleansing” to eliminate words, phrases and even concepts from ordinary discourse by rendering them “taboo”. In Propaganda, Ellul reminds us: “A stereotype is a seeming value judgment, acquired by belonging to a group, without any intellectual labor....

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The stereotype arises from feelings one has for one’s own group, or against the “out-group.” Man attaches himself passionately to the values represented by his group and rejects the cliches of the out-groups.... The stereotype, ... helps man to avoid thinking, to take a personal position, to form his own opinion.”

The ability to organize, mobilize, intimidate, condemn and sanction has been changed in its fundamental character by the scale, comprehensiveness and intensity of what has come into being through the communications and organizational mechanism of the Internet. Just as so many are now recoiling from the vast expansion in surveillance powers of governments that has resulted from the combination of the Internet and information acquisition and management technologies, a shift has also occurred in the empowerment of special interest and identity groups to wield its power to intimidate and punish.

The “Hate Strategy” and a Host of “New Taboos”

The concern over whether subjective taboos or “civility rules” help or hinder was the subject of an analysis in The Detroit News, “Losing Liberty: First Amendment: Rules Stifling Free Speech Damage Democracy.” The conclusions offered were that: “Activists have ... exploited exceptions to the First Amendment to silence voices counter to their ideology. And they have persuaded universities to impose drastic speech codes on students and faculty, turning institutions that were supposed to be bastions of free speech into enclaves of repressed speech.” The analysis continued: “For example, the harassment policy of New York's Bard College forbids conduct that 'causes embarrassment, discomfort, or injury to other individuals or the community.' In essence, the contrived right not to be offended is trumping the expressed right to free speech, the crown jewel of the Constitution. Instead of being places where even the most obnoxious ideas are dissected and debated, college campuses now are cloaked in self-imposed silence.”

The inherent power of the “hate strategy” is that accusations of being “phobic” or bigoted are not disprovable. They produce an emotional response as if the targeted person was a rabid dog that ought to be “put down” or is afflicted with a communicable disease that requires perpetual quarantine. Such charges are used to sanction anyone who questions the motives or arguments of the special interest group. Or the situation may be one where the unfortunate accused may simply be perceived as in the way of the accusers’ path to power. “All’s fair in love or war” and many of the ideologically-driven identity groups see the struggles within modern society as a sort of guerrilla war in which the end justifies nearly any strategy and tactic, including the sacrifice of an innocent.

The power to condemn has been demonstrated in university speech codes that reflect academics’ agreement with the suppression of open discourse. It is also, quite troublingly

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6 Jacques Ellul, Propaganda 57 (1965).
seen by identity collectives as a one-way street in which scathing criticism and accusations flow only in one direction. Peter Suber suggests that it is important not to allow discourse to be subordinated to repression and speech codes, even while acknowledging that some restrictions on the deliberately harmful speech are possible.

Suber offers: “If this book, or that epithet, or that photograph, offends me, should we punish the offender? The question arises because everyone is offended by something, and offense hurts. [Suber adds] But the absurdity of treating offended sensibilities as true injuries is shown by the converse fact: that anything will offend someone. None of us could teach anything if an offended student sufficed to stop us. No professor of literature could assign Salman Rushdie’s Satanic Verses, or even Huckleberry Finn. No religion professor could assign any book of the Bible. No biology professor could teach evolution. Even if we could find pabulum that would pass the no-offense test, we would eviscerate our mission to fill our curriculum with it.”

The problem is that control of language for political advantage is about dominance, not discourse. We see this in carefully designed “framings” such as “freedom of choice” v. “right to life”. It arises in the terms such as “homophobia”, “sexism”, “racism”, “Islamophobia”, and much, much more including according to something I just read, “Lesbophobia”. After all, if I am a “phobe” of one sort or another it is a sign of prejudice, irrationality, dark motivations or worse. Being labeled as such is something from which we emotionally recoil.

We now live in an historical moment that has so many linguistic taboos that we walk through a verbal “minefield” if we attempt to have honest discussion in any situation of conflicted politicized dispute. A prescient Albert Schweitzer argued several decades ago: “The past has, no doubt, seen the struggle of the free-thinking individual against the fettered spirit of a whole society, but the problem has never presented itself on the scale on which it does to-day, because the fettering of the collective spirit ... by modern organizations, [by] modern unreflectiveness, and [by] modern popular passions, is a phenomenon without precedent in history.” Of course the “fighters” on either side really do not want reasoned dialogue because that might dilute their power. It is now all about dominance of discourse and “shaming” as opposed to an actual “can we talk about this” interaction.

The “Argument Culture”

Rarely has the situation prevailing among politicians, academics and intellectuals in Western society been put more clearly than by Deborah Tannen. She describes what has developed as a “culture of argument” in which we approach public dialogue as a fight.

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9 Peter Suber, in “Unsimplifying Political Correctness: When the Right and Left are Right and Wrong,”


Tannen explains what helped her reach this insight. During a conference she asked a writer who she felt had clearly misrepresented Tannen’s work: “Why do you need to make others wrong for you to be right?” 13 Her critic’s response: “It’s an argument!” This caused Tannen to realize that her opponent was engaged in something other than reasoned discourse and that everything was a fight in which anything goes. 14

This confrontational mindset has dominated our “debates” for more than a decade and is becoming worse. One consequence is that our leaders, political representatives and even our teachers have become ideologues who aren’t even aware of their behavior because it is all they know. The recent 2016 presidential debates provided a crystalline view of what we have become. Whether we are considering the pre-nomination interactions or the final Trump/Clinton interactions what we experienced were sound bites, sarcasm, “one ups”, lies and misrepresentations, put downs and insults, and the so-called debate moderators weren’t much better. I am convinced they really don’t know any better and that as an overall society neither do we.

At this point our political, intellectual and moral guides, mentors and leaders do not even know how to produce evidentiary content or offer rational justifications for their positions. This is due to seeing every interaction as a conflict in which someone offers a fixed ideological position voiced as an inevitable conclusion with which others would be idiots or mean-spirited bigots if they dared to disagree. Of course, those who do not disagree respond from behind the barriers of their own ideological rigidity and condemn the others as irrational, Leftist, “Pinko”, “Tea Party” morons, Right wing, Fundamentalist, Atheist, Racist, Greedy, Capitalists, Socialist and so forth. We are left with nothing but vitriolic argumentation without substance. This, I think, is where Nancy Shurtz went wrong. She was attempting to generate true understanding and thoughtfulness in a context where no one is interested or willing to have their positions and ideologies questioned—even by themselves.

This transformation to a culture of continual ideological argumentation rather than reasoned discourse based on evidence changes the way people communicate. It justifies the use of partial truths, mistruths, exaggeration and propaganda, and blocks the exchange of real ideas and workable solutions based on evidence. As Tannen observes: “[w]hen you’re having an argument with someone, your goal is not to listen and understand. Instead, you use every tactic you can think of—including distorting what your opponent just said—in order to win the argument.” 15 She concludes: “In the argument culture, criticism, attack, or opposition are the predominant if not the only ways of responding to people or ideas.”16

The argument culture is a culture of the advocate and propagandist. It is the context through which we have been attempting to renegotiate the terms of a new social contract

13 Tannen, Argument Culture, id.
14 Tannen, Argument Culture, id.
15 Tannen, Argument Culture, id, at 5.
16 Tannen, Argument Culture, supra, n., at 7.
over the last twenty years or so. The ongoing conflict pervades American society, with the behavior being one in which: “As each group exalted its own authenticity, it defined its adversary’s values as indecent, stupid, obscene, or ... evil.” Even worse, as with Nancy Shurtz, behavior or speech can be misinterpreted to serve an identity group’s interests regardless of the truth of the situation and the harm to an innocent person used for political purposes as a “thing”.

Ayn Rand once described her conception of the social responsibility of the intellectual. She states that: “The intellectual is the eyes, ears and voice of a free society: it is [the intellectual’s] job to observe the events of the world, to evaluate their meaning and to inform the men in all the other fields. A free society has to be an informed society.” Rand added: “The more specialized and diversified a society, the greater its need for the integrating power of knowledge; but the acquisition of knowledge on so wide a scale is a full-time profession. A free society has to count on the honor of its intellectuals: it has to expect them to be as efficient, reliable, precise and objective as the printing presses and the television sets that carry their voices.”

Anyone who thinks that the above ideal actually describes how American university academics behave is engaging in self-deception. Instead of the balance and objectivity Rand urges, we [“intellectuals”, media, academics, politicians, activists] have degenerated into “throwers” of polemic, accusation and propaganda. We have become propagandists, ideologues, demagogues and zealots. Propaganda has been defined as the deliberate spreading of “information, ideas, or rumors” “to help a person, group, [or] movement.” An ideologue is one who “zealously advocates an ideology” and a demagogue is a “person ... who gains power and popularity by arousing the emotions, passions, and prejudices of the people.” This is who we are and what we have become. Nancy Shurtz is caught in the grinding gears of a propaganda machine and, as disgusting and unfair as that is, it is only one example of a mindless intolerance that now permeates our society, including universities that were thought to be the defenders of truth.

17 Strauss and Howe, The Fourth Turning. id.
18 Ayn Rand, For the New Intellectual 26 (Signet 1961).
19 Rand, For the New Intellectual 27, id.