AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 9: Liberalism Divided—Democratic Rights/Free Speech/Public Property, Subsidies, Employers, and Schools

**Papish v. Board of Curators of the University of Missouri, 410 U.S. 667 (1973)**

*Barbara Papish was a 32-year-old graduate student in the journalism program at the University of Missouri. She was in her sixth year in the program and on both academic and disciplinary probation, when she was expelled for distributing on campus an issue of the newspaper, the* Free Press Underground*. The newspaper was an approved student publication, but this issue included a political cartoon on the front cover depicting a police officer raping the Statue of Liberty and an article with the headline spelling out Motherf\*\*\*\*er Acquitted,” which reported on the assault trial of a New York City youth who belonged to an organization known as “Up Against the Wall, Motherf\*\*\*\*er.”*

*The student conduct committee conducted a hearing and found that Papish had violated a campus requirement that students “observe generally accepted standards of conduct” and that prohibited “indecent conduct or speech.” She filed suit in federal district court claiming that her expulsion violated her First Amendment rights, but the trial court and circuit court denied her relief. The U.S. Supreme Court reversed in a 6-3 decision, noting that the circuit court had ruled prior to Court’s decision in* Healy v. James *(1972), which emphasized the scope of First Amendment protections on the campuses of state universities. The dissenters thought it was inappropriate for university disciplinary rules to be held to the same requirements as the criminal law and would have given universities greater leeway to enforce codes of decorum on a college campus.*

PER CURIAM.

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. . . . We think Healy makes it clear that the mere dissemination of ideas -- no matter how offensive to good taste -- on a state university campus may not be shut off in the name alone of "conventions of decency." Other recent precedents of this Court make it equally clear that neither the political cartoon nor the headline story involved in this case can be labeled as constitutionally obscene or otherwise unprotected. *Gooding v. Wilson* (1972); *Cohen v. California* (1971). There is language in the opinions below which suggests that the University's action here could be viewed as an exercise of its legitimate authority to enforce reasonable regulations as to the time, place, and manner of speech and its dissemination. While we have repeatedly approved such regulatory authority, the facts set forth in the opinions below show clearly that petitioner was expelled because of the disapproved content of the newspaper, rather than the time, place, or manner of its distribution.

Since the First Amendment leaves no room for the operation of a dual standard in the academic community with respect to the content of speech, and because the state University's action here cannot be justified as a nondiscriminatory application of reasonable rules governing conduct, the judgments of the courts below must be reversed. . . .

CHIEF JUSTICE BURGER, dissenting.

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The present case is clearly distinguishable from the Court's prior holdings in Cohen, Gooding, and Rosenfeld v. New Jersey (1972), as erroneous as those holdings are. Cohen, Gooding, and Rosenfeld dealt with prosecutions under criminal statutes which allowed the imposition of severe penalties. Unlike such traditional First Amendment cases, we deal here with rules which govern conduct on the campus of a state university.

In theory, at least, a university is not merely an arena for the discussion of ideas by students and faculty; it is also an institution where individuals learn to express themselves in acceptable, civil terms. We provide that environment to the end that students may learn the self-restraint necessary to the functioning of a civilized society and understand the need for those external restraints to which we must all submit if group existence is to be tolerable.

I find it a curious--even bizarre -- extension of Cohen, Gooding, and Rosenfeld to say that a state university is impotent to deal with conduct such as that of the petitioner. Students are, of course, free to criticize the university, its faculty, or the Government in vigorous, or even harsh, terms. But it is not unreasonable or violative of the Constitution to subject to disciplinary action those individuals who distribute publications which are at the same time obscene and infantile. To preclude a state university or college from regulating the distribution of such obscene materials does not protect the values inherent in the First Amendment; rather, it demeans those values. The anomaly of the Court's holding today is suggested by its use of the now familiar "code" abbreviation for the petitioner's foul language.

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JUSTICE REHNQUIST, with whom the CHIEF JUSTICE and JUSTICE BLACKMUN join, dissenting.

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I continue to adhere to the dissenting views expressed in Rosenfeld v. New Jersey (1972), that the public use of the word "M\_\_\_f\_\_\_" is "lewd and obscene" as those terms were used by the Court in Chaplinsky v. New Hampshire (1942). There, the Court said:

"There are certain well defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words -- those which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."

But even were I convinced of the correctness of the Court's disposition of Rosenfeld, I would not think it should control the outcome of this case. It simply does not follow under any of our decisions or from the language of the First Amendment itself that, because petitioner could not be criminally prosecuted by the Missouri state courts for the conduct in question, she may not therefore be expelled from the University of Missouri for the same conduct. A state university is an establishment for the purpose of educating the State's young people, supported by the tax revenues of the State's citizens. The notion that the officials lawfully charged with the governance of the university have so little control over the environment for which they are responsible that they may not prevent the public distribution of a newspaper on campus which contained the language described in the Court's opinion is quite unacceptable to me, and I would suspect would have been equally unacceptable to the Framers of the First Amendment. This is indeed a case where the observation of a unanimous Court in Chaplinsky that

"such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality"

applies with compelling force.

The Court cautions that "disenchantment with Miss Papish's performance, understandable as it may have been, is no justification for denial of constitutional rights." Quite so. But a wooden insistence on equating, for constitutional purposes, the authority of the State to criminally punish with its authority to exercise even a modicum of control over the university which it operates, serves neither the Constitution nor public education well. There is reason to think that the "disenchantment" of which the Court speaks may, after this decision, become widespread among taxpayers and legislators. The system of tax supported public universities which has grown up in this country is one of its truly great accomplishments; if they are to continue to grow and thrive to serve an expanding population, they must have something more than the grudging support of taxpayers and legislators. But one can scarcely blame the latter if, told by the Court that their only function is to supply tax money for the operation of the university, the "disenchantment" may reach such a point that they doubt the game is worth the candle.