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1. Introduction

I found Wein's paper extremely interesting, and much of it, in particular his remarks on the implications of nudges and bumps for individual autonomy, I found convincing and enlightening. Here my focus will be on two topics: an account Wein gives of a zero tolerance policy, and his draft of a sample query list.

2. Zero tolerance

A zero tolerance policy, as understood by Wein, is

> [e]ssentially … a plan for dealing with an alleged social problem. And it is a plan that, by its very nature, displays two things: (a) the sense that the problem being confronted is a serious one that needs firm and perhaps radical measures to handle it adequately, and (b) that there is a substantial lack of trust in those who … are charged with the care of the community to remedy the matter by more normal, less draconian, means. (Wein, pp. 5-6)

I want to consider these claims by reference to a particular case. The University of Toronto has a *Code of Behaviour on Academic Matters* which says that "[t]he University and its members have a responsibility to ensure that a climate which might encourage, or conditions which might enable, cheating, misrepresentation or unfairness not be tolerated" (CBAM, p. 2). The *Code* lists actions which it is an offence for a student knowingly to perform, and actions which it is an offence for a faculty member knowingly to perform, where the latter include approving any action which it is an offence for a student knowingly to perform. When a student commits an offence, the division of the University in which the student is registered has jurisdiction in the matter. The largest division of the University of Toronto is the Faculty of Arts & Science, and it has an Office of Student Academic Integrity. The Office's website includes a page which says that "[i]nstructors and staff play a key role in the promotion and preservation of academic integrity at U of T" (OSAI); the page lists several ways in which, it says, "you" (the instructor or staff member) "can assist with this goal" (*ibid.*). One of these ways is to educate students as to the nature of academic offences and the protocols they must follow to avoid committing offences such as plagiarism. In addition, the Office provides information, based on the

Code, about the procedures instructors must follow if they suspect a student of having committed an academic offence. These procedures include interviewing the student; if the student doesn't admit the offence, and if the instructor nevertheless believes the student committed the offence, then, if the offence involves an assignment worth more than 10% of the final grade, the matter must be referred to the Office. The Office interviews the student, and if it finds the student guilty it imposes a sanction, which may be severe – for example, a grade of zero on the assignment and a transcript notation. The student has a right to appeal to the University's Academic Tribunal, and may retain legal counsel.

Clearly, then, the University of Toronto has a policy on academic offences. Broadly interpreted, the policy comprises the University's *Code of Behaviour on Academic Matters* and related divisional documents, including those of the Arts & Science Office of Student Academic Integrity. The policy contains what may reasonably be called a "plan" for dealing with the problem of student academic misconduct. There is no doubt that the plan displays the first of the two characteristics of a zero tolerance plan as described by Wein, namely "the sense that the problem being confronted is a serious one that needs firm and perhaps radical measures to handle it adequately." But does the plan display "a substantial lack of trust" in faculty members to remedy student academic misconduct by means less draconian than the use of zero tolerance sanctions? The plan permits the use of sanctions that vary in severity depending on the offence. The question, then, is whether the plan displays a substantial lack of trust in faculty members to remedy student academic misconduct by permissible means less severe than the most draconian means. Clearly it does not. Rather, Arts & Science faculty are told that they have "a key role" to play in promoting and preserving student academic integrity, and they are entrusted with responsibility to try to prevent student academic misconduct and to assist in sanctioning and remedying it, when it occurs, by following procedures that apply to every U of T instructor.

Wein might well say that the proper conclusion to draw from all of this is that the University of Toronto's policy on academic offences isn't a policy of zero tolerance. I would agree that, by his account of such a policy, it isn't. But I think this fact counts against his account, because the University's policy unconditionally prohibits academic conduct that it calls an offence; it doesn't tolerate such conduct, and so by this measure it's a zero tolerance policy.

3. Sample query list

Wein says that "some people in positions of authority have a bias towards adopting zero tolerance policies" (Wein, p. 6) when they haven't thought the matter out. "What is needed is a device for getting them to consider the many factors involved" (*ibid.*), and a query list is such a device.

In an appendix, Wein provides a draft of a "[s]ample query list (to be used by school principals prior to introducing a zero tolerance policy for drugs into their school)" (*ibid.*, p. 9). This wording suggests that the principals have already decided to introduce such a policy, but the first query on the list suggests otherwise; it says: "Briefly explain what prompts you to be *considering* a zero tolerance policy" (*ibid.*; italics added). Thus, query 1 envisages circumstances in which the principal concerned hasn't decided to introduce a policy of zero tolerance. But several other queries appear to point in the

opposite direction. For example, query 4 notes that under a zero tolerance policy the principal wouldn't have "any discretion regarding whether to go ahead and penalize a student found to have violated the rule," and says: "explain why you, as it were, wish to tie yourself to the mast regarding potential future cases" (*ibid*.). But if the principal is simply *considering* whether to adopt a zero tolerance policy on drugs, she doesn't necessarily have this wish.

      An obvious solution would be to revise query 1 as follows: Briefly explain what prompts you to be introducing a zero tolerance policy. So revised, query 1 would be congruent with the queries that apparently assume the principal has already decided to introduce a policy of this sort (queries 4, 7, 8). But a congruence issue would remain because in section 5 of his paper Wein says that his appendix draft query list is for "school principals *thinking* of adopting a zero tolerance policy for those who bring drugs onto a secondary school campus" (*ibid*., p. 7; italics added). In view of this and similar section 5 remarks, I believe Wein would do well to revise those queries on the list which apparently imply that the principals have already decided to introduce a policy of zero tolerance.

      Wein might reply that the list doesn't need revising because it's particularly intended for use by authority figures with a bias towards adopting zero tolerance policies, and a biased principal might have precisely the zero tolerance attitudes she would have if she had already decided to introduce such a policy. In response, I would say that the draft query list, revised as suggested, might prompt such a principal to examine those attitudes as if she were, as yet, simply considering adopting a zero tolerance policy.

      The draft list requires a principal to state or describe or explain various things. Thus, an audience is assumed. What is its membership? Perhaps just the principal: she asks herself the listed questions, and answers them. A different possibility is that the audience comprises the teachers, or some of the teachers, in the principal's school. As the query list now stands, there would then appear to be indications that the principal is providing the teachers with an *ex post facto* explanation or justification of his or her decision to introduce a zero tolerance policy. But a very different scenario will come to mind if the draft query list is revised to square with the query-list section of Wein's paper. In this scenario, the principal and the teachers are engaged in an exploratory discussion with a view to deciding whether or not, all things considered, the school should introduce a zero tolerance policy on drugs. A scenario of this sort can readily be related to the theme of the OSSA 11 conference. The participants in the discussion would presumably present arguments in support of their respective views, and so would engage in argumentation. A participant who appeared to have prejudged the issue would hear the other side, or be challenged, and this would be in the interests of objectivity, understood as requiring an open-minded consideration of relevant factors in the case at hand; prejudgment, in contrast, would be bias in a sense akin to prejudice. Argumentation of this sort would surely be, in Wein's words, "a good way to encourage thinking about viable alternative[s]" (*ibid*., p. 7) to a zero tolerance policy, and it might get people in positions of authority, in this case principals, to do precisely what Wein wants them to do, namely "consider the many factors involved [in zero tolerance policies] and reflect on every aspect of the policy they are considering" (*ibid*., p. 6).

References

CBAM (1995). *University of Toronto Code of Behaviour on Academic Matters*.
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