COMMENTARY

# Hate Speech on Campus

## Reframing the Discourse

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College campuses have long grappled with the question of allowing controversial speakers on campus. In the half-century since the Free Speech Movement at Berkeley, such events have become a fairly typical aspect of campus life. In recent years, however, increasingly divisive public figures have been invited—and, on occasion, disinvited. Being "deplatformed" has become a badge of honor for public figures like Ben Shapiro, Ann Coulter, and Milo Yiannapolous.

At the same time, there have been increasing incidents of overt hate speech on campus. Swastikas are painted, drawn, carved, or otherwise emblazoned on public spaces (Kimmelman 2018; Rothberg 2018). Signs abruptly appear around campus declaring that "It's okay to be white" and imploring students to "prevent white minority" (Ross 2017; Stoiber 2018). And of course, white supremacists gathered in a "Unite the Right" rally on the University of Virginia campus in Charlottesville. These explicitly hateful events dovetail with the rhetoric of deliberately provocative alt-right speakers like Yiannapolous (Thornberry 2016) and Coulter (Bear 2018). Moderate and left-leaning advocates of free speech—not to mention college administrators—have thus been confronted with a dilemma. Should hateful speech be banned from college campuses? If so, under what circumstances?

As with any contentious topic, much depends on how one defines the terms. The primary term in this case, "hate speech," is notoriously difficult to pin down. It has been defined a number of different ways, but most commonly as "that which offends or insults a group along racial, ethnic, national, religious, gender, or sexual identity lines" (Lawrence 2017, 16). Robert Labaree (1994, 372) defines it similarly, as "anti-minority or sexist speech, or expressions containing racial, ethnic, religious, or

sexually oriented words intended to insult or demean an individual or group."

Advocates often correctly point out that individuals' right to free speech should not be restricted simply because it "offends or insults." Nadine Strossen (1990, 488) argues forcefully that "educational institutions should be bastions of equal opportunity and unrestricted exchange." On public college campuses, in particular, the First Amendment is typically invoked in defense of the individual's right to speak. Labaree (1994, 374) claims that "most university hate speech policies, to one degree or another, violate the First Amendment right to freedom of speech." Erwin Chemerinsky (2009, 770) puts the issue even more starkly, stating that

> speakers generally have the right to go on to any public university campus and proclaim the most vile racist or homophobic or anti-Semitic ideas. Any attempt to silence or punish them based on the content of their message would infringe upon the First Amendment.

The principled stance, even for individual members of those segments of the population targeted by hate speech, has been defined as support for greater individual freedom to speak. Civil libertarians such as Strossen regard virtually unlimited free speech as fundamental to the promotion of other rights and liberties, which in their view is inextricable from the struggle against social inequality. "Combating . . . discrimination and protecting free speech should be viewed as mutually reinforcing, rather than antagonistic, goals" (Strossen 1990, 489). Strossen's bastion of "unrestricted exchange," typically referred to as the marketplace of ideas, is meant to guide each participant to the truth, to true freedom of thought and action.

Such a thorough focus on individual rights and individual development, however, overlooks the effect that such contentious speech has on the campus community as a whole. As advocates of restricting hate speech often point out, many European countries legally forbid or severely restrict such discourse. Germany, whose history exemplifies the broad danger of such language, is a common reference point. German law defines hate speech as that which,

> in a manner liable to disturb the public peace, (a) incites hatred against parts of the population or invites violence or arbitrary acts against them, or (b) attacks the human dignity of others by insulting, maliciously degrading or defaming parts of the population (Kübler 1998, 344-345).

As Friedrich Kübler (1998, 343) points out, one of the most significant aspects of this definition is that its purpose is "the protection not of individual rights, but of a public good." This element is often missing in American discussions of hate speech, and it is particularly relevant in discussions concerning college campuses. An unhindered flow of derisive, insulting speech does indeed disturb the public peace.

Continuing the marketplace metaphor, Lipinski and Henderson (2014, 223) describe hate speech as "a form of market failure." Specifically, they describe it as a negative externality to the market: hate speech "negatively affects another person or even a whole group without cost to the speaker or benefit to society" (Lipinski and Henderson 2014, 225). As such, it disrupts the nature of intellectual exchange on campus, the maintenance of which must always be a prime concern for administrations. College students face a constant stream of new information, and to absorb it they must feel comfortable enough to be open to it.

That said, as Mark Alfino (2014, 447) reminds us, the education which takes place on campus "is not just the conveyance of information but a matter of modeling inquiry." Such a position, to some degree, presupposes ideas which require interrogation. Some ideas trigger inquiry because they are novel and complex, such as advanced mathematics or research in the hard sciences. But others stimulate further examination because they directly challenge long-held beliefs, or because, if accepted as premises, they indicate conclusions which we find unacceptable.

Controversial, confrontational, provocative speech is typically of this latter type. Such discourse, then, is not simply permissible but welcome on the college campus. Disagreeable ideas are the most effective starting points for modeling moral and philosophical inquiry.

Often, unfortunately, this is the extent of the hate speech debate. It remains abstract, between the apparently opposite poles of "free speech" and "eliminating oppression." This is a dangerous way to frame the debate, as Charles Lawrence III (1990, 436) points out, because it provides a principled frame for oppressive speech, and "place[s] the bigot on the moral high ground." Graver still, it elides or erases the actual, tangible harm of hate speech on campus.

Lawrence describes racism as both speech and action. While it does express ideas, in a more immediate sense it acts upon individual members of targeted communities in ways that successfully diminish their ability to speak and to be heard. It is important to reframe the conversation

about hate speech in a way that will re-center these individuals and the harm done to them. Given historical precedents and broad cultural trends, marginalized community members often reasonably perceive actual, physical threats implicit in hate speech. It "is experienced as a blow, not a proffered idea" (Lawrence 1990, 452). This alone should be a greater concern than the abstract principles discussed above.

Aside from the immediate pain caused by such language, it also quite clearly does not serve to further dialogue—the ostensible reason for a First Amendment, marketplace-of-ideas defense. Lawrence (1990, 452) describes such hate speech as "a preemptive strike," which naturally "produces an instinctive, defensive psychological reaction. Fear, rage, shock, and flight all interfere with any reasoned response." The typical dichotomy between free speech and protection of minority groups simply offers no way to consider this reality. The very definitions we have been using—based on concepts such as offense and insult—are wholly inadequate. As Lawrence explains,

> There is a great difference between the offensiveness of words that you would rather not hear—because they are labeled dirty, impolite, or personally demeaning—and the *injury* inflicted by words that remind the world that you are fair game for physical attack, evoke in you all of the millions of cultural lessons regarding your inferiority that you have so painstakingly repressed, and imprint upon you a badge of servitude and subservience for all the world to see (Lawrence 1990, 461; emphasis in original).

For just such reasons, Citron and Norton (2011, 1459) recommend a new approach to defining hate speech, an approach which would "expressly turn on the harms to be targeted and prevented." They note several specific possibilities: speech that threatens or incites violence, that intentionally inflicts emotional distress, that harasses, that silences disagreement, and that exacerbates hatred and prejudice. Some of these are easily defensible, even on First Amendment grounds. Others may be more challenging to defend, but provide guidelines for campus responses that would allow for expansive protections of oppressed communities, rather than expansive protection for bigotry cloaked in the First Amendment. If it is not the role of higher educational institutions to provide intellectual leadership on this issue, whose can it be?

College campuses, confined by outdated ways of approaching the question of hate speech, have allowed themselves to be held captive by agents of intolerance and hate. It is imperative that educational institutions begin to rethink the debate and to take the initiative in changing how it is framed. This will require creativity on the part of campus administrations, but if they can begin to think of the debate in such a new framework, it may remove them from the uncomfortable bind of defending hateful, damaging speech against challenges by members of oppressed communities.

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