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Regulation or Respect

In a time as tumultuous as 2018, when ideology and words are sharper, attacks seems to be more personal, and respectful dialogue seems to be impossible to find, the questions of how to have productive dialogue, and, more importantly, what cannot or should not be said, are more important than ever. When observing the rise of the toxically vocal “alt-right” it can be tempting to turn to governmental power to promote respect and inclusivity. However, other current events, specifically the prospect that those who disagree with the President or publically make remarks that could be interpreted as disloyal may be fired, make clear that freedom of speech underlies the stability of our system of government. For this reason, any potential abrogation of free speech rights should first be evaluated under the Constitution and then as to whether it is a practical and effective means of promoting broader social goals.

Although the essay question presumes that regulating hate speech is a means to increase mutual respect between people, the main constitutionally protected concern in regulating hate speech is, and must be, public safety. This is reflected in the majority opinion of *R.A.V v. City of St. Paul, Minnesota*. The decision does not turn on whether the regulation in question is likely to promote an atmosphere of respect. Instead, the court supports the concept of limiting speech that amounts to “fighting words” or “arouses anger, alarm or resentment,” but finds the St. Paul ordinance unconstitutional because it limits the definition of fighting words to certain “favored topics” 505 U.S. 377, 396.

The second part of the essay question addresses not how our nation or our states ought to act when regulating speech, but rather how, in an educational context, to balance the protection of free speech with the need to create an environment that is conducive to all students’ learning.

Certain inflammatory speech, delivered with the deliberate intent to wound or provoke on the basis of gender, race or religion, can undoubtedly create real safety issues on campus. For example, as Adam Falk, the former President of Williams College observes, the University of Florida had to spend more than \$500,000 in connection with security for a talk by Richard Spencer, a man who seeks to put a palatable and professional face on white supremacy. And the cost to life and health at the University of Virginia were certainly higher. Clearly, certain speech, or maybe certain speech delivered by deliberately controversial speakers, can create physical dangers that must be protected against to maintain the function of the academic institution as a whole. It would seem consistent with the constitutional prohibition on “fighting words” to prohibit such speakers, even from public schools or universities, where there is a legitimate concern as to physical safety of staff, faculty and students.

But what about speakers who may not deliberately seek to incite violence or court controversy but whose words or actions are nonetheless at odds with cultural norms of respect, particularly where those norms protect groups who have been historically under protected? These speakers may not pose as imminent a threat of physical violence. However, their words may nonetheless be highly disruptive to the educational community, making individuals who had learned and worked together regard each other with distrust and anxiety.

These inflammatory speakers, who keep themselves just within the boundaries of explicit constitutional protection, can and should be subject to higher scrutiny in an educational setting. No one makes this case better than Falk, who fell under intense criticism after refusing to allow White Nationalist blogger, John Derbyshire, to speak at Williams in February of 2016. Furthermore, Falk makes it clear that his objection is based on the demeaning of whole groups of

students without an attempt at serious consideration of important issues. He also establishes that, in banning speakers like Derbyshire, he is not making Williams susceptible to any sort of slippery slope of speech regulation. He describes how, in the weeks after Derbyshire was rejected, a popular but controversial conservative voice, Charles Murray, along with several other conservative speakers was heard respectfully on campus.

As important as a culture of respect and understanding is, its pursuit must not be made a legal justification for the restriction of free speech. From a purely legal standpoint, the proper course of action when it comes to regulating speech is clear: only regulate hate speech where there is a legitimate concern as to safety. The boundaries of this concern will necessarily adapt as cultural norms do over time. Remarks and attitudes which we would now consider so offensive as to carry a high potential of violent response were once accepted. This limitation on regulating our free speech rights is necessary to ensure that future generations are protected from their legislatures or their judiciaries legislating what constitutes an acceptable social norm or unacceptable ideologies.

Moreover, regulating speech is not necessarily an effective tool for building respect: silencing a racist does not promote their respect for all peoples. Perhaps we have been looking in the wrong place for our tools to build productive understanding of difference on campus. Maybe the answer is not additional regulation, but additional work by all of us every day to get informed and to reach out to each other, and by our schools and colleges to help give us the skills to do so. For example, when conservative speaker Ben Shapiro was recently featured at the University of Minnesota, media headlines ranged from “UMN Under Fire for Quarantining Ben Shapiro Lecture” (Alpha News MN) to “Ben Shapiro Draws Packed House at UMN” (Alpha News MN) to “Police Outnumber Protesters as Conservative Pundit Ben Shapiro Speaks at UMN”

(TwinCities.com). Each of these headlines conveys a different message about what parts of the event are newsworthy. Whereas the first headline focuses on casting the University of Minnesota in a negative light by the use of the word “quarantining,” the second headline portrays a more neutral but still pro-Shapiro stance by focusing on the “packed house,” and the third headline lessens the importance of the event by noting that there were “more police than protestors.”

These differences should help us not only look more closely at the prejudices that influence the headlines we see, but also at the prejudices we have that draw us towards some news outlets over others. We can each apply this awareness every day to talk about the perspectives we encounter in terms that further rather than incinerate constructive dialogue.

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