

Noble Causes and Disastrous Effects of Campus Speech Codes

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A most vexing consequence of public policy is the emergence of unintended outcomes. No matter how diligently policy makers toil at crafting ideal strategies for correcting deficiencies or defects, surprise results almost always arise. Such is the case with school speech codes.

High school and college administrators were faced with an ugly reality, one that was growing in frequency, scope, potency, and urgency: a spate of hateful, insensitive, and racist/sexist epithets and slurs aimed at students or faculty that was threatening the learning environment at many schools. Such utterances were rightly interpreted by administrators as having the effects of: (a) lowering the self esteem of receivers of such messages; (b) inviting return slurs and epithets; (c) sidetracking students and teachers from their learning and teaching tasks; and (4) creating a threatening atmosphere not conducive to learning. In-school fights, accelerated group and individual violence, drop-outs, vandalism, and formal lawyer-aided complaints were on the increase. Some administrators tried, in good faith but with little success, to combat this nastiness with sensitivity sessions designed to expose what was occurring and fashioned to bring to the surface, in controlled ways, reasons for such behavior. It was hoped such sessions would lessen the problems. Sadly, little changed. Other administrators, faced with lawsuits and lowered learning outcomes in their schools, came up with a

more direct, combative answer to the problem: outlaw undesired behavior.

Speech codes became the new chosen solution for some school administrators. Speech codes are rules that prohibit or punish those who utter certain words or phrases. Most speech codes are similar; they prohibit calling others names; they also forbid making jokes or pejorative references about another's religion, race, sexual preference, or national origin. Some speech codes go further. It was reasoned that invective speech had no place in schools. Proponents of such speech codes assumed that since the courts allowed administrators to censor school newspapers, and since the "hostile environment" concept was alive and well in sexual harassment cases, they would be similarly lenient in terms of speech freedom controls. This was a significant judgment error. The courts struck down one school speech code after another.

Various court rulings struck a common chord. Utterances are protected as long as they do not: (a) directly impede government operations (such as treason or perjury); (b) incite a clear and present danger (like a riot or a lynching); (c) perpetrate fraud; (d) defame another (such as libel or slander); (e) violate legal confidences; or (f) commit face-to-face verbal assault. Hurtful speech, while painful, intrusive, and inconvenient, is nonetheless protected. The recourse to abusive speech, said the courts, is to speak back, rebut others' speech, or ignore hateful speech, giving it less standing in the public's eye.

This is a hard civics lesson for those on the receiving end of hateful speech. Why, receivers ask, should we have to endure the slings and arrows of bigots, hate mongers, and racists? The answer is, of course, the cornerstone of our first amendment, that all are free to say what they wish without prior restraint (the government cannot prevent us beforehand from saying what we wish) or punish us after we utter our thoughts. If we allow **some** speech to be censored, we can never be sure that **our** speech in the future will be deemed as unworthy. Not only would actual speech be endangered, potential speech would be threatened and the benefit of the "marketplace of ideas," so valiantly fought for, would be tainted or lost.

It is not that the constitution embraces hurtful speech, it is rather the recognition that speech is the product of thought. Even wicked thoughts deserve to be uttered. Uttered evil or harm can be recognized, labeled, countered, and avoided. Silent evil is more menacing; such thoughts are allowed to fester, to spread clandestinely, and to remain unchallenged. Our national founders recognized these differences and opted for exposure to wickedness and malice so they could be faced head on by an informed public. it was a philosophical dilemma faced by our country's founders: how to protect individual rights and protect the collective welfare. In the case of the first amendment, the founders saw wisdom in sacrificing individual sensitivities for the collective freedom of expression.

Hurtful speech is a symptom of insensitivity, insecurity,

superiority, and arrogance. We need to listen to what the hate mongers, bigots, uninformed persons, and even crazies have to say; not with an aim of being informed, persuaded, or comforted, but so we can prepare reasoned responses showing their ideas as unworthy of respect, belief, and following. Remember, Adolf Hitler, Jim Jones, and Mao Zedong were once fringe kooks who were left unchallenged. Vigilance is the hallmark of freedom.

The best speech code is to never allow hateful or hurtful speech to go unchallenged. ¹ When racists, bigots, and fools discover that their spiteful utterances have painful consequences, namely: rebuttal and condemnation, they usually cut short their venom. It is when the public many allows verbal garbage to continue unchallenged and therefore implicitly condoned and when others are harmed individually or collectively without direct reply that hateful speech is rewarded. In order to show proper reverence to the first amendment, we must take responsibility to ensure that it is abused as seldom as possible. We must all fight for each others' freedom or we may all lose ours.

¹ This position is also advocated by the National Coalition Building Institute.