

FREE SPEECH ON CAMPUS: THE PRINCIPLE BEYOND THE CRUCIBLE

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The problem with many free speech debates on Canadian campuses is that they are ignited by one particular offensive outburst. The result is a debate which takes place in a crucible fraught with situational ethics. Any debate born of a visceral reaction to a particular unpleasant statement will inevitably degenerate into a series of litmus tests, where each attempt to define principle will be scrutinized for hints of sympathy or antipathy towards the original outburst. When a debate is dominated by the anecdotal, it becomes virtually impossible to extract an acceptable axiom.

University administrations often avoid broad philosophical debates until incendiary events force them to act. The consequences of this approach are policies devoid of any philosophical underpinning. They have campus safety policies ignited by assaults and harassment policies developed in the shadow of outstanding complaints.

Free speech – the principle and its manifestations – is at the heart of the academic community and the philosophical search for truth. We have a responsibility to ensure that the principles embodied in free speech codes are developed through rational, not reactionary thought.

There are two traditional poles in the debate. The classic liberal would have us believe that all voices must be tolerated. From the rabble, a philosophical version of Adam Smith's invisible hand will steer us through the dialectic and we shall know the truth. On the other hand, relativists would argue that the test to determine whether speech is offensive is a subjective one, based not on the merits of the language, but on the perception of the aggrieved party. In the end, both extremes lead us towards a tyranny by those in power through a subtle yet pernicious silencing of diverse voices on the one hand and a blatant power play on the other. In fact, the dominance of these two schools of thought has developed into a nightmarish pastiche defining the political debate in our society which has led to an anti-intellectual, inward-looking climate.

The challenge is to develop an objective test for speech which enhances, rather than interferes with, the search for truth. In order to do this, we must look at group identities beyond the objectivist-relativist paradigm. We require a new, enlightened liberalism which redefines the Millian line between offense and harm,

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and which takes into account group sensitivities insofar as they impact upon the individual.

When Civil Liberties Are Not

It is tempting to put our faith in the marketplace of ideas. There are, however, drawbacks to this approach. It is easy for one who is in a position of power to avoid the consequences of hateful speech. However, how would a Jewish person feel when asked to put faith in the marketplace of ideas? Blacks would certainly be justified in wondering about the invisible hand of reason when 55% of white Louisianians supported former Ku Klux Klan Grand Wizard David Duke in the gubernatorial elections.

The classic response is that fringe voices should not be threatening for minority members in such an avowedly liberal, pluralistic society such as our own. One may assert that a member of the Montreal Jewish community should not quake at picayune curiosities like Eckville's Jim Keegstra. However, in the campus context, such an argument will not survive the clash between theory and practice.

The campus itself is a small community which impacts upon students' lives beyond the classroom. Hostility can be personally devastating in the campus context, and this is especially true for members of marginalized groups, who are usually small in both number and voice.

For example, it is hard to believe that the liberties of a gay student living in residence are adequately protected because he has the right to respond to hateful messages like those seen in washroom graffiti or in anonymous newspaper submissions. The problem is exacerbated by the limited number of people in such groups. To suggest that an eight-member gay and lesbian collective must find the gumption to answer homophobic attacks is to deny members of that group their liberties on campus. The classic liberal asks us to be blind to group membership when delivering individual rights. This falsely presumes that the status quo is inherently blind to group membership when assigning individual liberties. To truly make individual rights the hallmark of a society, the impact of group membership upon the individual's rights must be evaluated and compensated for.

The False Relief of Subjectivity

The response to liberalism's shortcomings has been a new kind of subjectivity. This school of thought imposes a zero tolerance upon offensive speech by categorizing it based upon the feeling held by the complainant, who is not always the target of the speech in question. In short, if someone feels threatened by my words, they probably were.

Relativism is intrinsic to this view. It presumes that there can be no objective truth between cultures, genders or races. Essentially, if a member of one group feels threatened or harassed, there is no basis upon which members of another group can judge whether or not the feeling is rationally held. Relativism is a theory which cannot sustain itself. Its most basic flaw is this – there is no greater statement of absolute knowledge than the assertion that there is absolutely no knowledge. How can one claim to have reviewed every statement ever made and found every one wanting? If there is no truth, if all views are equal, on what basis can any claim to knowledge be rejected? Such relativist underpinnings remove the very reason to protect people from harmful speech in the first place. If nothing is right, how can anything be wrong? If nothing can be wrong, on what grounds can we proscribe, or even challenge, the most harmful and destructive views?

The subjective approach is too open to the abuse of power. Without standards, nothing can keep those with power on campus from silencing the dissenters. This is especially poignant in the academic context. Far too often those whose views developed and thrived in an atmosphere of challenging the status quo create a new status quo even more oppressive, crushing those challenging their authority with the same venom they used to attack those who once had power over them. The desire to destroy the opposing view is harmless, even necessary, when one is on the outside fighting the power. It is destructive when one wields the power.

The Need for Middle Ground

The rise of relativist subjectivity as the main counterpoint to liberal individualism has given us the best of both worlds. The progressive camp must strongly rethink the maxim that the world operates in accordance with how one feels. When this retreat from rationalism is added to individualism, the result is damaging for the most defenceless members of society.

The past two years in American politics have given us an eerie sense of the move away from rational thought as a means of combating the excesses of liberalism. In this teledemocracy, unfocused rage spews forward from Rush Limbaugh and the like. Hot button campaigning dominates the political culture. Citizens are not asked or encouraged to justify their views. If I feel that the deficit is caused by Congressional expense accounts, it is. If I feel that immigrants are stealing jobs, they are. If I feel that violent crime is solved by capital punishment, it simply is. Rage does not just pass for political thought – it is political thought.

This nightmarish descent into the lowest rungs of the Platonic cave is not the unravelling of the left. It is a creation of the left wing's flirtation with relativism. The sad irony is that, having attempted to justify progressive policies based on how we feel, we have freed the reactionary right from any onus of proof beyond feeling. We have combined the selfishness of unfettered liberalism with the subjective idea

that one need only follow one's feelings. This severs the last link between the individual and the community – the need to justify one's behaviour.

In a subjective world, the dominant groups will always win. The reason is clear: in a subjective world, we have no basis to show why they should not. If there is no higher good or truth, what could possibly compel someone to relinquish power?

Applying this unfortunate *mélange* of ideologies to the free speech issue leaves us without any appeal for the sensitivity, compassion and open-mindedness which is so necessary in an academic environment. The biggest drawback to liberalism is that it blinds people to the realities of how membership in a marginalized group affects the individual. It asks us to be colour-blind because it assumes that the world already is.

To overcome this paradigm, we must challenge people, especially those in the comfortable white middle-class majority, to see the effects of simply behaving as one feels one should. The uninitiated should be challenged to see why other cultural practices for international students should be encouraged on campus, not ridiculed. The first-year residence student must be challenged to see how jokes can affect women, gays, lesbians and other marginalized groups for whom the attitudes of others are causally linked to a real threat of violence.

If we all just believe that our feelings are good enough because nobody understands us well enough to judge, then these transitions can never occur. The challenge is to develop an objective standard for free speech which takes into account the appropriate goals of a free speech policy, and realizes them in the context of sensitivity to issues of gender, culture and sexual orientation.

The Free Speech Policy

The questions are: what are we hoping to achieve with such a policy? What must we proscribe? What must we protect?

The now-clichéd notion of ensuring “comfort” seems anti-intellectual. Comfort has little to do with a liberal arts education. Socrates tells us that democracy leads to poor government. Marx tells us that business is laden with value judgments. Nietzsche tells us that religion and morality are immoral. Marcuse informs us that we are too duped to know what is good for us in any event.

There is nothing comfortable in these notions, nor should there be. The process of shedding biases is not pleasant, but each of us must take on that challenge if society is to move forward and if we are to grow as educated

individuals. The Millian distinction between offense and harm still seems useful – allow the offensive, prohibit the harmful. The issue is: what is harm?

The goal of such a policy could be set out in this manner – the university has a responsibility to provide a forum where all individual voices participate. Within that context, anything goes. Speech which denies the right of individuals to take part in the wider forum should be proscribed. This distinction allows for the censure of group-based attacks. Awareness of how individuals may be affected by their group status is not anti-liberal; rather, it is an enlightened liberalism which actively strives towards its stated goal of real individual rights and freedoms. After all, if fear of violence or ostracization silences a voice, that is an anti-liberal act. Beyond the effect on the individual, it denies each of us the true “marketplace of ideas” to which we are entitled.

It appears that this principle can be realized through three categories of proscribed speech on campus.

1. Group libel

The anti-hate sections of the *Criminal Code* found part of their philosophical grounding in this category. Slander and libel against an individual are not defended by even the most dogged of the classic liberals. It is bizarre, then, that they would allow the writings of Malcolm Ross and Ernst Zundel to join the debate. After all, these works are nothing but broad-based pieces of libel.

If I were to say, without grounds, that Professor X is a child molester, no free speech right would protect that. The reason is that such a statement is reducible enough to individuals that it is still slanderous. It follows, then, that statements that Jews are involved in a sinister plot to take over the world, or that homosexuals are also pedophiles, are equally reducible to the individual members of the identifiable group. In this case, we ask the state (in criminal law) or the university administration (on campuses) to initiate action for those who are individually slandered but are not afforded the opportunity for individual action.

This does not limit the right to philosophically challenge the beliefs of any group or individual. Using the group slander principle encompasses an objective standard for the speech to meet – that it is without rational or truthful foundation.

2. Speech Which Questions the Right of Others to Participate Because of Individual or Group Characteristics

It is acceptable in a marketplace of ideas to question the political and cultural institutions of countries or religions. It is acceptable for these to be defended, and held out as superior to the Western way of doing things. The line is drawn when

these group members are challenged on their very right to participate. Any speech which advocates the removal of people from the debate because of their ethnicity, gender, or other characteristics should be proscribed. This category encompasses speech which is of such a harassing or demeaning nature that it may objectively be found to have the same effect.

3. Speech to Which There may Reasonably be Established a Causal Connection to Actual Harm

The *Criminal Code* prohibits the advocacy of genocide. There is certainly some basis for silencing those who would advocate harm. However, enlightened liberalism would expand this to protect against speech which the speaker knows, or ought to know, will have the effect of tangible harm

The overflogged debate over *Matin Yaqzan* ignored one key point – Professor *Yaqzan's* speech was not just offensive – which would have been permissible. It was harmful. While professors in ivory towers screamed academic freedom for the right to offend, students saw something else. We know of residence parties, house parties and private encounters, where common sense ebbs and liquor flows, where female students must face a gamut of potential violence in the form of sexual assault and acquaintance rape.

To describe all of this as “necessary”, or to suggest that it is all right once a woman has entered the zone of a man’s residence room is not merely offensive – it is counselling a crime. It is the equivalent of falsely yelling “Fire!” in a crowded movie theatre. It can be causally linked to a potential for physical harm, and it can be sanctioned.

This redefinition of harm still has objectivity in its standards. However, it expands liberalism to recognize that individuals may be impacted by their group status. This is achieved through a sensitivity to how certain groups, such as women, gays and lesbians, and people of colour can face real violence or real tangible discrimination because of words which seem innocuous to the privileged majority.

The challenge of being a liberal is to recognize that the goal of individual liberty is not obtained through negative freedoms, but through rational positive action. In economic terms, this sense is encompassed by the idea that a hungry person is not free. Social issues such as free speech make it important for liberalism to go through the same enlightenment. We will not do this by denying ourselves the tool of logic and caving into relativism. Only by subjecting liberalism to a greater scrutiny of reason – to view how the real world, left alone, affects individuals and their freedoms – can we truly become liberal. Individuals under the fear of violence or ostracization are not free. If they are not free to pursue

the truth, then neither are any of us, because we are denied diversity. Rationally and objectively, free speech codes must provide that freedom for all members of the campus community.