

# Free Speech & Postmodernism

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In the early modern world, the case for free speech won the battle against traditional authoritarianism. Powerful arguments by Galileo,<sup>1</sup> John Locke,<sup>2</sup> John Stuart Mill,<sup>3</sup> and others won the debate for free speech. Historically, those arguments were nested in different philosophical contexts, and they were often tailored to audiences hostile in varying degrees to free speech. In contemporary language, here are the elements of those arguments that are still with us: (1) Reason is essential for knowing reality (Galileo and Locke). (2) Reason is a function of the individual (Locke, especially). (3) What the reasoning individual needs to pursue knowledge of reality is, above all, freedom—the freedom to think, to criticize, and to debate (Galileo, Locke, and Mill). (4) The individual's freedom to pursue knowledge is of fundamental value to the other members of his society (Mill, especially).

A corollary of this argument is that when we set up specialized social institutions to seek and advance our knowledge of the truth—scientific societies, research institutes, colleges and universities—we should take special pains to protect, nurture, and encourage the freedom of creative minds.

It is therefore surprising that the greatest current threats to free speech come from *within* our colleges and universities. Traditionally, a major career goal for most academics has been to get tenure, so that one can say whatever one wants without being fired. That is exactly the point of tenure: to protect freedom of thought and expression. Yet today we see that many individuals who have worked for many years to get tenure and the academic freedom that goes with it are the strongest advocates of limiting the speech of others.

## Sample Speech Codes

Here are two examples of the way that some academics are seeking to limit speech through so-called speech codes. A proposed speech code at the University of Michigan forbade:

[a]ny behavior, verbal or physical, that stigmatizes or victimizes an individual on the basis of race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap or Vietnam-era veteran status ...

At another major university, the University of Wisconsin, a hotly-debated speech code warned that disciplinary actions would be taken against any student

[f]or racist or discriminatory comments, epithets or other expressive behavior directed at an individual or on separate occasions at different individuals, or for physical conduct, if such comments, epithets, other expressive behavior or physical conduct intentionally: demean the race, sex, religion, color, creed, disability, sexual orientation, national origin, ancestry or age of the individual or individuals; and create an intimidating, hostile or demeaning environment for education, university related work, or other university authorized activity.

These two are representative of the speech codes that are being put in place in many universities and colleges around the land. Major theoreticians behind these speech codes include such prominent scholars as Mari J. Matsuda, who tends to write on behalf of Americans from Asian backgrounds<sup>4</sup>; Richard Delgado, who tends to write on behalf of Hispanics and racial minorities<sup>5</sup>; Catherine A. MacKinnon, who writes on behalf of women as an oppressed group<sup>6</sup>; and Stanley Fish, who, being a white male, is in a slightly delicate position—but who solves that problem by being sensitive to anybody with victim status.<sup>7</sup>

## Why Not Rely on the First Amendment?

In response to speech codes, a common reaction by Americans is to say: “Why hasn’t the First Amendment taken care of all of this? Why not point out that we live in the United States and the First Amendment protects free speech, even the speech of those who say offensive things?” Certainly, we should say that. But the First Amendment is a *political* rule that applies to political society. It is not a *social* rule that applies between private individuals and it is not a *philosophical* principle that answers philosophical attacks on free speech.

As regards the distinction between the political and private spheres, for example, note that the First Amendment says that *Congress* shall make no law, with respect to religion, free speech, and assembly. This means that the First Amendment applies to *governmental* actions and only to governmental actions. We can stretch this point to public universities such as Michigan and Wisconsin on the grounds that they are state-run schools and therefore are part of the government. In that way, we can say that First Amendment protection should be in place at all public universities. That is a good argument to make.

But that is not the end of the matter, for several reasons. To begin with, the First Amendment does not apply to private colleges. If a private college wishes to institute some sort of a speech code, there should be nothing illegal about that as far as the First Amendment is concerned. Second: First Amendment protection runs up against another cherished institution within the academy: academic freedom. It is possible that a professor would want to institute a speech code in his class and that, traditionally, would be protected under his academic freedom to conduct his classes as he wishes. Third: appealing to the First Amendment does not address another argument that has widespread appeal. Education is a form of communication and association, fairly intimate in some respects, and it requires civility if it is going to work. So open displays of hatred, antagonism, or threats in the classroom or anywhere in the university undermine the social atmosphere that makes education possible. This argument implies that colleges and universities are special kinds of social institution: communities where there may be a need for speech codes.

The First Amendment does not provide guidance about the rules governing speech in any of these cases. The debates over those cases are therefore primarily *philosophical*. And that is why we are here today.

### **Context: Why the Left?**

I want to point out, first, that most speech codes around the country are proposed by members of the far Left, even though the same far Left for many years complained about the heavy-handedness of university administrations and championed freedom from university restrictions. So there is an irony in the shift of tactics in the Left's campaign for authoritarian, politically correct speech-restrictions.

The question accordingly is: Why, in recent years, have academic Leftists switched their critique and their tactics so dramatically? I have spoken about aspects of this topic before and I have written a book on the topic (see my *Explaining Postmodernism: Skepticism and Socialism from Rousseau to Foucault*<sup>8</sup>). In my judgment, a key part of explaining why the Left now advocates speech codes is that in recent decades the Left has suffered a series of major disappointments. In the West, the Left has failed to generate significant socialist parties, and many socialist parties have become moderate. Major experiments in socialism in nations such as the Soviet Union,

0Vietnam, and Cuba have been failures. Even the academic world has shifted sharply towards liberalism and free markets. When an intellectual movement suffers major disappointments, one can expect it to resort to more desperate tactics. Speech codes that target the speech of one's political and philosophical opponents are one such tactic.

### **Affirmative Action as a Working Example**

Let's use affirmative action as an illustration of this process, for two reasons. First, the Left has clearly faced disappointment with its affirmative-action goals. In the 1980s and 1990s, the Left realized that it was losing the battle on affirmative action. Second, we are all familiar with the case of affirmative action, so it can serve as clear illustration of the philosophical principles the Left bases its goals upon; and this will enable us to see how those same principles are re-applied to the advocacy of speech codes.

The argument for racial affirmative action usually begins by observing that blacks as a group suffered severe oppression at the hands of whites as a group. Since that was unjust, obviously, and since it is a principle of justice that whenever one party harms another, the harmed party is owed compensation by the harming party, we can make the argument that whites as a group owe compensation to blacks as a group.

Those opposed to affirmative action will respond by arguing that the proposed "compensation" is unjust to the current generation. Affirmative action would make an individual of the current generation, a white who never owned slaves, compensate a black who never was a slave.

What we have here, on both sides of the arguments, is two pairs of competing principles.

One pair is highlighted by the following question: Should we treat individuals as *members of a group* or should we treat them as *individuals*? Do we talk about blacks as a group versus whites as a group? Or do we look at the individuals who are involved? Advocates of affirmative action argue that individual blacks and whites should be treated as members of the racial groups to which they belong, while opponents of affirmative action argue that we should treat individuals, whether black or white, as individuals regardless of the color of their skin. In short, we have the conflict between *collectivism* and *individualism*.

The other pair of competing principles emerges as follows. Advocates of affirmative action argue that partly as a result of slavery whites are now in the dominant group and blacks are in the subordinate group, and that the strong have an obligation to sacrifice for the weak. In the case of affirmative action, the argument runs, we should redistribute jobs and college acceptances from members of the stronger white group to members of the weaker black group. Opponents of affirmative action reject that altruistic standard. They argue that jobs and college acceptances should be

decided on the basis of individual achievement and merit. In short, we have a conflict between *altruism* and the *egoistic* principle that one should get what one has earned.

In the next typical stage of the debate over affirmative action, two further pairs of clashing principles emerge. Advocates of affirmative action will say: "Perhaps it is true that slavery is over, and maybe Jim Crow is over, but their effects are not. There is a legacy that blacks as a group have inherited from those practices. So, contemporary blacks are victims of past discrimination. They have been put down and held back, and they have never had a chance to catch up. Therefore, in order to equalize racially the distribution of wealth and jobs in society, we need affirmative action to redistribute opportunities from the groups that have disproportionately more to groups that have disproportionately less."

The opponents of affirmative action respond by saying something like the following: "Of course the effects of past events are passed down from generation to generation, but these are not strictly causal effects; they are *influences*. Individuals are influenced by their social backgrounds, but each individual has the power to decide for himself what influences he is going to accept. And in this country, especially, individuals are exposed to hundreds of different role models, from parents, to teachers, to peers, to sports heroes and movies stars, and so on. Accordingly, what people whose families were socially deprived need is not a handout but freedom and the opportunity to improve themselves. And again this country especially provides both of those plentifully." So, from this side of the argument, the point is that individuals are not simply products of their environments; they have the freedom to make of their lives what they will. Instead of affirmative action, the answer is to encourage individuals to think for themselves, to be ambitious, and to seek out opportunity, and to protect their freedom to do so.

Let's abstract from this second argument another two pairs of competing principles. Advocates of affirmative action rely upon a principle of *social determinism* that says, "This generation's status is a result of what occurred in the previous generation; its members are constructed by that previous generation's circumstances." The other side of the argument emphasizes *individual volition*: individuals have the power to choose which social influences they will accept. The second pair of competing principles follows: Do individuals most need to be made *equal* in assets and opportunities, or do they most need *liberty* to make of their lives what they will?

In summary, what we have is a debate involving four pairs of principles. Those four sub-debates constitute the overall debate over affirmative action.

<i>For Affirmative Action</i>	<i>Against Affirmative Action</i>
Collectivism	Individualism
Altruism	Egoism

Social Determinism	Volition
Egalitarianism	Liberty

Recently advocates of affirmative action have been on the defensive and many affirmative action programs are on their way out. There is now much less voluntary acceptance of affirmative action programs.

But if we are Leftists committed to the notion that racism and sexism are problems that must be attacked vigorously, and if we see the tool of affirmative action being taken away from us, we will realize that we must turn to new strategies. One such new strategy is the university speech code. So next I want to show how the issue of speech codes embodies each of these four principles on the Left side of the column—the collectivism, the altruism, the principle of social construction, and the egalitarian concept of equality.

### **Egalitarianism**

I sometimes have a fantasy that I will play one-on-one basketball with Michael Jordan. He comes by when I am shooting some hoops and I challenge him to a game. He accepts, and we get into the game. We even have a referee to make sure that there is no undue fouling and so forth.

But then an element of realism enters my fantasy. How would this game actually turn out? Well, we play according to the rules of basketball and Michael wins 100 to 3—one time before he got too close to me, I got a shot off and it happened to go in.

Now let's ask an ethics question: Would that be a *fair* game? There are two completely different answers one could give, the leftist and egalitarian answer—versus the answer that you are probably thinking of. The first answer says that the game would be completely unfair because Stephen Hicks has no chance at all of winning against Michael Jordan. Michael Jordan is the best basketball player in the universe, and I am an occasional weekend player with an eight-inch vertical clearance when I jump. To make the game “fair,” this answer says, we would need to equalize the radical difference in abilities that are entering into competition here. That is the egalitarian answer to the question.

The other answer says it would be a *perfectly fair* game. Both Michael and I chose to play. When I challenged him, I knew who he is. Michael has worked hard to develop the skills that he has acquired. By contrast, I have worked less hard to acquire the lesser number of skills that I have. Also, we both know the rules of the game, and there is a referee who is impartially enforcing those rules. When the game was played, Michael shot the ball into the basket the number of times needed to earn his 100 points. He deserves the points. And I deserve my three points as well. So, Michael won the game fair and square—and if my goal is to win at basketball then I should seek out other people to play with. That is the liberal individualist answer to the question.

But if we are committed to the egalitarian notion of “fair,” then we are led to the notion that in *any* competition we must equalize all of the participants so that they have at least a chance of success. This is where the principle of altruism comes in. Altruism says that in order to equalize opportunities we must take from the strong and give to the weak; that is, we must engage in redistribution. What we can do, in the basketball case, is equalize by, say, not allowing Michael Jordan to use his right hand; or if it is a matter of jumping, by making him wear weights on his ankles so that his jumping and my jumping are equalized. That is the principle of sports handicapping, which is widely used, and it entails not letting someone employ an asset so that the little guy has a chance. The other possible strategy is to give me a 90-point head start. That is, we would not take anything away from Michael that he has earned, but rather it would give me something that I have not earned. Or of course we could employ both remedies simultaneously. So, there are three approaches. (1) We can try to equalize by preventing the stronger from using an asset or a skill that he has. (2) We can give the weaker an advantage that he has not earned. Or (3) we can do both.

There is a general pattern here. The egalitarian starts with the premise that it is not fair unless the parties who are competing are equal. Then, the egalitarian points out that some parties are stronger in some respect than others. Finally, the egalitarian seeks to redistribute in some way in order to make the parties equal or it seeks to prevent the stronger from using their greater assets.

Postmodern leftists apply all of this to speech and say something like the following: “Fair” means that all voices are heard equally. But some people have *more* speech than others, and some have *more effective* speech than others. So what we need to do, in order to equalize speech, is to limit the speech of the stronger parties in order to equalize or give more speech opportunities to the weaker parties. Or we need to do both. The parallel with affirmative action is clear.

### **Inequalities along Racial and Sexual Lines**

The next question is: Who are the stronger and the weaker parties that we are talking about? Well, not surprisingly, the Left again emphasizes racial and sexual classes as the groups in need of help. The Left spends much time focusing on data regarding statistical disparities across racial/sexual lines. What is the racial and sexual composition of various professions? various prestigious colleges? various prestigious programs? Then they will argue that racism and sexism are the causes of those disparities and that we need to attack those disparities by redistribution.

How do individualists and liberals respond to the postmodern-Leftist-egalitarian arguments? In some cases, the disparities that leftists find are genuine and racism and sexism do factor into those disparities. But instead of engaging in redistribution, individualists argue, we should solve those problems by teaching individuals to be rational, in two ways. First, we should teach them to develop their skills and talents and

be ambitious, so they can make their own way in the world. Second, we should teach them the obvious point that racism and sexism are stupid; that in judging oneself and others it is character, intelligence, personality, and abilities that matter; and that the color of one's skin is almost always insignificant.

To this, the postmodernists respond that the advice is pointless in the real world. And here is where the postmodernist arguments, though they have been used in the case of affirmative action, are new with respect to speech. What they do is introduce a new epistemology—a social constructionist epistemology—into the censorship debates.

### **The Social Construction of Minds**

Traditionally, speech has been seen as an individual cognitive act. The postmodern view, by contrast, is that speech is formed socially in the individual. And since what we think is a function of what we learn linguistically, our thinking processes are constructed socially, depending on the linguistic habits of the groups we belong to. From this epistemological perspective, the notion that individuals can teach themselves or go their own way is a myth. Also, the notion that we can take someone who has been constructed as a racist and simply teach him to unlearn his bad habits, or teach a whole group to unlearn its bad habits, by appealing to their reason—that also is a myth.

Take Stanley Fish's argument, from his book *There's No Such Thing as Free Speech—and it's a good thing too*. The point here is not primarily political but epistemological.

Freedom of speech is a conceptual impossibility because the condition of speech's being free in the first place is unrealizable. That condition corresponds to the hope, represented by the often-invoked 'marketplace of ideas,' that we can fashion a forum in which ideas can be considered independently of political and ideological constraint. My point, not engaged by the letters, is that constraint of an ideological kind is *generative* of speech and that therefore the very intelligibility of speech (as assertion rather than noise) is radically dependent on what free-speech ideologues would push away. Absent some already-in-place and (for the time being) unquestioned ideological vision, the act of speaking would make no sense, because it would not be resonating against any background understanding of the possible courses of physical or verbal actions and their possible consequences. Nor is that background accessible to the speaker it constrains; it is not an object of his or her critical self-consciousness; rather, it constituted the field in which consciousness occurs, and therefore the productions of consciousness, and specifically speech, will always be political (that is, angled) in ways the speaker cannot know.<sup>9</sup>



We are constructed socially, the postmoderns argue, and we are, even as adults, not aware of the social construction that underlies the speech we are engaging in. We might *feel* as though we are speaking freely and making our own choices, but the unseen hand of social construction is making us what we are. What you think and what you do and even *how* you think are governed by your background beliefs.

Fish states the point abstractly. Catharine MacKinnon applies this point to the special case of women and men, in making her case for censoring pornography. Her argument is not the standard, conservative argument that pornography desensitizes men and gets them riled up to the point where they go out and do brutal things to women. MacKinnon believes that pornography does that, but her argument is deeper. She argues that pornography is a major part of the social discourse that is constructing all of us. It makes men what they are in the first place and it makes women what they are in the first place. So we are culturally constructed by porn as a form of language to adopt certain sex roles and so forth.<sup>10</sup>

As a result of this, the postmoderns infer there is no distinction between speech and action, a distinction that liberals have traditionally prized. According to postmodernists, speech is itself something that is powerful because it constructs who we are and underlies all of the actions that we engage in. And as a form of action, it can and does cause harm to other people. Liberals, say postmodernists, should accept that *any* form of harmful action must be constrained. Therefore, they must accept censorship.

Another consequence of this view is that group conflict is inevitable, for different groups are constructed differently according to their different linguistic and social backgrounds. Blacks and whites, men and women, are constructed differently and those different linguistic-social-ideological universes will clash with each other. Thus, the speech of the members of each group is seen as a vehicle through which the groups' competing interests clash. And there will be no way of resolving the clash, because from this perspective you cannot say, "Let's settle this reasonably." What reason is, is itself constructed by the prior conditions that made you what you are. What seems reasonable to you is not going to be what is reasonable to the other group. Consequently, the whole discussion is necessarily going to descend into a shouting match.

## Speakers and Censors

Let's summarize this argument and put all of its elements together.

Speech is a form of *social power*. [Social Constructivism]

Fairness means an *equal ability* to speak. [Egalitarianism]

The ability to speak is unequal across *racial and sexual groups*. [Collectivism]

The races and sexes are in *conflict* with each other. [Racism and Sexism]  
The stronger racial and sexual groups, that is, whites and males, will use speech-power to their advantage, at the expense of other races and women. [Zero-Sum Conflict]

What we have then are two positions about the nature of speech. The postmoderns say: Speech is a *weapon* in the *conflict* between *groups* that are *unequal*. And that is diametrically opposed to the liberal view of speech, which says: Speech is a *tool of cognition and communication* for *individuals* who are *free*.

If we adopt the first statement, then the solution is going to be some form of enforced altruism, under which we redistribute speech in order to protect the harmed, weaker groups. If the stronger white males have speech tools they can use to the detriment of the other groups, then do not let them use those speech tools. Generate a list of denigrating words that harm members of the other groups and prohibit members of the powerful groups from using them. Do not let them use the words that reinforce their own racism and sexism, and don't let them use words that make members of other groups feel threatened. Eliminating those speech advantages will reconstruct our social reality—which is the same goal as affirmative action.

A striking consequence of this analysis is that the toleration of “anything goes” in speech becomes censorship. The postmodern argument implies that if anything goes, then that gives permission to the dominant groups to keep on saying the things that keep the subordinate groups in their place. Liberalism thus means helping the silencing of the subordinate groups and letting only the dominant groups have effective speech. Postmodern speech codes, therefore, are not censorship but a form of liberation—they liberate the subordinated groups from the punishing and silencing effects of the powerful groups' speech, and they provide an atmosphere in which the previously subordinated groups can express themselves. Speech codes equalize the playing field.

As Stanley Fish says:

Individualism, fairness, merit—these three words are continually in the mouths of our up-to-date, newly respectable bigots who have learned that they need not put on a white hood or bar access to the ballot box in order to secure their ends.”<sup>11</sup>

In other words, free speech is what the Ku Klux Klan favors.

The liberal notions of leaving individuals free and telling them that we are going to treat them according to the same rules and judge them on their merit—that only means reinforcing the *status quo*, which means keeping the whites and males on top and the rest below. So in order to equalize the power imbalance, explicit and forthright

double-standards are absolutely and unapologetically called for by the postmodern Left.

This point is not new to this generation of postmodernists. Herbert Marcuse first articulated it in a broader form when he said: "Liberating tolerance, then, would mean intolerance against movements from the Right, and toleration of movements from the Left."<sup>12</sup>

### **The Heart of the Debate**

We have seen, then, what philosopher Ayn Rand often insisted upon—that politics is not a primary.<sup>13</sup> The debates over free speech and censorship are a political battle, but one cannot over-emphasize the importance in those debates of fundamental philosophical issues in epistemology, human nature, and values.

Three issues are the core of the contemporary debates over free speech and censorship, and they are traditional philosophical problems.

First, there is an epistemological issue: Is reason cognitive? Skeptics who deny the cognitive efficacy of reason open the door to various forms of skepticism and subjectivism and now, in the contemporary generation, to social subjectivism. If reason is socially constructed, then it is not a tool of knowing reality. To defend free speech, that postmodern epistemological claim must be challenged and refuted.

Second is a core issue in human nature. Do we have volition or are we products of our social environments? Is speech something we can generate freely, or is it a form of social conditioning that makes us who we are?

And third is an issue from ethics: Do we bring to our analysis of speech a commitment to individualism and self-responsibility? Or do we come into this particular debate committed to egalitarianism and altruism?

Postmodernism, as a fairly consistent philosophical outlook, presupposes a social subjectivist epistemology, a social-determinist view of human nature, and an altruistic, egalitarian ethic. Speech codes are a logical application of those beliefs.

### **The Justification of Freedom of Speech**

In light of the foregoing, what liberals of the contemporary generation must advocate are *objectivity* in epistemology, *volition* in human nature, and *egoism* in ethics. We are not going to solve all of those problems in this essay. My purpose here is to point out that those *are* the issues and to indicate how I think that our defense of free speech should proceed. Three broad points must be made.

The first is an ethical point: individual autonomy. We live in reality, and it is absolutely important to our survival that we come to understand that reality. But coming to know how the world works and acting on the basis of that knowledge is an individual responsibility. Exercising that responsibility requires social freedoms, and one of the social freedoms that we need is speech. We have the capacity to think or not.

But that capacity can be hampered severely by a social atmosphere of fear. That is an indispensable part of the liberal argument. Censorship is a tool of government: the government has the power of force to achieve its end, and depending on how that force is used it can generate an atmosphere of fear that interferes with an individual's ability to perform the basic cognitive functions he needs to act responsibly in the world.

Second is a social point: We get all sorts of values from each other. I will use David Kelley's social-value categorization scheme here<sup>14</sup>: in social relationships we exchange *knowledge* values, *friendship and love* values, and *economic* trade values. Often, the pursuit of knowledge values is conducted in specialized institutions, and within those institutions the discovery of truth requires certain protections. If we are going to learn from each other and if we are going to be able to teach others, then we need to be able to engage in certain kinds of social processes: debate, criticism, lecturing, asking stupid questions, and so on. All of that presupposes a key social principle: that we will tolerate those things in our social interactions. Part of the price that we will pay is that our opinions and our feelings will be bruised on a regular basis, but—live with it.

Finally, there is a series of political points. As we saw above, beliefs and thoughts are each individual's responsibility, just as making a living and putting together a happy life are each individual's responsibility. The purpose of government is to protect individuals' rights to pursue these activities. The point for free speech is this: Thoughts and speech do not, no matter how false and offensive they are, violate anyone's rights. Therefore, there is no basis for government intervention.

There is also a point to be made about democracy, which is a part of our social system. Democracy means decentralizing decision-making about who is going to wield political power for the next period of time. In order to make that decision, we expect voters to make an informed choice, and the only way that they can make an informed choice is if there is much discussion and much vigorous debate. So, free speech is an essential part of maintaining democracy.

Finally, free speech is a check on the abuses of government power. History teaches us to worry about the abuse of government power, and one indispensable way of checking such abuse is to allow people to criticize the government and to prohibit the government from preventing such criticism.

### **Three Special Cases**

I want next to address two challenges that the postmodern Left is likely to make to my arguments, and then return specifically to the special case of the university.

Consider first a free-speech point dear to liberal hearts: that there is a distinction between speech and action. I can say something that will harm your feelings. That I am free to do. But if I harm your body—say I hit you with a stick—that I am not free to do. The government can come after me in the latter case but not in the former.

Postmodernists try to break down the distinction between speech and action as follows. Speech, after all, propagates through the air, physically, and then impinges upon the person's ear, which is a physical organ. So there is no metaphysical basis for making a distinction between an action and speech; speech *is* an action. The only relevant distinction, therefore, is between actions that harm another person and actions that do not harm another. If one wants to say, as liberals do want to say, that harming the other person by shooting a bullet into him is bad, then it is only a difference of degree between that and harming the person by bad speech. It is *not* only sticks and stones that can break our bones.

Against that I argue as follows. The first point is true—speech is physical. But there is a significant qualitative difference that we must insist upon. There is a big difference between the breaking of sound waves across your body and the breaking of a baseball bat across your body. Both are physical, but the results of breaking the baseball bat involve consequences over which you have no control. The pain is not a matter of your volition. By contrast, in the case of the sound waves washing over your body, how you interpret those and evaluate them *is* entirely under your control. Whether you let them hurt your feelings depends on how you evaluate the intellectual content of that physical event.

### **Racial and Sexual Hate Speech**

This ties into a second point. The postmodernist will say, “Anyone who thinks honestly about the history of racism and sexism knows that many words are designed to wound. And if you are not a member of a minority group, you cannot imagine the suffering that the mere use of those words inflicts on people. In short, hate speech *victimizes* people and so we should have special protections against hateful forms of speech—not all speech; only hate speech.”

Against that I would say, first, that we have a right to hate people. It is a free country—and some people are in fact deserving of hate. Hatred is a perfectly rational and just response to extreme assaults on one's core values. The premise that we should never hate other individuals is wrong: Judgment is called for, and hateful expressions are appropriate in some cases.

But more directly to the point of the argument here, I argue that racist hate speech does *not* victimize. It hurts only if one accepts the terms of the speech, and acceptance of those terms is *not* what we should be teaching. We should *not* be teaching our students the following lesson: “He called you a racist name. That victimizes you.” That lesson says, first, that you should judge your skin color to be significant to your identity, and, second, that other people's opinions about your skin color should be significant to you. Only if you accept both of those premises will you feel victimized by someone's saying something about your skin color.

What we should be teaching instead is that skin color is not significant to one's core identity, and that other people's stupid opinions about the significance of skin color is a reflection of their stupidity, not a reflection on you. If someone calls me a goddamned whitey, my reaction should be that the person who says that is an idiot for thinking that my whiteness has anything to do with whether I am goddamned or not. So, I think that the arguments for hate speech, as an exception to free speech, are simply wrong.

### **The University as a Special Case**

Now let me return to the special case of the university. In many ways, the postmodern arguments are tailored to the university, given the priority of our educational goals there and what education presupposes. For it is true that education cannot occur unless minimal rules of civility are observed in the classroom. But let me make a couple of distinctions before I raise the issue of civility.

I hold with what I said earlier: I agree with the distinction between private colleges and public universities. I think that private colleges should be free to institute whatever kinds of codes they wish. As for the public university, while I agree wholeheartedly with the First Amendment, I think it means universities as a whole should not be allowed to institute speech codes. That means that in the tension between the First Amendment and academic freedom, I come down on the side of the academic freedom. If individual professors wish to institute speech codes in their classes, they should be allowed to do so. I think that they would be wrong to do so, for two reasons, but they should have the right to do so.

Why do I think they would be wrong? Because they would be doing themselves a disservice. Many students would vote with their feet and drop the class and spread the word about the professor's dictatorialism. No self-respecting student will stay in a class where he is going to be browbeaten into a Party line. So I think that there would be a built-in market punishment for a bad classroom policy.

Beyond that, any sort of speech code undermines the process of education. Civility is important, but civility should be something the professor teaches. He should show his students how to deal with controversial issues, setting the example himself. He should go through the ground rules, making it clear that while the class is dealing with sensitive subjects the class as a whole will make progress on them only if its members do not resort to *ad hominem*, insults, threats, and so forth. If a professor happens to have an individual trouble-maker in the class—and the kinds of racism and sexism that people worry about are mostly matters of isolated individuals—then as a professor he has the option of dropping that student from his course—on the grounds of interference with the process of education, not as a matter of ideological Party line.

That point about the requirements of true education has been demonstrated time and time again. There are the famous cases historically. What happened in Athens after

the execution of Socrates, what happened to Renaissance Italy after the silencing of Galileo, and hundreds of other cases. The pursuit of knowledge requires free speech. On that point, I agree with C. Vann Woodward:

[T]he purpose of the university is not to make its members feel secure, content, or good about themselves, but to provide a forum for the new, the provocative, the disturbing, the unorthodox, even the shocking — all of which can be profoundly offensive to many, inside as well as outside its walls... . I do not think the university is or should attempt to be a political or a philanthropic, or a paternalistic or a therapeutic institution. It is not a club or a fellowship to promote harmony and civility, important as those values are. It is a place where the unthinkable can be thought, the unmentionable can be discussed, and the unchallengeable can be challenged. That means, in the words of Justice Holmes, ‘not free thought for those who agree with us but freedom for the thought we hate.’<sup>15</sup>

That sets the university’s priority of values exactly right. And, to generalize that to the objectivist point about the functioning of reason, Thomas Jefferson also got it exactly right upon the founding of the University of Virginia: “This institution will be based on the illimitable freedom of the human mind. For here, we are not afraid to follow truth where it may lead, nor to tolerate error so long as reason is free to combat it.”

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