Restrictions Against Hate Speech Violate the First Amendment

Civil Liberties, 2003
From *Opposing Viewpoints in Context* Research Database
Paul McMasters, First Amendment Ombudsman for the Freedom Forum, an advocacy organization dedicated to free press and free speech.

More than one year has passed, and we have yet to shake the image of Matthew Shepard pistol-whipped and strung up to die on a Wyoming rail fence because he was gay [the murder occurred on October 7, 1998]. We still shudder over the horror of James Byrd chained to a pickup truck and dragged to his death along a Texas country road because he was black. We cringe when reminded of the racist rampage of Benjamin Smith that left two people dead and nine others wounded.

America, we like to feel, has room for everyone. It is a place of tolerance, equality, and justice. Hate is a singular affront to that vision, and the lengthening list of these atrocities haunts the national conscience and quickens the search for remedy.

It once seemed easier to ignore the haters among us. They held furtive meetings in out-of-the-way places, wrote racist screeds in the guise of bad novels, and when they appeared in public, they wore hoods to hide their faces. Now, they apply for admission to the bar, stand for elected office, appear on radio and television talk shows, and increasingly take their message to the mainstream by using the Internet.

Hate has been a presence on the Internet since its inception. That presence increased dramatically with the advent of the World Wide Web. Now such sites, professionally produced and graphically appealing, number in the hundreds. More go up every day. Activists have moved quickly to confront the haters on this virtual ground, using the Internet to give the lie to hate speech, to monitor hate groups, and to highlight the problems of hate.

Thus, the Internet is forcing us to plumb the true depth of hate in our society. Because the role the Internet will play in the matter of hate is still evolving, the question arises: Will the Internet prove to be an instrument of hate, a palliative to hate, or just a shift in venue? The answer will depend in large measure on the nature of the solutions to hate that we pursue.

Hate Speech

Among the proposals advanced are restrictions on hate speech. Generally, hate speech is that which offends, threatens, or insults groups based on race, color, religion, national origin, gender, sexual orientation, disability, or a number of other traits. Proposals to restrict such speech have considerable support among victim groups, civil rights activists, scholars, political

figures, and ordinary citizens. The arguments for restrictions on hate speech, whether on the Internet or elsewhere, are straightforward:

- Words can and do harm the targets of hate in painfully real ways.
- Hate speech silences the members of victim groups and denies them their rightful standing in society.
- There already are exceptions to First Amendment protections for other types of speech; surely hate speech can be added to that list.
- When it comes to hate speech, civil rights must trump civil liberties.

The calls for restrictions include declaring hate-mongers mentally ill, government monitoring of groups and individuals espousing hate, outright censorship of hate speech on the Internet, and punishment of hate speech in all forms and media. It has even been proposed that recent hate outrages justify lifting the restraints placed on the Hoover-era Federal Bureau of Investigation to allow the agency to investigate groups and individuals for religious or political speech it deems extreme.

Most Americans want to do something about the hate. In the aftermath of the October 1998 beating death of Matthew Shepard, the University of Wyoming student targeted because he was gay, 26 states took up legislative proposals dealing with hate crimes. Missouri passed such a law, and California Governor Gray Davis recently signed a bill that outlaws harassment of gays in state schools.

Hate Speech in the Courts

It is a uniquely American characteristic that such matters become the stuff of passionate debate rather than bloody warfare—remarkable considering the seriousness and divisiveness of the issues raised. When laws target speech, whether on the Internet or in other venues, profound questions are raised. Do group sensibilities take precedence over individual conscience? Is some speech so odious and hurtful that it can be regarded as conduct? Must the achievement of a civil society be at the expense of a free society?

However we eventually resolve such questions, the debate must play out in terms of what the Constitution will allow. The Supreme Court has been wary of a general proscription of hate speech. Beginning with *Cantwell v. Connecticut* 310 U.S. 296 (1940), the court set about defining and refining the conditions under which hate speech might fall outside the First Amendment's protections.

A series of these decisions—*Chaplinsky v. New Hampshire* 315 U.S. 568 (1942), *Terminiello v. Chicago* 337 U.S. 1 (1949), *Feiner v. New York* 340 U.S. 315 (1951), and *Brandenburg v. Ohio* 395 U.S. 444 (1969)—have added such terms as "clear and present danger," "fighting

words," incitement to "... imminent lawless action," and "the heckler's veto" to the legal lexicon. Even so, no ruling has yet yielded up a "victim's veto."

With the unanimous decision in *R.A.V. v. St. Paul* 505 U.S. 377 (1992), which held that a bias-motivated criminal ordinance was invalid because it prohibited "otherwise permitted speech solely on the basis of the subjects the speech addresses," that seems even less likely today. In addition, there are other constitutional obstacles such as the jurisprudence involving prior restraint, group libel, and the right to private conscience (an issue explored at some length by Alan Charles Kors and Harvey A. Silverglate in *The Shadow University: The Betrayal of Liberty on America's Campuses*). Nevertheless, judges and juries in state courts are listening intently to efforts to make the case against hate speech. Attempts to expand the concepts of threat or the intentional infliction of emotional distress offer hope to advocates that a constitutionally valid approach can be devised.

Even if laws that the Supreme Court would abide could be crafted, however, there is another, more difficult, problem for the advocates of such laws: They don't stop hate. That is the fundamental flaw in solutions that focus on hate-speech laws. The proponents of such laws frequently fail to disentangle three distinct issues: hate speech, hate crimes, and the silencing of victim groups. Hate causes each of these. It does not necessarily follow that hate speech causes either hate crimes or the silencing of victim groups or that anti-hate speech laws will relieve either problem. Censoring hate speech may have emotional and symbolic appeal but little if any utility as a solution.

Outside the United States, hate often manifests itself in prolonged and violent clashes between groups. International conventions and anti-hate speech laws don't seem to have had an appreciable impact on hate or the violence that it causes, however. We have had the same experience with campus speech codes in the United States. Not only have they not found much favor with the courts, but more important, hate speech and crimes on the nation's campuses have increased appreciably despite the existence of speech codes covering broad categories of speech at hundreds of colleges and universities.

In fact, women and minorities—traditional groups for whom the speech codes were enacted—often are the ones punished under them. It is instructive to note that the defendants in the early hate-speech cases were religious or political speakers. In *Cantwell* and *Chaplinsky*, they were Jehovah's Witnesses; in *Terminiello*, a Catholic priest (albeit under suspension from his bishop at the time for racist speech), and in *Feiner*, a college student appealing to blacks to revolt against racist oppression.

Defining Hate Speech

The difficulty of defining hate speech significantly complicates attempts to draft laws against hate speech. What might work for scholarly or general discourse surely would not be adequate for the formulation of laws. Is the definition in terms of what the speech reflects, such as bigotry, bias, prejudice, anger, ignorance, and fear? Or what the speech conveys: intimidation, vilification, subjugation, eradication? Does it matter whether the speech occurs in a

face-to-face encounter, in an online diatribe, in a novel, in a newscast, during a classroom presentation, or as part of a political candidate's campaign? Can hate speech be defined as a list of words, or does the context of those words count? Which is more important in determining hate speech, the intent of the speaker or the reaction of the audience?

Once a definition of hate speech is codified in law, the problem becomes one of determining how it is applied and to whom it is applied. Should a law proscribe certain words and thoughts for one group of Americans but allow them for oppressed groups that have appropriated the language of victimization and discrimination as a strategy for combating hate?

For hate laws to function, hate groups must be designated for special punishment of their words and views and victim groups must be designated for special consideration—a seductive prospect in light of their history of oppression. Ultimately, however, it is an inconsistent and possibly disastrous principle to embed in law, given the potential for arbitrary justice as well as a hardening of the hate lines. Further, to punish hate-mongers for thoughts and words instead of actions is to alter the essential nature of our social and political compact.

The Problem with Hate-Speech Laws

Hate-speech laws encourage appropriation of victim groups' identities by groups that until recently had not been considered oppressed. The list of such "outsider" groups is growing. For example, an Oregon law includes along with the traditional criteria such designations as political party, purchasing power, union membership, social standing, or marital status, to name a few. As this list of victim groups expands, the universe of protected speech shrinks.

Hate-speech laws can work to silence individual members of victim groups if the speech against others falls within the definition of hate speech or if individuals within the group are only allowed to represent that group in their speech. They would be prevented from criticizing or harshly characterizing members of their own group or other victim groups.

Hate-speech laws also must depend on an accurate representation of how speech works, reasonably predicting how speech will be received. If not, application of the law becomes arbitrary and capricious. For example, if inadvertent harm is a criterion of the law—and how can it not be?—then speech against hate as well as hate speech itself becomes vulnerable to punishment since inadvertent harm is inevitable. The ironic beauty of speech is that neither the speaker nor the text can control the reaction of the audience, which may vary dramatically from one hearer to another. It is safe to say that the interpretations of a particular word or string of words in a particular context amount to some multiple of the total number of individuals and groups receiving it. Language is simply too mercurial for the constraints of legal definitions.

Laws against hate speech would obviate the benefits of such speech—and there are benefits. Hate speech uncovers the haters. It exposes the ignorance, fear, and incoherence in their views. It warns, prepares, and galvanizes the targets. It provides the police with suspects and the prosecutors with evidence in the event of a crime. It enlivens the bystanders. It

demands response. And it demonstrates the strength of our commitment to the tolerance of intolerance and the primacy of freedom of expression.

Laws restricting hate speech begin with the assumption that speech is a finite commodity so that speech must be taken from one group in order to give more speech to another group, Such an assumption offends both reason and our First Amendment tradition.

Punishing speech is not the same thing as curing hate. Ultimately, anti-hate speech laws would silence the voices they would help as well as those who would help them. They would be enacted with the best of intentions and executed with the worst of results. Rather than encouraging the assimilation of the words and work of those championing a more civil society, these laws would substitute one form of silencing for another. They would divert public dialogue from a focus on a fair society to a preoccupation with censorship. They would risk exacerbating hate rather than eliminating it. They would trivialize the debate by flailing at words and symbols rather than the causes of hate and discrimination. They would lay a veneer of civility over a community seething with tension.

Even though arguments against hate-speech laws from a First Amendment perspective seem anemic and abstract in the face of hate's graphic ugliness, they must be made. Free-speech advocates cannot merely wave the First Amendment flag and walk away. They must encourage advocates for the targets of hate to speak out against bigotry and bias at every turn. They must remind them that protecting and exercising the freedom guaranteed under the First Amendment is the best way to insure the equality guaranteed under the Fourteenth Amendment.
All efforts must focus on affirming the American tradition that no problem—even hate—is so intractable that we must censor words, images, and ideas to address it. The challenge within that tradition is to achieve civility in discourse without imposing conformity in thought, The First Amendment imperative within that tradition is to defend bad words for good principles.

Source Citation

McMasters, Paul. "Restrictions Against Hate Speech Violate the First Amendment." *Civil Liberties*, edited by James D. Torr, Greenhaven Press, 2003. Current Controversies. *Opposing Viewpoints in Context*, ezproxy.cuyamaca.edu/login?url=http://link.galegroup.com.ezproxy.cuyamaca.edu/apps/doc/EJ3010295213/OVIC?u=sdccd_cuyamaca&xid=2f7ade21. Accessed 30 Dec. 2016. Originally published as "Must a Civil Society Be a Censored Society?" *www.freedomforum.org*, 17 Jan. 1999.

Gale Document Number: GALE|EJ3010295213

++

Why Hate Speech Should Not Be Banned

The following exchange is an excerpt of an interview between Peter Molnar, Senior Research Fellow at the Center for Media and Communication Studies at Central European University, Budapest, and Kenan Malik, Senior Visiting Fellow at the University of Surrey and author of multiple books on race, human nature, and philosophy. The interview took place in 2011 in anticipation of the release of a book titled *The Content and Context of Hate Speech: Rethinking Regulation and Responses*, to which Malik is a contributor.

Peter Molnar: Would you characterize some speech as 'hate speech', and do you think that it is possible to provide a reliable legal definition of 'hate speech'?

Kenan Malik: I am not sure that 'hate speech' is a particularly useful concept. Much is said and written, of course, that is designed to promote hatred. But it makes little sense to lump it all together in a single category, especially when hatred is such a contested concept.
In a sense, hate speech restriction has become a means not of addressing specific issues about intimidation or incitement, but of enforcing general social regulation. This is why if you look at hate speech laws across the world, there is no consistency about what constitutes hate speech. Britain bans abusive, insulting, and threatening speech. Denmark and Canada ban speech that is insulting and degrading. India and Israel ban speech that hurts religious feelings and incites racial and religious hatred. In Holland, it is a criminal offense deliberately to insult a particular group. Australia prohibits speech that offends, insults, humiliates, or intimidates individuals or groups. Germany bans speech that violates the dignity of, or maliciously degrades or defames, a group. And so on. In each case, the law defines hate speech in a different way.

One response might be to say: Let us define hate speech much more tightly. I think, however, that the problem runs much deeper. Hate speech restriction is a means not of tackling bigotry but of rebranding certain, often obnoxious, ideas or arguments as *immoral*. It is a way of making certain ideas illegitimate without bothering politically to challenge them. And that is dangerous.

PM: Setting aside legal restrictions, would you differentiate between claims (that target certain groups) that should be challenged in political debate and claims (that also target certain groups) that should be simply rejected as so immoral that they don't deserve an answer other than the strongest rejection and moral condemnation?

KM: There are certainly claims that are so outrageous that one would not wish to waste one's time refuting them. If someone were to suggest that all Muslims should be tortured because they are potential terrorists, or that rape is acceptable, then clearly no rational argument will ever change their mind, or that of anyone who accepts such claims.
Much of what we call hate speech consists, however, of claims that may be contemptible but yet are accepted by many as morally defensible. Hence I am wary of the argument that some sentiments are so immoral they can simply be condemned without being contested. First, such blanket condemnations are often a cover for the inability or unwillingness politically to challenge obnoxious sentiments. Second, in challenging obnoxious sentiments, we are not simply challenging those who spout such views; we are also challenging the potential audience for such views. Dismissing obnoxious or hateful views as not worthy of response may not be the best way of engaging with such an audience. Whether or not an

obnoxious claim requires a reply depends, therefore, not simply on the nature of the claim itself, but also on the potential audience for that claim.

PM: Do you support content-based bans of 'hate speech' through the criminal law, or do you instead agree with the American and Hungarian approach, which permits prohibition only of speech that creates imminent danger?

KM: I believe that *no* speech should be banned solely because of its content; I would distinguish 'content-based' regulation from 'effects-based' regulation and permit the prohibition only of speech that creates imminent danger. I oppose content-based bans both as a matter of principle and with a mind to the practical impact of such bans. Such laws are wrong in principle because free speech for everyone except bigots is not free speech at all. It is meaningless to defend the right of free expression for people with whose views we agree. The right to free speech only has political bite when we are forced to defend the rights of people with whose views we profoundly disagree.
And in practice, you cannot reduce or eliminate bigotry simply by banning it. You simply let the sentiments fester underground. As Milton once put it, to keep out 'evil doctrine' by licensing is 'like the exploit of that gallant man who thought to pound up the crows by shutting his Park-gate'.

Take Britain. In 1965, Britain prohibited incitement to racial hatred as part of its Race Relations Act. The following decade was probably the most racist in British history. It was the decade of 'Paki-bashing', when racist thugs would seek out Asians to beat up. It was a decade of firebombings, stabbings, and murders. In the early 1980s, I was organizing street patrols in East London to protect Asian families from racist attacks.

Nor were thugs the only problem. Racism was woven into the fabric of public institutions. The police, immigration officials – all were openly racist. In the twenty years between 1969 and 1989, no fewer than thirty-seven blacks and Asians were killed in police custody – almost one every six months. The same number again died in prisons or in hospital custody. When in 1982, cadets at the national police academy were asked to write essays about immigrants, one wrote, 'Wogs, nignogs and Pakis come into Britain take up our homes, our jobs and our resources and contribute relatively less to our once glorious country. They are, by nature, unintelligent. And can't at all be educated sufficiently to live in a civilised society of the Western world'. Another wrote that 'all blacks are pains and should be ejected from society'. So much for incitement laws helping create a more tolerant society.

Of course, as the British experience shows, hatred exists not just in speech but also has physical consequences. Is it not important, critics of my view ask, to limit the fomenting of hatred to protect the lives of those who may be attacked? In asking this very question, they are revealing the distinction between speech and action. Saying something is not the same as doing it. But, in these post-ideological, postmodern times, it has become very unfashionable to insist on such a distinction.

In blurring the distinction between speech and action, what is really being blurred is the idea of human agency and of moral responsibility. Because lurking underneath the argument is the idea that people respond like automata to words or images. But people are not like robots. They think and reason and act on their thoughts and reasoning. Words certainly have an impact on the real world, but that impact is mediated through human agency.

Racists are, of course, influenced by racist talk. It is they, however, who bear responsibility for translating racist talk into racist action. Ironically, for all the talk of using free speech responsibly, the real consequence of the demand for censorship is to moderate the responsibility of individuals for their actions.

PM: How tightly should we define the connection between incitement and the imminent danger of action? What about racist slogans in a soccer stadium, and imminent danger of violence on the crowded streets after the end of the game?

KM: Racist slogans, like any racist speech, should be a moral issue, not a legal one. If supporters are clearly set to attack others, or are directly inciting others to do so, then, of course, it becomes a matter for the law.

PM: In that case, suppose the action is not violence but discrimination. That is, should it be only the imminent danger of violence that can justify restriction to speech, or does the imminent danger of discrimination suffice?

KM: I support laws against discrimination in the public sphere. But I absolutely oppose laws against the advocacy of discrimination. Equality is a political concept, and one to which I subscribe. But many people don't. It is clearly a highly contested concept. Should there be continued Muslim immigration into Europe? Should indigenous workers get priority in social housing? Should gays be allowed to adopt? These are all questions being keenly debated at the moment. I have strong views on all these issues, based on my belief in equality. But it would be absurd to suggest that only people who hold my kind of views should be able to advocate them. I find arguments against Muslim immigration, against equal access to housing, against gay adoptions unpalatable. But I accept that these are legitimate political arguments. A society that outlawed such arguments would, in my mind, be as reactionary as one that banned Muslim immigration or denied gays rights.

++

Hate Speech Codes Will Not End Racism and Hate Crimes

What Is a Hate Crime?, 2007
From *Opposing Viewpoints in Context* Research Database
Tim Wise, Activist and Lecturer against racism. He is the author of *White Like Me: Reflections on Race from a Privileged Son* (2005) and *Affirmative Action: Racial Preference in Black and White* (2005).

As has been the case every year for as long as I can recall, an American college campus is once again embroiled in controversy over the expression of racism in its hallowed halls, and what it may seek to do in response.

This time the place is Bellarmine University, a Catholic college in Louisville, Kentucky, where, for the past several months, freshman Andrei Chira has been sporting an armband for "Blood and Honour"—a British-based neo-Nazi and skinhead-affiliated musical movement, that calls for "white pride" and white power. Created originally as a magazine by Ian Stuart of the Hitler-friendly and openly fascist band, Skrewdriver, the Blood and Honour "movement" promotes bands that sing about racial cleansing and the deportation, if not extermination, of blacks and Jews. Blood and Honour's symbol, similar to the Nazi swastika, is that of the South African white supremacist movement, and is featured prominently on Chira's armband.

Chira, for his part, seems more confused than dangerous. All in the same breath he insists he is not a Nazi or neo-Nazi, but that he is a National Socialist (the term for which Nazi is shorthand). He insists he is not a white supremacist, a racist, or anti-Jewish, yet claims to be a supporter of the American National Socialist Movement (NSM), which calls for citizenship to be limited to those who are non-Jewish, heterosexual whites, and which group praises Hitler on its website.

All of which raises the larger question, which is not so much whether or not Chira should have the freedom to be an ignorant lout, but rather, how did someone so incapable of evincing even a modicum of intelligible (or merely internally consistent) thought, get admitted to a good college like Bellarmine in the first place? Are there no standards anymore?

Is a Racist Symbol Free Speech?

Naturally, the debate has now begun to turn on the issue of free speech: Does the University have the right to sanction Chira or force him to remove the armband, or do his First Amendment rights trump concerns about the feelings of students of color, Jews (yes there are some at the Catholic school, both students and professors), and others who are made to feel unsafe by a neo-Nazi symbol?

To be honest, I have never found the main arguments of either the free speech absolutists or those who support hate speech restrictions to be particularly persuasive.

It's a tug-of-war that has divided American higher education for years, with some schools passing restrictive codes limiting language or symbols that express open racial or religious hostility, and others taking a more hands-off approach. Bellarmine has remained uncommitted to any particular course of action. The University President has spoken in defense of Chira's free speech rights (and of the principle, more broadly), and has called for a committee to study the issue and determine what kind of policy the school should adopt to deal with hate speech.

Buzz around campus has been split between free speech absolutists on the one hand (who seem to predominate), and those concerned about the way in which racist symbols might intimidate and further marginalize already isolated students, faculty and staff of color, on the other. Faculty have sniped at one another from both sides of the issue, as have students, and a group of about a dozen students launched a sit-in outside the office of the Vice-President for Student Affairs to insist on the inviolability of free speech rights....

Having spoken recently at Bellarmine, and having met dozens of conscientious students and faculty there, concerned about addressing racism, I would like to take this opportunity to chime in, both regarding the existing free speech debate, and the larger (and I think more important) issue, which is how best to respond to racism, whether at a college or in society more broadly.

To be honest, I have never found the main arguments of either the free speech absolutists or those who support hate speech restrictions to be particularly persuasive.

The Problem with Labeling All Speech as Free

On the one hand, the free speech folks ignore several examples of speech limitations that we live with everyday, and that most all would think legitimate. So, we are not free to slander others, to print libelous information about others, to engage in false advertising, to harass others, to print and disseminate personal information about others (such as their confidential medical or financial records), to engage in speech that seeks to further a criminal conspiracy, to speak in a way that creates a hostile work environment (as with sexual harassment), to engage in plagiarized speech, or to lie under oath by way of dishonest speech. In other words, First Amendment absolutism is not only inconsistent with Constitutional jurisprudence; it is also a moral and practical absurdity, as these and other legitimate limitations make fairly apparent.

Secondly, the free speech rights of racists, by definition, must be balanced against the equal protection rights of those targeted by said speech. If people have the right to be educated or employed in non-hostile environments (and the courts and common sense both suggest they do), and if these rights extend to both public and private institutions (and they do), then to favor the free speech rights of racists, over and above the right to equal protection for their targets, is to trample the latter for the sake of the former. In other words, there is always a balance that must be struck, and an argument can be made that certain kinds of racist speech create such a hostile and intimidating environment that certain limits would be not only acceptable, but *required*, as a prerequisite for equal protection of the laws, and equal opportunity.

So, for example, face-to-face racist invective could be restricted, as could racist speech that carried with it the implied threat of violence. Whether or not a neo-Nazi symbol of a movement that celebrates Adolph Hitler qualifies in that regard, is the issue to be resolved; but certainly it should not be seen as obvious that any and all speech is protected, just because of the right to free speech in the abstract.

Not to mention, does anyone honestly believe that Bellarmine, a Catholic school, would allow (or that most of the free speech absolutists would insist that they *should* allow) students to attend class with t-shirts that read: "Hey Pope Benedict: Kiss my pro-choice Catholic ass!" or "My priest molested me and all I got from my diocese was this lousy t-shirt?" No doubt such garments would be seen as disruptive, and precisely because they do not truly express a viewpoint or any substantive content, but rather, simply toss rhetorical grenades for the sake of shock value (likely part of Chira's motivation too).

Chira's armband, in that regard, is quite different from a research paper, dissertation, or even a speech given on a soapbox, or article written for his own newspaper, if he had one: namely, unlike these things, the armband is not a rebuttable argument, nor does it put forth a cogent position to which "more speech" can be the obvious solution. It provokes an emotional response only, and little else.

The Problem with Restricting Hate Speech

At the same time, the arguments of those who would move to ban hate speech have also typically fallen short of the mark, at least in my estimation.

Hate speech codes reinforce the common tendency to view racism on the purely individual level.
To begin with, speech codes have always seemed the easy way out: the least costly, most self-righteous, but ultimately least effective way to address racism. First, such codes only target, by necessity, the most blatant forms of racism—the overtly hateful, bigoted and hostile forms of speech embodied in slurs or perhaps neo-Nazi symbolism—while leaving in place, also by necessity, the legality of more nuanced, high-minded, and ultimately more dangerous forms of racism. So racist books like *The Bell Curve*, which argues that blacks are genetically inferior to whites and Asians, obviously would not be banned under hate speech codes (nor should they be), but those racists who were too stupid to couch their biases in big words and footnotes would be singled out for attention: in which case, we'd be punishing not racism, *per se* [for itself], or even racist speech, but merely the inarticulate expression of the same.

In turn, this kind of policy would then create a false sense of security, as institutions came to believe they had really done something important, even as slicker forms of racism remained popular and unaddressed. Furthermore, such policies would also reinforce the false and dangerous notion that racism is limited to the blatant forms being circumscribed by statute, or that racists are all obvious and open advocates of fascism, rather than the oftentimes professional, respectable, and destructive leaders of our institutions: politicians, cops, and bosses, among others.

Secondly, hate speech codes reinforce the common tendency to view racism on the purely individual level—as a personality problem in need of adjustment, or at least censure—as opposed to an institutional arrangement, whereby colleges, workplaces and society at large manifest racial inequity of treatment and opportunity, often without any bigotry whatsoever. So, for example, racial inequity in the job market is perpetuated not only, or even mostly by overt racism—though that too is still far too common—but rather by way of the "old boy's networks," whereby mostly white, middle class and above, and male networks of friends, neighbors and associates pass along information about job openings to one another. And this they do, not because they seek to deliberately keep others out, but simply because those are the people they know, live around, and consider their friends. The result, of course, is that people of color and women of all colors remain locked out of full opportunity.

Likewise, students seeking to get into college are given standardized tests (bearing little relationship to academic ability), which are then used to determine in large measure where (or even *if*) they will go to college at all; this, despite the fact that these students have received profoundly unstandardized educations, have been exposed to unstandardized resources, unstandardized curricula, and have come from unstandardized and dramatically unequal backgrounds. As such, lower income students and students of color—who disproportionately come out on the short end of the resource stick—are prevented from obtaining true educational equity with their white and more affluent peers. And again, this would have nothing to do with overt bias, let alone the presence of neo-Nazis at the Educational Testing Service or in the admissions offices of any given school.

Hate Speech Codes Are a Distraction

In other words, by focusing on the overt and obvious forms of racism, hate speech codes distract us from the structural and institutional changes necessary to truly address racism and white supremacy as larger social phenomena. And while we could, in theory, both limit racist speech and respond to institutional racism, doing the former almost by definition takes so much energy (if for no other reason than the time it takes to defend the effort from Constitutional challenges), that getting around to the latter never seems to follow in practice. Not to mention, by passing hate speech codes, the dialogue about racism inevitably (as at Bellarmine) gets transformed into a discussion about free speech and censorship, thereby fundamentally altering the focus of our attentions, and making it all the less likely that our emphasis will be shifted back to the harder and more thoroughgoing work of addressing structural racial inequity.

Perhaps most importantly, even to the extent we seek to focus on the overt manifestations of racism, putting our emphasis on ways to limit speech implies that there aren't other ways to respond to overt bias that might be more effective and more creative, and engage members of the institution in a more thoroughgoing and important discussion about individual responsibilities to challenge bigotry.

So instead of banning racist armbands, how much better might it be to see hundreds of Bellarmine students donning their own come spring: armbands saying things like: "F... Nazism," "F... Racism," or, for that matter, "F... You, Andrei" (hey, free speech is free speech, after all).

That a lot of folks would be more offended by the word 'f...,' both in this article and on an armband, than by the political message of Chira's wardrobe accessory, of course, says a lot about what's wrong in this culture, but that's a different column for a different day. The point here is that such messages would be a good way to test how committed people at Bellarmine really are to free speech, and would also send a strong message that racism will be met and challenged *en masse*, and not just via anonymous e-mails.

In other words, if Chira is free to make people of color uncomfortable, then others are sure as s... free to do the same to him and others like him. Otherwise, freedom of speech becomes solely a shield for members of majority groups to hide behind, every time they seek to bash others.

Creating an Anti-racist Culture Is the Solution

Instead of banning hate speech, how much better might it be if everyone at Bellarmine who insists that they don't agree with Chira, but only support his rights to free speech, isolated and ostracized him: refusing to speak to him, refusing to sit near him, refusing to associate with him in any way, shape or form. That too would be exercising free speech after all, since free speech also means the freedom not to speak, in this case, to a jackass like Andrei Chira.
Instead of banning hate speech, how much better might it be for Bellarmine University to institutionalize practices and policies intended to screen out fascist bottom-feeders like Chira in the first place? After all, Bellarmine, like any college can establish any number of requirements for students seeking to gain admission, or staff seeking to work at the school, or faculty desiring a teaching gig. In addition to scholarly credentials, why not require applicants—whether for student slots or jobs—to explain how they intend to further the cause of racial diversity and equity at Bellarmine?

And before I'm accused of advocating the larding up of the school's mission with politically correct platitudes, perhaps it would be worth noting that these values are already part of Bellarmine's Mission statement. To wit, the school's Mission statement, which reads:

Bellarmine University is an independent, Catholic university in the public interest, serving the region, the nation and the world by providing an educational environment of academic excellence and respect for the intrinsic value and dignity of each person. We foster international awareness in undergraduate and graduate programs in the liberal arts and professional studies where talented, diverse persons of all faiths and many ages, nations and cultures develop the intellectual, moral and professional competencies for lifelong learning, leadership, service to others, careers, and responsible, values-based, caring lives....

In other words, the school's entire purpose is consistent with the search for diversity and equity, and entirely inconsistent with the racism and Nazism of persons like Chira. So why shouldn't the school seek to ensure that only persons who adhere to, buy into, and are prepared to further the purpose of the institution itself, are admitted or hired to work there? Once there, individuals may indeed have free speech rights that protect even their most obnoxious of views, but that says nothing about the ability of the school to take steps that will make it much harder for such individuals to enter the institution to begin with.

Sadly, perhaps the most important missing ingredient in the struggle to uproot racism is white outrage.

Making a proven commitment to antiracist values a prerequisite for entry (and perhaps requiring some form of training in these issues or antiracist service project in order to graduate or receive tenure or promotion) would go far towards operationalizing the college's lofty (but thus far mostly impotent) mission, and would make controversies such as the present one far less frequent or relevant.

If Bellarmine is serious about stamping out racism, it is this kind of institutional change—which would both limit the presence of racists and increase the numbers of people of color and white antiracist allies, by definition—that they should adopt. No more platitudes, no more promises, and no more unnecessary debates about free speech. Create an antiracist culture from the get-go, by expanding affirmative action, diversifying the curricula, and using admissions and hiring criteria that sends a clear signal: namely, you may have free speech, but so do we; and we are exercising ours to tell you that you are not welcome here.

Why Are Whites Not Angrier?

Sadly, perhaps the most important missing ingredient in the struggle to uproot racism, is white outrage: not at those who challenge racism (oh we've plenty of anger for them, typically), but rather, at those who are white like us, and whose racism we listen to with amusement, more so than indignation.

So, for example, notice how the free speech supporters wax eloquent about the importance of upholding Chira's right to be a racist prick, but they evince almost no hostility towards [him] and his message, beyond the obligatory throw-away line: "I completely reject his views, but will fight for his right to express them." In other words, they are far more worked up about the possibility (however slight it appears to be) that the Administration may sanction the Nazi, than they are about the fact that *there is a Nazi on their campus in the first place*. Which brings up the question: does Nazism not bother them that much? Or have they confused the valid concept of free speech with the completely invalid notion that one shouldn't even condemn racists, out of some misplaced fealty to their rights (which notion of course relinquishes one's *own* right to speak back, and forcefully, to assholes like Chira)?
I long for the day when whites will get as angry at one of our number supporting bigotry and genocidal political movements, as we do at those who denounce the bigots and suggest that the

right of students of color to be educated in a non-hostile environment is just as important as the right to spout putrid inanities.

What's more, I long for the day when whites stage sit-ins to demand a more diverse and equitable college environment for students of color (which currently is threatened by rollbacks of affirmative action, for example), just as quickly as we stage them to defend free speech for fascists, which, at Bellarmine at least, shows no signs of being endangered, so quick has the Administration been to defend Chira's liberties.

In the final analysis, when whites take it upon ourselves to make racists and Nazis like Chira feel unwelcome at our colleges and in our workplaces, by virtue of making clear our own views in opposition to them, all talk of hate speech codes will become superfluous. Where anti-racists are consistent, persistent, and uncompromising, and where anti-racist principles are woven into the fabric of our institutions, there will be no need to worry about people like Chira any longer.

Source Citation

Wise, Tim. "Hate Speech Codes Will Not End Racism and Hate Crimes." *What Is a Hate Crime?*, edited by Robert Winters, Greenhaven Press, 2007. At Issue. *Opposing Viewpoints in Context*, ezproxy.cuyamaca.edu/login?url=http://link.galegroup.com.ezproxy.cuyamaca.edu/apps/doc/EJ3010196217/OVIC?u=sdccd_cuyamaca&xid=d1114bc0. Accessed 30 Dec. 2016. Originally published as "Racism, Free Speech, and the College Campus," *Lip Magazine*, 23 Dec. 2005.

Gale Document Number: GALE|EJ3010196217

++