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THE REGULATION OF HATE SPEECH BY ACADEME vs. THE IDEA OF A UNIVERSITY: A CLASSIC OXYMORON?*

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Legend has it that Willie Sutton, when asked *why* he robbed banks, answered, "Because that's where the money is!" One hopes that when people are asked, "Why do you go to college?", their response might be: "Because that's where the education is." Such an answer reflects the traditional idea of a university, embodying the seemingly self-evident proposition that it is the universe in which ideas are freely discussed and shared. However, clouds of doubt concerning this traditional idea have cast some shadows across the landscape of academe in the form of a recent phenomenon—the regulation of hate speech. By hate speech I refer here to the distribution and utterance on college campuses of bigoted, racist, sexist, religious and similar shibboleths. The perceived threat of hate speech has propelled institutions of higher learning towards

* This essay is adapted from a speech delivered by Hon. Joseph W. Bellacosa, New York Court of Appeals, at the annual dinner of the Hudson Mohawk Association of Colleges and Universities at Albany, New York, on May 28, 1992. Excerpts of this speech appeared in *The New York Law Journal* on June 24, 1992.

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a reactive regulation of open, robust, cantankerous, contentious, and often vile and hurtful discourse and exchange of occasionally tormenting ideas and epithets. The scholastic sanctuaries seem to be yawing, swaying, and overreacting to the ugly profusion of hate speech.¹

My personal sense is that the attempt by academe to regulate such speech in this fashion may be unconstitutional. While a narrowly drafted regulation may qualify under some bare exceptional circumstances and analysis, it is in any event counterproductive, rife with frustration, and unwise. In a phrase, it is a classically oxymoronic enterprise. This characterization is particularly apt if the usual modes of bureaucratic, administrative, or even scholastic regulation are employed. In the short run, my conclusion is buttressed by the controversy and litigation that has erupted around these hate speech codes. They are going nowhere fast.² In the long run, these exertions on campuses across the country are doomed by self-contradiction. They clash head-on with the educational environment of free discourse, openness, and re-exploration of ideas, even detestable or very unsettling ideas.

Woodrow Wilson, while president of Princeton University, observed: "I have always been among those who believed that the freedom of speech was the greatest safety, because if [people are] fools, the best thing to do is to encourage [them] to advertise that fact by speaking."³ Some eighty years later, Benno Schmidt, then president of Yale, echoed Wilson's trenchant challenge amidst the current turmoil. Bucking prevalent academic philosophies, Schmidt, a First Amendment scholar in his own right, opined:

Much expression that is free may deserve our contempt. We may well be moved to exercise our own freedom to counter it or to

¹ See Todd Ackerman, *Decision Could Kill College Speech Codes*, Hous. CHRON., June 28, 1992, at A1 (citing estimates that at least 250 universities have some type of general or specific code); Ken Emerson, *Only Correct—A Campus Report: Wisconsin; New Race Relation Rules on College Campuses*, NEW REPUBLIC, Feb. 18, 1991, at 18 (estimating that nearly 125 colleges and universities have promulgated codes prohibiting hate speech in one form or another). See generally Rodney A. Smolla, *Academic Freedom, Hate Speech, and the Idea of a University*, 53 LAW & CONTEMP. PROBS. 195, 195 n.1 (1990) (citing articles concerning the debate over hate speech on college campuses).

² See *University of Wis. at Madison Post, Inc. v. Board of Regents*, 774 F. Supp. 1163, 1181 (E.D. Wis. 1991) (striking university rule as overbroad and vague); *Doe v. University of Mich.*, 721 F. Supp. 852, 866-67 (E.D. Mich. 1989) (holding university policy on discrimination and harassment vague and overbroad); *infra* notes 28-35 and accompanying text.

³ Barbara Dority, *Civil Liberties Watch: The P.C. Speech Police*, THE HUMANIST, Mar./Apr. 1992, at 31.

ignore it. But universities cannot censor or suppress speech, no matter how obnoxious in content, without violating their justification for existence. . . . On some other campuses in this country, values of civility and community have been offered by some as paramount values of the university, even to the extent of superseding freedom of expression. Such a view is wrong in principle and, if extended, is disastrous to freedom of thought The chilling effects on speech of the vagueness and open-ended nature of many universities' prohibitions . . . are compounded by the fact that these codes are typically enforced by faculty and students who commonly assert that vague notions of community are more important to the academy than freedom of thought and expression⁴

These two academic leaders span the twentieth century American experience and provide illuminating perspectives for examining the solution being proffered for the problem of an apparently enveloping tide of ethnoviolence.⁵ In my frame of reference, hate speech should be treated differently from hate-filled conduct. Not surprisingly, these horrid verbal manifestations on college campuses mirror similar effusions in broader society, in crumbling urban centers, and even in the "safe havens" of suburbia and academe.

Justice Oliver Wendell Holmes was once asked, "What is it like up there in the Supreme Court?" He responded, "We are very quiet there," and, after a pause, added "but it is the quiet of a storm centre."⁶ Academic and judicial sanctuaries may be very much alike in the framework of his telling metaphor.

The faddish response of many colleges and universities, both public and private, seems to be the adoption of disciplinary hate speech codes, or the modification of existing student conduct codes to encompass hate speech. These efforts, for the most part, seem well-intended as they focus on the fulfillment of a school's responsibility to provide full and equal opportunity, to meet equal protection obligations and commitments, and to redress a cross-section of harms inflicted on a variety of victims. But these well-

⁴ Nat Hentoff, 'Speech Codes' on the Campus and Problems of Free Speech, *DISSENT*, Fall 1991, at 549.

⁵ See, e.g., Alexander Cockburn, *Beat the Devil*, *THE NATION*, May 27, 1991, at 690 (discussing expulsion of Brown University student for violating hate speech policy); Tom Morgenthau et al., *Race on Campus: Failing the Test*, *NEWSWEEK*, May 6, 1991, at 26 (recounting bias incident at Yale University).

⁶ Oliver W. Holmes, *Law and the Court*, in *COLLECTED LEGAL PAPERS* 291, 292 (1920).

intended efforts are also too often disguised missions, driven by political and special interest agendas.

My two focal points are the legality and the wisdom of the proliferation of hate speech code exertions. A threshold problem or, at least, concern must be with organic law—the First Amendment. *New York Times* columnist Anthony Lewis reflected a point of view recently in his book *Make No Law*,⁷ marking the twenty-fifth anniversary of *New York Times Co. v. Sullivan*,⁸ that the words of the Bill of Rights are simple and unqualified: “Congress shall make no law . . . abridging the freedom of speech”⁹ Nevertheless, voluminous litigation and scholarly writings continue to challenge the seemingly plain principle.

As an almost universal proposition, colleges and universities, serving as state actors or agents, cannot regulate speech based on its content. If the speech falls into some very exceptional and highly qualified categories, such as fighting words,¹⁰ obscenity,¹¹ or defamation,¹² there may be some room for regulation. These excep-

⁷ ANTHONY LEWIS, *MAKE NO LAW: THE SULLIVAN CASE AND THE FIRST AMENDMENT* (1991).

⁸ 376 U.S. 254 (1964).

⁹ U.S. CONST. amend. I; see LEWIS, *supra* note 7, at 47.

¹⁰ Fighting words are those “which by their very utterance inflict injury or tend to incite an immediate breach of the peace.” *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942). In *Chaplinsky*, petitioner was convicted for violating a New Hampshire statute prohibiting anyone to address “any offensive, derisive or annoying word to any other person . . . with intent to deride, offend or annoy him.” *Id.* at 569. The violation was based upon petitioner’s statements during a public disturbance that the city marshal was a “God damned racketeer” and a “damned Fascist.” *Id.* Because such utterances were not an essential element of the free exchange of ideas or the discovery of truth, the Supreme Court found that any benefit derived from them was clearly outweighed by the social interest in order and morality. *Id.* at 572.

¹¹ *Miller v. California*, 413 U.S. 15 (1973). Obscene material is not simply that which depicts sexual acts, but rather that which an average person, applying contemporary community standards, would find, when taken as a whole, appeals to prurient interest. *Roth v. United States*, 354 U.S. 476, 489 (1957). To be considered obscene, the material must also depict, in a patently offensive way, sexual conduct specifically defined under state law, and lack serious literary, artistic, political, or scientific value when taken as a whole. *Miller*, 413 U.S. at 24.

¹² *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). The burden of proving whether a defendant has forfeited First Amendment protection through the publication of false and defamatory statements depends upon the nature of the publication and the status of the parties involved. In *New York Times v. Sullivan*, the Supreme Court held that a public official may not recover damages for a defamatory falsehood relating to his official conduct absent a showing of “actual malice”—that the statement was made with knowledge that it was false or with reckless disregard for whether it was false or not. *Id.* at 279-80; see also *Garrison v. Louisiana*, 379 U.S. 64, 77 (1964) (extending *New York Times* rule to “anything which might touch on an official’s fitness for office,” even if the defamatory statement did

tional utterances are deemed to enjoy such little redeeming social value and to be so undeserving of constitutional protection that any negative consequences of interdicting them are outweighed by a perceived need for deference to competing societal benefits and protections.

The spectrum of differentiation, however, is very difficult to pinpoint and define with any precision. Hate speech can be mercurial and terribly provocative. It is often personalized and vicious and it can be permanently harmful.¹³ Therefore, society tends to view it differently in nature from utterances that courts have classified as political in nature, which enjoy the highest and purest hierarchical rank of protection.¹⁴

Where then does the modern plague of hate speech on campuses fit into First Amendment jurisprudence and principles? One Supreme Court case of doubtful sweep arguably suggests that hate speech may be constitutionally regulated when it substantially interferes with the educational process and opportunity to learn.¹⁵ Thus, a narrowly drafted policy—for example, one that punishes only racial or sexist epithets intentionally directed at an individual, as opposed to pure ideas exchanged in the classroom—may pass constitutional muster. The targeted individual in such a case is not able to turn a deaf ear and, thus, suffers an unavoidable injurious interruption or inflammatory disruption of the central educational experience and atmosphere. By this reasoning, provo-

not concern official conduct). The Court later addressed the question of a private plaintiff involved in an issue of public concern and found the *New York Times* standard inapplicable. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345-46 (1974). The Court held that so long as there is no liability without fault, states may define for themselves the appropriate standard of liability in these situations. *Id.* at 347.

¹³ See Charles R. Lawrence III, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, 1990 DUKE L.J. 431, 457-76 (discussing injuries inflicted by racist speech); Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2326-41 (1988) (reviewing the victim's story of the effects of hate filled messages).

¹⁴ See *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538, 2564, 2567-68 (1992) (Stevens, J., concurring); see also *infra* notes 16-24 and accompanying text.

¹⁵ *Healy v. James*, 408 U.S. 169 (1972). In *Healy*, a state college denied official recognition to a group of students who wished to form a local chapter of Students for a Democratic Society ("SDS"). *Id.* at 170. The college based its denial on the fact that the chapter had links with the national SDS, which was known for promoting "disruption and violence" on campuses and whose philosophy was "antithetical to the school's policies." *Id.* at 174-75. Although the Court held that the denial of recognition violated the local SDS chapter's First Amendment rights, it suggested that the school may deny recognition to the group if it refused to abide by reasonable campus rules and regulations governing conduct. *Id.* at 191-94.

cations short of fighting words may be curtailed. However, this exception, even if formerly valid, may have fizzled.

Recently, in *R.A.V. v. City of St. Paul*,¹⁶ the United States Supreme Court, rather than explicitly endorsing such a chilling restraint in the educational context, seems to have promulgated its own chilling counter-guidance to speech regulations when it upheld a First Amendment challenge to a hate crime municipal ordinance in St. Paul, Minnesota.¹⁷ The ordinance in question penalized placing on "public or private property a symbol, object, appellation, characterization or graffiti . . . which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender."¹⁸ The Court declared the ordinance facially invalid under the First Amendment because its prohibitions were based solely on subject matter, i.e., certain "disfavored" topics.¹⁹ Although the Minnesota Supreme Court narrowly construed the ordinance to prohibit only those displays or symbols that amounted to "fighting words," the Supreme Court found that the prohibition was, in functional impact, targeted at the disfavored topics specified in the ordinance.²⁰ Displays or symbols constituting fighting words, expressing hostility to topics other than those listed in the ordinance, were unaffected.²¹ Thus, the Supreme Court concluded that the ordinance amounted to impermissibly content-based discrimination and was therefore invalid.²²

Moreover, the Supreme Court also concluded that the ordinance amounted to viewpoint discrimination because those arguing in favor of racial or religious tolerance, for example, could project "fighting words," addressed to something other than "race, creed, color, religion, or gender," to advance their cause while their oppo-

¹⁶ 112 S. Ct. 2538 (1992). In *R.A.V.*, petitioner was charged for violation of the St. Paul Bias-Motivated Crime Ordinance after he allegedly burned a cross inside the fenced yard of a black family. *Id.* at 2541.

¹⁷ *Id.* at 2550. See generally *Speech Therapy: First Amendment Decision on 'Fighting Words,'* THE NEW REPUBLIC, July 13, 1992, at 7 (asserting that *R.A.V.* decision declared "unequivocally that even racist and sexist speech is protected by the First Amendment").

¹⁸ *R.A.V.*, 112 S. Ct. at 2541; see also David Savage, *Hate Crime Law is Struck Down*, L.A. TIMES, June 23, 1992, at A1 (noting that 46 states have measures outlawing burning of crosses and displaying of Nazi emblems and other signs that convey bias and hatred).

¹⁹ *R.A.V.*, 112 S. Ct. at 2547.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

nents could not.²³ Condemning the particular activity and recognizing that municipalities have a compelling interest in ensuring “basic human rights of members of groups that have historically been subjected to discrimination,” the Supreme Court nevertheless concluded that the content discrimination in the St. Paul ordinance was not reasonably necessary to achieve that interest.²⁴

As some colleges and universities wrestle with the problem of hate speech, they too have framed hate speech codes that have tried to fit within the well-known fighting words concept. That doctrine, enunciated in *Chaplinsky v. New Hampshire*,²⁵ focuses on words that intentionally tend to incite immediate breaches of the peace.²⁶ Institutions and regions, progressive by reputation and practice, strained to squeeze restrictive rules into this narrow tube, but it is highly doubtful in view of *R.A.V.* that this narrow doctrine will tolerate such experiments. Indeed, as punctuated by the Court in *R.A.V.*, the fighting words doctrine allows regulation as to the *mode*, not the *content* of the expression.²⁷

In 1989, for example, the University of Wisconsin adopted a rule authorizing discipline for racist or discriminatory behavior directed at an individual that was intentional and demeaning and created a hostile environment.²⁸ This regulation was struck down by a federal district court as overbroad.²⁹ The court found that the rule covered situations in which no breach of the peace was likely and, therefore, did not meet the requirements of the “fighting words” doctrine. Subsequently, the University modified its ban to cover only situations involving direct confrontations between stu-

²³ *Id.* at 2547-48.

²⁴ *Id.* at 2549-50.

²⁵ 315 U.S. 568 (1942).

²⁶ *Chaplinsky*, 315 U.S. at 572; *see supra* note 10.

²⁷ *R.A.V.*, 112 S. Ct. at 2545.

²⁸ *See University of Wis. at Madison Post, Inc. v. Board of Regents*, 774 F. Supp. 1163 (E.D. Wis. 1991). The University of Wisconsin Rule provided in pertinent part that the university may discipline a student:

(2)(a) For 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 or other behavior or physical conduct intentionally: (1) demean the race, sex, religion, color, creed, disability, sexual orientation, national origin, ancestry or age of the individual or individuals; and (2) create an intimidating, hostile or demeaning environment for education, university-related work, or other university-authorized activity.

Id. at 1165.

²⁹ *Id.* at 1173.

dents.³⁰ Still concerned about its constitutionality, and wary of the legal costs of defending the rule, the University reassessed its rule and repealed it in the wake of *R.A.V.*³¹ Since the narrow "fighting words" channel seems even more constricted than ever, it appears to offer little promise for those who seek to use it to calm the present academic turbulence through greater restriction of speech.

Another policy, adopted in 1988 by the University of Michigan, regulated behavior in classroom buildings, libraries, labs, and recreational and study centers. The policy subjected students to disciplinary action for verbal or physical behavior that "stigmatize[d] or victimize[d]" an individual based on race, sex, or other grounds, and either threatened that individual's academic efforts, employment, extracurricular activities, or safety, or had the purpose or effect of interfering with the same, or created an intimidating, hostile, or demeaning environment for the same.³² Again, the effort was swamped in the whirlpool of unconstitutional overbreadth and vagueness.³³ The lower federal court addressing the policy not only ruled that words like "stigmatize," "victimize," "threat," and "interfere" were so vague that enforcement of the rule would violate due process, but also expressed a concern over the omission of an exemption for classroom discussion.³⁴

Apart from the concerns over constitutionality, equally serious concerns flare up regarding the wisdom of such codes. Assuming constitutionality, the cost, prudentially, must be weighed and it may be exorbitant. These regulatory adventures in an academic atmosphere loom disproportionately to the threatened harms. They also seem contradictory to the *raison d'être* of institutions of higher learning that dare to experiment with their adoption and enforcement.³⁵

³⁰ *University of Wisconsin Repeals Ban on Hate Speech*, N.Y. TIMES, Sept. 13, 1992, at A10.

³¹ *Id.*

³² See *Doe v. University of Mich.*, 721 F. Supp. 852, 852-56 (E.D. Mich. 1989). Sanctions under the university's policy ranged from mandatory attendance in special classes to expulsion. *Id.* at 857.

³³ *Id.* at 866-67; see also *First Amendment—Racist and Sexist Expression on Campus—Court Strikes Down University Limits on Hate Speech—Doe v. Univ. of Mich.*, 103 HARV. L. REV. 1397, 1397-98 (1990).

³⁴ *Doe*, 721 F. Supp. at 866-67.

³⁵ As the court in *Doe* aptly described, the principle of freedom of speech "acquire[s] a special significance in the university setting, where the free and unfettered interplay of competing views is essential to the institution's educational mission." *Id.* at 863; see also *Keyn- 15*

In the kindest light, these codes are supposed to foster a more tolerant, civilized, peaceful, and effective learning environment. However paternalistic they may be in some respects, they nevertheless represent a laudable set of goals. The rub comes from the backfire and chill on skeptical speech and the free exchange of ideas. Even the chameleonic mantra “political correctness” rears its disconcerting head to further complicate and misdirect the effort to weigh the wisdom of such regulatory exertions.

Few people could responsibly deny that the “reform” hate speech codes can be used as vehicles to foster special interests and ideological or political agendas. That truth makes these codes potentially susceptible to great abuse and mischief. To the extent one knows or suspects that special interests lurk beneath seemingly benign motivations, a legitimate concern about the consequences emerges. Imagine the specter of a Trojan horse—we’ll call it “Oxymoron”—wending its tricky entry and incursion into the citadel of academe. Imagine further the belated, loud lament of the surprised populace after the trap is sprung: “Where has all the freedom of thought and expression gone?” Historians would be quick to remonstrate that those who neglected the painful lessons of history about regimes that suppress or regulate speech are doomed to relive the pain.

Thus, from my perspective, these speech-regulating codes seem already well onto the slippery slope that drops only downhill. They are contrary to the rich and great traditions of higher education—open discourse, lofty or even lowly debate, and classical rhetoric. In *The Idea of a University*,³⁶ mid-nineteenth century author John Henry Cardinal Newman provided this illuminating description:

[A] University is not a birthplace of poets or of immortal authors, of founders of schools, leaders of colonies, or conquerors of nations. It does not promise a generation of Aristotles or Newtons, of Napoleons or Washingtons, of Raphaels or Shakespeares, though such miracles of nature it has before now contained within its precincts. Nor is it content on the other hand with forming the critic or the experimentalist, the economist or the engineer, though such too it includes within its scope. But a University training is the great ordinary means to a great but ordinary end; it aims at raising the intellectual tone of society, at cultivating the

guarding academic freedom).

³⁶ J.H.C. NEWMAN, *THE IDEA OF A UNIVERSITY* (1947).

public mind, at purifying the national taste, at supplying true principles to popular enthusiasm and fixed aims to popular aspiration, at giving enlargement and sobriety to the ideas of the age, at facilitating the exercise of political power, and refining the intercourse of private life.³⁷

The rich history and tradition of classical rhetoric—an intellectual discipline which originated perhaps 150 years before Aristotle—were refined by Aristotle. In that ancient framework, he and his school provided the foundation for many important features of modern Western education.³⁸ While rhetoric as such—the formal study and discipline—has undergone considerable change since Greco-Roman times (along with the modern connotative deconstruction of the rich word), the school campus is still admired as the unique and special forum for freely exchanging ideas and training the human mind. The central purposes of higher education persist: to expose students to a diversity of new ideas and people and to teach critical examination of the opinions and perspectives of others rather than blind acceptance or rejection based on direction from an oligarchy of *omniscienti*.

Regulatory speech codes, for whatever doubtful good they may be intended to accomplish, also have a highly toxic side effect. They hermetically seal and carbonically date formative minds in the then-current state of knowledge and of fallible majoritarian viewpoints. They preclude by fiat the ever-evolving reconsideration, reevaluation, and challenge to status quo thinking and knowledge. What a sad specter it would be to see educational leaders, administrators, faculty, and students cautiously tip-toeing around their campuses and classrooms, and one another, avoiding engagement with respect to controversial or unpopular viewpoints or theories! This image should be repugnant to anyone who values a vibrant, dynamic educational heritage, tradition, and experience. When divergent theories and viewpoints are restricted, suppressed, or, worst of all, punished in and by academe, then not only do the institutions of higher learning stagnate, but society itself also suffers an infrastructural atrophy and deterioration.

Yet, schools and society at large wince with a felt need to draw some lines of interdiction, the transgression of which produces some kind of sanction. They want teeth behind the shout from the

³⁷ *Id.* at 146-47.

³⁸ See DONALD L. CLARK, RHETORIC IN GRECO-ROMAN EDUCATION 24-50 (1957).

lips to "Be still." To be sure, people abhor conformity while they yearn for civility. The key may be found in a quenchless desire for alternative means to achieve the good ends—tolerance, mutual respect and a healthy, effective environment conducive to learning and discourse—without sacrificing fundamental values or producing undesirable consequences. It is often forgotten that the ultimate lesson of King Solomon's wisdom resulted from the *avoidance* of having to split the baby in half.

Regrettably, society has learned to like and expect quick, short-term fixes. The nation and world seem fixated by instant perception, immediate reaction, and prompt solution. Thought, reflection, and deliberation are brushed aside and impatiently discounted and, thus, discouraged. Today, people experience wars, societal upheavals, and natural disasters through a voyeuristic couch-potato lens, as though flicking a remote control solves problems by just moving them off the screen. Yet solutions proportionate to big problems, such as hate speech, require time, reflection, and careful thought; they do not emerge whole from shoot-from-the-hip or knee-jerk fixes.

However audacious it may be for me as a judicial officer to propose academic solutions to academicians, I nevertheless do so, with the caveat and understanding that the suggestions are not particularly original or clever. Nor should anyone expect that any one of these ideas alone will do the job. Educational leaders may gain some insights, however, by seriously weighing the following steps:

1. Utilize and enforce existing academic codes governing student conduct, concentrating especially, for example, on those educating about and prohibiting alcohol and drug abuse, probably the worst breeder of hate speech incidents on college campuses or anywhere else on this planet.

2. Identify and promote profiles in tolerance and courage. First and foremost, teachers, already heroes and heroines in these respects should be exalted, honored, respected, and encouraged very regularly and very visibly. This approach may help counter the lionizing of haters and disrupters, those few who are driving institutions to overreactive, negative experimentation.

3. Create opportunities for demonstration projects and discourse, and encourage mediation and counseling engagements.

4. Formulate counterculture courses, in the traditional rhetorical and academic mode, to examine and critically challenge hate-

filled or baiting or inciting speech that so terribly affects and injures people. Good speech is the best antidote for bad speech.

5. Promote incentives and disincentives that do not simultaneously produce disproportionately adverse side effects, such as stigma, shunning, and speech chills.

6. Use traditional tools, skills, and mechanisms of higher educational institutions designed to protect minorities' interests in their educational journeys.

7. Enforce existing anti-discrimination policies and laws.

8. Commit to fair affirmative activity and diversity, generating broad opportunities for enrollment and for employment.

9. Support minority student organizations, multi-cultural events, and the development of forums and workshops for moderated discussion of controversial subjects and ideas.

The task may seem like that of Sisyphus, condemned to push the rock up the mountain only to have it slide back on nearing the top. His daunting daily task was a punishment; ours is a challenge. I am confident that the views and approach I have propounded will help our society and academia to scale and conquer the mountain of hate speech. In any event, our positive quest should, at the very least, prove more fruitful, in and of itself, than the oxymoronic regulatory enterprise which while designed to squelch hate speech on campuses is doomed to failure by its self-contradiction.