

270. Hate-Speech and Universities

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We have in Canada laws against the expression of hate. Publicly inciting hatred against an identifiable group and promoting hatred against an identifiable group are crimes punishable by imprisonment or fine. People found to have expressed hatred can be ordered to cease and desist and their publications can be seized and destroyed.

As well, some provinces have human rights acts under which people can be fined for communicating an intention to discriminate against members of an identifiable group. Again, offending publications can be confiscated and banned.

Well-crafted laws and government policies against the expression of hate could conceivably be sound, for hate speech can cause harm. But given the centrality of expression to individual autonomy, a law or policy restricting hateful speech is unsound unless three conditions hold. 1) The law is in fact an effective means of attaining a significant good. 2) There is no other way for the government to attain that good, at least no other way that brings it about as effectively. 3) The good attained by the law or policy outweighs the costs and harms of having that law or policy.

If hate speech laws in a country fail any one of these three conditions, then they constitute an unjustified infringement on the peaceful expression of opinion and emotion. As such, they are inconsistent with both democracy and the conception of people as free and equal individuals capable of exercising their own judgement and choosing for themselves how to live.

In Canada, in my view, laws against the expression of hate fail all three criteria. First, the plight of marginalized people or people from historically oppressed groups has not been improved by these laws or by prosecuting people under them or banning their publications. second, that plight could well be ameliorated through policies aimed at raising the living standards of marginalized people or ensuring them opportunities for education and employment.

Finally, laws against the expression of hate have done much damage to public discourse in Canada, primarily by making ordinary, non-hateful people fearful to express themselves on controversial matters, but also by creating rancor among those few who actually do wish ill toward others. Feeling that they have been denied a say in democratic processes, such people are encouraged to take up direct action both against the targets of their ill-will and against the illegitimate political order that has excluded them.

And yet, we have these laws, and we must live under them, even as we work to increase the respect and affection Canadians have for the civil liberties, in particular for freedom of expression.

How should universities behave given the presence of laws and other government policies against the expression of hate?

My answer is that universities should simply ignore hate-speech laws and go about their business as though these laws didn't exist. Doing anything even to acknowledge hate-speech laws, let alone aiding in their enforcement, is contrary to the academic ethos and mission of the university.

Others, though, have said that universities should ensure that people on Canadian university campuses know about our hate-speech laws and that universities should indicate their willingness to see these laws used. University administrators should attempt to prevent expressions of hate and they should summon the police should they deem a hate-speech law to have been violated.

Those who enjoin universities to take the specter of hateful utterance seriously speak favourably of the letter academic vice-president François Houle sent to Ann Coulter, back in 2010, when Coulter was scheduled to speak at the University of Ottawa. "I hereby encourage you to educate yourself, if need be, as to what is acceptable in Canada and to do so before your planned visit here. Promoting hatred against any identifiable group would not only be considered inappropriate, but could in fact lead to criminal charges."

The argument for having universities embrace hate-speech laws is that their doing so tells students and professors who belong to marginalized groups that they are respected by the university and that the university is committed to maintaining a hospitable environment in which they may study and work.

This justification, though, misunderstands entirely the sort of people who are at home on university campuses. University people are intellectuals, or aspiring or apprentice intellectuals. For them, a hospitable environment is one of wide freedom of expression. If we appreciate the nature of university people, we will see that only ignoring laws against the expression of hate is consistent with the academic ethos and mission of a university.

A university is a place of open and free inquiry and discussion, inquiry and discussion aimed at creating comprehensive and true understandings of the world. University people, though, want not only to produce and to contemplate such understandings. They are moved by two other things, as well.

First, they enjoy the process of fashioning their understandings. They enjoy being in the lab or running surveys or reading articles or hearing about new (or old) theories. They enjoy thinking hard. They enjoy critical discussion. They do not, that is, engage in all this work simply to produce more knowledge. The work itself is profoundly joyous.

Second, while they care to believe truly and to value soundly, they care also, even more, to believe and value for their own reasons. They want to believe and value on the basis of evidence and argument, evidence and argument that they accept as indicating truth; they do not want to believe and value what they do as a result of social or psychological pressures. This gives them another reason to value the process of inquiry, besides their taste for it. They value inquiry because it supplies them with reasons of their own for believing and valuing as they do.

A person who wishes to believe truly but only for reasons of evidence or argument will seek to remove or at least to minimize within her work space the social and psychological pressures that influence what she believes and values. That is why she will be keen that expression is well protected at her university, that people be able to inquire and to speak as they wish. Sanctioning the expression or advocacy of a view, any view, is to try to impose on people reasons that are not reasons of evidence or argument to refrain from believing that view.

A university will be, then, to the extent that it takes its responsibility to its academic ethos and mission seriously, a place of wide freedom of expression. It will not itself restrict expression

either in order to create a hospitable environment or to combat hate. A hospitable university environment would be an environment congenial to university people, whether other people find it congenial or not, and university people will combat hate not by silencing it but only through critique.

For a university, then, to mention hate speech in its rules and regulations or to take account of that category in its practices would be for that university to distract the members of the university community from their tasks. University people, as I said, are interested in the truth of claims or theories and the soundness of values. They are not interested in whether a claim or theory can be categorized as hateful—they are especially not interested in that matter if the result is to be used to control expression or discussion. Asking them to take an interest in the status of claims and theories as hateful or not is to divert them from their tasks of creating comprehensive understandings of things. It is at least to waste their time, but it also threatens to corrupt their academic endeavour.

Academics care only whether the impugned idea is true or false, not whether it expresses hate. The university, as an institution charged with establishing and maintaining an environment in which academics might best pursue academic endeavours, must not direct them to care whether hatred is being illegally expressed by the idea they are examining.

Now one objection to the idea that universities should simply ignore laws against the expression of hate is that we all have a duty to abide by the law. This duty extends to foolish and unjust laws, for they, too, are laws among all the others. In a democracy, all the laws have the distinction of expressing the will of the people and they all thereby enjoy legitimacy. To fail in the duty to abide by the law is to express disdain for both democracy and the rule of law, if not indeed to put democracy or the rule of law at risk.

There are times, of course, when individuals and institutions should violate the law, even democratically enacted law. But if they are going to violate the law, they should violate it only in the spirit of civil disobedience. That is, they should violate it publicly, having given public notice that that is what they intend to do, and they should communicate a rationale for violating it. And they must accept to be prosecuted for breaking it and accept their punishment.

My argument, though, is not that universities should violate laws against the expression of hate in the spirit of civil disobedience, aiming thereby to draw attention to the injustice of such laws and to get people to mobilize against those laws. In recommending that universities ignore hate-speech laws, I am not suggesting that they or anyone violate those laws, not even in the best spirit.

Ignoring hate-speech laws is perfectly legal, not an act of civil disobedience. Ignoring them amounts simply to refraining from making complaints under them and not including reference to them in university policies. No one is under any obligation to scan what people say for hateful content or to report any incident of what appears to be hate speech. We are legally free to engage with expressions of hate by critiquing them or ignoring them. Not even the police have a duty to watch or report. The police will, unfortunately, investigate complaints of hate-speech, but, happily, they take no interest in what people say until they receive a complaint.

University people won't complain that someone has crossed the line into hate speech, for it won't occur to them to do so. They will react to illegal hate speech just as they react to all speech: by considering it or critiquing it, if they are interested; by ignoring it, if they are not. They won't compromise the integrity of their academic spaces by doing something that might chill discussion or bring social or psychological pressures to bear on what people believe or value.

University speech policies, codes of conduct, safe and respectful campus policies, harassment policies, gendered and sexual violence policies—none need and none should mention hate speech. Policies and codes might note that the laws of the land apply on campus just as they do off campus, though everyone knows this already. Best that universities simply affirm that the university itself puts no restrictions on the content of speech or other expression.

To sum up. In Canada, we have laws against the expression of hate. These laws have had a baleful effect on public discourse in our country and in our universities. We are not, though, bound by law to monitor discussions for expressions of hate or to complain to the police about instances of speech we think might be illegal. It is perfectly legal, then, for us to go about our business never employing the concept of hate speech.

If we are intellectuals, we won't employ the concept of hate speech in judging what people say. As intellectuals, what matters to us is the truth of the ideas or the soundness of the values that people advocate. Whether an expression is or isn't an illegal expression of hate is irrelevant to intellectuals.

Universities, to the extent that they provide caring and nurturing homes for intellectuals, will neither divert members of their communities from their scholarly tasks nor allow social or psychological pressures to condition what those members believe and value. Since a concern to prevent hate speech or to identify and punish it diverts attention from matters of truth and soundness, and since it urges people to believe or value in certain ways, or else, universities will be concerned neither to prevent hate speech nor to identify and punish instances of it.

University rules and policies, then, should make no mention of hate speech. University people should carry on as though there were no laws in Canada against the peaceful expression of opinion and emotion.