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24.02 Moral Problems and the Good Life
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Hate Speech and Free Speech

Some have argued that it is permissible to regulate hate speech because it is harmful when it targets subordinate groups. One question is how to define hate speech. Another is whether regulation of hate speech is consistent with the First Amendment, or more generally, whether it is in keeping with the moral principles that underwrite the Constitution. The basic idea, however, is that sometimes speech—especially the use of slurs and epithets—is used to degrade or demean members of subordinated groups, and so is not acceptable in a society that affirms the equal moral standing of all its members. How should the values of liberty (freedom of speech) and equality be balanced?

I. What is hate speech?

A. *Examples (all from actual incidents...I did not make these up):*

- A message scrawled on a mirror of an African-American's dorm room: "African monkeys, why don't you go back to the jungle?" (Gale)
- In an email: "Why don't you take your fat slant eyed head and go back to China?"
- A letter to a Jewish student reading: "You Jews better get out of Maine before we blow you up."
- Another, found nailed to the front door of a home belonging to an African-American man, showed a hooded member of the Ku Klux Klan with the words "We're back" underneath.
- To Margaret Cho in an email: "...how about coming down to my pig farm. You look like some good stock to breed with my pigs. In fact, if I have one that looks exactly like you I can sell more pigs to the Chinatowns across the U.S."
- In an email to an activist mailing list (*'s added by me): "Hello there. I just want to tell you that I disagree with what you have to say. I am the one and only Adolph Hitler - and guess what: I'm BACK!!!! I'm going to come and incinerate every last one of you k*k* bastards. I hate all f***ing jews and n***ers. I made a mistake by not killing every one of you bastards last time. I have a question for you: Do you think it's a coincidence that there are all of these hate groups all over the world? I guess the jews are right and everyone else is a f***ing stupid bigot. WRONG!!!! The jews are the problem and I am the answer. The fires of Auschwitz will burn again and your f***ing k*k* ass will be the first to burn...
Love,
Adolf "The Jew Killer" Hitler
PS - I'm having a barbeque on Sunday - would you like to be the main course?"

B. *Speech act theory*

Locutionary force: the literal meaning of the utterance.

Perlocutionary force: the impact or effect of the utterance. E.g. her comment intrigued (bored, excited, angered) me.

Illocutionary force: the act conventionally performed in making the utterance. E.g., ordering, warning, christening.

Subordinating speech acts: "Whites Only" sign.

C. *Stanford University's definition of "harassment by vilification":*

Speech or other expression constitutes harassment by vilification if it:

- a) is intended to insult or stigmatize an individual or small number of individuals on the basis of their sex, race, color, handicap, religion, sexual orientation, or national and ethnic origin; and
- b) is addressed directly to the individual or individuals whom it insults or stigmatizes; and
- c) makes use of "fighting words" or nonverbal symbols. (Lawrence 122)

Questions:

- What counts as a "slur" or "epithet"? Are there cases in which something should count as hate speech although it does not include a "slur" or "epithet"?
- Does this definition respect the legal distinction between content-based restrictions and "time, place and manner" restrictions? How?

II. Regulation of speech

A. The First Amendment only applies to government action, not to private parties. I can ask you to leave my party if you use a racial epithet without violating the First Amendment. Institutions receiving federal money (such as universities) fall within the scope of government action.

B. Arguments for and against regulation fall within familiar consequentialist and deontological frameworks.

C. Arguments against regulation:

i) *Slippery slope/chilling effect on unobjectionable speech:* If censorship is allowed, then over time, this will have a chilling effect on the legitimate expression of ideas and may eventually erode a commitment to freedom of speech.

- Is this also true of other laws? Once we prohibit harmful behavior, such prohibitions will expand to prohibit other sorts of behavior? Is there an especially slippery slope in the case of speech?

ii) *Speech is not action; speech is not directly harmful:* Laws against wrongful behavior (rape, assault, etc) protect individuals from direct harm. Speech only harms individuals indirectly: the harmful "effect of hate speech, if it exists, is only indirect; hate speech is harmful only because of its impact on others who are then led in turn to commit acts of violence or discrimination." (Arthur 130).

- Hate speech is more like a "slap in the face" than a conversation. "The injury is instantaneous." (Lawrence 122)
- Speech act approach suggests that words can directly subordinate. If we take a deontological approach, we can identify wrongs in hate speech other than causing harm.

iii) *The best response to problematic/harmful speech is more speech.*

- But doesn't hate speech silence the target group?

Questions:

- Do universities have special reasons to manage speech? What are those special reasons and how do they affect the legitimacy of speech codes?
- Would unregulated speech promote freedom of speech?

Further information:

In *Corry v. Stanford University* the court held that the Stanford speech code was too restrictive. See: <http://www.ithaca.edu/faculty/cduncan/265/corryvstanford.htm>