

Students Protesting Speakers: Justifiable or Juvenile?

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April 2019

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In light of the current political atmosphere of the United States, there seems to be more and more polarized political rhetoric surrounding sensitive topics such as racism, homophobia, and prejudice in general. American colleges seem to be common symbol and forum in the favor of free speech and expression of ideas, although along with this shift in polarization comes unrest when speakers present rhetoric found to be hateful or against the values of students attending those institutions. This brings up the question of whether students should have the right to protest speakers, and if it is a matter of free speech on the part of students or if it is simply the obstruction of speech by speakers with unpopular opinions. This paper will explore cases of students protesting speakers they believe are engaging in hate speech, the idea and implications of establishing speech codes, and possible solutions colleges could take to minimize or eliminate the issue of student hecklers.

The “Heckler’s Veto” and Historical Background

Historically, the Supreme Court has been back and forth on the matter of using the “heckler’s veto” argument that if a crowd so intensely disagrees and is demonstrating that it doesn’t want the speech to occur, the speaker should be stopped from speaking in the interest of public safety. However, another sentiment is that speech cannot be stopped due to the potential for a negative or violent reaction from the audience or surrounding community (Wright, 2017). In order to legally prosecute or prevent speech, the reason for doing so has to be conduct or context-based, referring to the manner, time, place, and otherwise inappropriate context in which the speech occurred or will occur.

A main case citing this concept was *Feiner v. New York*, in which Irving Feiner was arrested after speaking on a public street, criticizing public officials and a racist system, and was

silenced and prevented from speaking by police after his inflammatory words started to create a negative and restless reaction from the crowd. Feiner refused to stop the speech and break up the hostile crowd and was arrested and convicted for disorderly conduct. In the following case, it was established that he was not arrested due to the content of his message, but rather for the “reaction which it actually engendered” (Feiner, 1951). Another case involving this concept was *Bible Believers v. Wayne County*, in which case a group of evangelical Christians attended the Arab International Festival in 2012. These peaceful protesters held signs and preached publicly about their beliefs, and a crowd formed around them and began to throw objects at them and heckle. Members of the crowd assaulted some members of the Christian group, who were denouncing Muslim practices and insisting Mohammad was a false prophet. The group was removed from the festival due to the unrest and danger of the situation, according to police. The group then sued Wayne County citing the First Amendment, claiming they were conducting a peaceful protest under legal pretenses in an area designated for public use. At first this claim was dismissed and the plaintiffs appealed. The court decision following the appeal found that “there can be no legitimate dispute based on this record that the WCSO effectuated a heckler's veto by cutting off the Bible Believers' protected speech in response to a hostile crowd's reaction.” (Believers, 2015)

What is Hate Speech?

Hate speech has always been present in society, but the term has gained popularity as a reference to hateful and discriminatory words that encourage or incite violence and unrest. The First Amendment does not prohibit hate speech, because if it did, it would be a content-based law which interferes with free speech principals. Fighting words, or words that incite imminent violence, are not protected by free speech due to the danger they could cause, when students

protest against speakers, they are often protesting ideas they find to be bigoted or otherwise morally corrupt.

In 2017, a group of students shouted down conservative writer and speaker Charles Murray at Middlebury College, due to the fact that they believed his published book and theories to be racist. Murray had written about theorized links to race and intelligence, which caused students to heckle and overpower his voice upon his attempt to give a lecture at the college. Murray tried to live stream the talk, but student protesters found the room he was trying to broadcast from and disrupted it by banging on doors and making noise. Considering this chaos led to students attempting to attack Murray by jumping on the car he was taking to leave campus, it does not make a good case in favor of students being allowed to protest speakers, as it seems to be both disruptive and counter-productive for the intended message of inclusivity. In this way, if students silence any type of speech they don't like, the possibilities are endless for what could be considered hateful and therefore censored on college campuses and beyond. This would be a violation of the First Amendment, so by nature hate speech cannot be regulated, simply because it refers to content rather than danger caused by the manner in which it is said (Davidson, 2017).

Speech Codes and Implications

With the establishment that student protests can be dangerous and conflict with the constitutional rights of speakers, therein comes the question of how to control students faced with speakers they disagree with. The conclusion is not a simple one, as prohibiting any nonviolent form of protest would inhibit the First Amendment rights of students. The solution that some colleges have explored for this issue has been the concept and implementation of "free speech zones". This concept became relevant at first in the 1960s and 1970s, as the Civil Rights Movement and Vietnam War protests caused there to be disruptions to student life on campuses

across the US. Speech zones were originally meant to provide a specific forum for students to speak without causing a traffic issues or disrupting normal college life and study (Zeiner, 2005). One case concerning speech zones was that of *Roberts v. Haragan*, involving a student who applied to speak about his religious beliefs against homosexuality at Texas Tech University in 2004. The student was denied his request to speak in the area he requested, and referred to a “free speech zone” located in a gazebo to deliver his speech. He appealed this decision, but later sued the president of the university since he believed the initial denial was in violation of his right to free speech. The court decided in his favor and struck down the university’s speech zone policy, as the reasoning behind the decision was decidedly based on the potentially problematic content of the student’s speech rather than actual safety concerns. The policy itself was broad enough where it left a lot of wiggle room for the school board to discriminate against any speech they found to be potentially aggravating, and the presence of limited “speech zones” violated the rights of students to speak freely by implying they could only have complete freedom in these zones (Roberts, 2004).

The issue of speech codes comes with good intentions but problematic strategies on the part of schools in this way. Free speech zones and similar attempts to create environments of safety for minority groups who feel threatened by the presence of prejudice and hate speech on campus can easily create a problem with the freedom of students to express beliefs. The plaintiff in the Texas Tech case truly believed that homosexuality was wrong, and although the message contained discriminatory material against a marginalized group, his right to deliver his message outweighed the comfort of other students on campus. This applies to the issue of students disagreeing with speakers on their campuses because in terms of the law, discomfort with the

speech of others does not carry more importance than the constitutional right of the speaker to say it.

What's the Solution, Then?

Since it has been established that speech codes are too problematic and risky to implement under the law and protests by heckling are decidedly disruptive and counterproductive for free speech, it may be too simple of a solution for universities to prohibit speech for either party. However, promoting certain *types* of speech over others could be the solution. Workshops and seminars can be very informative and helpful for students learning about how to express themselves and have their voices heard in an effective way. Prohibiting students from heckling would be impossible without impeding their right to free expression. This being said, protests can take several forms. Encouraging students to protest outside the building where the speech is taking place might be a solution, for example. Exposing the irony of stopping speech from occurring with the intention of promoting inclusivity and acceptance could potentially resolve the problem, without taking action within college or governmental policies to strictly regulate the speech.

Education is often the solution to bigotry, ignorance, and hatred, which is the sole purpose of colleges anyway, so it makes logical sense to promote speaking up but also allowing others to do so. Seminars, workshops, and debates could help to ease tension about sensitive topics, and if handled correctly, could promote BOTH the speakers' right to express ideas and the audience's right to protest in a way that does not disrupt the "marketplace of ideas" that the Supreme Court has long held as a precedent for what academia should be. This may be a hard sell with students who are tired of having to listen to dominant groups express ideas that they disagree with, but in reality, history tends to move forward in favor of justice, so if the messages

are truly problematic, the world will eventually see that and the speaker will be lost in the void of bigotry that has been spewed by scholars motivated by hatred and ignorance since the birth of the country.

Conclusion

It is easy to say that history will dispose of rhetoric that hurts people, but there is only so much that law can do, or is supposed to do, to prevent hate speech from occurring. The law can only try to prevent violence and protect the given rights to life, liberty, and the pursuit of happiness, in whatever context that they are threatened. It is also very easy to say education is the simple answer to hate speech and the protests that try to prevent it, while in reality some people will never be able to escape the hate that drives the socially harmful rhetoric they spread. In the same breath, hecklers will continue to exist as long as anyone has the guts to stand in front of a crowd and deliver their opinions, so education will never be able to eliminate that factor fully either. In this way, law will not be the concrete answer to student protests, but rather civilized conversation and communication in a strategic and thought-out way.

References

Bible Believers v. Wayne Cty., Mich., 805 F.3d 228, 243 (6th Cir. 2015)

Davidson, J. D. (2017, April 20). Sorry, college students. There's no such thing as hate speech.

Retrieved April 12, 2019, from The Federalist website: <https://thefederalist.com/2017/04/20/sorry-college-kids-theres-no-thing-hate-speech/>

Feiner v. New York, 340 U.S. 315, 319–20, 71 S. Ct. 303, 305–06, 95 L. Ed. 295 (1951)

Roberts v. Haragan, 346 F. Supp. 2d 853, 871 (N.D. Tex. 2004)

Wright, R. G. (2017). The heckler's veto today. *Case Western Reserve Law Review*, 68(1),

159-188.<https://doi.org/0008-7262>

Zeiner, C. L. (2005). Zoned out! Examining campus speech zones. *Louisiana Law Review*, 66(1), 6-7.