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Our Obligation: Protecting Free Speech and Fostering Inclusive Environments

Patricia Telles-Irvin¹

There is much discussion and debate these days on college campuses on how to protect freedom of expression while, at the same time, cultivate an inclusive environment that promotes learning for all members of the community. While it is clear that freedom of expression is fundamental to the mission of an institution of higher education, creating an inclusive community can be challenging when toxic speech, under the protection of the First Amendment, aims only to demean and marginalize groups of individuals with no true redeeming value to advance knowledge. If our core mission is to educate by allowing the expression of divergent thoughts and perspectives, what lessons are being learned from this behavior? Where does targeted negative vitriol fit into a campus community whose mission is to educate? We often hear that “negative” speech should be countered with more speech not censorship, which is essentially valid. And yet, it is often left up to those being targeted to speak up. This can be a daunting challenge for those individuals and administrators on campuses who are asked to make campuses “safe.”

While institutions of higher education may not be able to restrict this type of speech, there are steps that can be taken to manage this challenging balance. First, it must begin with a clear statement of the institution’s values and community standards. Universities need to be very clear what they stand for, what they believe in and what is expected of each member of the community. By promoting a positive environment with values of freedom of expression, respect, dignity of others, curiosity and discovery, accountability and a commitment to excellence, a campus community can go far in promoting productive discourse of varying and divergent views and perspectives by setting such a foundation.

Secondly, institutions cannot remain neutral when purposeful measures are taken to create divisiveness and degrade a particular group of members of the community. From my perspective, it undermines the integrity of a learning community. An institution has a right to express its own point of view based on established values. As Teresa Sullivan, president of the University of Virginia, stated “...when members of university communities learn about verbal insults that include racist, sexist, homophobic, ethnic, or other forms of bias, we should join together to denounce them and to support those who have been targeted.”² Similarly, in *On Freedom of Expression and Campus Speech Codes*, the American Association of University Professors strongly oppose any restrictions of expression and freedom of thought, but maintain universities governing boards and administrators having “a

1. Vice president for Student Affairs at Northwestern University. Has served in this capacity at three different four-year institutions for the last twenty years.

2. Teresa A. Sullivan, *When the Middle Ground is the High Ground: Free Speech and the University*, TRUSTEESHIP MAG. (July/August 2017).

special duty not only to set an outstanding example of tolerance, but also to challenge boldly and condemn immediately serious breaches of civility.”³ They go on to recommend, “these institutions should, of course, be free (indeed encouraged) to condemn manifestations of intolerance and discrimination, whether physical or verbal.”⁴ Additionally, they suggest to those in student affairs, given that hate speech happens more often in outside the classroom in “dormitories, locker rooms, cafeterias, and student centers”⁵ they set “high standards of their own for tolerance and should make unmistakably clear the harm that uncivil and intolerant speech inflicts.”⁶

Third, universities can advance productive discourse by role modeling the art of engaging in discussions on conflicting points of view, and intentionally creating opportunities both inside and outside of the classroom that promotes true engagement in discourse and debate. The amount of polarization that has been emerging in our society and the unwillingness to listen to someone with whom we disagree without shutting them out immediately is a growing concern to civility and the intellectual and social life of our campuses. We must assist our students in combating the tendency to avoid divergent thoughts by preparing them with skills in listening, tolerating negative and oftentimes ignorant statements, in formulating strong arguments backed by facts and knowledge, and in resilience. The art of discourse does not come naturally to most human beings. It would behoove us to develop curriculum that prepares students to participate in brave spaces more often.

In *Free Speech on Campus*, the authors provide guidance on ways for campuses to balance free speech and maintain an inclusive community.⁷ Among the list of 17 suggestions, here are eight they believe will reinforce the well-being of students and encourage an inclusive living and learning environment:⁸

- 1) Emphasize how the campus scholarly mission is best accomplished when people of diverse backgrounds and perspectives work together in an environment of mutual respect and constructive engagement;
- 2) Protect the rights of all students to engage in meaningful protest and to distribute materials that get their message out;
- 3) Punish speech that constitutes ‘true threat’ or that meets the definition of harassment under federal anti-discrimination law;
- 4) Promulgate clear and powerful principles of community, stressing the importance of an inclusive environment and condemning hateful or stigmatizing speech;
- 5) Establish clear reporting requirements so that incidents of discriminatory practices can be quickly investigated and addressed;
- 6) Ensure that learning environments are safe for the civil expression of ideas;
- 7) Ensure that campus dormitories are safe spaces of repose, short of imposing content-based restrictions on speech;
- 8) Organize co-curricular activities that celebrate cultural diversity and provide victims of hateful and bullying acts the opportunity to heard.

3. *On Freedom of Expression and Campus Speech Codes*, AM. ASS’N OF UNIV. PROFESSORS (Nov. 2014).

4. *Id.*

5. *Id.*

6. *Id.*

7. See generally ERWIN CHERMERINSKY & HOWARD GILLMAN, *FREE SPEECH ON CAMPUS* (2017).

8. *Id.* at 150-151.

Some concrete examples, among others, implemented at Northwestern to maintain the balance and support the students are: The creation of a *NURespect* website⁹ to report bias incidents to a team of staff who can reach out to students for support; regularly scheduled community dialogues with administrators, students and faculty; sponsoring of Sustained Dialogue, a national program, where a diverse group of students meet for 10 sessions to learn more about each other's' differences;¹⁰ hosting fire side chats at the vice president's home, called Mosaic dinners, where students from diverse backgrounds find commonalities within their differences; having safe spaces whether purposely or randomly created by the institution or students themselves; recruitment of diverse staff and students, and diversity training for student affairs staff. The use of restorative circles has shown promise in providing a venue where greater understanding can occur among those who have been harmed by restoring respect, owning one's responsibility, and where participants feel heard, supported and cared for.

Finally, campuses must be prepared to exert whatever measures to ensure safety when a highly controversial speaker is invited to campus. Time, place, and manner are essential guiding parameters. Secondly, working closely with students in the planning process, involving them in finding solutions to secure the safety of the campus, is key. Third, counter-protests should also be a part of the offerings to students who choose to protest. Fourth, training staff to know how to manage these potentially volatile circumstances and developing a strong collaborative relationship with campus police are critical. Knowing the appropriate roles each play can make the difference in the outcome of the event.

A college campus is a community of learners seeking knowledge and understanding to better serve and contribute to the advancement of our society. Communities of higher education have obligations and responsibilities to provide a rich and vibrant environment where knowledge is attained through inquiry, debate and discovery. We cannot discourage differences of opinions. At the same time, we are obligated to create an inclusive environment that values and promotes respect, civility and excellence. When those values are violated with statements and behaviors that undermine the integrity and dignity of others, universities must step-up and take proactive and remedial action in accord with the goal of educating a responsible, fair, and civilized citizenry.

9. See *Campus Inclusion & Community*, NW. UNIV. STUDENT AFFAIRS, <http://www.northwestern.edu/inclusion/respectnu/index.html>.

10. *Sustained Dialogue*, NW. UNIV. STUDENT AFFAIRS, <http://www.northwestern.edu/socialjustice/programs/sustained-dialogue/index.html>.