

FREEDOM THROUGH MORAL EDUCATION

ALAN L. KEYES*

The debate over the regulation of speech at universities often becomes a conflict between civil libertarians and civil rights advocates. Unfortunately, this conflict obscures the real issue and becomes an excuse to ignore what is really at stake. It does so, in part, because some participants in the debate like to think that knowledge can be conveyed in a value-neutral manner. Nevertheless, the debate is really about moral education—about how we establish, encourage, and maintain moral behavior.

The most intriguing aspect of seeing the problem in this light is that the very conduct restricted by campus speech regulation lies at the foundation of serious moral education. Moral education involves apportioning praise and blame to guide our conduct. It is not education of the mind, accomplished by sitting down and reading ethics. Rather, because personal sentiments are necessary to translate moral precepts into moral actions, moral education requires what might have been called at one time “sentimental education.” We believe that some things are repugnant, nasty, or unacceptable, and thus we would not do them. Likewise, we believe that some things are attractive, wonderful, or acceptable, and thus we would do them. Therefore, to instill moral feelings we must be able to use the vocabulary of praise and blame, appreciation and opprobrium.

In this regard, insult is actually a very useful tool. Insults can attack immoral behavior by exposing it, by ripping off its mask and allowing us to see the corrupt for what they really are. As a result, we should not banish the vocabulary of insult from our society as long as it is effective in fighting emotionally those who engage in immoral conduct.

The distinction between using the tools of praise and blame, appreciation and opprobrium on the one hand, and using coercion on the other, may reflect the distinction between enforcing mores and enforcing laws. For example, in determining what constitutes an acceptable romantic overture, we do not have a

* President, Citizens Against Government Waste; former Assistant Secretary of State of the United States.

formal code of conduct to prescribe acceptable and unacceptable behavior. Instead, this code develops largely on its own. Approach a person of the opposite sex in a certain way, and that person may respond favorably. Approach the same person in a different way, and that person may laugh or use derogatory names.

The second category of response has reduced many an inept lover to despair. Repeated often enough, it may even amount to a form of personal abuse. Still, we do not subject this sort of invidious discrimination to formal regulation. And yet, if the argument for campus speech restrictions depends on the harmful effects of certain words, why are inept lovers not a protected class? There are probably students wandering this very campus who are in the process of being emotionally destroyed. They will carry wounds with them for the rest of their lives. Despite this, however, most people would find my question humorous or ask how anyone could seriously propose to limit this sort of discrimination.

Similarly, we do not regulate the significant prejudice endured by the ugly. Society denies them many important things, including the chance of ever being ravishing movie stars or of engaging in many similar occupations. Yet, because the relevant distinctions do not appear to involve moral judgments on the order of "you are a bad person," few think that this discrimination should be regulated. Someone might be ugly, but that does not make him a bad person. Clearly, the debate over speech restrictions cannot turn solely on the discriminatory use of judgmental language or even on the effects of such language.

There is little disagreement that conduct, and even speech to a certain extent, should be regulated to maintain an acceptable moral atmosphere. This regulation occurs all the time, both in society at large and on college campuses. For instance, public fornication is illegal in most places. It is unacceptable, indecent behavior, and those who engage in it are punished in various ways. Now, for believers in sexual liberation, public fornication is arguably a type of free speech. It makes a statement about the acceptability, and even the beauty, of a particular human behavior. Society proscribes it nevertheless. Not even Charles Lawrence could convince us that public fornication is a message that should be protected under the First

Amendment.¹

Therefore, reducing the debate to civil liberties versus civil rights misses the point. The debate is really about which moral standards we should enforce coercively, which moral standards we should not enforce coercively, and, ultimately, what these moral standards should be.

Although these questions are today most often raised and debated at universities, they are probably more easily resolved in society at large. There, a very easy principle emerges: the principle of politeness. Under ordinary circumstances we can set up rules that determine what kinds of conduct are becoming to citizens and what kinds of conduct are not. As long as we apply these rules without making invidious distinctions, we are reasonably safe.

Although couched in more lawyerly verbiage, courts apply an essentially similar principle when they consider fighting words and breaches of peace.² In permitting some degree of regulation, they look at the impact of disruptive speech or behavior on what is arguably a public good requiring protection: civility.

Universities face a harder problem because moral education, the real crux of this dispute, plays a different role in the context of campus life. Education prepares students for citizenship in a free society. Accordingly, politeness takes on a different meaning under these special circumstances—just as being polite in the court of the king is not the same thing as being polite in a democratic context. Yet, the suggested university codes of conduct go beyond the mere regulation of politeness. Instead, these regulations represent an effort to establish and teach new moral standards to replace older moral standards. Moreover, in their dependence on coercion, the new standards may run directly counter to the older ones.

The treatment of homosexuality is a very good illustration of this phenomenon. Homosexuality was, until recently, a taboo word on campuses and elsewhere. Parents taught their children that it was ugly and dirty. They did so in order to turn their moral conviction that homosexual conduct was bad into moral

1. See, e.g., Lawrence, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, 1990 DUKE L.J. 431.

2. See, e.g., *Cox v. Louisiana*, 379 U.S. 536 (1965); *Edwards v. South Carolina*, 372 U.S. 229 (1963); *Feiner v. New York*, 340 U.S. 315 (1951); *Terminiello v. Chicago*, 337 U.S. 1 (1949); *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

actions by their children. Repugnance at homosexual behavior was seen as necessary to defend against whatever temptation it might present.

Some may claim that this method of teaching was discriminatory. Nonetheless, as I have argued earlier, this method has been commonly used to translate moral precepts into moral actions throughout human history. People point a finger at certain conduct and call it bad, ugly, shameful, dirty, or repugnant. They ridicule and revile it. Many books of the Bible, for instance, contain pages filled with invectives against the wicked.³

Significantly, however, we no longer think that invectives used in biblical times constitute fighting words. For example, if we singled out those people in this room who have engaged in any form of premarital sexual activity and called them fornicators and whoremongers, they would probably shrug off or pay no attention to the attack. Over time, then, fighting words may change along with our sense of what constitutes acceptable and unacceptable behavior.

At the same time, if we singled out people who engaged in homosexual acts and called them sodomites or other names, these would still be fighting words. Homosexual rights advocates argue that the use of such words is cause for the intervention of coercive force.⁴ In fact, what they are really arguing for is the protection of a still-controversial moral judgment about homosexuality. Because heterosexual promiscuity is generally acceptable, it requires no such formal defense. We do not establish rules to punish its opponents. Homosexuality, by contrast, has not yet achieved the same accepted status. Nonetheless, its defenders seek to create rules to stigmatize its critics. They have even invented a word to convey this stigma: homophobia.

Actually, homophobia is not a good word for this purpose. If homophobia is a true phobia, then it is a neurosis for which people are not responsible. If this is the case, why punish them for it? After all, the fear of immoral behavior is, in many, an uncontrollable impulse. Such people reflexively remove them-

3. See, e.g., *Isaiah* 1:21-23, 19:11-15, 57:3-5; *Jeremiah* 5:7-9, 23:10-14; *Matthew* 23:1-33.

4. See, e.g., Lawrence, *supra* note 1, at 452-56.

selves from the presence of what they believe to be evil. They involuntarily try to oppose and destroy immorality.

Furthermore, in some instances, we think such instincts are wonderful. For example, we would approve of the uncontrollable desire to prevent, by whatever means, a murder in our presence. Likewise, we would approve of the innate impulse to flee from the scene of a human sacrifice considered ugly and revolting. We think such instincts are normal and desirable because they reflect standards that are, in some sense, commonly agreed-upon.

By contrast, while everyone understands the general meaning of the term "sexual orientation," the fact remains that people have all kinds of odd sexual tastes. As a society, we are in basic agreement that some of these tastes, such as bestiality, are repugnant. Consequently, we should have the right to raise our children to regard certain behavior as worthy of opprobrium. Those who engage in bestiality, therefore, are rightly ridiculed and scorned in order to support the moral feelings we try to inculcate in our young. Yet, by broadly protecting "sexual orientation," are we not suppressing all forms of praise and blame directed at any sexual behavior whatsoever? Do we not thereby undermine the ability to impart any kind of moral education based on this or other standards?

This is just a general aspect of the problem, but we can only start dealing with it when we face the reality that the issue here is not one of minority rights versus free speech. Instead, the issue is one of identifying both the correct moral standards for universities to uphold and the proper methods for upholding these standards. In this regard, the question becomes whether rules against harassment on the basis of race, gender, or sexual orientation are desirable or justified.

Civil libertarians commonly approach this question, particularly with respect to universities, by talking about the need to preserve free speech as a marketplace of ideas.⁵ In a way, this approach is good because it considers the impact of speech restrictions on the pursuit of truth. Yet, the interesting thing about truth is that, although we may seek it for a long time, we are not likely to find it. Nevertheless, the pursuit of truth, as Socrates argued long ago, should be an end in itself, to be val-

5. *See, e.g.*, J.S. MILL, *ON LIBERTY* 18-52 (D. Spitz ed. 1975). *See also* *Abrams v. United States*, 250 U.S. 616, 630 (Holmes, J., dissenting).

ued in and of itself.⁶ Consequently, the ability to engage in this pursuit, and to engage in it with strength and courage, is also a benefit. It is, in fact, the chief benefit that should result from a liberal education. The results of liberal education are not necessarily measured by what goes into a student's mind in the form of information, but rather by what remains in a student's character in the form of the ability to seek and pursue truth despite difficulties. Thus, the basic problem with the speech restrictions meant to protect various minorities, including blacks, is that they weaken students' ability to seek and pursue truth.

These restrictions are, at the outset, based on patronizing and paternalistic assumptions. Telling blacks that whites have the moral character to shrug off epithets, and they do not, is an insult. Saying that whites have the innate capacity to defend themselves against verbal attack, and blacks do not, compounds the insult. Finally, building this imputed genetic weakness into codes of conduct for the protection of blacks makes perhaps the most insulting, most invidious, most racist statement of all.

These codes are more than insulting; they are ultimately incapacitating. Students come to a university to learn how to engage in the pursuit of truth, in the battle of ideas. This battle is like any other; it requires effective training. For example, the Army does not teach soldiers how to fight by establishing rules that prevent stronger conscripts from assaulting weaker ones with certain weapons. To be sure, such rules would permit weaker soldiers to complete their course of training comfortably insulated from certain forms of attack. Such soldiers may volunteer to go to war on the basis of such training, but they would surely be among the first to die.

In calling for speech restrictions, Charles Lawrence argues that certain insults scar or lead to debilitating anxiety.⁷ Similarly, when a black student is called a racial epithet, all thoughts are supposedly removed from his mind and he immediately becomes unable to act.⁸ Yet, isn't education supposed to prepare students to seek truth, to pursue it, and to persist in this endeavor despite the obstacles? Should students really be pro-

6. See, e.g., PLATO, *GORGIAS* (W. Hamilton trans. ed. 1960).

7. See Gunther & Lawrence, *Good Speech, Bad Speech*, *STAN. LAW.*, Spring 1990, at 4, 6, 8.

8. See Lawrence, *supra* note 1, at 452-53.

tected from these obstacles instead of preparing for them? If a black student steps out of Stanford University into his first argument with a gutter fighter over an important issue, gets called a racial epithet, and loses his mind, should he not go back to Stanford and seek a refund?

The most fundamental problem with campus speech restrictions is that in protecting certain students they ultimately make these students weaker. The restrictions institutionalize victimization by leaving the victimized unprepared to fight against it. This effect might be tolerable as long as minorities live underneath the paternalistic wing of universities such as Stanford. But it is likely to be devastating when they go into a world where no protection exists. That world is the real world, regardless of the laws we make.

Education must offer something more, particularly to those who wish to be free. Freedom is in essence the ability to defend oneself. It does not consist of seeking champions for one's defense—that is not freedom, but feudalism. Therefore, instead of looking for rulers and laws to defend us, we must be able to rule ourselves and make our own laws. This ability must be inside every individual. It should be the result of a liberal education that, true to its name, strengthens people and prepares them to be free.

