

wrapped their cause in motherhood out tried to strip motherhood of meaningful opportunities.

My campaign is grounded in the belief that we can and should trust again. As such, it is not so much a fight against George Bush as a fight for what America can be.

People continually underestimate our youth, forgetting that, in many ways, the government of the last ten years has sold it short—leaving the tab to our youth for a federal deficit that threatens our standard of living and that of our children.

I know that it is your generation that must answer this most critical question: Are we headed in the right direction? If you answer no, I invite you to join in the good work of rebuilding greatness in America.

Trusting Your Institution: A Challenging Proposition to a Difficult Issue of Racist Speech on College Campuses

By Jin Song

It is technically impossible to write an anti-speech code that cannot be twisted against speech nobody means to bar. It has been tried and tried and tried.

— Eleanor Holmes Norton,
chair of the National Advocacy
Council for the ACLU

If the attempt to regulate speech is such an impossible endeavor, why does our society repeatedly strive to do it? It is not as if we live in a country that enjoys suppressing our individuality and liberty. On the contrary, the United States is one of the only countries in the industrial world that has not created some form of hate speech law; France, England, and others have had them for years. We hail our democratic foundations as the hallmark of all our progress and prosperity, standing firmly behind our notion of governance as a true symbol of virtue. We cherish our Constitution and clutch dearly to our Bill of Rights with the intense grip of a nation utterly dependent upon these concepts.

What then, is Norton's point in stating that we

**One man's vulgarity is
another man's lyric.**

have "tried and tried and tried" to ban speech in our society? The quotation above should not convince the reader that the "impossibility" of writing an anti-speech code proves its uselessness. Rather, it should raise the larger question of why a society whose structure is based on a document as great as the Constitution would keep returning to the drafting table in search of a fair speech code as a solution to a conflict that appears in the guise of different issues. The answer lies somewhere in the First Amendment. One way to evaluate the issue is to examine the direct applicability of the definition of the First Amendment to a specific situation.

Today, the First Amendment finds itself under great scrutiny due to a fierce resurgence of racial incidents on university campuses across the nation. When hateful words and equally offensive symbolic expressions pass between students, a wide range of viewpoints arise concerning the actions that should be taken against them. While some feel that a speech code should be integrated into the university's community for the protection of the victims, others believe that the First Amendment should not be compromised and that a speech code violates basic constitutional rights.

These viewpoints will be further discussed and as one becomes more engrossed in the intricacies of this issue, one will realize that the regulation of racial speech is undeniably a double-edged sword. Both sides present compelling arguments, but the only way to reconcile the two sides is to analyze and understand two underlying factors: the university's responsibility as an educator, and the student's basic and essential rights. With these factors in mind, the most fundamental question remains: does racist speech enhance or degrade the values protected by the First Amendment?

Presenting Both Sides of the Issue

Although many people would agree that racial insults have little or no social value, those who oppose speech regulations of any kind are more concerned with protesting the "stifling" of their opinions than advocating a more general principle of free speech. These staunch supporters of First Amendment rights feel that regulating free speech would inevitably become an expression of the political goals of the group that controls the censor's office, and that any form of regulation would be sup-

Helvidius

pression. Suppression, however, is a direct result of the vagueness of the Constitution on moral issues. There are

The fundamental question remains: does racist speech enhance or degrade the values protected by the First Amendment?

no governmental criteria that can accurately judge what is or is not distasteful speech, rather, it is a matter of opinions. Thus, the supporters of this position believe that their

insistence on free speech stems not so much from optimism about the emergence of truth from open debate as from realistic pessimism about the character of representative government. (Byrne 404)

The first argument stems from the fact that there are no set criteria adequate to determine what is "valuable and worthless" speech. (Byrne 403)

Accordingly, *Cohen v. California* (1971) helped shape the principles of free speech. When Cohen showed up in a courthouse wearing a jacket stating, "Fuck the Draft," he was convicted for "offensive conduct." In Cohen's appeal, Justice Harlan upheld Cohen's First Amendment rights by stating that, in this "diverse and populous society," there is no way of determining which expressions should or should not be prohibited. After all, he concludes succinctly, "one man's vulgarity is another man's lyric."

The First Amendment says that "Congress shall make no law . . . abridging freedom of speech." If we interpret this to exclude certain types of speech, like racial epithets, then we open the door to compromise. The Constitution will then no longer be seen as a guarantee of individual rights and liberties, but a tool to be manipulated. Those who argue that the freedom of speech is absolute do not fully recognize the extent to which offensive conduct has affected the victim in the incident. Those who advocate the regulation of free speech, however, view the argument from the offended individual's perspective rights rather than the speaker's. The victim of offensive or racist verbal attack finds protection from those who advocate some form of regulation of speech.

The "fighting words" clause in the First Amendment is currently the prevailing legal argument concerning prohibition of racial insults. According to *Cohen*, speech that falls under this exception must have "little or no social value and . . . be justified by realistic concerns about a breach of the peace." Yet the kinds of

racial insults and confrontations that occur on college campuses do not always incite physical violence. In fact, an offensive verbal attack would most likely result in the victim ignoring the attacker, or at least cutting off further verbal exchange. When someone calls another person a "nigger," "spic," "chink," or "fag," the experience of the offense is immediate. Because the injury is instantaneous, the victim has no chance to think about what has happened. Experts on First Amendment rights, John Powell and J. Denver, in an unpublished manuscript, state that:

a definite attribute of speech is that it appeals first to the mind of the hearer who can evaluate its truth or persuasiveness. The use of racial epithets lacks this quality; it is a form of violence by speech.'

Regulation advocates feel that the fighting words clause is applicable in the case of racial insults because the harm resulting from them is analogous to a breach of the peace: not physical harm to the victim, but mental harm.

This concern for the victim leads to another serious question exposing the dichotomy between the First and the Fourteenth Amendments. Can we ask which amendment takes precedence over the other? The framers of the Constitution certainly did not plan on any kind of hierarchy when laying down the rights of the citizens. Today, however, we find that the issue of equality conflicts with the issue of free speech. The Carnegie Foundation for the Advancement of Teaching agrees, stating:

restrictive codes may be expedient, even grounded in conviction, but the university cannot submit the two cherished ideals of freedom and equality to the legal system and expect both to be returned intact. (Lawrence 486)

The proponents of this view assume that racial insults

First Amendment doctrine depends too much on the exultation of individualism and middle-class white concerns.

demean the minority victim's already vulnerable status in some group, whether it be race, gender, ethnicity, religious affiliation, or sexual preference. The accuser does not hurl racist attacks to encourage thoughtful or intellectual discussion, but to strike the emotional gut of the listener by assaulting him or her verbally. Some might respond, "So you're insulted. I can hardly believe that a

person would experience mental trauma from such an encounter." If every student were as confident about his or her identity, there really would be no issue; the insults would be ineffective.

Unfortunately, racist attacks do harm the listener mentally and emotionally. No one should be denied protection from such verbal abuse. Members of a minority group already enter the university community with a degree of self-consciousness. When insulted in this

The university's highest priority is to leave students intolerant of propaganda and commercial manipulation.

fashion, there is a sense of segregation and exclusion from the "majority" and of being an "other." The insult gains its power from the cumulative and reinforcing effect of countless similar messages conveyed in a society where racism is ubiquitous. The injury inflicted upon the victim's sense of cohesion with the university and his or her status as a scholar exacerbates his or her ability to obtain an equal education. The listener feels subordinated and unequal to the person who has exerted this kind of power. There is no way to measure the damage done upon that victim of racist slander. When a person is attacked in this manner, there is little if anything that can be said to redress the emotional or reputational injury.

Although the First Amendment clearly protects a right to free speech, the Fourteenth Amendment guarantees "equal protection of the laws." Furthermore, *Brown v. Board of Education* (1954) shows that the equal opportunity for education, which is guaranteed by the Fourteenth Amendment, does not merely require the absence of statutory discrimination.

Many also feel that the unique nature of the free speech calls for a fine-tuning of the First Amendment. According to some professors and legal authorities such as Mari Matsuda and Katherine MacKinnon, the

First Amendment doctrine depends too much on the exaltation of individualism and middle-class white concerns, and slights the significance of civic morality, group identity, and the perspective of subordinated people. (Byrne 409)

Although this is a thought-provoking angle to a rather exhausted debate, it only leads to the old question of whether Madison and his colleagues, when exercising the word "men," really meant only men. If they did, how fair is it to stretch the doctrine to blanket all of those who fall

under the ambiguous category of "other" by the Framers, and expect equal protection? Reinterpreting the Constitution is one of the oldest methods substantiating arguments for or against legislation, and the advocates of regulation apply it here to illustrate that a strict reading of the Constitution is not always the most effective solution to a problem. A broader interpretation is especially necessary in this situation where the dynamics concerning equality among a diverse range of people are a recent development.

The Goal of the University

The bleak reality concerning the issue of free speech is that it may well remain immersed in the flotsam and jetsam of legal jargon forever. Fortunately, it doesn't have to—at least where universities and colleges are concerned. Universities function with a fundamental purpose vastly different from the state's. Although constitutional limitations apply to the state and the university, the distinction that allows the university to reconcile their problems concerning the free speech issue is its fundamental responsibility as an institution of formal education.

Universities function through speech and the criticism of ideas. The suppression of speech would therefore be an obvious contradiction to the university's goals. Yet, the university encourages speech which will improve critical thinking and intellectual observation. Speech is the stimulus to thought and knowledge, and

Racist, offensive speech fosters nothing but abrupt silence.

implicit in the university's core function is the regulation of expression to enhance its quality. The freedom of speech on college campuses is thus an essential component to furthering education. Through the instrument of free speech, the university's highest priority is to

leave students intolerant of propaganda and commercial manipulation, and competent to directly and forcefully express coherent views as citizens. (Byrne 440)

This may sound like a grand, sweeping gesture of idealism, but the university is a consciously ideal environment for intellectual discourse that allows every student the opportunity to prepare for the challenges of real life. As Professor of Political Science Charles Hamilton states, "The academic environment is the freest environment; you are supposed to examine all ideas

Helvidius

here." He firmly believes that the university and faculty "ought to encourage all communication which furthers

No racist incident is isolated.

the purpose of our existence," all communication, that is, which encourages discussion and debate. Racist, offensive speech fosters nothing but abrupt silence. When an educational institution considers drafting a policy to curb certain forms of speech, its aim is to diminish the speech that inhibits productive intellectual discourse.

But exactly where do we draw the line as to what words are offensive? "When you start using language that cuts off debate, then you've crossed the line," states Hamilton. Professor Richard Delgado, an issue specialist, makes a similar claim: "...racial insults are not intended to inform or convince the listener. Racial insults invite no discourse, and no speech in response can cure the inflicted harm."

Although racist speech seems incompatible with the university's goal of education, it has an even more challenging task in squaring itself with the First Amendment. The racist words weaken the student's confidence and status within the university, and prevent him or her from reaching full potential. As debate is hindered by racism, ideas cannot be acknowledged, and the journey toward truth becomes more difficult. In addition, the attainment of social stability is retarded; the bigotry and prejudice that society cultivates is sanctioned within an environment supposedly committed to moral and social growth.

The immeasurable deleterious power of racist speech frightens everyone, but no one would argue that a policy regulating certain forms of speech is the answer to all our problems. It often seems as if those who support a policy are searching for a set document or restrictive set of rules which we can consult in ambiguous situations. The Constitution is itself a very broadly constructed document, not a list of hard and fast rules.

The reasonable and feasible solution, then, is not a blanket vote hailing an absolute "yea" to some code of conduct or an absolute "nay" to everything but unchecked speech; rather, we should develop a speech code which embodies certain principles of equality and understanding, much like the Constitution does. Universities must assess the level of racist incidents on campus and determine the necessity of a policy, taking into consideration the characteristics of the student body, the faculty, the general environment of the campus, and the frequency and intensity of racial incidents. If a university feels that drafting a policy may be beneficial and consistent with its

goals as an educating body, it should work closely with those who will be affected. Mock slave auctions at Dartmouth and cruel racial slurs mailed daily to an Asian student at the University of Massachusetts at Amherst may be brushed off as isolated incidents by those who see any kind of regulation as wrong or unnecessary. No racial incident is isolated, however. Professor Charles Lawrence of Harvard Law School states that "racism is a part of our common historical experience, and therefore, a part of our culture."

This may be true, but students certainly don't have to accept it silently. Some universities experience malicious forms of racist expression, and it is up to the school to determine the appropriate actions that should be taken. Yale University, for instance, has decided that they will not impose any kind of regulating policy, and will deal with incidents of expressive racism as they present themselves, while Stanford has created a code akin to the fighting words exception of the First Amendment.

Applying the Issue Closer to Home

Columbia University's experience with racist speech and expression has not been as tumultuous as

Racism is part of our common historical experience, and therefore, a part of our culture.

some of the other less diverse, more race-polarized universities. Yet no one denies the probability that racist incidents occur every day in numerous less obvious forms. But does our campus really need a policy? The Civility Committee, headed by Provost Jonathan Cole, is in the midst of drafting a policy that may curb certain forms of expression. The Subcommittee on Drafting Principles heads the creation of such a policy, and Eric Garcetti, the student liaison to this committee, feels:

limitations on speech are not a new idea in the universities and in society. For civil libertarians to claim that any limitations will lead to all limitations is a grave mistake and is not based on any historical facts.

In essence, the student who chooses to devote a certain number of years to a specific university places a great responsibility into the university's hands. The university's purpose is to educate, and the student's is to learn, both by making use of what is offered to them. Just as a university admits a student on the assumption that he or she will strive intellectually and socially within the

community, the student must trust the university's commitment to educating its students. A university would not impose a policy on its students to suppress their thoughts or words because it would be a contradiction of its purpose of existence. Moreover, the students are a powerful component of the community; they serve not only as a body which absorbs knowledge, but also as an active group participating in the molding and shaping of

Does our campus really need a policy?

the university's character. In a way, the student body serves as a check upon the university; if a university exercises bad policies, the students will respond. The university is thus more reactionary than pro-actionary because it acts in accordance with the changing needs of the students. Garcetti makes a statement along similar lines when he says that "speech codes are not created in a vacuum. They're created in response to an uncivil or intolerant campus environment." So, if Yale's decision to remain unregulated results in an outburst of racist incidents, they may adjust their views accordingly, as may Stanford and any other institution that finds itself in a similar situation.

Apart from a speech code, it is important for the university to show that it wants to eradicate racism on campus by exercising positive measures consistent with its racist speech policy. The university could hire more faculty of color, create programs that encourage tolerance, and develop course requirements to replace parts of its pre-existing set of requirements (such as our rather musty-smelling, homogeneous Core) with a more current flavoring: perhaps moral and ethical issues from the 20th century, rather than the second. If students wish to express their views about race, gender equality, or sexual orientation, they should be given their chance to speak in an appropriate atmosphere such as the classroom, where words that might be considered racist and hurtful someplace else can be confronted in a neutral, thought-provoking environment. Words that may have at one time impeded discussion can in this way be used as an impetus for debate.

No one denies that racial insults have become a serious problem on college campuses. Many lawyers, administrators, and scholars have produced a great number of works on whether the university ought to install a speech code, or why a university should not install one. But the issue of racist speech does not have to extend into the legal realm. If everyone would consider the real purpose of an educational institution and the true objec-

tives of every student, the issue may slowly unravel itself. But we must first begin with faith. Students must have faith in the institution's intentions, and the university, in turn, must have faith in the goodwill of their students. If a policy is drafted, students should look upon this document critically and openly, not with suspicion or pessimism. In return, a university should not underestimate the virtue of the student body by outlining a defensive regulation that may indeed suppress the voice of the students. Professor Hamilton describes ours as "a community of honest scholars," and we should strive to meet that definition by resolving this issue of offensive speech without resorting to the legal realm. We must apply precisely that which the university has stressed: intellectual, rational discourse and an untiring devotion to ascertaining truth, because racism isn't truth, and we need not tolerate it any longer.

Bibliography

Byrne, J. Peter. "Racial Issues and Free Speech within the University." *Georgetown Law Review* Vol. 79, num. 3, Feb. 1991:386-462.

Lawrence III, Charles R. "If He Hollers Let Him Go: Regulating Racist Speech on Campus." *Duke Law Review* Vol. 1990, num. 3, 1990:452-486.

Rosenberg, David. "Racist Speech, The First Amendment, and Public Universities: Taking a Stand on Neutrality." *ComellLawReview* Vol. 76, num. 2, Jan. 1991:546-600.

Jin Song is a Columbia College junior.

DEMOCRACY IN NEW YORK?

By Brandon Mitchell

With the tremendous world political changes of the last few years, democratic movements and demands for political pluralism are on the ascent in Latin America and Africa, Asia, and Europe, all of which invoke the American model of democratic government. Yet, in many states across America, electoral competition and participation is either stagnating or in decline.

Americans were deeply moved and proud that the Chinese students in Tiananmen Square in 1990 fashioned their symbol of Liberty after our statue of Liberty. It seems ironic, however, that in New York State, where the statue of Liberty stands, electoral competition