

The Limits of Community: Deconstructing the White Framing of Racist Speech in Universities

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Abstract

This article identifies the dominant frame through which university administrators in the United States respond to racist incidents and analyzes that from using the lens of critical race theory (CRT). We argue that the stock response of college and university administrators, which calls for counterspeech as the only appropriate response to racist speech, fails to consider the harmful effects of racist speech on students, staff, and faculty of color. Furthermore, this abstract-liberalist, color-blind approach decontextualizes racist speech from the historical and contemporary reality of structural racism that informs the speech acts and symbols used in these displays. We further use the CRT approach by shifting the perspective from a unilateral focus on protecting the right to racist speech to explore what happens when analysts focus instead on protecting substantively equal access for community members of color. In so doing, we highlight the value of CRT for revealing how white racial framing obscures competing legal and policy norms.

Keywords

free speech, critical race theory, law

Introduction

In February of 2016, a group of high school juniors, mostly African Americans, from Uplift Hampton, a Dallas high school, visited and toured the campus of Texas A&M University. As they were on their tour a white woman student, who was wearing earrings with the design of the confederate flag, confronted the high school students and

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showed them her earrings asking them what they thought of them. Then she and several other white students began taunting the children, calling them racial slurs and telling them to “go back where they came from” (Watkins, 2016). After this happened, protests on the A&M campus challenged this racist incident and what students suggested was a more pervasive racist climate on campus. The major institutional response to the incident from the President’s office came in the form of a mass e-mail in the Fall of 2016, calling attention to a newly produced online statement which he called a “White Paper” (a term for an authoritative informational report or proposal on a specific issue).

The so-called White Paper titled “Free Speech and the Right to Associate: Legal Issues in the Student/University Relationship,”¹ outlined the university policy regarding expressions of racism on campus. The document was framed through a narrative centered on the “core institutional value” of freedom of speech and expression; it connected the institutional value to the guarantee of the First Amendment to the U.S. constitution, noting that this constitutional right extends even to forms of speech and expression that some might find “offensive.” The document stated,

These constitutional [First Amendment] issues are sometimes difficult for the general public to comprehend because there is often an expectation that university administrators can control student speech and control or prevent student association. This public perception is often grounded in the false belief that students do not have constitutional rights or that they do not enjoy these rights in their roles as college students. Nothing could be further from the truth at public institutions.

It then went on to suggest that “the exercise of free expression that has offensive content can be most powerfully engaged through the use of free speech.” Thus, the White Paper expressed an institutional response that gave primacy to a broad almost absolutist right of freedom of speech, and suggested that the best institutional response to racist speech and expression in the university community was the use of more (counter) speech.

That is what Texas A&M’s White Paper statement *included*. What the White Paper failed to include was a substantive discussion about how racist speech and expression operates as an oppressive, exclusionary, and sometimes threatening force in colleges and universities, creating a hostile institutional environment for people of color within these important institutions. The White Paper did not focus on the legal right of racially equitable access to public institutions of higher education in the United States—not merely access, but *substantively equal access*. It did not focus on how racially equitable access is or should be a core institutional value of the university. It did not include a list of laws and cases that set forth the legal rights of equitable access, such as the jurisprudence of the Fourteenth Amendment of the Constitution or the 1964 Civil Rights Act. In addition, the White Paper did not provide scholarly or pragmatic policy resources on how the university might work to create an institutional space free from dehumanizing and potentially violent racial micro- and macro-aggressions like racist speech and expression. Nor did it document or provide citations for the large body of

research that indicates the vastly inequitable emotional and sometimes physical labor people of color must engage in when they negotiate racism in institutions like colleges and universities.

Our research examining institutional responses to racist speech and expression on college and university campuses in the United States indicates that the form of Texas A&M University's response is not unique. The institutional reaction to racist speech and expression deploys a frame that prioritizes and values the First Amendment and freedom of speech, suggests that the best response to racist speech is counterspeech, and marginalizes or completely excludes discussion of the implications of racist speech on people of color navigating these institutions. Herein, we suggest that this stock frame operates as a mechanism of color-blind racism, tacitly or sometimes explicitly deploying an underlying abstract liberalist framing that decontextualizes racist expressions from a long history of white supremacy and the contemporary racial dynamics of white institutional space. Moreover, we assert that this abstract liberalist framing creates a right of white people to enact racism on college and university campuses, and consequently diminishes the right of people of color to receive the benefits of institutions of higher education free from dehumanizing, oppressive, and violent racism.

In so doing, we identify and expose the abstract liberalist stock response as a mechanism of white domination in institutions of higher education. We then take our analysis a step further by consciously rejecting this frame, rotating the lens away from the "right to be racist" and toward a frame that centers on protecting the right of people of color to have equitable access to higher education. Utilizing a critical race theoretical perspective, we rotate the lens away from the white normative frame and instead focus on the histories and interests of people of color in our discussion of racism on college and university campuses. This analysis demonstrates how critical race theory provides the tools to both expose and challenge dominant white normative discursive mechanisms that reproduce white space in colleges and universities in the United States.

White Domination and the Limits of Community

As we noted above, Texas A&M's administrative response to racist speech and expression was not a unique institutional response. In the spring of 2002, Harvard Law School experienced a series of racist incidents, which began when a white law student used the law school website to outline the facts of a property case involving racially restrictive covenants and used the term "nigs" to refer to African Americans (Lewin 2002; Steinhardt 2002). After a protest led by students of color in reaction to this incident, another white male student sent an anonymous e-mail (though he was later identified) to a first-year Black woman law student that said, among other things,

We at the Harvard Law School, [are] a free, private community, where any member wishing to use the word "nigger" in any form should not be prevented from doing so. . . . If you as a race, want to prove that you do not deserve to be called by that word, work hard and you will be recognized.

Echoing what we have found to be a stock administrative narrative, Harvard Law School's Dean (at that time), Todd Rakoff responded publicly by suggesting administrative impotence as a result the institutional value for the right of freedom of speech and the First Amendment protects of that right. He said to reporters,

I would say that it is clear that we have got a problem or set of problems to address. Some of these are substantive problems—what are the limits of community on one side and free speech on the other? (Blanks, 2002)

Rakoff's comments appeared to set up a dichotomy of competing institutional interests: the institutional values of Harvard Law and the role those values should play in the limiting of certain behaviors in the institutional community, on the one hand, and primary value of freedom of speech and expression, on the other.

The very notion that there are identifiable "limits of community" is vague and potentially confusing. By contrast the focus on the juxtaposed freedom of speech reveals a clear priority of the community—a legal right that white people can invoke for state-centered protection for their racist expression. This construction of racist speech as a right of white people generally, and more specifically a right of white students and sometimes faculty, staff, or outside speakers in college and university communities, is set up by college and university administrators in a manner that immediately constrains dialogue about whose interests are *definitive* in this construction of the limits of community. As a result, the right of students of color to attain their higher education free from dehumanizing, oppressive and, as we will argue, tacitly threatening communications is marginalized at best, completely non-existent at worst.

Explicit Racism Exists Within the Limits of Community

We initiated our research by collecting print news media accounts of racist incidents on college and university campuses between 1991 and 2011 using LexisNexis's news search function. We selected this time period because it represents a particularly relevant legal moment in the postcivil rights era. It was in the mid-1980s that college and university administrators began to suggest that racist incidents were not subsiding despite the previously widely held belief that such incidents would subside as a result of the inclusion of people of color into previously all white institutions (Matsuda, Lawrence, Delgado, & Crenshaw, 1988). We identified 199 incidents of racist activity on college and university campuses during this time (there were often several news stories about individual incidents, so we counted the total number of incidents and combined all stories for each incident as one discursive text). We focused our analysis on the reported reactions and statements of administration and faculty to the racist incidents on their campuses (for purposes of this project, we focused on those in positions of institutional power and knowledge, so we gave less attention to the reactions of students). Looking at the reporting of racist incidents on college and university campuses between 1991 and 2011, we found that a consistent, if sporadic, pattern of

racist speech and expression exists in higher education communities in institutions large and small, in the most local and inclusive institutions and the most nationally prestigious and exclusive institutions.

By way of example; in September of 2016, a man wearing a gorilla mask and carrying a banana on a string showed up to a Black Lives Matter rally at East Tennessee State University and walked around thrusting the banana into the faces of African American students participating in the rally (Abrams 2017). In 2010, at the University of California at San Diego (UCSD), a group of white students organized a party called a "Compton Cookout," which they claimed was in "celebration" of Black History Month. The invitation was posted publicly on Facebook, asking people to dress and behave in "ghetto" fashion and indicating that chicken, watermelon, and malt liquor would be served. In response to this provocation, Black students at UCSD organized a protest, criticizing the racist depiction of Blackness and Black culture. The protest sparked an outburst of racist activity at the university, including a campus television broadcast on which white students called the Black student protestors "ungrateful niggers," a noose was hung from a bookcase in the main library and a white pillowcase placed in Ku Klux Klan (KKK) style over a campus statue (Archibold, 2010; Gordon, 2010). Similarly on the morning of November 4, 2008, the day that Barack Obama became the first African American president of the United States, a noose was found hanging from a prominent tree on campus at Baylor University (Ortego, 2008). In February 1995, at University of California, Berkeley's renowned School of Law, 14 students of color received letters in their mailboxes, calling them "niggers," "wetbacks," and "chinks" and suggesting that Boalt (the University of California, Berkeley's Law School) was "for whites only" (Koury & Koh 1995). And as a final example, in the fall of 1986, at the Citadel Military College, five white cadets wearing KKK-type garb stormed into the dormitory room of a Black freshman, yelling racial epithets and burning a paper cross (UPI, 1986).

These are just a few examples of the many types of incidents that take place at colleges and universities across the nation each year. According to the National Center for Education Statistics, there were 5,583 reported hate crime incidents on degree granting college campuses between 2009 and 2015. In 2015, campus community members reported 860 incidents that rose to the level of a "hate crime." This refers to only those incidents that involve a criminal offense, including vandalism, intimidation, simple assault, larceny, aggravated assault, forcible sex offenses, burglary, and robbery (Musu-Gillette et al., 2018). Four out of five of those crimes "were motivated by race, religion, or sexual orientation." (Jones, 1992). Race motivated a full 39% of those crimes. In 1990, Howard Ehrlich, Research Director of the National Institute Against Prejudice and Violence, estimated that 20% of students experience some form of ethnic or racial attack during an academic year and one fourth of these students are victimized more than once. Ehrlich further estimates that "50 to 90 percent of victims do not report the incidents to the university police or administration" (Jones, 1992).

There are no reliable statistics on incidents of racist speech or other forms of hate speech that do not rise to the level of a hate crime. But in 1990, the National Institute Against Prejudice and Violence said that incidents of what they termed “hate speech” on college and university campuses could be calculated at between 800,000 and 1 million per year. Although these estimates are somewhat dated, there has been no structural or institutional change in higher education or the law since then that would indicate a basis for change in university climates. If anything, as the large and nationally publicized white nationalist rally at the University of Virginia in August of 2017 indicates, the social atmosphere for explicit and open white racism has grown more permissive as a result of the current presidential administration. Put simply, racist speech and expression is an element of the community in U.S. colleges and universities.

Incidents of blatant racism on colleges and university campuses seems to contradict contemporary sociological analyses of the racial dynamics of the post-civil rights era which suggest that, while racist structures persist, racist expression typically takes place in a less overt, more subtle manner; what Eduardo Bonilla-Silva (2010) has termed “color-blind racism” (see also Bobo, Kluegel, & Smith, 1996). Rather than expressing overt hostility, color-blind racist narratives deploy a decontextualized commitment to racial equality, while simultaneously ignoring and/or justifying and thereby reifying historical and structural racial inequality (Bell & Hartmann, 2007; Bonilla-Silva, 2010). Color-blind racist discourse, then, often takes place through an espoused commitment to “abstract liberalist” discursive tenets which profess a rhetorical commitment to equality of opportunity, yet simultaneously minimize the contemporary relevance of the history of explicit racial oppression as well as contemporary institutional and structural mechanisms that perpetuate racial inequality (Bonilla-Silva, 2003, 2009). Many contemporary scholars of race and education have documented the manner in which color-blind racism has become a dominant discourse in educational institutions in the post-civil rights era (see, e.g., Carr, 1997; DiTamaso, Parks-Yancy & Post, 2003; Feagin, Vera, & Imani, 1997; Gallagher, 2003; Lewis, 2003; Moore, 2008). But while the concept of color-blind racism provides an invaluable theoretical insight into the persistence of racial inequality in the United States, as well as its manifestations in U.S. institutions, our research suggests that there is an easy union between these overt and blatant racist expressions, and the more tacit and covert racial tenets of color-blind racism (Moore & Bell, 2017). We suggest that sporadic (but regular) explicitly hostile racist incidents on college and university campuses work together with more subtle and institutional forms of racial oppression and exclusion to facilitate the operation of historically white university as contemporary *white institutional spaces*. These incidents serve, on the one hand, as a reminder of the historical exclusions and violence of white supremacy historically, and on the other hand they provide an opportunity for administrators to, reject explicit racism while simultaneously reinforcing abstract liberalist framings of racist speech and expression. Ultimately then, the racist incidents and institutional response both protect right of white community members to deploy white racism as a tool of continued exclusion and allow university administrators to maintain an appearance of commitment to equality in

spite of patterned support of less explicitly racist for policies or practices that maintain institutional racial inequality. This phenomenon becomes even clearer when looking at the development of policies created by higher education administrators, which indicates that there are, in fact, some forms of expression that fall outside the limits of community—just not racist expression.

Harassment Policies, or How Sexual Harassment Falls Outside the Limits of Community

A second element of our broad research project examining institutional responses to racist expressions in institutions of higher education included an examination of the policy environment concerning harassment in colleges and universities. These harassment policies were created in the post–civil rights era in conjunction with laws concerning equitable access based on gender and race in U.S. colleges and universities. Our research in this area has led us to question whether the protection of racist speech is really rooted in free speech absolutism at all—or if the kind of speech matters more than lawmakers or university administrators acknowledge.

Antiharassment policy is one tool that colleges and universities have utilized to deal with explicit acts of racism in the higher education community. These policies are different from, although clearly legally connected to, antidiscrimination policy or compliance with the antidiscrimination law embodied in the 1964 Civil Rights Act. While antidiscrimination law was principally concerned with creating access to institutional spaces for people of color who had previously been denied that access, laws concerning harassment were constructed as an extension of these mere access laws to ensure that people of color entering previously exclusively white spaces could participate meaningfully without experiencing racial (or sexual) harassment from other members of the community. Although racial harassment policies were constructed alongside similar policies that prohibit sexual harassment, unlike sexual harassment policies, racial, and ethnic harassment policies have been the target of wide-spread and coordinated legal challenges from individuals and organizations who have suggested that they infringe on their First Amendment right to freedom of speech and expression. As a result of such challenges, the legality of racial and ethnic harassment policies has been broadly questioned in U.S. courts to an extent that sexual harassment policies have not. This has created contradictions in harassment law and has led to confusion and contradiction in the legal and policy-making environment at colleges and universities.

On the institutional level, what we see among college and university administrators is that sexually harassing speech has not been constructed as a right, and the policy response shows that sexually harassing speech and expression clearly falls outside the “limits of community,” whereas racist speech and expression does not. Looking at harassment policies at the top 100 colleges and universities (as defined by the U.S. News & World Report, 2011), we found that while the vast majority of these institutions have specific sexual harassment policies, very few have racial harassment policies (Table 1).

Table 1. Harrassment Policy in US Colleges & Universities.

	General	Sexual	Racial
All (100)	71	80	14
Private (55)	84	64	11
Public (45)	55	100	17

As these numbers indicate, 71% of U.S. colleges and universities have explicit sexual harassment policies apart from any general policies on harassment, whereas only 14% have separate racial harassment policies. In addition, the vast majority of racial harassment policies were framed using First Amendment principles of freedom of speech and expression to explicitly limit the reach of equal protection law regarding harassing expressions. For example, in their statement against discriminatory harassment, Notre Dame engages the tension between free speech and protection against harassment, noting that the boundaries of protection against harassment end where the right to free speech or expression is potentially threatened:

The University of Notre Dame believes in the intrinsic value of all human beings. It is, moreover, committed to the full, peaceable participation of all its members in the educational endeavor it fosters. Accordingly, the University prohibits discriminatory harassment by all administrators, faculty, staff, and students. The University is also committed to the free expression and advocacy of ideas and wishes to maintain the integrity of this commitment as well. For this reason, discriminatory harassment is defined here with *great caution*. (Italics added)

Thus, even where we found attempts to create policy concerning racial harassment, these policies were framed with the dominant narrative of freedom of expression which confined the discussion about racial harassment, within the bounds of the identified core value—the right to be racist.

Rotating Lenses and Exposing Antiepistemological Projects

In both our analysis of public news responses by college and university administrators and in our examination of harassment policy, we found that in combination with universities’ focus on the value of an absolutist and abstract freedom of speech, there was a suggestion that the appropriate response to hostile racist expression was through the avenue of speech—counter-speech, “teach-ins,” or other forms of presentations and talks concerning social justice and rejecting racism. The suggestion that hostile racist speech should be resisted by use of more speech rather than speech restrictions relies on a decontextualized notion that ignores the connection between racist speech and expression and the long and violent history of white supremacy in the United States.

Signifying Racial History and Reinscribing Symbolic Violence

When you see a noose hanging from a tree on a college campus, or from a light fixture in a university library (as at the 2010 incident at UCSD), it connects to a specific historical meaning. The practice of lynching, specifically what Dray (2002) identifies as "spectacle lynching," was a grotesque but common manner of exerting social control over the entire Black community in the antebellum era until at least World War I. Often done in geographically significant locations, for example, trees in a central area of town or in a particular community, lynching was a mechanism of individual torture *and* symbolic violence. While the act of lynching effected physical violence on the person being lynched, the lynching itself, as public spectacle, was more important in its symbolism (Foucault, 1977). Most of the individual victims of lynching were tortured far beyond the actual act of hanging by the neck; often the men and women who ended up being lynched were tortured in a variety of ways, from ferocious physical beatings, to acts of rape (including sodomy), to being set on fire (Dray, 2002). Some individuals who were lynched were, in fact, already dead, and for others death was imminent. Thus, the real significance of the act of lynching was the message it sent to the Black community as a whole: this barbarous torture can happen to you if you challenge whiteness or step outside the confines of your racially oppressed position (Dray, 2002). As a mechanism of symbolic violence, lynching served as a form of public spectacle torture, which evoked the widespread terror that compelled Black acquiescence in the racial order without the necessity for direct individual supervision or control (see Foucault, 1977, for a discussion of public spectacle torture as a disciplining mechanism).

The noose is, of course, directly tied to the brutal history of lynching. When placed, as an object or image, in a public space it becomes a symbolic signifier of racial violence that functions to maintain the racial order that organizes the social space in the same manner that spectacle lynching did (see Bourdieu [1989] for a discussion of symbolic power and violence in the maintenance of power relations in social spaces). It is not necessary for the person who publically hangs or places an image of a noose in a public space to *intend* the object or image to have this meaning; in fact, the communicator's motive is irrelevant. The noose garners meaning through its historical connection to the social structure of racial oppression. As a tool of racial terror, the noose (the essential mechanism of the rope needed to hang a body) is a cultural referent, a symbol whose meaning is known as a result of a shared knowledge of social and cultural context (van Dijk, 1997); in this instance, the historical practice of lynching Black people as a form of symbolic violence and social control.

In like manner, a burning cross, or the garb of the KKK, signifies a history of racial violence and white supremacy; these symbols are all linked to the practice of lynching as well as other forms of terroristic torture and violent repression aimed at African Americans throughout U.S. history. As Matsuda and Lawrence (1993) note with regard to the symbol of a burning cross,

there is no Black person in America who has not learned the significance of this instrument of persecution and intimidation, who has not had emblazoned on his or her mind the image of Black men's scorched bodies hanging from trees. (p. 133)

Similarly, the word "nigger," constructed by white people as an epithet to denote Black inferiority and the enforcement of systemic oppression, signifies *nothing* but racial oppression, exclusion, and the potential for violence (Delgado & Stefancic, 2004). Its mere utterance (or the writing of the word on a public wall on a college campus) brings about a reification of white power by the fact of its connection to the history of white supremacy. As Bourdieu (1989) notes with regard to the active nature of forms of speech invested in power relations, "... the performative utterance, the political prevision, is itself a prediction which aims to bring about what it utters" (p. 128). In other words, the performative use of racist language is an act of reproduction and reification of power relations: white supremacist power.

Clearly all of these forms of expression garner their meaning through their connection to both history and social structure. In other words, these objects, images, and words derive directly from the oppressive and often violent oppression of people of color throughout the history of this nation, and call up widespread, patterned societal racial inequality—or systemic racism (Feagin, 2006). Racist expression on college and university campuses, then, serves as a source of social control and symbolic violence in the same manner as in other social spaces. The hanging of nooses, burning of mock (or real) crosses, dress-up in KKK garb, mocking reenactments of the violence of slavery, donning of Black face with caricaturized stereotypical Black representations—all of these incidents hark back to a history when the vast majority of institutions (including those of higher education) were "for whites only," and when the boundaries of those institutions was regulated through violence, both physical and symbolic.

More than that, when racist speech and expression take place in institutional settings like colleges and universities, these forms of communicative action reinscribe the relations of structural and cultural power that are essential elements of white institutional space. They signify the outsider status, as well as the alleged inferiority of, people of color in that space. In addition, they signify the continuing potential for violence against people of color in those spaces. Racist speech (the use of racial epithets, e.g.,) and expression (the noose) hold power that counterspeech does not. Therefore, in offering the solution of more speech, administrators deploy a false equivalency between structurally nonequivalent forms of expression, tacitly reifying the power of racist speech and the outsider status of people of color in higher education institutions.

Antiepistemological Projects and the Reproduction of Epistemologies of Ignorance

Another common response by administrators, when presented with the connection between speech and expression and the history of white supremacy, or to discussions

that center the dehumanizing and emotionally violent effects of racist speech and expression, is a call for civility and reason in the discussion. This focus on civility and reason generally accompanies the abstract liberalist white framing of racist speech, which reframes the discourse, turning it away from the experiences of and consequences for people of color, and back to the right of white people to be racist. We suggest that this is a mechanism of the white frame, an intentional or unintentional tactic that functions to remove the discussion from the empirically real emotional consequences for people of color. As Jennifer Mueller (2017) suggests, this administrative move to constrain the discourse with notions of civility, and remove it from the emotional responses it evokes, is a form of racial ignorance that positions white ignorance as a technology of white supremacy: an active project of knowing that is designed to facilitate not knowing about the empirical realities of racial inequality and the mechanisms of domination. Here, the call for administrators to enforce civility and remove emotion from the discussion serves as this type of technology; an antiepistemological project. Epistemology means a way of knowing or coming to know something. In this instance, we suggest that administrators are facilitating a way of *not* knowing or *not being able* to not know. The removal of emotion once again privileges the perspectives and interests of whites. But more than this, it allows the frame of reference for the discussion about racist speech to be separated from the histories and experiences of people of color.

Conclusion: A Rejection of False Equivalencies

As we have demonstrated, when college and university administrators frame their responses to racist speech and expression in higher education communities as centrally about freedom of speech, they create and protect a right to be racist, while diminishing the right for people of color to have equitable access to the benefits of higher education in the United States. More than that, we suggest that the notion that we must endure racist speech as part of the commitment to freedom of speech in order to protect antiracist or social justice speech presents a false equivalency. These forms of speech are not the same structurally, nor are they difficult to differentiate. We see this false equivalency most starkly when we look at how racial justice protest speech has been repressed by the state despite absolutist free speech laws, and when we look to other socially democratic countries who value freedom of speech, but have created laws to limit harmful racist speech and expression.

Repression of Racial Protest Speech

While the legal framing of the First Amendment has served to protect racist speech and the right to be racist in higher education, this frame has largely failed to protect social justice speech and expression that challenges, criticizes, or attempts to fight against white supremacy. From the demonstrations of those involved in the Civil Rights Movement, to the contemporary demonstrations by Black Lives Matter, to

demonstrations for diversity and equity on college and university campuses, to the speech of artists like rap group NWA—the government has deployed its police power to restrain and prevent this protest speech. So while white racists like Richard Spencer have been protected as they terrorize people of color on college and university campuses, those fighting for social justice have been stalled, arrested, and even physically assaulted by government representatives. Indeed, campus administrators tend to favor free speech arguments when protecting “the right to be racist on campus” but tend to invoke arguments about civility when it comes to protest speech.

In short, when racist incidents occur on college campuses, administrators tend to argue that such speech (and sometimes nonspeech artifacts such as nooses or graffiti) is protected by the First Amendment. However, when students of color protest racist incidents or other forms of campus inequality, they are most often met with calls for civility. This creates a campus environment in which the speech of those with power—speech that protects the status quo, including racist speech by outsiders is protected. Simultaneously, speech by those who are less powerful—speech that seeks change, even by campus community members—is frowned on, or worse, criminalized.

This has had fatal consequences in this country in the past—it should not be lost on us that the student protest wave that we are seeing today has many parallels to the protest wave of late 1960s and 1970s that led to deadly repression of student protest at Kent State and Jackson State for example. These should be remembered as cautionary tales on campus communities. But even absent that kind of assault on protest speech, today’s students are being silenced, facing reprimands, expulsion, and criminal charges for exercising their right to speech that challenges existing power structures. And these consequences are often handed down from the same administrators who vehemently call on the First Amendment when protecting the rights of racist speakers.

Other Social Democracies Limiting Racist Speech

Many other democratic countries in the world that constitutionally protect and respect freedom of speech and expression do, in fact, prohibit some forms of racist and ethnocentric expression. Their restrictions have been historically based precisely on the kinds of structural connections between such expression and the histories of racial violence and oppression we discuss herein. In fact, after World War II, the United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide, obligating signatories to create sanctions for “direct and public incitement to commit genocide” (see Tsesis, 2010, p. 645). With the lessons of World War II revealing startling connections between rhetorical manipulation and racial/ethnic genocide, many democratic nations responded by enacting criminal and civil penalties for certain forms of expressions of racial/ethnic animus and incitement. For example, the Canadian Supreme Court has prohibited hate speech, noting that the purpose of protections of free speech include “(a) seeking the truth and the common good, (b) promoting self-fulfillment of individuals by allowing them to develop thoughts and ideas as they see fit, and (c) ensuring that the political process is open to all persons” (quoted in Tsesis, 2010, p. 647). Noting that racial/ethnic hate speech is

not compatible with these goals, the Canadian Supreme Court has permitted “reasonable” limitations on such forms of speech (Tsesis, 2010). In addition, the United Kingdom, Germany, France, and many other Western democracies permit criminal and civil penalties for racist and ethnocentric speech, including speech that creates hatred for an entire race/ethnicity, incites violence or argues for the mass oppression of racial and ethnic groups (Delgado & Stefancic, 2004; Matsuda et al., 1993; Tsesis, 2010). Moreover, in Canada, the United Kingdom and Germany, government policies have been created with special regard to such forms of hate speech on college and university campuses to prevent racist and xenophobic ideologies from “taking root” in these settings (Tsesis, 2010, p. 646).

In the United States, however, the courts have prohibited such government interventions with regard to racist expression, and administrators in institutions of higher education have followed suit by consistently committing to an absolutist commitment to freedom of speech. This has meant that university administrators are unwilling or unable to resist the absolutist framing of freedom of speech in this country and create institutional penalties for those who engage in racist speech and expression. But more than this, we have also found that the abstract liberalist white framing of free speech enforces boundaries around the discussion such that the lens cannot be rotated long enough to make arguments from the vantage point of protecting racially equitable access in higher education. For example, our research on administrative responses in public news and in policy reveals a consistent pattern of responses that focus on presenting the legal and policy issues of freedom of speech (like the White Paper developed by the President at Texas A&M). What we have never found is a similar public statement or policy framed by the interests of people of color and racial equity.

Consider this example, what if instead of a White Paper titled “Free Speech and the Right to Associate: Legal Issues in the Student/University Relationship” a university official published a White Paper titled “Racial Equity and the Equal Protection Clause: Legal Issues in the Student/University Relationship” (Table 2). Such a statement might look like this:

This is merely one small example, just a reframing of the issue that could lead to a presentation of the laws and requirements of the Fourteenth Amendment and the 1964 Civil Rights Act, both of which require racially equitable access to higher education; a presentation of the research examining and detailing the mechanisms of white institutional space and how to destabilize these mechanisms; and a presentation of the consequences of hostile racism and microaggressions and macroaggressions for people of color navigating white spaces. We suggest that administrators rotate the lens away from dominant white framing of the issue of racist speech and expression on college and university campuses, and explicitly examine how that framing operates as a mechanism of white power and domination. Short of this, administrators across the country, who claim to be rejecting and denouncing white racist speech in college and university campuses, are actually reproducing institutional spaces in which the limits of the community include the right to be racist.

Table 2. Racial Equity and the Equal Protection Clause: Legal Issues in the Student/University Relationship.

Racial Equity and the Equal Protection Clause: Legal Issues in the Student/University Relationship

- At a public university, all students, regardless of race must have substantively equal access to the institution.
 - Racist speech and expression is considered by this university to be fundamentally exclusionary and potentially threatening in that it affects the ability of students of color (as well as faculty and staff of color) to meaningfully engage in the institutional community and to benefit from the resources of the institution to the same extent as white students.
 - Whether or not First Amendment law permits the university to take punitive action against those who engage in racist speech and expression in our university community, we will take all legally permissible action and utilize our own institutional power of speech to sanction and criticize these forms of expression in order to protect the rights of students of color to attain their education free from the threat of dehumanizing or violent expressions.
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1. See <http://provost.tamu.edu/Provost/media/Assets/pdfs-essentials/Access-Free-Speech-0618.pdf>

References

- Abrams, A. (2017). Tennessee college student arrested after wearing gorilla mask to black lives matter protest. Time. <http://time.com/4512941/gorilla-mask-black-lives-matter/>
- Archibold, R. C. (2010, February 26). California campus sees uneasy race relations. *The New York Times*. Retrieved from <http://www.nytimes.com/2010/02/27/education/27sandiego.html>
- Bell, J. and Hartmann, D. (2007) Diversity in everyday discourse: The cultural ambiguities and consequences of 'happy talk'. *American Sociological Review*, 72(6): 895-914.
- Blanks, J. (2002, April 18). Administration responds to BLSA demands as students stage protest. *Harvard Law Record*. Retrieved from <http://hlrecord.org/?p=12225>
- Bobo, L., Kluegel, J.R., and Smith, R. (1996). *Laissez-Faire racism: The crystallization of a 'kinder, gentler' anti-black ideology*. Russell Sage Foundation: June.
- Bonilla-Silva, E. (2010). *Racism without racists: Color-blind racism and the persistence of racial inequality in the United States* (3rd ed.). Lanham, MD: Rowman & Littlefield.

- Bourdieu, P. (1989). Social space and symbolic power. *Sociological Theory*, 7, 14-25.
- Carr, L. G. (1997). *Color-blind racism*. Thousand Oaks, CA: Sage.
- Crenshaw, K. W. (1988). Foreword: Toward a race-conscious pedagogy in legal education. *National Black Law Journal*, 11(1), 1-14.
- Delgado, R., & Stefancic, J. (2004). *Understanding words that wound*. New York, NY: Westview Press.
- DiTamaso N., Parks-Yancy, R. and Post, C. (2003). White views of civil rights: Color blindness and equal opportunity. In: A. W. Doane, & E. Bonilla-Silva, (Eds.), *White Out: The Continuing Significance of Racism*. New York, NY: Routledge, 189-198.
- Dray, P. (2002). *At the hands of person's unknown: The lynching of black America*. New York, NY: Modern Library.
- Feagin, J. R. (2006). *Systemic racism: A theory of oppression*. New York, NY: Routledge.
- Feagin, J. R., Vera, H., & Imani, N. (1997). *The agony of education: Black students at white colleges and universities*. New York, NY: Routledge.
- Foucault, M. (1977). *Discipline and punish: The birth of the prison*. New York :Pantheon Books,
- Gallagher, C. A. (2003). Color-blind privilege: The social and political functions of erasing the color line in post race America. *Race, Gender, & Class*, 10(4), 22-37.
- Gordon, L. (2010, February 18). UC San Diego condemns student party mocking black history month. *Los Angeles Times*. Retrieved from <http://articles.latimes.com/2010/feb/18/local/la-me-ucsd18-2010feb18>
- Jones, C. (1992). Regulating campus hate speech: Is it constitutional? *NCCD Focus*, San Francisco: National Council on Crime and Delinquency.
- Koury, R., & Koh, B. (1995, February 16). Students at the college of San Mateo and UC-Berkeley rally against racism hate fliers evoke sadness at Colleges. *San Jose Mercury News*, p. 1B.
- Lewin, T. (2002, April 20). Comments concerning race divide Harvard Law School. *The New York Times*. Retrieved from <http://www.nytimes.com/2002/04/20/us/comments-concerning-race-divide-harvard-law-school.html>
- Lewis, A. E. (2003). *Race in the schoolyard: Negotiating the color line in classrooms and communities*. New Brunswick, NJ: Rutgers University Press.
- Matsuda, M. J., & Lawrence, C. R., III. (1993). Epilogue: Burning crosses and the R. A. V. case. In M. J. Matsuda, C. R. Lawrence, R. Delgado, & K. W. Crenshaw (Eds.), *Words that wound: Critical race theory, assaultive speech, and the First Amendment* (pp. 133-136). New York, NY: Westview Press.
- Matsuda, M. J., Lawrence, C. R., III., Delgado, R., & Crenshaw, K. W. (Eds.). (1993). *Words that wound: Critical race theory, assaultive speech, and the First Amendment*. New York, NY: Westview Press.
- Moore W.L. (2008). Reproducing racism: White space, elite law schools, and racial inequality. Lanham, MD: Rowman and Littlefield.
- Moore, W.L. & Bell, J.M. (2017). "The right to be racist in college: Racist speech, white institutional space and the first amendment," *Law and Policy*, 39(2):99-120
- Mueller, J. 2017. "Producing colobblindness: Everyday mechanisms of white ignorance." *Social Problems*, 64:219-238.
- Musu-Gillette, L., Zhang, A., Wang, K., Zhang, J., Kemp, J., Diliberti, M., and Oudekerk, B.A. (2018). Indicators of school crime and safety: 2017 (NCES 2018-036/NCJ 251413). National Center for Education Statistics, U.S. Department of Education, and Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. Washington, DC.

- Ortego, J. "Noose ignites tempers on campus." The Baylor Lariat, <https://www.baylor.edu/lariat/archives/news.php?action=story&story=54331>
- Steinhardt, J. L. (2002, April 16). Law students, faculty protest racial incidents. *The Harvard Crimson*. Retrieved from <http://www.thecrimson.com/article/2002/4/16/law-students-faculty-protest-racial-incidents/>
- Tsesis, A. (2010). Burning crosses on campus: University hate speech codes. *Connecticut Law Review*, 43, 617-672.
- UPI. (1986, December 2). Around the nation: F.B.I. to investigate the Citadel for racism. *The New York Times*. Retrieved from <https://www.nytimes.com/1986/12/02/us/around-the-nation-fbi-to-investigate-the-citadel-for-racism.html>
- US News & World Report. (2011). America's best colleges. Washington, DC : U.S. News & World Report.
- van Dijk, T. A. (Ed.). (1997). *Discourse as structure and process*. London, England: Sage.
- Watkins, M. (2016, February 11). Texas A&M investigating after black high schoolers harassed on campus. *The Texas Tribune*. Retrieved from <https://www.texastribune.org/2016/02/11/m-investigating-after-black-high-schoolers-harasse/>

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