

On Hate Speech and the Politically Correct: Comments to Students at the University of North Dakota School of Law

Dr. Jack Russell Weinstein
Associate Professor of Philosophy
University of North Dakota

We are living in a time of backlash. After three decades of negations regarding the nature of a pluralist society, the dominant political culture tells us that certain issues are resolved: The Women's Right's movement is over, women have equality. The Civil Rights Movement is completed; black Americans are considered full citizens. The sexual revolution is over; consenting adults are free to do what they want. But none of these assertions are true. Things are certainly better than they were – woman and black Americans, for example, have more opportunities than they have ever had – but none of these issues have been resolved. The battles have simply become more subtle.

Because it is now unacceptable to state publicly that women are inferior or that blacks shouldn't have the same opportunities as whites, the nature of intolerance has shifted. We have developed other ways to exclude and to alienate, ways that appear to be protected and proper. Our focus has shifted from the openness towards difference to the assertion of the rights of the intolerant. If one group has the right to glorify their ethnicity, all groups do. If one religion is permitted to flourish, so should all others. At the core of this discussion is a debate about the possibility of yet another, as of yet unarticulated, right. Do I, as an American, have the right not to be offended? In other words, if your acts, your t-shirt, or your music offends me, do I have the right to make you stop acting, to change your clothes, or to turn the stereo off? The answer is likely no. The right to free expression trumps the right not to be offended, in most contexts – and I will return to the qualifier repeatedly.

And thus, we have the introduction of the phrase “politically correct.” Those who wish to assert their right to offend and those who wish to challenge the strictures of toleration, assert, proudly, that they are happy to use a phrase, make a joke, or espouse a political position because they aren't interested in being “politically correct.” Then they do so, confident in their entitlement to do whatever it is they were doing before they were forced to defend themselves and their acts. This political correctness is

the backlash, a rebellion of a libertarian society of rights against a well-functioning polity of respect.

The phrase “politically correct” is both dangerous and misleading because it misses the point. It ignores the fact that social discourse is contextual and governed by rules established and corrected over time by an ever enlarging community of inquirers. What “politically incorrect” comments really are, are statements in flux. They are deviant assertions making a last gasp for acceptability. And once the transition is completed, once these statements become subject to clear rules of use and propriety, they sink into the realm of the prohibited.

Let's consider an example. Imagine you are in class and the professor is giving a lecture. The students have all worked hard to be prepared and to participate with comments of their own. The atmosphere is serious but energetic and someone raises her hand in response to the Professor's question. The professor, a male, points to the female student and says, “well, you're a pretty little thing. What do you think?”

This is a shocking scenario for two reasons. The first is the damage that it illustrates. Nothing could erase this comment, and the woman called on, as well as most, if not all other women in the room, will feel excluded, uncomfortable, and disrespected. They will resent the teacher and resent the lecture. They will likely stop participating, or do so only with trepidation. They will be denied access to education, and their lack of participation will deny the males in the room that same education. Many men will feel uncomfortable, perhaps even embarrassed, and the community of the classroom will be fragmented and unproductive.

The second reason why this is shocking is because it simply doesn't happen anymore. It is clearly bad teaching and indicative of the professor's bad character. Few people would defend this professor's actions for any reason other than sport or playing the devil's advocate. But half a century ago, this comment would have been perfectly acceptable, and

three decades ago, it would have been considered “politically correct” (if, of course, the phrase had been in existence). The professor could have easily asserted, “well, I know that *some people* might find this offense, but I’m not succumbing to political correctness.

What happened over time, thankfully, is that it became clear that in order to cultivate a classroom of equals, professors and students must refrain or be prohibited from making such comments. There is clearly good reason to do so because in *this* particular context, the right to not be offended trumps the right to free expression. Why? Because, in this context, sexist language and behavior prohibits students’ access to education. A sexist classroom is a classroom for men, and men of bad character, at that.

I make these points about political correctness because in the current climate, one cannot have a discussion of hate speech without first dealing with the rhetoric of the politically incorrect. We therefore have to diffuse the credibility of the phrase before we can even get to the more serious violation of hate speech. Most people would never defend their painting a swastikas on a synagogue door as politically incorrect, and only a very few would argue that they are justified in hanging a Nazi flag in a window. In fact, even if it turns out to be their right to do so, virtually everyone would regard the person with the nazi flag as immoral, crazy, or, for lack of a better term, an asshole, and they would try their best to keep away from him or her. But many more people would assert their right to hang a confederate flag in their window, and to justify it while celebrating their resistance to the pressure of political correctness. Even more would assert their right to say something nasty about Native Americans, in public, on a t-shirt, on a university list-serve, or in class. Because, unfortunately, and for a variety of reasons, the rules of social discourse have simply not developed thoroughly enough to consider Indians as recipients of the same protections as Jews – who, in all honesty, aren’t all that protected, as is evidenced by the Grand Forks Herald’s, the City Council’s, The Mayor’s, and Charles Kupchella’s silence in response to the attack on B’nai Israel Synagogue last month.

Our job here is to help evolve those standards of discourse; to include all students in the protection of equal respect. The initial step towards curbing hate speech is first and foremost to recognize that the term “politically correct” is a red herring. It is a way of hiding the refusal to respect the feelings of other. It is a backlash against equality and empathy.

Perhaps more importantly, the foundation of curbing hate speech is the understanding that the libertarian conception of rights that lay at the core of the so-called “right to offend at will” is a superficial definition of political freedom that remains inadequate to meet the needs of a modern political society.

In contemporary America, most people operate on the belief that freedom means the ability to do whatever one wants without consequences. Thus, a person is said to be free when he or she can indulge in their preferences, act however they choose, say whatever they want, and take whatever the please. Building on the philosophy of John Stuart Mill, the argument continues that a person’s freedom extends only to that point where it inhibits another, but Mill, and others, still regard this conflict as a limitation of both person’s freedom: all involved cannot do *anything* they want to *anytime* they want, and are thus less free. This kind of freedom is what Isaiah Berlin referred to as negative freedom or “freedom from.” A person is free when they are free from restraints or violence.

But Berlin introduced another concept. That is, positive freedom” or “freedom to.” A person under this conception of freedom is free *to* get an education, free *to* have health care, free *to* be fulfilled. Despite Berlin’s criticisms, positive freedom is of extreme importance, we need both it and negative freedom, because without it, individuals are left helpless in the face of reality. Consider the following example of a society in which there is only negative freedom. A farmer in North Dakota grows flax. She is free from the burden of excess taxes, but she receives no subsidies or governmental assistance. The market price of her crop is inadequate to pay all her bills, and her daughter wants to go to college. But they have no money to spend on tuition and no means of getting it. Is this daughter really free to get an education? Of course not. The assertion that no one is hindering her from going to school is irrelevant. The lack of assistance is hindrance enough.

As students, and as citizens, you are obligated to cultivate both types of freedom for your colleagues. You must refrain from hindering them, but you must also respect and assist in their freedom to be educated. When you cultivate hateful acts, you interfere with their ability to get an education as well as your own because you contribute to an environment of alienation and fragmentation. In the school context, the right to respect, the right not be

offended, trumps the right to free-speech, because you are part of a voluntary association that promises an equal opportunity to education to all who join. And, if you hide behind the veil of the “politically incorrect,” you are not only interfering with the rights of other, you are also doing it in a dishonest and cowardly way. You are being hateful and lacking the courage to admit it.

This is not to say that you are not permitted to disagree with your colleagues or debate controversial issues. A mature person knows not to be offended by differences of opinion. There are rules of respectful argumentation, and it is your professors’ job to teach you what they are if you don’t yet know them. But

outside those specific contexts, the right to an education trumps the right to speak completely free of any restraint. It may seem contradictory at first, but the presence of differing rules of conduct in different discourse-contexts makes us all more rather than less free.

Of course, none of this should suggest that you are not free to say whatever you want in the privacy of your own home, with your friends and intimates, in a context that does not take away the freedom of others. Uttering racist, sexist, homophobic or anti-Semitic remarks in such a circumstance may, in fact, be your right. Doing so doesn’t make you in violation of the law. It only makes you a bad person.