

All Speech is Not Free: The Ethics of “Affirmative Action Pedagogy”

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All speech is not free. Power inequities institutionalized through economies, gender roles, social class, and corporate-owned media ensure that all voices do not carry the same weight. As part of Western democracies, different voices pay different prices for the words one chooses to utter. Some speech results in the speaker being assaulted, or even killed. Other speech is not free in the sense that it is foreclosed: our social and political culture predetermines certain voices and articulations as unrecognizable, illegitimate, unspeakable.¹ Similarly, neither are all expressions of hostility equal. Some hostile voices are penalized while others are tolerated.² Hostility that targets a marginalized person on the basis of her or his assumed inferiority carries more weight than hostility expressed by a marginalized person towards a member of the dominant class. Efforts to legislate against “hate speech” within public spaces cannot, in principle, recognize the differential weight and significance of hate speech directed at different individuals or groups.

If all speech is not free, then in what sense can one claim that freedom of speech is a working constitutional right? If free speech is not effective in practice, then a historicized ethics is required. Thus the discomfiting paradox of U.S. democracy: while we may desire a principle of equality that applies in exactly the same way to every citizen, in a society where equality is not guaranteed we require historically sensitive principles that appear to contradict the ideal of “equality.” An historicized ethics operates toward the ideal of principles such as constitutional rights, but also recognizes the need to develop ethical principles that take into account that all persons do not have equal protection under the law nor equal access to resources. Within a climate of extreme backlash to affirmative action and to women’s rights, I propose what I call an “affirmative action pedagogy”: a pedagogy that ensures critical analysis within higher education classrooms of any expression of racism, homophobia, anti-Semitism, or sexism, for example. An affirmative action pedagogy seeks to ensure that we bear witness to marginalized voices in our classrooms, even at the minor cost of limiting dominant voices.

The first part of my argument is that all voices are not equal; the second is that the obligation of educators is not to guarantee a space that is free from hostility — an impossible and sanitizing task — but rather, to challenge oneself and one’s students to analyze critically any statement made in a classroom, especially those which are rooted in dominant ideological values that subordinate on the basis of race, gender, class, or sexual orientation. When a student claims, for example, that he has been victimized by affirmative action, and “proves it” with his experience, we cannot allow ourselves or our students to be silenced by this “authority of experience” or “self-disclosure.” No utterance that assumes the inferiority of targeted groups is sacred or immune to interrogation.

THE UNIQUE PUBLIC SPACES OF EDUCATION

What does it mean to recognize, in the educational practices of college and university classrooms, that all voices are not equal? The solution is neither to invoke an absolutist sense of free speech, nor to prohibit simply and absolutely all hostile expressions. The uniqueness of classrooms is that, ideally, they provide a public space in which marginalized and silenced voices can respond to ignorant expressions rooted in privilege, white supremacy, or other dominant ideologies. Unlike many public spaces in which one may encounter hate speech — say, on a street or in a shopping mall — the classroom is one of the few public spaces in which one can respond and be heard. In these classrooms, educators must deal with messy issues that others cannot or do not want to address. Does this give educators any special Constitutional privilege or dispensation? I leave that question open. However, to advocate that we use classrooms to critically interrogate racist and homophobic remarks is not based on an invocation of free speech. Rather, an affirmative action pedagogy recognizes that we are not equally protected in practice by the first amendment, and that education needs fairly to represent marginalized voices by challenging dominant voices in the classroom.

In this argument, I must also distinguish the public space of higher education classrooms from other public spaces in which hate speech occurs. Within the majority of college and university classrooms I am assuming that we are concerned with statements that are offensive, oppressive, or ignorant, supported by dominant cultural values institutionalized and validated through social, legal, and political practices. I distinguish such offensive expressions from what may be termed “verbal abuse” or what are legally referred to as “fighting words”: for instance, name-calling solely intended to denigrate the other.³

The First Amendment protects the individual’s right to free speech against government intervention. In the case of publicly-funded higher education, the First Amendment protects individual educators’ right to set classroom rules. Yet to what extent does the First Amendment protect hostile expressions within classrooms? Within this murky legislative terrain, I set out to examine the ethics of affirmative action pedagogy. I want to explore a pedagogy that reflects a commitment as well, to the Fourteenth amendment and to Title IX, to ensure social equity and to create an educational climate which does not replicate the social inequities of the “real” world.

THE FREEDOM TO CREATE “UNREAL” SPACES

Some argue that to create a classroom environment that does not replicate the inequities of the “real” world is a disservice to students. This accusation would apply as well to women’s colleges and to historically black colleges. I see no viable reason why educators should not create “separatist” spaces in which to empower historically marginalized groups, so that they may reenter a hostile “real” world better equipped to defend their views and rights. Universities in general function as “white men’s clubs” and by default function to empower those who already hold privileged positions within the “real” world.

The recently publicized occasion involving Professor Mary Daly’s women’s studies classroom has functioned as a lightning rod for these frequently ill-informed

debates. Professor Daly made a decision to prohibit two male students from enrolling in her women's studies class. In this instance, apparently the two male students were enrolling not out of genuine educational interest but in a desire to "disrupt" the "safe space" of women's studies through contentious participation. I am told that Professor Daly regularly allowed men to enroll but held separate classes for them.

The Daly case raises another interesting ethical dilemma: on what basis does one disallow a student from a classroom? In this instance, the intention of the prohibited students was precisely to disrupt the classroom environment. Yet in other cases, one may have students whose intention is not to disrupt, who are genuinely open to education and change, yet who bring with them potentially offensive views which can in effect disrupt the classroom as much as would intentional harassment.

Not all university educators, by any means, agree on what rules should govern the climate or speech of a classroom. At a recent women's studies meeting, we discussed how any of the twenty of us dealt with expressions of racist or homophobic ignorance that arise in our classrooms. One faculty member, an assistant professor in black studies, stated that she informs students that, during the semester, they are welcome to say or express any views they wish. She invites this precisely because she sees the classroom as place where others can educate such ignorance, that collectively the group can respond and speak back. She described how she sees attitudes change within the context of the educational space, over time: for example, when she counters a student's ignorant remark, and other students chime in, she sees the student nodding her head or she begins to develop a new awareness of the social context for expression. This professor stressed the importance of critical analysis: she requires students' accountability for every one of their claims and opinions.

Another assistant professor of religion and black studies expressed an entirely different set of ground rules. She described how her web page devotes a good portion to demarcating areas of discussion, questions, and remarks that are not permissible in her classroom. She discusses these rules of conduct with her students at the beginning of class. In a women's studies class, for example, she tells students that she expects that every enrolled student is there because he or she supports the empowerment of all women everywhere. In a black studies class, she tells enrolled students that she expects them to object to any denigration of black persons anywhere.

Is the second case an example of censorship? What if a student does not support the empowerment of women? Yet what if one excludes this student from class, when in fact there is some evidence to show that sitting through the course would change that person's prejudiced thinking? A recent program on PBS documented the radical transformation which can occur as a result of educational experience: a course called "Tolerance" taught in a southern California high school, is offered in response to hate speech and crimes on their campus. One semester a white supremacist goes through the course and appears not to have changed his views. A few years later, he returns to the teacher and explains how the course had changed him: he has reevaluated his belief system and now supports black rights.

While the first instance — inviting students to express anything — may appear to invoke free speech, in fact the operative principle is the belief that an educational environment actively engages critical analysis of how racist or homophobic opinions, for example, are founded in institutionalized systems of privilege and subordination. Following from this, the belief is that this process of challenging racism or homophobia will result in changing individual and group attitudes that are rooted in ignorance.

The second instance — prohibiting certain kinds of speech, or enforcing an assumption about what beliefs participants are assumed to hold — is, in my analysis, similarly motivated by a commitment to an affirmative action pedagogy. In this classroom, it is significant that what is prohibited are particular hostile expressions — those aimed at subordinate groups. This functions to correct an educational history which has systematically discriminated against marginalized voices. Within women’s and black studies in particular, this attempt to counter unequal representation is especially appropriate.

It is helpful to see both of the above pedagogies as different ways of deploying an affirmative action pedagogy. One encourages a voicing of the hostilities in order that they may be critically addressed; the other privileges marginalized voices by setting ground rules to create a space in which, uniquely, the unheard may be heard.

JUSTIFICATIONS FOR HISTORICIZED ETHICS

On what basis might one justify an affirmative action pedagogy? The first justification is forwarded by legal scholars in the area of critical race theory. The authors of *Words that Wound* address the tension between the First and Fourteenth amendment. The tension arises because, in fact all people are not equally protected under the law due to the institutionalized inequities within our society. This complicates the effectiveness of the First Amendment. Scholarship in critical race theory and educational analyses document that in recent years we find incidents of hate speech primarily to be directed at racial, religious, or sexual minorities. Not surprisingly, one finds in turn that invocations of the right to free speech are most often invocations to protect the right of the members of the dominant culture to express their hatred toward members of minority culture. These authors make important legal and historical cases to support their observation that, in practice, while the rhetoric of the First Amendment is a buzz word that makes all of us want to rally for its principle, in practice “the First Amendment arms conscious and unconscious racists — Nazis and liberals alike — with a constitutional right to be racist. Racism is just another idea deserving of constitutional protection like all ideas.”⁴ Similarly, Judith Roof, a scholar from another discipline addresses classroom dynamics and argues that we must “read the appeal to the First Amendment as itself a kind of panic response in the same order as hate speech itself.”⁵

A second justification for privileging marginalized voices is based on the measurement of the psychological effect of hate speech on targeted groups and individuals. As one legal scholar explains, hate speech affects its victim in the visceral experience of a “disorienting powerlessness,” an effect achieved because hate speech is comparable to an act of violence.⁶ In reaction to hate speech, the target

commonly experiences a “state of semishock,” nausea, dizziness, and an inability to articulate a response. This scholar gives an example of a student who is white and gay. The student reports that in an instance where he was called “faggot” he experienced all of the above symptoms. Yet when he was called “honky,” he did not experience the disorienting powerlessness. As the scholar remarks, “the context of the power relationships in which the speech takes place, and the connection to violence must be considered as we decide how best to foster the freest and fullest dialogue within our communities.”⁷

This brings me to another key point: the analysis of utterance in the classroom requires more than rational dialogue. In fact, the critical race theorists argue that because racism is irrational, no amount of rational dialogue will change racist attitudes. I disagree, in part because I am convinced that classroom discussion must recognize the emotions that shape and construct the meanings of our claims, our interchange with one another, and our investments in particular world-views. Thus a discussion of racism or homophobia cannot rely simply on rational exchange, but must delve into the deeply emotional investments and associations that surround perceptions of difference and ideologies. One is potentially faced with allowing one’s world-views to be shattered, in itself a profoundly emotionally charged experience.

In her book *Excitable Speech*, Judith Butler makes an argument against the critical race theorists. Two aspects of her argument are relevant to mine: the accountability of the person who utters “hate speech,” on the one hand; and the potential for critical agency on the part of the target of hate speech, on the other. Butler argues for the benefits of what she calls the “citationality of discourse which can work to enhance and intensify our sense of responsibility for it.”⁸ For example, the person who repeats or articulates a circulating form of hate speech should be required to negotiate “the legacies of usage that constrain and enable that speaker’s speech.”⁹ Butler’s argument reaches farther than my own, as she is arguing against any codes that constrain hate speech, including codes that might legislate hate speech in the dormitories or public spaces of a university. I am appropriating her point more narrowly to examine when and how injurious language expressed in a classroom provides a “teachable moment” — in other words, the extent to which educational spaces provide one of very few opportunities in which a speaker will be held accountable for the “legacies of usage” that surround offensive speech and beliefs.

I have frequently argued that one of the most effective ways to demand accountability for the “opinions” students feel “free” to express in the classroom, is to require a homework assignment in which they trace the source of their views (with respect to white supremacy, for example: a history of why and how it is condoned and supported, what enables the speaker as an individual to express this view without fear of censure or loss of privilege, and so on). Such an assignment can be equivalently required of any student’s expressed view: the sexual assault survivor can provide an analysis of the legacies that enable her to speak of being assaulted, of the histories of women’s liberation that have sought to legislate on behalf of assault survivors.

Butler's second point relevant to my discussion is her argument that the *expression* of hate speech, and not its censorship, is invaluable because such expressions ensure that the targets of hate-speech can develop critical agency. She writes, "those who argue that hate speech produces a 'victim class' deny critical agency and tend to support an intervention in which agency is fully assumed by the state. In the place of state-sponsored censorship, a social and cultural struggle of language takes place in which agency is derived from injury, and injury countered through that very derivation."¹⁰ Butler's argument supports the black studies professor who invites her students to express any of their views, no matter how offensive. This argument is compelling in some educational situations, but would seem to offer little in situations where there are no allies to the victim who risks his or her life in uttering critical response. To tell someone who appears "gay" or "lesbian" that, when walking down the street and accosted by homophobic remarks from a passing car that one should "engage in a social and cultural struggle over language" seems a rather empty promise of redress, given that there may be no opportunity to speak back or one's life may be at risk. However, within an educational environment, articulation of injurious views can, if handled ethically, provide the target of hate speech with opportunities to speak back and thereby develop a sense of critical agency.

These complicating factors reiterate that all speech is not free, and that the principle of free speech is so deeply mediated by power that it cannot assure the equality promised by democracy. I turn now to address briefly what has come to be called the "paradoxes of self-disclosure," which represent a post-political correctness use of "free speech" to protect hate speech.

"SELF-DISCLOSURE" AS THINLY-DISGUISED HATE SPEECH

Within a historical moment of backlash in which those with privilege have been "forced" by feminist and affirmative action policies to acknowledge power inequities, those with privilege have also recognized that expressions of "personal experience" tend to be exempted from penalization. A recent issue of *Concerns* is devoted to the paradoxes created within the context of this backlash, particularly with respect to the First Amendment and new challenges for equitable pedagogies. The authors address an intriguing phenomenon of "self-disclosure" used by privileged students to justify offensive expressions. Self-disclosure essentially takes up where "non-situated" hate speech or assertions of superiority left off.

In that issue, Roof cited above, details the evolution of self-disclosure as a version of "standpoint epistemology," in which the speaker locates her/himself in relation to gender, race, class, and sexual orientation for example. She goes on to argue that "the relative power accorded to groups in Western culture affects both what is disclosed and how that disclosure might be heard."¹¹ As a result of differential weight and authority of voices,

self-disclosures sometimes manage, whether their tone is proud or apologetic, to validate the embattled attitudes of privilege and entitlement that tend to produce hate speech in the first place. Disclosure can transform a centrist or dominant position into a victimized, marginal, oppressed slot that competes loudly for attention against the more traditionally marginal and oppressed voices that are emerging...[resulting in] the reassertion of a speaker's relative privilege.¹²

Many educators who teach about social inequalities encounter this phenomenon in which the use of self-disclosure on the part of a speaker who enjoys relative social privilege reassert their dominance. For philosophers, this throws us into longstanding arguments regarding epistemological relativism: do all assertions carry equal weight? If not, why not? Particularly with respect to the invocation of “personal experience,” how are we to “rank” the painfulness/attention-worthiness of different experiences, and how much space these experiences should be permitted within a discussion? Also in the *Concerns* issue, Angela Jones offers an insightful way of dealing with such uses of self disclosure:

Every semester, for instance, a self-identified white, middle-class male student will complain that he is tired of hearing minorities “whine” about their oppression, usually volunteering his own problems as evidence that he too is oppressed. . . . I resist the temptation to cross-examine him because his complaint typically shuts down anyone who would challenge him and my pointed questions would only shut him down or create an adversarial exchange. . . . Instead it is my goal at those moments to authorize those who have been silenced by connecting their previously volunteered experiences to this particular discussion.¹³

The educator might then ask the marginalized students to discuss and explain the issues they have previously raised, and bring the discussion around to ask: how is that analysis of racism and sexism gets cast as “whining?” Jones’s example represents a recurrent problem: when we re-configure the conversation to foreground the experiences of marginalized groups, those who have traditionally been at the center develop creative ways to reassert their centrality.

I recognize that my comment is contentious: do not white, middle-class male students have as much right to share their experiences in the classroom? I think there are justifiable cases where they do not. In the case in question, the speaker’s comment functions first to dismiss the other students’ comments as “whining.” Secondly, his interjection shifts the focus of attention back to himself and to his reluctance to recognize white male privilege as an institution and pervasive reality, no matter how troubled his own individual experience. If indeed the conversation then is redirected to his experience, affirmative action pedagogy fails. The discussion instead becomes one in which the privileged and dominant voice of society is the focus and center of attention, a context which further allows him to take up time justifying his emotional resistance to recognizing historically and socially determined inequities. Further, frequently such interjections derail a class from ongoing and in-depth study of nuances of feminist theory or other details of assigned readings. What is recreated is the classic situation to which women of color have learned to respond: “We do not want to educate you about racism, and we do not want to have to justify the fact of racism.” This student’s options include, instead, to go back over his class notes and assigned readings; discuss issues of sexism and feminism with other scholars and peers who care to educate him about sexism or racism for example; to do further outside reading and scholarship to evaluate the extent of feminist, postcolonial, black, and cultural studies to grasp the accomplishments and breadth of cross-disciplinary critiques of privilege. Perhaps he can come to recognize that these critiques are not isolated instances of “whining” but rather part of a systematic investigation of social inequalities, hierarchies, and the operation of power with Western society.

PUTTING AFFIRMATIVE ACTION PEDAGOGY INTO PRACTICE

The complexities of ensuring critical agency and juggling the paradoxes of self-disclosure come into sharp relief when one puts affirmative action pedagogy into practice. While I am arguing that ideally we challenge, for example, any homophobic remark uttered in a classroom, the complexity of social relations makes this extraordinarily difficult. To begin with, different voices carry different weight; some voices are heard better than others; some voices are foreclosed before even speaking. For example, it is one thing for my white male colleague to say “As a heterosexual white man I believe that persons of any sexual orientation should be equally protected under the law.” It is entirely other matter for someone to say, “As a lesbian I believe that persons of any sexual orientation should be equally protected under the law.” Obviously, the lesbian is biased while the white male heterosexual is not, right? If the white man says “I feel victimized by affirmative action,” the media and many of those in political power listen and validate his experience, whereas if an African-American female says “I feel victimized by capitalist patriarchy” not only will she not be quoted in the news and not validated, she will be blamed for her failure to succeed.

A second level of complication surrounds the relationship between individuals, or between different group members. For example, I think of a course I was co-teaching with an African-American, heterosexual female colleague. Early in the semester, the one African-American male, who rarely said anything in class, stated, “I would not want any homosexuals teaching my children.” I experienced, to a degree, the visceral effects of hate-speech. I was shocked by his comment. I was not out as a lesbian to this class. Frankly, at that particular moment, I did not know how to respond. I also did not want to put this man on the spot, in part because he had not spoken before. I recall that my colleague spoke directly with him when we broke into small groups. In large part her ability to challenge him was founded in their shared racial identity and perhaps the fact of their shared sexual orientation.

I think in contrast of an incident in another class in which the discussion was focused on issues of homophobia. A white male student shared, in a moment of self-disclosure, that the thought of two men having sex made him feel like throwing up, that it was totally disgusting and repulsive to him. He qualified by saying he was not opposed to other men being homosexuals, but... In this instance, in part because I had established more of a sense of rapport and dialogue with this class and this young man, I was able to interrogate: why would one feel repulsion? What social institutions and values contribute to this being our learned response? Why, supposedly, do not we feel that when we think of heterosexuality? These kinds of critical inquiry exemplify demanding from students an accountability for their hostile expressions.

I will briefly address further the experience of educators. Who can guarantee the safety of the educator? In my own experience, coming out at a public rally held on the drillfield of my University in support of Matthew Shepherd was safer than coming out in my own classroom. In some ways this is because of obvious reasons — because one assumed people attending a vigil for Shepherd support lesbian and gay rights, because I could slip away and never face that particular crowd again. Yet

it is a sad state of affairs that the fear of homophobia at this university is so great that many gay and lesbian professors and students I know do not come out. This means that gay and lesbian students in class have one less role model and ally.

Just as educators must commit to being allies to marginalized views within their classrooms, so must we develop creative ways to provide allies to the educator. Collaborative teaching with diverse instructors is an excellent way to create greater safety for an educator who feels silenced or fears recrimination from students or from the institution. For example, a woman defending feminism or addressing sexism will not always be heard as legitimate whereas if a male colleague comes in and discusses feminism it lends validation. Crucially, for lesbian and gay educators who do not feel safe coming out, it may be important to have straight allies come in to take some of the heat. This collaboration might be in the form of a roving “team” of colleagues who are available on an on-call basis. Although this is not an ideal solution — it risks disempowering the marginalized by requiring others to speak for them — it reiterates the fact that all speech is not free.

In closing, there are no prescriptions for one effective pedagogy. All speech is not equal, and this fact makes for a murky terrain with no easy solution. Ironically, one of the few places we may be able to exorcise some of the roots of inequality of speech is in the classroom, as painful and messy as this process may be. Until all voices are equal, we must operate within a context of historicized ethics which consciously privileges the insurrectionary and dissenting voices, sometimes at the minor cost of silencing those voices which have been permitted dominant status for the past centuries.

1. See Judith Butler, *Excitable Speech* (New York: Routledge, 1997). Foreclosure is exemplified in the “Don’t Ask, Don’t Tell” policy applied to gays in the military.

2. See the many cases cited in Mari J. Matsuda, Charles Lawrence, and Richard Delgado, *Words that Wound* (Boulder, CO: Westview Press, 1993). For example, a 1989 case at Stanford University in which racist hate speech/vandalism was not penalized but a student of color protest faced disciplinary measures.

3. This begs the question of whether the simple utterance of a derogatory term, when invoked for the purpose of critical inquiry, is an instance of hate speech. See Butler, *Excitable Speech*, 37.

4. Matsuda et al., *Words that Wound*, 15.

5. Judith Roof, “The Truth about Disclosure, or Revoking a First Amendment License to Hate,” *Concerns: Publication of the Women’s Caucus for the Modern Language Association* 26, no. 1 (1999): 45.

6. Charles Lawrence, “If He Hollers Let Him Go: Racist Speech on Campus,” in *Words that Wound*, 70.
7. *Ibid.*, 70.

8. Butler, *Excitable Speech*, 27.

9. *Ibid.*

10. *Ibid.*, 41.

11. Roof, “Truth about Disclosure,” 48.

12. *Ibid.*, 49.

13. Angela Jones, “Self-Disclosure in the Feminist Writing Classroom,” *Concerns: Publication of the Women’s Caucus for the Modern Language Association* 26, no. 1 (1999): 36.