

PODIUM

CIVIL LIBERTIES *By Harvey A. Silverglate*

Hate Crimes Laws Undermine Equality for All

HATE CRIMES LAWS, like the hate speech codes endemic on America's college campuses, are misguided from every point of view: legal, moral and practical. Yet in the wake of such outrages as the torture/murder of gay college student Matthew Shepard in Wyoming in October, the cry for legislation of this sort is heard from self-described "civil rights" or "gay rights" activists.

In fact, such laws do not promote anyone's rights. They impinge on the speech rights and consciences of those accused of attacking their victims, by words or physical assaults, driven by deeply held biases and ideologies. They demean those they are designed to protect by buying into the theory that members of "historically disadvantaged" groups cannot live with the same Bill of Rights that suffices for other citizens.

Perhaps most cruelly of all, laws that seek to confer rights and protections upon ostensibly vulnerable citizens by

taking rights away from supposedly advantaged citizens do a disservice to all Americans. They especially harm minority group members, by weakening the hard-won American consensus in favor of equal protection through the law.

Speech codes that are common on campuses generally prohibit the use of offensive words uttered by members of "historically advantaged" groups (typically meaning white males), which might create a "hostile learning environment" for members of "historically disadvantaged" groups (typically, women, blacks, Hispanics and gays). Such codes proceed on the assumption that rights are a zero-sum game, that to confer upon disadvantaged students an equal opportunity to gain an education, colleges must restrict the rights of advantaged students. This violates academic freedom and, on public campuses, the Constitution.

Inequality Redux

Hate crimes laws operate in similar fashion. By establishing enhanced penalties for crimes committed against members of designated vulnerable groups, these laws declare not only that some citizens are more vulnerable than others, but also that they are more worthy of legal protection. Further, in deciding whether a defendant has committed a

crime out of hatred of the victim's race or sexual orientation, rather than other motives, courts are frequently forced to inquire into, and punish, the defendant's social and philosophical views.

Such distinctions that classify citizens by characteristics over which they have no control—sex, race and sexual orientation—smack of the Nuremberg Race Codes. One would hope that 60 years after a bloody World War II, such an approach would have been quashed for centuries, not mere decades. Besides, in the face of a Constitution that guarantees equality before the law, the unconstitutionality of such laws should be manifest. (In fact, courts have uniformly declared speech codes unconstitutional, but hate crimes laws have so far survived review.)

Perhaps the most potent objection to laws that apply unequally to citizens because they are based upon such classifications is that they violate and weaken the fundamental American notion that all citizens are entitled, and required, to live by the same rules. A "golden rule" basic to American liberty: "Do unto others as you would have them do unto you."

Those who make and enforce our laws are required to live under them, as even the president of the United States has learned of late. Our system of legal precedent requires that a court ruling

applied to one citizen at one time should govern a similar case arising later with respect to another citizen.

Legal equality has not always been the ruling ideology. It took a bloody Civil War to abolish an official category of noncitizen defined by bloodlines. It took an often bloody civil rights movement, led by the Rev. Dr. Martin Luther King Jr., to abolish a system of legal inequality violative of the 14th Amendment. Dr. King's genius was to leverage the average citizen's theoretical support for equal treatment of all citizens before the law into support in practice. Had Dr. King insisted that it was more heinous to crack the skull of a black citizen than a white, the civil rights movement would never have gotten off the ground.

To classify some citizens now as more worthy of protection than others, to deprive some of rights ostensibly in order to enhance the rights of others, to declare some victims more worthy than others, is to risk destroying the broad-based coalition of Americans of good faith who would accord their fellow citizens the same legal rights they wish for themselves and their family and friends. In the end, double standards weaken support for legal equality, and once this happens, the only real protection for minorities disappears. ☐

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