

What we risk when we ban racist speech

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University of Oklahoma students march to the now-closed fraternity house of Sigma Alpha Epsilon during a rally in Norman, Oklahoma, on Tuesday, March 10. The university's president expelled two students Tuesday after he said they were identified as leaders of a racist chant that was captured on video.

Sue Ogrocki/AP











Oklahoma fraternity under fire

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Editor's Note: Marc J. Randazza is a Las Vegas-based First Amendment attorney and managing partner of the Randazza Legal Group. He is licensed to practice in Arizona, California, Florida, Massachusetts and Nevada. The opinions expressed in this commentary are his.

CNN —

America used to be a place where we said, “Give me liberty or give me death.” We live by a credo that “freedom isn’t free,” and that our Constitution is worth dying for. How inspirational it is to believe that this is the wind of thought that blows underneath the Eagle’s wings.

Unfortunately, whenever that wind becomes just a little too gusty for comfort, we find out just how little relationship our poetic credo has to our collective guts.

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The latest example: Nine seconds of video of a number of boys singing an offensive song. Immediately, the University of Oklahoma expelled two of the boys for their speech. Forget whether you like the speech or not. That is not relevant. These boys got kicked out of a public school for singing a song, on their own time, in a privately rented bus, simply because the government didn’t like the content of their song.



Opinion: What’s the right way to face racism?

Censors overstepping their bounds is no surprise. What surprises me is how readily the public supported the expulsions, and how many supposedly intelligent people were willing to turn the First Amendment on its head, because of nine seconds of video.

I don’t like the song or its message either. I can’t imagine anyone reasonable who would. But I want to live in a country where the government does not listen to my songs and then decide whether or not I should be punished, based on what words I used. That is not freedom.

video

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I understand that most of us hate racism. We are on a mission to eradicate it from all corners. But I am not willing to trade the First Amendment for a society where we don’t need to hear racist words.

In *Abrams v. United States*, Justice Oliver Wendell Holmes wrote a passage that ultimately became the cornerstone of a liberty-based view toward free speech, and which became the dominant theory in First Amendment jurisprudence. In *Abrams*, Holmes gave us “the marketplace of ideas.” And what a brilliant theory it was.

Holmes noted that if someone was completely confident in the belief that they were right, then it would seem logical that they would want to suppress dissenting views. “If you have no doubt of your premises or your power, and want a certain result with all your heart, you naturally express your wishes in law, and sweep away all opposition.” Those who wish to eradicate racism are certain that they are right.

I believe in a racism-free world. I have marched in counterprotests against the Ku Klux Klan. I’ve stood up in places you don’t want to be, against violent neo-Nazis. And I would do it again.

But I feel no kinship with anyone who would harm the First Amendment to fight racism. Some things are worse than racism – like a loss of the right to speak your mind and think your own thoughts. Unfortunately, that is a price that too many of us are willing to pay.

I am not. As certain as I am that my views on race are correct, I cannot shake Holmes’ wisdom from my mind. He wrote:

“But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution.”

For that reason, I would gladly protest against the KKK, but I would never abide any government official denying the KKK its right to speak.

I understand those who would wish to do so. They want to eradicate racism, and the end will justify the means. However, we have slowly been descending into a place where we are trading this for freedoms that are far more precious than the freedom to avoid having our feelings hurt by offensive statements.

Of course, some say that these were more than “offensive.” The song was a “threat.” After all, it did mention lynching black people. But was that really a threat? An idiotic ditty in an all-white bus? To call it a threat is disingenuous.

What about the disruptive nature of the song? Should other students have to go to school with people who clearly despise them, and who carry these offensive racist thoughts? Yes. They should be free to have these thoughts, they should be free to say these things. If it crosses the line into action, or even imminent incitement to action, that’s another story. In this case, that never happened. The First Amendment prevails here.

Opinion: The danger society doesn’t talk about

It is easy to claim that these Sigma Alpha Epsilon boys did not deserve First Amendment protection. Many have said so. But, when you hear that, your immediate reaction should be one of skepticism. The First Amendment is not there to serve as a comforting blanket of civility. In fact, it is there precisely to protect the sharp edges. It is there for the KKK, the Nazis, SAE, and you alike. It is there for words that shock us, challenge us, and that bother us.

You should want to protect the SAE boys – not that they deserve it. You should do so because the day will come that your speech is unpopular.

Once, speech in favor of racial equality was considered to be “bad speech.” Once, professors were kicked off campus for not being “anti-gay enough.” But, today, the thought of equality and tolerance have won out in the marketplace. Let that victory stand, without trying to cement it with the force of law, and without destroying the very liberty that allowed these “good thoughts” to flourish in the first place.

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