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Fall October 19, 2022

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To cite this article: Sy Stokes & Charles H. F. Davis (2022): In Defense of Dignitary Safety: A Phenomenological Study of Student Resistance to Hate Speech on Campus, Peabody Journal of Education, DOI: [10.1080/0161956X.2022.2125760](https://doi.org/10.1080/0161956X.2022.2125760)

To link to this article: <https://doi.org/10.1080/0161956X.2022.2125760>



Published online: 19 Oct 2022.



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ABSTRACT

Frequent incidents of racist hate speech on college and university campuses continue to instigate an ideological battleground between legal purists, anti-racist scholars, and those otherwise situated somewhere therein. We find that arguments from legal purists are predicated upon a false-equivalency between racist and anti-racist speech where the effect, value, and embedded power dynamics of the former are often disregarded. We engage in a phenomenological analysis of a four-year, private institution – Clearview College (CVC)—where a controversial speaker was invited to campus by a conservative student organization. We specifically interrogate how the seemingly race-neutral free speech policies at CVC, which were informed by the “Chicago Principles,” were racially structured in impact. We utilize a conceptual framework that demarcates intellectual safety and dignitary safety as a foundational point of departure to analyze the responses from 20 undergraduate students. The responses from focus groups revealed two primary themes: (1) racist hate speech as a threat to dignitary safety, and (2) institutional retribution against students defending their dignitary safety. Implications for higher education policy and praxis are provided.

Colleges and universities continue to serve as a battleground for ultraconservative, right-wing speakers to engage in offensive speech that further alienates racially minoritized students (Hutchens & Fernandez, 2018). Speech events at University of California, Berkeley; University of Virginia; University of Washington, among others, have served as catalysts to several instances of violence involving students, college and university officials, and community members (Carter & Miletich, 2017; Nelson & Harold, 2018; Park & Lah, 2017). Public and private higher education institutions have repeatedly chosen to help organize, facilitate, and allocate institutional resources to host right-wing speakers for these campus-wide events. Leonardo (2020) highlights how “the Right has found a vulnerability in the university’s policies regarding the extension of invitations to campus speakers,” and they have taken full advantage of race-neutral policies to locate higher education institutions as ample platforms to spread racist ideologies (p. 32).

Whether incapacitated by strict legal parameters governing public institutions or the lack the institutional incentive to suppress racist hate speech at private colleges and universities, regulation of speech has proven to be a seemingly futile exercise. However, frequent incidents of racist hate speech on college and university campuses continue to instigate an ideological battleground between legal purists, anti-racist scholars, and those otherwise situated somewhere therein. In what has been referred to as the “second free speech movement” (Leonardo, 2020), “each side invokes a different paradigm, with different heroes, myths, and notions of what is at stake in the argument” (Delgado & Stefancic, 2018, p. 37).

We offer further insight into this debate by engaging in a phenomenological analysis of a four-year, private institution – Clearview College (CVC) — where a controversial speaker was invited to campus by a conservative student organization. We specifically interrogate how the seemingly race-neutral free speech policies at CVC, which were informed by the “Chicago Principles,” disproportionately disciplined racially minoritized student activists. However, it is helpful to begin with a brief overview of the longstanding debate regarding free speech on college and university campuses to provide an analytical foundation for our study.

The legal implications of free speech policies on college and university campuses

The free speech debate on college and university campuses is both distinct in its contextual elements and expansive in its sociopolitical implications. Since the 1990s, free speech policies at public institutions have corresponded with a critical legal precedent established by *Doe v. University of Michigan* (1989), which addressed whether it was appropriate for the university to implement speech codes that “specifically prohibited students, under penalty of sanctions, from ‘stigmatizing or victimizing individuals or groups’ through verbal or physical behavior on the basis of ‘race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap or Vietnam-era veteran status’” (*Doe v. University of Michigan*, 1989; Hulshizer, 1991, p. 384). Considering the longstanding battle over the parameters of the First Amendment – which included the introduction of a “danger test” (*Brandenburg v. Ohio*, 1969; *Dennis v. United States*, 1958; *Schenck v. United States*, 1919) and the legal delineation of “fighting words” (*Chaplinsky v. New Hampshire*, 1942)—*Doe v. University of Michigan* (1989) was understandably contested. The court eventually decided to strike the policy down on grounds of “overbreadth and vagueness” (Zollinger, 1991). It was established that campus speech codes could not address the possible restrictions of racial harassment and intimidation because “a public university cannot constitutionally prohibit the expression of ‘racist ideas’ on campus” (Sedler, 1991, p. 1328, emphasis added).

There is essentially no such category for “hate speech” under US law, as the Supreme Court has continually demonstrated that there is an “almost insurmountably high bar” to reach “before it will punish those who advocate or incite illegal action: the advocacy must be explicit, the illegality advocated must be imminent, and the incitement must produce an actual likelihood of that imminent illegality” (Schauer, 2018, p. 63). Over the last 30 years, more than 350 colleges and universities have attempted to adopt codes restricting hate speech, but every court has declared such restrictions unconstitutional under the same rationale (Chemerinsky & Gillman, 2017).

Still, while free speech at public institutions is directly regulated by the First Amendment, private institutions have the procedural flexibility to regulate the speech and expression of its members (Civil Liberties Law Review, 2015). In principle, debates about free speech protections at private institutions can be piloted by “moral or philosophical questions, rather than strictly legal ones” (Civil Liberties Law Review, 2015, p. 3). More specifically, “[f]or private universities, [free speech] provisions are more likely to withstand constitutional challenges. Justification for such codes rests on the assumption that racist speech has no legitimate educational or expressive purposes, and thus should be banned to protect the rights and dignity of minority students” (Civil Liberties Law Review, 2015, p. 8). Though, under the weight of institutional isomorphic pressures (DiMaggio & Powell, 1983; Garbes, 2022)—a concept upon which we elaborate below in our discussion – private institutions similarly tend to adhere to the general principles of the First Amendment regardless of their prescribed autonomy (Ben-Porath, 2017). Thus, the approaches to free speech regulation between public and private institutions are generally indistinguishable.

Free speech and power in higher education

Arguments in favor of free speech purism provide a safeguard for institutional policymakers, shielding them from accountability for inadequate responses to racist hate speech on college and university

campuses (J. Rodriguez, 2021). As J. Rodriguez (2021) posits, campus officials often cite “freedom of speech” and “academic freedom” as justifications for remaining neutral in the face of racist hate speech, arguing that students must be open and willing to listen, debate, and learn from oppositional perspectives as a necessary academic exercise. Nonetheless, there is an undeniable dynamic of power that is largely absent from arguments against hate speech regulation. As Lawrence (1990) notes, “the question of power, of the context of the power relationships within which speech takes place, must be considered as we decide how best to foster the freest and fullest dialogue within our communities” (p. 456). As researchers have identified, the asymmetrical power relations between racially minoritized students and perpetrators of racist hate speech are exemplified by physical and psychological manifestations of racial trauma (Pérez Huber, 2016; Smith et al., 2007). Further, Lawrence (1990) argues, it is “difficult for us to believe that we should fight to protect speech rights for racists because that will ensure our own speech rights. Our experience is that the American system of justice has never been symmetrical where race is concerned” (p. 467). This imbalance of power has material consequences for victims of hate speech, whom Matsuda notes:

experience physiological symptoms and emotional distress ranging from fear in the gut to rapid pulse rate and difficulty in breathing, nightmares, post-traumatic stress disorder, hypertension, psychosis, and suicide ... Victims are restricted in their personal freedom. To avoid receiving hate messages, victims have to quit jobs, forgo education, leave their homes, avoid certain public places, curtail their own exercise of speech rights, and otherwise modify their behavior and demeanor (Matsuda, 1993, p. 24).

Delgado (1993) argues that racial insults are always a dignitary affront and remain among the most pervasive apparatus by which discriminatory ideas are transmitted. “Such language injures the dignity and self-regard of the person to whom it is addressed, communicating the message that distinctions of race are distinctions of merit, dignity, status, and personhood” (Delgado, 1993, p. 90). Thus, it is evident that the purist perspective that all speech should be protected creates a false equivalency between speech acts that are underpinned by “racist ideologies of material consequence” (Davis, 2017, para. 7) and those speaking against the status quo of white racial hegemony. Furthermore, the burden of societal harm inflicted by racist hate speech is not shared equally. Again, the taxation and fatigue resulting from persisting through campus and workplace climates that fail to challenge racist norms disproportionately impacts the well-being of racially minoritized students, staff, and faculty.

In this way, anti-regulation arguments support the ability for speakers to profess bigoted and racist ideas devoid of contestation or accountability. Gillborn (2009) describes this as “risk-free racism,” which refers to the process in which racist speech carries no ideological or material consequences for white people but could lead to considerable danger for minoritized communities (Gillborn, 2009). Although racist arguments can be disregarded as just “ideas,” this unregulated speech can contribute to a wider network of beliefs and practices that have real-world implications for racially minoritized groups. For example, campus-wide speaking events featuring prominent right-wing commentators allow racist ideologies to exist within public discourse as an arguable platform worth considering, which could lead to shifts in the policies, behavior, and culture of an institution and its members (Gillborn, 2009; Shafer, 2017). These events are not only a unidirectional expression of ideas, but also a dangerous demonstration of power that, while psychologically harmful to those targeted, is also “harmful to student perpetrators in that it is a lesson in getting away with it that will have lifelong repercussions” (Matsuda, 1993, p. 44).

Similarly, the common argument that the most effective response to hate speech is “more speech” (Chemerinsky & Gillman, 2017) places the onus on the victim (Delgado & Stefancic, 2018). The belief that a student can debate their way out of the consequences of racist hate speech, and even idealistically educate the perpetrator about their wrongful behavior, ignores longstanding power dynamics of racist ideas and the racial violence that often results from challenging the status quo. Delgado (1993) emphasizes that responding to racist hate speech “frequently is useless because it may provoke only further abuse or because the insulter is in a position of authority over the victim” (Delgado, 1993, p. 95). Thus, Delgado and Stefancic (2018) raise an important question regarding why minoritized

undergraduates, many of whom are already charged with educating themselves in culturally sustaining ways, must also be responsible for educating others. Altogether, and despite these consequential effects, postsecondary institutions largely continue to maintain a race-neutral position on free speech matters. In our study, we focus on the consequences of higher education free speech policies aligned with the Chicago Principles, a widely adopted framework for institutions attempting to address issues of free expression since 2014.

The Chicago Principles

In 2014, The Committee on Freedom of Expression at the University of Chicago released a report commonly referred to as the “Chicago Principles” or the “Chicago Statement,” which aimed to clarify and re-establish the university’s commitment to the “preservation and celebration of the freedom of expression as an essential element of the University’s culture” (Stone et al, 2014, para. 1). The undergirding philosophy of the 931-word statement, which foregrounds the substance of its content under the premise of colleges and universities as institutions broadly committed to free and open inquiry, can be encapsulated in the following excerpt:

... [I]t is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community ...

In addition to offering further discussion on the types of speech the University would not permit (e.g., violations of the law, individually defamatory, “genuine” threats, etc.), the statement also clarifies the university’s position on campus protests:

... the University may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities of the University ... Although members of the University community are free to criticize and contest the views expressed on campus, and to criticize and contest speakers who are invited to express their views on campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe.

The Chicago Principles have been referred to as the “gold standard among institutions that wish to show their commitment to this core principle of American higher education” (Poliakoff, 2018, para. 2). According to the Foundation for Individual Rights in Education (FIRE), there are currently more than 80 colleges and universities that have adopted or endorsed the Chicago Principles (Foundation for Individual Rights in Education, 2022). FIRE, an organization whose “funding, board members, and closest associations are heavily right wing” (Sleeper, 2016, para. 7), has been a prominent proponent of the Chicago Principles. Sleeper (2016) discovered that FIRE’s major grants include a collective of ultra-conservative foundations and funders that support campus-targeting organizations. President and CEO of FIRE, Greg Lukianoff, believes that college and university students who are calling for hate speech regulation “are asking to be protected from offensive ideas rather than to be taught how to effectively engage them” (Lukianoff, 2018, para. 5). Similarly, Michael Poliakoff, President of the American Council of Trustees and Alumni, a conservative nonprofit organization, states that bias is merely a perceptual phenomenon and that while debunking biased ideas is burdensome “... it is a responsibility that comes with leading an examined life and a valuable educational exercise in and of itself. To protect students from this activity would weaken the academic experience” (Poliakoff, 2018, para. 7).

Still, despite wide adoption among many colleges and universities, the Chicago Principles have been contested by other scholars of free speech on-campus. Ben-Porath (2017, 2018), for instance, has been a vocal opponent of the Chicago Principles on the basis of their imprecision and vulnerability to inequitable implementation in policy and practice. Instead, Ben-Porath has proposed the inclusive freedom framework to bifurcate issues of safety to recognize how institutional policy should intervene

to protect those vulnerable to rhetorical and other forms of harm. For purposes of our study, we elucidate Ben-Porath's framework and further draw upon the concept of "dignitary safety" to situate our findings.

Inclusive freedom: A conceptual alternative to the Chicago Principles

In *Free Speech on Campus*, Sigal Ben-Porath's (2017) introduces an inclusive freedom framework, which provides a pragmatic demarcation between intellectual safety and dignitary safety. The former refers to the necessary intellectual risks that students must take to learn about different opinions, viewpoints, and positions (Ben-Porath, 2017). Dignitary safety is a frame that moves away from the routine focus on speaker autonomy and instead concerns itself with the consequences of speakers on vulnerable members of the learning community (Ben-Porath, 2017). For instance, the concern is not so much about whether a speaker can express themselves freely, but " . . . about the dignity of certain members of her potential audience or on their ability to be seen and to operate as equal members of the community" (Ben-Porath, 2017, p. 56). Therefore, according to Ben-Porath, so long as intellectual arguments are not rooted in oppressive ideologies that question the human dignity of historically marginalized groups, they must be welcomed on college and university campuses. Simultaneously, the dignitary safety of those vulnerable to various harms resulting from unmitigated intellectual safety must also be protected by institutional policy.

The concept of dignitary safety and inclusive freedom framework provide the necessary heuristics for considering how racist hate speech reifies unequal power dynamics and ultimately disarms and disempowers racially minoritized students. In this way, we agree that speech that functions as an affront to one's dignitary safety offers a compelling rationale for specific speech restrictions. Further, policies that protect the dignitary safety of racially minoritized students should be interpreted as a part of the broader struggle against racial minoritization, on campus and beyond. As institutions continue to espouse values of diversity and inclusion, it is important that "the demand for recognition should be seen as a way of ensuring the safety that is necessary for extending the reality of dignity to all members of the community and thus ensuring an open-minded exchange of ideas in all areas of the public sphere" (Ben-Porath, 2017, p. 66).

A central point of contention Ben-Porath's framework illuminates is that the Chicago Principles do not equitably account for the experiences of students – some of whom are also activists – that are burdened with self-defense against assaults on their dignitary safety when racist speakers are invited to campus. Ben-Porath (2018) believes:

the endorsement of the Chicago Principles comes at the expense of the reasonable demands from people on campuses who argue that free speech that protects the expression of biased views creates an unequal burden that they are made to carry – especially as free speech today is too often used as a political tool by the right (Ben-Porath, 2018, para. 10).

Put differently, the imprecise language of the Chicago Principles effectively gives institutions carte blanche to determine how to discipline student activists who engage in disruptive protests, which will inevitably reinforce the existing asymmetrical power relations that render racially minoritized students more vulnerable to social, political, and institutional harm (Davis, 2017). Furthermore, an emphasis on civility in the Chicago Principles is particularly alarming given its failure to recognize how the presence of racist hate speech at once creates the conditions for incivility at its outset (Zamalin, 2021). What is more, the demand for civility as a response to the routine harm of rhetorical violence "leans too strongly to the side of order, reasonableness, and avoidance of challenge," whereas inclusive freedom can afford opportunities for "messy, inappropriate, challenging, and sometimes uncivil expression" (Ben-Porath, 2017, p. 68). Thus, such an approach to free speech policies could account for and encourage the presence of dissident voices that would not lead to disciplinary action.

Methodology and methods

Our rationale for focusing on the design, implementation, and oppositional perspectives to the Chicago Principles is embedded in our methodological approach for this study. We employed a phenomenological examination of student activists' perceptions and experiences related to free speech policies at Clearview College (CVC), where a controversial speaker was invited to campus by a conservative student organization. CVC adopted the Chicago Principles in 2016, one year prior to the speaking event. Our study was guided by the following research questions:

- (1) How have race-neutral campus speech policies influenced the lives of student activists resisting hate speech at a private, four-year college?
- (2) In what ways have the Chicago Principles (as applied in practice) disproportionately shaped the political engagement of student activists on campus?
- (3) How do student activists perceive and experience racist hate speech as a threat to their dignitary safety?

As described by Moustakas (1994), phenomenology refers to the “the science of describing what one perceives, senses, and knows in one’s immediate awareness and experience” (p. 30). A phenomenological study was an appropriate method for engaging these research questions because perception and sensemaking are core components of the inclusive freedom framework (Ben-Porath, 2017).

Specifically, the core principle of phenomenology involves the role of the participant, as it requires a participant sample that has experienced the phenomenon under investigation (Polkinghorne, 1989). Polkinghorne (1989) explains how data derived from phenomenological studies differ from “commonsense descriptions that are aimed at depicting things or happenings as they exist independently of a person’s experience of them [because] the production of phenomenological protocols requires that subjects’ awareness be redirected toward *their own experiencing*” (p. 46, emphasis added). In other words, while the phenomenon is a shared experience, it is experienced in various ways. Given that the students in this study recently experienced an incident involving an invited controversial speaker, CVC served as both a germane site to engage in our analysis and an appropriate context to compile our sample.

Polkinghorne (1989) separates phenomenologically based inquiries into two basic types: (a) those that ask how objects are present to the various modes of conscious experience, such as perception or memory, and (b) those that ask how meaning presents itself in experience. While this study did require the participants to reflect on their experiences in retrospect, it is primarily structured toward examining the second type – meaning-making derived from experience. A phenomenological lens was helpful in that we were particularly interested in exploring students’ perceptions and experiences regarding how the invited speaker affected their dignitary safety and racialized experiences more broadly.

Data sources and analysis procedures

Data for our study was primarily derived from five semi-structured focus group interviews with 20 undergraduate students at Clearview College (CVC) (pseudonym), a private liberal arts institution in California. These data are a subset of a larger multi-institution study with 83 undergraduate students that examined campus racial climate across four California colleges and universities situated in similar geographic, political, and racial contexts. As noted, CVC was a particularly appropriate site for several reasons, which led us to narrowing our methodological scope to this specific institution.

According to the reporting from Integrated Postsecondary Education Data System (IPEDS), Clearview College is a historically White (see Table 1) four-year institution with a total enrolment of 1,264 students.

Table 1. Clearview college student enrollment by race.

| Student Population | Percent Enrollment |
|---|--------------------|
| American Indian or Alaskan Native | 0% |
| Asian American | 13% |
| Black or African American | 5% |
| Hispanic/Latinx | 17% |
| Native Hawaiian or other Pacific Islander | 0% |
| White | 38% |
| Bi- or multi-racial | 7% |
| Race/ethnicity unknown | 5% |
| Undocumented | 14% |

Table 2. Focus group participation by race/ethnicity.

| | |
|---------------------------|----|
| Total Sample | 20 |
| Asian American | 7 |
| Black or African American | 9 |
| Hispanic/Latinx | 2 |
| White | 2 |

Our participant sample was acquired through the process of criterion sampling (Patton, 2002), where the criterion was to have been an undergraduate student who attended CVC between 2016 and 2020. This period was chosen initially to align with the Trump presidential campaign and administration for the larger multi-institutional study, but conveniently served as an adequate period for which all the participants were present during the invited speaker event in 2017. By limiting our study to current and recent CVC students, we were able to ensure that each study participant could share direct observations pertaining to our research questions.

Each individual participant completed a voluntary intake form where they were asked to self-identify their classification/year in school, racial/ethnic identity, and gender pronouns. Given our focus on racist hate speech in this study, we have reported only the racial/ethnic composition of focus group participants (see Table 2). And, in reporting the data, all participants were given pseudonyms to ensure confidentiality.

To analyze the focus group interview data, we utilized Strauss and Corbin's (1998) prescribed four-phased approach for qualitative data analysis, which consists of pre-coding, open-coding, axial-coding, selective coding, and concluding. We specifically focused on the following three analytical areas in our coding of the data: (1) student perceptions of dignitary safety, (2) student interpretations of campus events for controversial speakers, and (3) institutional responses to student activism. In addition, to ensure the trustworthiness and validity of the data, both internal (i.e., pattern matching) and external validity (i.e., ongoing analysis and participant member-checking) procedures were performed (Yin, 2014).

Findings

In the fall of 2017 at Clearview College, an ultraconservative commentator was invited to speak at an event organized by a conservative student organization. Student activists at CVC challenged administration about the academic value of holding the speaking event. They highlighted how the speaker was known for dismissing the experiences of sexual violence victims as "hysteria," justifying the extrajudicial killings of Black people by law enforcement, and vehemently denying the existence of

systemic racism. Still, CVC officials reportedly moved forward with the event on the basis that preventing such speakers from expressing their views would violate campus free speech policies, which institutional records indicate were guided by the Chicago Principles as adopted in their entirety in 2016. The responses from focus groups with undergraduate students at CVC revealed two primary themes: (1) racist hate speech as a threat to dignitary safety, and (2) institutional retribution against students defending their dignitary safety.

Perceived threats to dignitary safety

Throughout our focus groups with CVC students, we found evidence to suggest the Chicago Principles as implemented by the college facilitated the dignitary suffering for racially minoritized students. For instance, participants shared that a central argument from campus officials who advocated in support of the controversial speaker was that it served as an opportunity for students to engage with, debate, and learn from oppositional perspectives in an academic setting. However, Joey, a White fourth-year student, believes

there is no educational or intellectual value to racism. There is no reason which we should allow either explicitly or implicitly racist speakers to come here . . . but we do because . . . [campus officials] believe that it's valuable to have that viewpoint because they think we don't hear enough of it.

Sharon, a fourth-year Black student, explained how she felt the potential consequences for minoritized students were entirely disregarded. She emphasized how treating these events as educational opportunities was an affront to her marginalized identity:

. . . in those conversations with students about this person coming – that's when I felt the most directly affected in terms of my race . . . To me, that was kind of a point where I was like, wow, do you really not understand that this directly affects my identity? Does this person even see me as a person? [. . .] For us, it is very much like this is our identity and my life. Not something theoretical.

Joey's belief that "there is no educational or intellectual value to racism," and Sharon's last point that her racialized experiences are "not something theoretical," allude to Ben-Porath's (2017) demarcation of intellectual safety and dignitary safety. While some people were able to argue on behalf of the racist speaker as a harmless intellectual exercise, Sharon felt that her peers were seemingly dismissing her humanity as a tertiary implication of the event. Janay, a third-year Black student, responded to a question about CVC's decision to continue with the event despite the vocal opposition from student activists:

It's hard to have conversations . . . when my humanity is attacked, when the people that I support's humanity is attacked. I can't put myself in that situation . . . because it is my reality. It is my brothers' and sisters' reality. It is reality. There is nothing you can say to me to dehumanize a human that I can have a conversation about. That's just not gonna happen.

Ebony, a second-year Black student, expanded on this notion by highlighting how other students, faculty, and administrators who defended the speaker were arguing from a place of privilege. She elaborated on what it means to have "implications on your life" that are often ignored by privileged members of the campus community:

I think that, yes, we can have political arguments and it's from a place of privilege that you can talk about different opinions and not worry about how it affects you and people you know. But I think that it's important to consider the very real implications for very real people. It's a privilege to be able to talk about them and discuss them without having any implications on your life . . . That's a privilege I don't have.

These debates placed a psychological and emotional burden on students of color who were tasked with the responsibility of educating their peers on racial matters. Peter, a fourth-year Chinese American student, referred to it as "taxing" process, and explained how he is constantly required to validate his experiences to garner any empathy and support from campus officials:

I feel like a lot of the young students of color . . . when they offer a point of view that is driven by some sort of racial experience or cultural experience, they have to justify that to other students all the time. And then you have to do that to adults, who you feel like should understand you more and have greater empathy and a greater understanding of how the world works . . . [T]o have to do that all the time is so much labor. It's so taxing . . . It's kind of like talking to yourself . . . and it makes you question how many people out there can really empathize with you, and why there are so many people that don't.

Danielle, a fourth-year Chinese American student, followed Peter's statement with a plea to CVC officials to implement race-salient policies that account for the racialized experiences of students of color:

Race impacts every person of color's life, so it's either ignorance or intentional emotionlessness. It's just damaging, that kind of rhetoric and speech, because we're not in a post-racial society. Race is still at the forefront of everything because this country was founded on racism. You can't just treat the symptoms; the core issue is still there and hasn't been resolved. If you are able to [defend the speaker], you are either ignorant of what that means for certain people, or that you have the privilege of not having to care.

Danielle clarified that she was not arguing for the speaker to be prevented from giving their speech entirely. Rather, a key issue with the event was that CVC provided a platform for the speaker's racist ideologies to be affirmed and legitimated both financially and ideologically. Danielle described how the ability for a student organization to use their institutionally allocated funds to invite racist speakers conveys a harmful message to the marginalized students on campus:

. . . it's both the monetary but also the institution reaffirming that they have a place there. That they're going to fund them, protect that space, without giving that space to students who also want to voice their opinions . . . It reaffirms that that viewpoint has a certain validity, even if you say it's just free speech. By paying them, giving them that platform, you're still saying that that viewpoint is valid. I guess it is, but there should still be consequences for holding those viewpoints.

Within the context of higher education, a certain level of legitimacy is inherently ascribed to invited speakers, regardless of their viewpoints. Danielle believes that the financial component of these events helps amplify and substantiate the ideologies of the speaker, which is further protected by institutional policy. However, the "consequences" that Danielle feels should be infringed upon the speaker were instead reserved for student activists who engaged in disruptive protests in defense of their dignitary safety.

Institutional retribution to student defense of dignitary safety

The participant responses allude to the stark juxtaposition between the free speech protections afforded to controversial speakers and racially minoritized students. While the former are endorsed and protected – both financially and ideologically – by the institution, the latter can be subjected to institutional discipline at the administrators' discretion. Nearly 200 student activists organized a protest on the day of the event, forming a blockade in front of the entrance to prevent the audience from hearing the speech. In alignment with the Chicago Principles, CVC's official policy on demonstrations lists disruptive actions or demonstrations as "those that restrict free movement on any of the campuses, or interfere with, or impede access to, regular activities or facilities," and non-peaceful actions or demonstrations as "those that endanger or injure, or threaten to endanger or injure, any person, or that damage or threaten to damage property." CVC officials stated that the students had every right to protest but were violating institutional policy by participating in "actions which disturb or disrupt the personal safety, peace or well-being of the community or any community members, or which disturb or disrupt the normal functions of the college (including actions which interfere with maintaining order on campus)." The official document provides details for how the policy should be enforced, stating, "The President(s) of the College(s) where activities are disrupted . . . will determine whether or not negotiation will take place with those involved in the demonstration or disruption. S/he will also determine the actions to be taken including, but not limited to, provisional or summary

suspension or arrest. The president of the college may summarily suspend a student of his/her college violating this policy.” Danielle, who attended the protest, reflected on the institutional response to the student protestors:

It was really aggressive . . . It was seen more like they were silencing us rather than working with the students to see a way to understand where students were coming from and why they felt the need to protest.

Peter was also involved in the protest, and explained how the disproportionate consequences inflicted upon his peers was contradictory to the institution’s “free speech” rationale for holding the event:

I think it was hard because they were having all these people come talk about free speech, but when we expressed ourselves through a protest, and when we’re telling administration that this is uncomfortable and we want change, they’re not acknowledging that.

Joey explained that prior to the event, student activists utilized every available institutional channel to voice their concerns but were ignored by campus officials:

. . . when [the speaker] was protested, a lot of the people who blocked the entrance, and the people who were then suspended, were the same people who had led the [students of color] protest the year before, and that’s something people don’t bring up . . . that these are the same people who had been expressing their vast discomfort here for years.

After student activists became frustrated with the lack of acknowledgement from CVC administrators, they ultimately decided to engage in more disruptive methods of protest on the day of the event. It was a matter of defending their dignitary safety when the institution refused to protect them. The campus newspaper estimated that 250 students participated in the protest, however, several student activists were punished by the institution. It was reported that three students were suspended for a full year, two students were suspended for a semester, and two students were placed on conduct probation for “breaching institutional values of freedom of expression and assembly.” The students were of various minoritized identities, which included students of color, women, and LGBTQ+.

Discussion

Our findings revealed that there is a systemic process that produces inequitable conditions for racially marginalized students where they (1) must sacrifice their dignitary safety to educate and respond to perpetrators of hate speech (Delgado & Stefancic, 2018; Gillborn, 2009), (2) serve as the vanguard of resistance to racist rhetoric when the institution refuses to interject (Davis, 2017), and (3) are susceptible to disciplinary action by the institution for merely defending their right to dignitary safety (Ben-Porath, 2017). Our findings were a reflection of how this system operates within the context of a private higher education institution. More specifically, this system was reinforced by a particular set of adopted institutional principles that disproportionately affected the lives of student activists. We direct our focus to three key themes derived from the participant responses: (1) the impact that invited speakers can have on the dignitary safety of marginalized students, (2) Chicago Principles serving as an avenue for anti-activist policies, and (3) higher education institutions formulating free speech policies through an organizational process of white institutional isomorphism.

In defense of dignitary safety

There is sufficient evidence for how racist hate speech disproportionately affects the experiences of students of color. The student participants in this study believed that debates about free speech and the rhetoric of the invited speaker were far more than just an intellectual opportunity to engage with their peers, but rather a direct threat to their dignitary safety. Joey argued that “there is no educational or intellectual value to racism,” and suggested that campus officials believe students “don’t hear enough of it.” As a white student, he specifically highlighted how his peers of color were being targeted by

CVC's policies. We will return to this in the next section. First, we focus on the intellectual safety versus dignitary safety argument that Joey indirectly referenced.

Sharon described how those who advocated on behalf of the invited speaker were disregarding her humanity, as these discussions about race and racism were “not something theoretical.” Janay also noted how “it’s hard to have conversations . . . when [her] humanity is attacked” and “there is nothing you can say to [her] to dehumanize a human that [she] can have a conversation about.” What these students are essentially arguing is that racism should not serve as an ideological point of departure for events and discussions about free speech. It is not a matter of opinion for these students, who experience the very real physical and psychological consequences of hate speech that could not only be categorized as a mere intellectual exercise.

Delgado (1993) asserts that “a racial insult is always a dignitary affront, a direct violation of the victim’s right to be treated respectfully . . . A racial insult is a serious transgression . . . because it derogates by race, a characteristic central to one’s self-image” (p. 94). Danielle recognized that we do not live in a “post-racial” society and “race is still at the forefront of everything because this country was founded on racism.” The important historical context she provides alludes to how “Racism is more than race hatred or prejudice. It is the structural subordination of a group based on an idea of racial inferiority. *Racist speech* is particularly harmful because it is a mechanism of subordination, reinforcing a historical vertical relationship” (Matsuda, 1993, p. 36, emphasis added). Racist speech contributes to the maintenance of an existing power apparatus that is specifically predicated on the inferiority of people of color (Delgado & Stefancic, 2018). These students’ experiences and feelings toward the invited speaker event were not isolated to any extent because

... no racial incident is ‘isolated’ in America. That is what makes the incidents so horrible, so scary. It is the knowledge that they are not the isolated unpopular speech of a dissident few that makes them so frightening. These incidents are manifestations of an ubiquitous and deeply ingrained cultural belief system, an American way of life (Lawrence, 1990, p. 461).

Regardless of the disproportionate impact of hate speech on students of color, higher education institutions continue to draft free speech policies that do not address or protect minoritized students’ dignitary safety. In the next section, we argue that CVC’s policies placed

... a false equivalency between anti-oppressive and oppressive free speech . . . [and aimed] to suppress and criminalize, through punitive measures, those not only willing to labor in the name of justice but also those who must because disruption remains a tactic on which their very minds, bodies and spirits depend (Davis, 2017, para. 6).

Chicago Principles as an avenue for anti-activist policymaking

Lawrence (1990) notes that “the question of power, of the context of the power relationships within which speech takes place, must be considered as we decide how best to foster the freest and fullest dialogue within our communities” (p. 456). Peter alluded to an imbalance of power when he stated, “they were having all these people come talk about free speech, but when we expressed ourselves through a protest . . . they’re not acknowledging that.” Joey also highlighted how the students of color who organized the demonstration had already exhausted the available institutional channels to express their concerns prior to the event. Thus, in defense of their dignitary safety, student activists did what they felt was necessary to protect their peers from being exposed to racist and dehumanizing speech. Danielle believed CVC’s decision to discipline student activists for their disruptive demonstration was not only an affront to their dignity, but was also the “institution reaffirming” the speaker’s ideologies by signaling that their “viewpoint has a certain validity.”

To reiterate, it is not legally permissible for public institutions to restrict hate speech; however, “for private universities, such provisions are more likely to withstand constitutional challenges. Justification for such codes rests on the assumption that racist speech has no legitimate educational or expressive purposes, and thus should be banned to protect the rights and dignity of minority

students” (Civil Liberties Law Review, 2015, p. 8). Arguments over free speech protections at private institutions become “moral or philosophical questions, rather than strictly legal ones” (Civil Liberties Law Review, 2015, p. 3). Therefore, the current infrastructure in place dictates that “who decides what speech is acceptable often boils down to who has power at the time” (Thomas, 2019, p. 34). Given the inherent positionality of student activists – who champion counter-majoritarian ideologies and actively resist normalized structures of white supremacy – they will never possess the “power at the time.” The asymmetrical power relationship ascribed to racist and anti-racist speech therefore renders student activists of color particularly vulnerable to harm, as “tolerance of hate speech is not tolerance borne by the community at large. Rather, it is a psychic tax imposed on those least able to pay” (Matsuda, 1993, p. 18).

As Ben-Porath’s (2017) notes, the disciplinary components of the Chicago Principles are not structured to protect the dignitary safety of student activists. Although written in broadly conceived language and presented as race-neutral, CVC’s policies on disruptive actions or demonstrations and non-peaceful actions or demonstrations – which were informed by the Chicago Principles – were racially structured in impact. The racialized subtext of the policy was reflected in the disproportionate enforcement upon students of color as “the implementation and enforcement routinely subject[ed] racially minoritized people to higher levels of scrutiny, applicability, and punishment” (Davis, 2019, p. 113). This confirms Lawrence’s (1990) belief that

Whenever we decide that racist hate speech must be tolerated because of the importance of tolerating unpopular speech we ask blacks and other subordinated groups to bear a burden for the good of society – to pay the price for the societal benefit of creating more room for speech. And we assign this burden to them without seeking their advice, or consent. This amounts to white domination, pure and simple. It is taxation without representation (p. 472).

It is important to note that the Chicago Principles are only one avenue for which anti-activist policies are philosophically welcomed. Davis (2019) recently launched the Protest Policy Project (PPP), a national project designed to critically assess, analyze, and counter-legislate policies aimed at punishing students participating in campus protest. The development of PPP was prompted by a system-wide policy adopted by the Wisconsin System Board of Regents in 2017 that sought to discipline students who were exercising their First Amendment rights. Similar to the conservative and right-wing support behind the Chicago Principles (Sleeper, 2016), the policy in Wisconsin was guided by model legislation drafted and lobbied by the Goldwater Institute, a right-leaning conservative think tank that Davis (2019) argues has a vested interest in protecting conservative speakers who publicly advocate white nationalist and white supremacist agendas.

Davis (2019) located how public institutions are now discovering ways to enact the same anti-activist policies through federal and state-level legislation. The policy asserted that students would be suspended if they twice engaged in “violence or disorderly conduct” (both of which were not clearly defined) that disrupts the subjectively determined free speech of other people, and would be expelled if they were in violation of the policy three times (Davis, 2019, p. 3). Student activists in Wisconsin – and several other states considering similar legislation such as Arizona, California, Georgia, Illinois, Minnesota, Tennessee, Virginia, and Wyoming – are now being targeted by a structural overlap of campus, system, and state-level policies aimed at suppressing and criminalizing their political dissent (Davis, 2019).

Higher education institutions are in a constant state of inertia and are rarely moved toward equity by egalitarian motives (Davis et al., 2020). Students have recognized that “only disruption of the target system can yield progressive changes to that system” (Gonzalez-Vaillant & Schwartz, 2019, p. 135). However, when student activists choose to serve as the internal force to pressure higher education leaders into action, they often encounter the greatest risks and challenges contending with hierarchical power when they disturb the conventional institutional order (Davis et al., 2020). This was particularly evident at CVC, where the speaker’s speech was protected by institutional policy, but the student

activists' nonviolent protest was deemed injurious enough to the campus community to warrant suspension.

The very purpose of higher education institutions, which is to prepare students to participate and contribute to a democratic society, renders anti-activist policies intrinsically hypocritical. Sampson (1967) argues that “you cannot socialize democratic, participatory values in the home and teach one to question and to be critical at school, without allowing for the possibility that these values and these learnings will be turned towards the very institutions themselves” (p. 11). Without the longstanding history of student activists engaging in necessary disruption, higher education institutions, and the nation more broadly, would not be the relatively progressive environments they are today (Gonzalez-Vaillant & Schwartz, 2019; Zamalin, 2021).

Student activists on college and university campuses are arguably the most active members of our democratic society, and we must make an intentional effort to nurture their critical consciousness and social justice-oriented identities. Higher education institutions have demonstrated that they are more than willing to invest the time and resources to protect the rights of controversial speakers (Chemerinsky & Gillman, 2017). However, we share Lawrence's (1990) vision that “Until we have eradicated racism and sexism and no longer share in the fruits of those forms of domination, we cannot justly strike the balance over the protest of those who are dominated. My plea is simply that we listen to the victims” (Lawrence, 1990, p. 459).

White institutional isomorphism and the Chicago Principles

We agree with Ben-Porath's critiques of the Chicago Principles in that we do not believe they equitably account for the dignitary safety of student activists and are too broad to be directly applied to institutional free speech policies without the addition of extensive contextual nuances. For example, Ben-Porath (2018) notes that if “African American students express opposition to a campus group's invitation to an anti-Black Lives Matter speaker, their paths for legitimate protest are paved by the college's history, its student body makeup and the willingness of the college leadership to work with them and help them make their voices heard” (para. 6). There are several reasons we believe higher education institutions have chosen to adopt the Chicago Principles as both a philosophical and pragmatic foundation for constructing free speech policy.

DiMaggio and Powell (1983) theorize that organizations begin to mirror one another through a process of institutional isomorphism. Institutional isomorphism is delineated by three forms of pressure: (1) coercive (the legal and technical regulations for which the broader organizational field adheres to) (2) normative (avoiding deviating from organizational norms to maintain legitimacy), and (3) mimetic (when organizations mirror others within the organizational environment when struggling to identify best practices on their own) (DiMaggio & Powell, 1983; Garbes, 2022). In both isolation and conjunction, these three field-wide pressures produce a “constraining process that forces one unit in a population to resemble other units that face the same set of environmental conditions” (DiMaggio & Powell, 1983, p. 149).

Garbes (2022) examines this concept through a racialized lens to coin the term white institutional isomorphism, which refers to the ways in which “institutional actors, shaped by both larger field-wide precedents and their own white subjectivities, developed policies that, while race-blind on their surface, inhibited racial inclusivity” (p. 80). It serves as an analytical lens to examine “organizational fields as sites in which deeply embedded racialized norms are translated by organizational actors that do not see the racially unequal implications of their decision-making” (Garbes, 2022, p. 82).

Within the context of free speech on college and university campuses, white coercive isomorphic pressures are particularly influential for public institutions that must abide by federal Constitutional regulations. As identified by several scholars (Delgado, 1993; Delgado & Stefancic, 2018; Lawrence, 1990), the underlying racial dimensions of First Amendment purism allows campus officials to circumvent accountability for addressing the harms of racist hate speech endured by racially minoritized students (J. Rodriguez, 2021). White coercive isomorphic pressures provide the justification for

maintaining white hegemony in the face of racist hate speech (A. Rodriguez et al., 2021). Davis (2017) argues that an insidious and hypocritical fallacy undergirds the rationale that higher education stakeholders must remain ideologically impartial because of these external forces. They draw attention to how administrators perceive racist and anti-racist speech as equivalent in their affects, purpose, and validity (Davis, 2017). What is more, coercive isomorphism also applies to the free speech policies of private institutions that are generally indistinguishable from public institutions due to the reciprocal reinforcement of normative and mimetic pressures.

White normative isomorphic pressures relate to how private institutions rarely deviate from the racialized institutional norms of other colleges and universities within the broader higher education system. This can be partially attributed to the fact that through the process of mimetic isomorphism, colleges and universities struggling to construct adequate free speech policies simply “model themselves off existing legitimated paradigms” (Garbes, 2022, p. 89). The wide adoption of the Chicago Principles, which has become a legitimated paradigm, is a reflection of a systemic lack of effort and innovation. These three interrelated forms effectively merge to disproportionately impact the lives of racially minoritized students far beyond the context of Clearview College.

Conclusion

Campus officials should fulfill their commitments to racial equity by refusing to align themselves with harmful, uninformed ideologies that are antithetical to institutional values. They must collaborate with students to collectively construct free speech policies that uphold the values of free inquiry and expression while also providing the necessary protections for preserving the dignitary safety of racially minoritized students. Ben-Porath’s (2017) inclusive freedom framework is one proposed solution, but every institution has contextually specific factors that must be considered for equitable policy construction. When deciding the most fair and effective way to address free speech on campus, we must seriously consider the question, “is it really so hard to distinguish between the hateful kind and that which we all desire to protect?” (Delgado & Stefancic, 2018, p. xi).

Disclosure statement

No potential conflict of interest was reported by the authors.

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