

BEYOND FREE SPEECH

Fostering Civic Engagement at the Intersection of Diversity and Expression*

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Ten months ago, as a fellow of the University of California National Center for Free Speech and Civic Engagement, I embarked on an examination of the intersection of diversity and speech on U.S. college and university campuses. In my fellowship application I proposed to conduct a historically-based research project to address the following question: over the past fifty years, what factors have driven many higher education diversity advocates to become so opposed to our nation's tradition of free speech? However, my research quickly convinced me that I had posed the wrong question.

Why? What led to my original error? Because I had been sucked into the reigning dualistic framing of diversity and speech. Only by rejecting that distorting dualism could I more fully understand the dynamic that was occurring.

The process of extricating myself from that conceptual "escape room" gave rise to a more compelling question: how can we foster better civic engagement concerning the intersection of diversity and speech, as well as other forms of expression? My research ultimately led me to the conclusion that constructive civic engagement around this issue is hindered by two factors:

- 1) a misleading overuse of the term, free speech, including by self-designated supporters of that concept.
- 2) a lack of understanding of the historical trajectory and complexities of the diversity movement, including by self-designated diversity advocates.

Let's take these in order, beginning with the misuse of the term, free speech.

The Power of Metanarratives

What is a metanarrative? It is a narrative that has attained so much power that it obscures competing narratives about a specific topic. Because of its wide and often blind acceptance, a metanarrative often becomes largely exempt from self-examination and virtually immune to external criticism. It is simply accepted as The Truth. Such is the case with the current dominant diversity-and-speech metanarrative. It goes like this.

"The United States has a long tradition of free speech. However, over the last fifty years a serious challenge to free speech has emerged, particularly on college campuses. That challenge has been greatly spawned – sometimes intentionally, sometimes incidentally – by the diversity movement. It is dramatically embodied on college campuses by so-called social justice warriors, as evidenced by such actions as protests against outside speakers, and by feckless college administrators, through such actions as creating speech codes or punishing individuals or groups for selected expressive acts."

Some purveyors of that metanarrative – not all, but some – also add a militaristic moral dimension: that we are now witnessing an all-out war between the forces of good (stalwart defenders of free speech) and the forces of evil (anti-free speech diversity advocates). Such moral framings are what political scientists call *affective polarization* – when you raise the emotional heat in describing disagreements by framing your opponents as threats to societal well-being.

When I began my fellowship project, I uncritically accepted much of that metanarrative (minus the good vs. evil element). Then I began reading, intensively. In particular, I focused on the flood of recent scholarship defending

free speech. Some of these treatises express degrees of sympathy for issues raised by diversity advocates. Despite this, however, they continually lapse into the dualistic diversity-vs.-free speech metanarrative, including by featuring “free” in their titles:

- FIRE’s *Guide to Free Speech on Campus* by Harvey A. Silvergate, David French, and Greg Lukianoff (2d ed, 2012).
- *Kindly Inquisitors: The New Attacks on Free Thought* by Jonathan Rauch (expanded edition, 2013).
- *Free Speech on Campus* by Erwin Chemerinsky and Howard Gillman (2017).
- *Free Speech on Campus* by Sigal R. Ben Porath (2017).
- *Safe Spaces, Brave Spaces: Diversity and Free Expression in Education* by John Palfrey (2017).
- *Freedom of Speech on Campus: Guidelines for Governing Boards and Institutional Leaders* by the Association of Governing Boards of Universities and Colleges (2017).
- *Speak Freely: Why Universities Must Defend Free Speech* by Keith E. Whittington (2018).
- *And Campus for All: Diversity, Inclusion, and Freedom of Speech at U.S. Universities* by PEN America (2018A).

But, book and report titles notwithstanding, I soon realized that most so-called free speech defenders were not actually defending free speech. Rather they were defending a juridical system of robust legally-permitted but also legally-restricted speech. In fact, I ultimately came to the conclusion that the diversity-vs.-free-speech metanarrative was basically bogus, a hoax, although a widely accepted hoax. And here’s why. Let’s begin by examining two conceptions of the term, free speech, two conceptions that inevitably create confusion because they are so consistently conflated in discussions of speech.

Free Speech

First is aspirational free speech. This is the theoretical principle that people should be free to say anything they want at any time, in any place, and through any means. In other words, anything goes free speech.

In point of fact, I have never actually encountered any contemporary advocate of that absolutist free speech position, but such advocates may exist. I read libertarian literature, such as Reason magazine, but as yet I have

never read anyone who explicitly argues for totally unbridled speech.

Then there is the second conception of free speech, the juridical conception, in which free speech becomes a convenient but civically-misleading label for the legal system of speech that has developed historically in the United States. The complication is this: our system does not permit free speech in the total aspirational sense. As former Harvard law professor John Palfrey wrote in his book, *Safe Spaces, Brave Spaces: Diversity and Free Expression in Education*, “The First Amendment is often assumed to do something that it does not: to grant an affirmative right to free expression to all people (Palfrey, 2017, p. 69).” Instead, through more than two centuries of laws, regulations, and court decisions, we have created a system of robust but legally-restrained speech.

Even treatises by self-identified free speech supporters recognize speech limitations. They address this non-free-speech conundrum by employing various distinctions:

- protected vs. unprotected speech
- restricted vs. unrestricted speech
- permitted vs. unpermitted speech
- permissible vs. impermissible speech
- punishable vs. non-punishable speech.

Yet even while noting such existent limitations on speech, they often obscure the issue by inaccurately referring to what is left over as “free.” In his well-argued *Speak Freely: Why Universities Must Defend Free Speech*, political scientist Keith Whittington asserts, “free speech can thrive only under conditions of appropriate regulation (Whittington, 2018, p. 94).” Appropriate regulation! In other words, it isn’t “free.” While opposing most speech regulations in his *Campus Hate Speech on Trial*, philosopher Timothy Shiell nonetheless indicates that “no serious participant in the hate speech debate believes all speech regulations must go (Shiell, 2009, p. 158).”

Nadine Strossen, the former president of the American Civil Liberties Union, has written an intriguing book entitled *Hate: Why We Should Resist It with Free Speech, Not Censorship* (Strossen, 2018). Yet Strossen devotes Chapter Three to arguing that hate speech codes are unnecessary partially because there are already numerous legal restrictions on speech. In other words, that our

current speech is not actually “free.”

So why this verbal inconsistency, especially when the very evidence these authors present demonstrates that “free” speech is not free? Let me muse. Beginning as an aspirational principle based on the Constitution, the term free speech has evolved into two popular U.S. usages: a juridical label for our nation’s system of speech permissions and limitations; and a common cultural buzz word. Yet in both uses it is a misnomer because it obscures the fact that, in our nation’s speech system, considerable speech is legally restricted.

In his book, *There's No Such Thing as Free Speech...and It's a Good Thing, Too*, critic Stanley Fish put forth the following argument. “Despite what they say, courts are never in the business of protecting speech per se, “mere” speech (a nonexistent animal); rather, they are in the business of classifying speech (as protected or regulatable) in relation to a value (Fish, 1994, p. 106).”

Americans should be happy that we enjoy a system that supports abundant speech. Robust speech, yes. Vibrant speech, yes. As a former professional journalist and as someone who lived for nearly two years under a military dictatorship, I am delighted with such abundance, robustness, and vibrancy of expression and applaud those who defend those qualities. On the other hand, I wish folks would stop calling it “free” speech, because it isn’t and because the overuse of the term poisons civic conversations.

In fact, books purportedly defending “free” speech team with references to myriad speech restrictions based on laws and court decisions. Those prohibitions include:

- slander
- libel
- defamation
- fraud
- vandalism
- bias crimes
- true threats
- fighting words
- punishable incitement
- sanctionable harassment

- invasion of privacy
- facilitating criminal conduct
- incitement to unlawful action
- revealing national security secrets
- creation of an unsafe working environment
- in special purpose facilities
- restricted by time, place, and manner
- speech integral to already-criminal conduct
- specific imminent objectively ascertainable serious harm.

In short, we do not have a system of free speech. Rather, we have a system of robust and abundant legally-permitted speech in which certain types of speech are selectively prohibited or sanctioned. Misleadingly, this system is referred to as free.

Add the fact that, when discussing higher education, many of these books also point out that constitutional protections for legally-permitted speech apply only to public colleges and universities. Private universities remain exempt from some of these speech protections and therefore can be much more restrictive on speech. As stated on the Foundation for Individual Rights in Education website, “. . . if a private college wishes to place a particular set of moral, philosophical, or religious teachings above a commitment to free expression, it has every right to do so (FIRE, n.d.).”

Given all of these admitted restrictions, it is obvious that the term “free” speech is a metaphor rather than a precise label for our nation’s speech system. Maybe book titles should reflect this with greater self-restraint, something like *Legally-Protected Speech on Public College and University Campuses*. Not exactly a book marketer’s dream, but it does have the advantages of precision and clarity.

Yet, despite admitting the existence of extensive speech limitations, speech defenders nonetheless continue to refer to whatever remains as “free.” So why? Why do so many erudite scholars insist on using the misleading free speech misnomer as the label for a speech system replete with legal limitations on freedom of expression?

I have asked numerous attorneys, but not one has been able to give me a compelling explanation for this verbal

sleight of hand. Rather, they generally refer to it as legal tradition. That is, all lawyers know that all freedoms are inevitably limited within our juridical balancing act.

So much for the precision of the word “free.” Its phantom use serves as a testament to professional tradition, as well as to the power of personal habit, cultural conditioning, and, maybe most important, confirmation bias.

No Harm, No Foul

Now you might ask, why am I making such a big deal about a mere label? What’s the harm in calling it free speech so long as we all agree that those two words are just a harmless convention – a convenient metaphor – and wink at each other because we all recognize that truly “free” speech is not what we are really talking about? If we could all do that, well and good. No harm, no foul.

The trouble is, from a civic engagement perspective, there is harm. This professional verbal sleight of hand is a problem because most Americans are not part of the legal discourse community. When they are bombarded by the term, “free” speech, it should come as no surprise that most Americans come to believe that our speech is actually “free.” And while we’re at it, since most authority figures say so, the emperor really must be wearing clothes.

This profligate use of “free” speech – by both attorneys and non-attorneys – has led to an anti-civic engagement result. It has contributed to the term becoming weaponized. In our polarized world, the expression “free speech” has morphed into one source of such polarization. In fact, the term’s overuse, combined with its twin polarizer, the hyperventilating accusation of “censorship” whenever someone proposes additions to our current system of speech restrictions, has become an obstacle to constructive civic engagement.

Further complicating civic engagement are the repeated dichotomies proffered by public opinion pollsters, including with college students, when they pose the false polarity of whether students support diversity or free speech? (I have never seen a poll asking whether you favor laws against slander and defamation or freedom of speech.)

Most toxic for healthy civic discourse, the misused “free” speech label has become a knee-jerk response – a linguistically slothful response – when confronted by proposals for additional limitations on speech beyond those already part of our system. Some opponents of diversity-related arguments now use “free speech” as an

all-purpose excuse. In this way they can casually dismiss serious and thoughtful observations concerning the deleterious dimensions of some aspects of speech.

The American Civil Liberties Union, historically one of the nation’s foremost defenders of robust speech, has become the site of vigorous internal debate over this issue. Following the 2017 Charlottesville incident, 200 of the ACLU’s full-time employees signed a letter criticizing the organization’s policy of defending all speech. The letter stated, “Our broader mission – which includes advancing the racial justice guarantees in the Constitution and elsewhere, not just the First Amendment – continues to be undermined by our rigid stance (Hemingway, 2018).” Furthermore, the ACLU online document, “Speech on Campus,” states the following: “To be clear, the First Amendment does not protect behavior on campus that crosses the line into targeted harassment or threats, or that creates a pervasively hostile environment for vulnerable students (American Civil Liberties Union, 2018, p. 2).” That position creates considerable latitude for further diversity-driven speech limitations.

PEN America, a pro-expression national writers’ organization, has also addressed this issue in its *PEN America Principles on Campus Free Speech*, arguing: “But cries of ‘free speech’ have on occasion been used to refute or delegitimize protest and outrage – to dismiss the forms that speech takes and thereby avoid considering its substance (PEN America, 2018B, p. 2).” In short, the current overuse and misuse of “free speech” has often become an impediment to constructive civic engagement and toxic for serious discussions of inclusive community.

That is why I now advocate terms like “abundant” speech and “robust” speech instead of “free” speech. Such terms are more historically accurate. They suggest a complexity and nuance that the misleading “free” speech label sorely lacks. Maybe most important, they invite us to move away from polarization in our civic discussions of speech, particularly the intersection of diversity and expression. According to James Madison University president and constitutional law attorney Jonathan Alger, “The mission of higher education is premised on a robust exchange of ideas and perspectives, but that mission is served only when individual rights are balanced with community needs (Alger, 2017, p. 2).”

John Dewey used the term “pernicious dualism” to refer to the American tendency to slot into either-or thinking. A more nuanced label – for example, “abundant speech” – would help us move beyond the current pernicious dualism of diversity vs. free speech. By junking that simplistic and inherently polarizing framing, we can move toward a more constructive civic engagement with the values and imperatives of both robust expression and inclusive diversity, both of which are vital to our civic society. How do they intersect, compete, and sometimes complement each other?

So with this question in mind, let us return to the original diversity-vs.-free-speech metanarrative. What might be a more accurate, nuanced, and civically-constructive counter-narrative? Maybe something like this.

“The U.S. has a tradition of legally-protected abundant, robust, and vibrant speech. However, in the more than two centuries since the adoption of the U.S. Constitution, we have witnessed a series of laws, regulations, and court decisions that have selectively established limits to the principle of totally unmitigated speech. During the last fifty years, the diversity movement has spawned a particularly strong challenge concerning which types of speech – in fact, expression writ large – should be permitted and which types of speech should be restricted.”

A Changing Context

Particularly in the last decade, diversity-driven challenges to certain types of speech have taken on added heft as a result of other forces. Take two of them: neuroscientific research and internet developments.

Breakthroughs in neuroscientific research have given us continuously greater insight into the power of speech. This includes its power to wreak emotional, psychological, and even physical havoc on individuals and groups (Barrett, 2017). Conversely, such research has provided insight into ways for using speech to create greater equity and inclusivity (Casey & Robinson, 2017).

“Free” speech defenders often cite mid-nineteenth-century British philosopher John Stuart Mill’s On Liberty (Mill, 1859). While I admire Mill’s arguments in favor of robust speech, he did not have to concern himself with today’s neuroscientific revelations. My guess is that he would have seriously contemplated this new knowledge and may well have modified some of his arguments in light of such research advances.

Then there is the development of the internet. With its easy, lightly-monitored access and its algorithm-driven reinforcement of beliefs and emotions (Noble, 2018), the internet has led to an unprecedented torrent of often-anonymous, rapidly-disseminated vicious speech that has upended lives. As Rabbis Marvin Hier and Abraham Cooper wrote in a recent opinion piece on the rise of anti-Semitism in the United States, “Intercepting that hate and degrading bigots’ marketing capabilities stands as one of our greatest challenges (Hier & Cooper, 2019).” Such speech-limiting internet efforts are sometimes referred to as “deplatforming.”

In an effort to scrub hate speech and other types of extremism from its sites, Facebook has developed more than 1,400 pages of content rules that are applied to posts by some 15,000 “moderators” (Fisher, 2018). Even Twitter, which branded itself as the epitome of free expression, has now adopted guidelines that users:

- “may not engage in the targeted harassment of someone, or incite other people to do so.”
- “may not promote violence against, threaten, or harass other people on the basis of race, ethnicity, national origin, sexual orientation, gender, gender identity, religious affiliation, age, disability, or serious disease (Twitter, n.d., p.5).”

“Free” speech defenders often cite Judge Louis Brandeis’ opinion in *Whitney v. California* (1927): “If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to

be applied is more speech, not enforced silence. Only an emergency can justify repression." While I'm all for more speech on aspirational grounds, I wonder how Brandeis might have tempered his assertion in the light of doxing, troll storms, and other forms of internet speech terrorism.

Much of the diversity-driven challenge to our current system of permitted speech has occurred on college campuses. I repeat: this is not a challenge to "free" speech, which exists only as a metaphor. Rather it is a challenge to selected aspects of our current system of speech protections and limitations. To clarify the nature of that challenge, I will address three fundamental questions:

- What is the historical trajectory of the diversity movement, particularly in higher education?
- How does diversity intersect with speech and other forms of expression on college campuses?
- How can we create better civic engagement on college campuses concerning the intersection of imperatives driven by both diversity and speech concerns?

The Diversity Movement

For a better understanding of diversity challenges to our speech system, it is important to root the discussion in the nature of what I call The Diversity Movement. But what is that movement?

First let me say what it is not. The diversity movement is not a monolith. It has no all-encompassing organizational structure, no official leadership, and no precise date of origin. As a result, we do not have recourse to a diversity movement founding document to learn about its beliefs, values, and goals. In fact, within the diversity movement itself such principles are continuously evolving while also being constantly contested. There are myriad certificates and degrees connected with diversity, but nobody can possibly achieve "competence" in all aspects of diversity.

So what is the diversity movement? I view it as an umbrella term for the totality of individual and group efforts to reduce societal inequities that penalize people because of their membership in and identification with certain groups. Within the diversity umbrella, the movement features a wide range of emphases. At times such emphases are on specific sectors of the diversity movement – for example, civil rights, multicultural education, and environmental

justice. At other times the focus is on inequities faced by specific societal groups – for example, groups based on race, sex, ethnicity, age, religion, sexual orientation, ability/disability, gender identity, or language.

The diversity movement is creatively unorganized. Because it is continually evolving, the movement refuses to stand still to pose for a snapshot and resists being confined to a single framework. Much of its momentum comes from its continuous dynamism – there are constantly new sectors of action, new scholarly challenges, and new diversity "start ups." For example, the diversity movement has found new resonance in such expressions as "me, too" and "Black lives matter" (Lebron, 2018). Five years ago few people were identifying themselves by indicating their preferred pronouns, while airlines were not issuing detailed rulings on comfort animals.

Thousands of books have been written about the general topic of diversity, about selected aspects of the diversity movement, and about specific societal groups, including the inequities they have faced and efforts to reduce those inequities. Yet I have not encountered one single fully satisfying scholarly treatment of the historical trajectory of the overall diversity movement, with its scope and intricacy. A few years ago I edited Sage's four-volume *Multicultural America: A Multimedia Encyclopedia* (2013), a useful source that captures part of the diversity movement, but only part.

So for this project I decided to briefly propose what I see as the basic contours and historical trajectory of the diversity movement, with a particular focus on its intersection with the issue of speech. In doing so, I concluded that the diversity movement has developed through four distinct currents. Yet while distinct, these currents also often intersect, sometimes blend, at times clash, and at other times cross-fertilize. Among many things, these four currents have helped to shape today's higher education diversity landscape and, in the process, have raised issues for speech and other forms of expression. I will refer retrospectively to these four historical currents as:

- intercultural diversity
- equity-and-inclusion diversity
- critical theory diversity
- managerial diversity.

Intercultural Diversity – The intercultural strand of the diversity movement dates back to at least the 1920's. Beginning with such entities as the Institute of International Education, formed in 1922, the intercultural field experienced slow growth for the next two decades before taking off after World War II. The field emphasized intercultural relations, perceptions, and communication, with an emphasis on the interaction of people from diverse world cultures (Pusch, 2017).

For the most part interculturalists focused on the international scene. Intercultural training emphasized the understanding of cultural differences and the development of skills to facilitate better intercultural interactions. As the global economy grew and the world metaphorically shrank, many interculturalists specialized in helping individuals and companies participate more effectively in global commerce and build well-functioning multinational teams.

Particularly with the arrival of the ethnic revitalization movement during the 1960's, some interculturalists expanded their attention to the domestic scene by addressing issues of intergroup relations. For example, the Summer Institute for Intercultural Communication, for which I have been a faculty member for the past twenty-five years, offers courses that address international interculturalism and others that address interculturalism within nations, particularly within the United States.

On college campuses, interculturalism's presence can be seen most prominently in two areas. Curricular programs involving world cultures can be found at most universities, with some offering degrees in intercultural communication. Moreover, interculturalism is systematized by administrators and offices established to support international faculty and students.

Interculturalism has also given rise to the concept of cultural competence (sometimes called intercultural competence). That idea has penetrated numerous professional organizations and degree-granting settings. I give workshops on medical cultural competence, while I wrote an essay on intercultural humor for *The SAGE Encyclopedia of Intercultural Competence* (Bennett, 2015).

Equity-and-Inclusion Diversity – Parallel to interculturalism runs the second and far more visible diversity strand, most commonly known today as Diversity and Inclusion

(D&I), sometimes Diversity, Equity, and Inclusion. Because I am using diversity as the umbrella term for the overall movement, to avoid confusion I will refer to this strand as Equity and Inclusion. While intercultural diversity grew out of an initial focus on the international scene, equity-and-inclusion diversity grew out of the U.S. civil rights movement during the 1960's. (The D&I label would not appear until later, although I have heard historically-uninformed D&I practitioners claim that diversity began with D&I).

At first the equity-and-inclusion current of the diversity movement primarily addressed the issue of race, focusing on such issues as segregation, denial of voting rights, and other race-based inequities. The movement also spread into the struggle for equity by other marginalized groups, such as women, gays and lesbians, and the disabled. In many respects activists in these different areas struggled in parallel. Yet there was something more that transformed these individual group struggles into a broader movement, a phenomenon called psychic contagion.

The late 1960's and early 1970's of the diversity movement generated the idea of psychic contagion, a term as relevant today as it was then. This concept referred to an expanding process of mutual inspiration, transmission of ideas and energy, and creation of alliances among people involved in different types of group-based advocacy. It brought the mutual reinforcement of efforts for civil rights, anti-racism, women's rights, ethnic pride, gay liberation, and disability rights.

The intertwining of these different strands of group advocacy ultimately led to the popularization of the concept of intersectionality. That term has nineteenth-century roots, when black feminists challenged white domination of the women's movement and criticized the movement's core narrative that focused almost entirely on white women. The idea gained greater traction in the 1980s when proponents of intersectionality argued that specific attention must be paid to the different experiential patterns of women of color and women of other non-dominant groups (Crenshaw, 1989).

Intersectionality ultimately became a basic concept of inclusionist thinking. No person belonged to a single social category. Every person was an intersectional being, with race, ethnicity, sex, age, religion, sexual orientation, gender

identity, and other group factors intersecting, sometimes colliding, but inevitably influencing each individual's experience and identity.

Somewhere in the fog of war of these disparate groups and efforts, with their categorical struggles and their intergroup psychic contagion, the word diversity emerged as a movement term. Obviously the word diversity was not new. With origins stretching back to the Latin *diversitas* (difference), diversity had long been a common cultural word.

As the word diversity gained wider usage within the movement, inevitably there were efforts to give it a more specific movement meaning. However, since the diversity movement had no central governing body, there could be no "official" vote on terminology. Diversity simply became an unofficial, widely-accepted, multiply-defined umbrella term, distinct from common cultural dictionary definitions. Nobody "owns" the term. This is why, in all of my diversity workshops, I begin by explaining how I will use the word diversity (see Appendix), but also point out that there is no such thing as the definition of diversity.

Higher education provided an important part of the diversity movement story. Beginning in the 1960's, campus programs and efforts focused on domestic diversity began to bloom. These initiatives took various forms:

- the recruitment of underrepresented faculty, staff, and students.
- the establishment of group-based student support centers.
- diversity training for faculty, staff, and students.
- struggles for greater recognition of group-focused and equity-oriented scholarship.

The college curriculum attracted special attention. Students called for both a revision of the traditional curriculum and the establishment of group-based studies. This began with ethnic and women's studies, expanded to gay and disability studies, and has continued to morph into other forms such as queer and gender studies. At the K-12 level, such curricular reforms became central to multicultural education.

(Full disclosure: I was part of that process, serving on the University of California, Riverside's faculty committee that established Chicano and Black Studies degree programs

and later chairing Chicano Studies for seven-and-one-half years. I also contributed articles to some of the formative books on multicultural education [Banks, 1973].

While much of early curricular reform occurred within group silos, broader diversity thinking was developing. Over time there emerged a recognition that the pursuit of greater equity necessitated a more intersectional diversity view of curriculum, scholarship, and other campus pursuits of equity and inclusion. One of the early expressions of this growing awareness was the establishment of diversity course requirements for graduation.

In the 1970's I drafted the first modest diversity graduation requirement for my campus' College of Humanities and Social Sciences. We managed to get it adopted by a narrow margin of faculty voters, then had to regularly repel efforts to eliminate it. Given that experience, forty years later, at age 84, I am dazzled by the fact that one-third of U.S. colleges and universities now have some form of diversity graduation requirement.

In some respects, equity and inclusion drew upon the ideas and language of interculturalism, for example, in the development of multicultural education. Yet tensions remained between these two strands of the diversity movement. Many inclusivists saw interculturalists as insufficiently concerned with issues of equity, power differentials, structural impediments, and social justice. Interculturalists sometimes viewed inclusivist efforts as insufficiently grounded in an understanding of intercultural dynamics.

Louise Wilkinson, my teaching partner, and I have built that tension into Teaching Diversity, our five-day course for advanced professionals at the Summer Institute for Intercultural Communication. In particular, Louise has developed a module in which she asks participants to address a series of workplace conflict situations by applying and comparing inclusionist and intercultural thinking.

As we approach the end of the 2010's, the equity-and-inclusion strand of the diversity movement has become solidly rooted on college campuses. Now far more than a fad (which was predicted by skeptics in the 1970's), diversity has become a paradigm-transforming value in higher education.

Critical Theory – In the 1980's emerged still a third strand of the diversity movement, critical theory. Like the first two diversity movement currents, its roots stretch back historically. In this case, the critical theory current extends to the 1920's with the Frankfurt School, a movement growing out of the Institute for Social Research at Goethe University Frankfurt.

Like inclusionists, current critical theorists are involved in the pursuit of greater equity. However, they argue for a deeper, more skeptical analysis of the structures of inequality, dominance, and oppression. This can be seen, for example, in scholarship on critical race theory (Delgado, 2012).

According to critical theorists, all elements of society – laws, structures, and cultural practices – need to be examined in order to discover whether or not, deep down, they contribute to the maintenance of group-based inequities. In the pursuit of such critical analysis, nothing is sacred. Speech and other forms of expression could not escape inspection (Lawrence, 1990; Matsuda et. al., 1993). Critical theorists refused to bow to the idea of free expression as an assumed virtue; some took dead aim on it (MacKinnon, 1993).

Over time, critical theory began to infuse and sometimes even question other areas of the diversity movement. Conversely, interculturalists and inclusionists, although not always well versed in the sometimes obscurantist intricacies of critical theory, began to integrate some of its insights (Case & Ngo, 2017). Some traditional diversity organizations began to build critical theory into their operations. For example, the National Association for Multicultural Education has launched an initiative for spotlighting Critical Multicultural Educators.

Beyond that, other diversity advocates have developed a wide range of concepts that open new avenues for critical analysis. Not all of these new ideas may properly fall within the “official” scope of critical theory. However, they draw, at least indirectly, from critical theory and provide new analytical lenses for examining diversity and inequity in society. Let’s call this the penumbra of critical theory. Take two examples.

Peggy McIntosh did not invent the term privilege, whose roots stretch back to the Latin *privilegium* (irregular right or obligation). In English the word has numerous dictionary definitions and common cultural meanings. However, in a piercing 1988 article, “White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences Through Work in Women’s Studies (McIntosh, 1988),” McIntosh gave a very precise spin to the word. In the process she captured a simple but elusive idea.

In brief, McIntosh’s conception of privilege is that members of certain societal groups receive unearned advantages, which are supported by institutions and cultural practices. More insidiously, individuals may benefit from privilege even if they fail to recognize that they have received those unearned advantages. Indeed, part of the power of privilege is that it often operates under the radar.

McIntosh’s concept caught fire within diversity circles. Today the word privilege trips easily off the tongues of college students, whether or not they have ever read or even heard of McIntosh. Unfortunately, the term privilege has become battered and distorted by overuse on college campuses. It often serves as little more than a battle cry or an all-purpose insult (“Check Your Privilege”). Yet McIntosh’s crystalline original argument remains a bedrock of critical diversity thinking.

A more recent addition to the diversity lexicon is the term microaggression. Developed by psychiatrist Chester Pierce and popularized by psychologist Derald Wing Sue (Sue, 2010), microaggression refers to often subtle actions or remarks that have a cumulative negative impact on other individuals. Such actions or remarks may have occurred unconsciously, out of habit, and without harmful intention. However, they may have a deleterious impact, usually the result of relentless if unnoticed repetition.

Like privilege, microaggression has become a staple of campus diversity language. For some it has brought a reminder of the obstacles they still face. For others it has brought a greater awareness of the often-unintentional impact of their own language use. Unfortunately, at times the concept of microaggressions has been applied in rigid and sometimes ludicrous ways, which I will discuss later.

And the beat goes on. The critical theory penumbra now glitters with such concepts as cultural appropriation, implicit bias, epistemic violence, mansplaining, and white fragility. While these concepts are of varying quality and often suffer in their sloppy and sometimes authoritarian application, in totality they provide new critical perspectives and continuously raise provocative questions that further fuel the diversity movement.

Managerial Diversity – Even as intercultural, inclusivist, and critical theory approaches to diversity developed historically, still a fourth diversity thrust gained traction in the 1980's. This was the concept of “managing diversity,” a term often credited to organizational theorist and trainer R. Roosevelt Thomas, Jr. (Thomas, 1991).

In contrast to the turbulent and creatively decentralized trajectories of the other three strands of the diversity movement, the concept of managing diversity is based on the effort to create a diversity system. Thomas and others began counseling organizations and institutions on how to channel the energy provided by diversity and draw on diversity to support organizational goals.

Out of this managerial approach emerged a related concept, “the business case for diversity.” According to the “business case” argument, diversity could become a source for generating profits. But the “business case” emphasis quickly created a new challenge. How could managerialists demonstrate the value of this approach?

To address that challenge, managerialists latched onto the idea of diversity metrics. The managing diversity idea, buttressed by its metrics component, soon migrated to multiple settings (Brennan, 2014). It was adopted by non-profit organizations and religious institutions. And it also made its way onto college campuses.

Metrics, of course, was not a new concept among higher education diversity advocates. For example, since diversity became a higher education focus in the 1960's, advocates had used metrics to assess student matriculation, graduation success, and efforts to diversify faculty and administrative ranks. However, in the last two decades the idea of metrics has become increasingly important in higher education diversity circles, often under the purview of a new expression of the managing diversity concept, the Chief Diversity Officer.

As the managerial thrust of diversity took greater hold on college campuses, advocates increasingly emphasized the value of quantitative measures of diversity progress. At the same time most advocates also heeded Einstein’s dictum, “Not everything that counts can be counted, and not everything that can be counted counts.” As a result, campus diversity efforts also focused on qualitative dimensions of the lived higher education experience, including the speech-related environment in which campus denizens functioned.

But there was one final element to the managing diversity picture. Diversity managers might be rooted in ideas of equity, inclusion, and interculturalism. They might even be adherents of critical theory. But they also had to accept one other imperative of employment. Part of their job was to protect the institution. Managing diversity in higher education necessarily became a delicate balancing act.

Beyond the Chief Diversity Officer, the list of higher education diversity managers is myriad and growing. These include Title IX directors, disability service coordinators, and hate-bias response teams and coordinators. With each new addition to the administrative list and with each expansion of the diversity presence, campuses amplified the message that diversity is a core value. Things that inhibit equity, inclusivity, intergroup understanding, and a healthy campus experience for all need to be challenged. Speech could not avoid scrutiny.

One final observation before we move into the diversity-speech intersection. In laying out these four currents of the diversity movement, I am not claiming that all diversity advocates sort themselves out neatly into one and only one of these categories. Rather I have presented this classification system in order to help illuminate the multiple dimensions of the diversity movement. For example, I am both an interculturalist and an inclusionist, while selectively drawing on ideas from critical theory and its penumbra. Although I do not currently hold a position as a managerialist, much of my professional activity involves organizational training and working with diversity managers.

A Complex Intersection

Drawing on their unique historical trajectories, each of these four strands of the diversity movement intersects in a special way with our historically-rooted system of speech and other forms of expression. Each assesses situations differently, poses different questions, and suggests different courses of action.

However, there is one common element that complicates the balancing of diversity and speech imperatives. Defenders of robust speech (often erroneously called “free”) are primarily concerned with output – the opportunity to express. In contrast, diversity advocates are primarily concerned with input – the inequitable effect of such expression on individuals and groups. Looking at this conundrum through the lenses of the four diversity movement currents provides a better understanding of the complexities involved.

Interculturalism – Concerns about interculturalism inevitably involve issues of speech (Renteln, 2004). One of the major emphases of the intercultural movement has been helping people become more cognizant of language and other forms of expression, particularly where cultural differences are involved. This includes not only verbal communication, but also various forms of non-verbal expression such as gestures, body language, culturally-rooted differences in demonstrating respect (or disrespect), and proxemics, the cultural variation of comfortable conversational distances.

Interculturalists emphasize the importance of developing both greater knowledge of and increased sensitivity to cultures other than your own. Indeed, one of interculturalism’s most widely-used theoretical paradigms is the Developmental Model of Intercultural Sensitivity. In their training efforts, interculturalists tend to focus on helping people become more responsive to cultural otherness and to voluntarily modify their language (including body language) in order to better communicate with those who come from other cultural backgrounds. That includes cultural varieties within the United States as well as internationally.

The conceptual premise is that cultural knowledge, cross-cultural understanding, and intercultural skills should lead to more positive and constructive interactions. When people possess these qualities, they will become more responsive to others and therefore will modify their speech and communication styles in order to build better relationships. The interculturalist emphasis is on voluntary action.

This raises another speech issue. Isn’t such voluntary self-restraint and conscious speech adaptation to otherness a form of self-censorship? Maybe so, at least in today’s polarized atmosphere, with its penchant for knee-jerk accusations of political correctness. But growing up in the Midwest in the 1940’s, I learned that such self-restraint (today sometimes referred to as self-editing) was merely common courtesy. Interculturalism adds another dimension to the idea of courtesy and respect through the recognition that varying ways of expressing courtesy and respect (as well as insult) are rooted in different cultural traditions.

Equity and Inclusionism – Historically speaking, higher education’s general support of abundant and robust speech has often served as a strength and a protection for this strand of the diversity movement. On college campuses, diversity advocates have benefited from speech protections – the right to express challenging and contentious ideas with vigor and even acerbic language. For example, this applies to aggressive challenges to traditional white-centered, male-centered, and straight-centered curricula. Such challenges sometimes employ language that could well be categorized as offensive.

But as inclusionists began to examine issues of speech and other forms of expression, they tended to go beyond traditional interculturalist practices. To inclusionists, equitable diversity was not just a matter of knowledge and sensitivity. Other questions needed to be addressed. What inequities are built into historical and current language use? In what respects can language use actually undermine equity and inclusivity? How might changes in language use help to broaden inclusivity and deepen equity?

In addressing speech, interculturalists and inclusionists sometimes diverge in their approaches. Interculturalists tend to focus on such topics as understanding, sensitivity, empathy, and, more recently, emotional intelligence, as avenues toward voluntary speech restraint. Equity and inclusion advocates are more likely to assess speech by applying such lenses as prejudice, power differentials, privilege-based advantages, and structural obstacles (Stewart, 2017).

One area of diversity-speech tensions involves the idea of language correctness. Because group labels continuously evolve, it is often difficult to determine what is the “correct” term for a group, particularly when group members disagree on their preferences (for example, Hispanic, Latino, or Latinx). Now we have entered the world of variations of individually-preferred gender pronouns. In these constantly-changing circumstances, “mistakes” are inevitable, even by people of goodwill.

For the most part, diversity advocates of both the interculturalist and equity-and-inclusion strands have tended to cut people considerable speech slack when it comes to keeping up with language changes and new terminology. However, in contrast to voluntarism-oriented interculturalists, some inclusionists have moved to a position of supporting speech prohibitions and favoring sanctions for language use deemed oppressive. At least one major university has been considering punishments for people who use the wrong gender pronouns.

Critical Theory – Of the four diversity currents, critical theorists and their followers have taken special aim at the concept of “free” speech. For them, an examination of speech cannot be divorced from a thorough analysis of inequitable outcomes built into language and language use. For example, many critical theorists view arguments for free speech as a defensive and regressive strategy for reifying inequitable group power differentials.

In *Must We Defend Nazis? Hate Speech, Pornography, and the First Amendment*, Richard Delgado and Jean Stefancic threw down the gauntlet by strongly advocating greater legal restrictions on and punishment for certain forms of expression (Delgado & Stefancic, 1997). Likewise legal restrictions have been championed by Andrea Dworkin and Catharine MacKinnon, as in *Pornography and Civil Rights: A New Day for Women's Equality* (Dworkin & MacKinnon,

1988). With the publication of such treatises, diversity arguments for the limitation of expression attained a more focused, emphatic, and juridically-oriented voice.

Managerialism – With each new managing diversity initiative, campuses have amplified the message that diversity is a core value. Things that inhibit equity, inclusivity, intergroup understanding, and a healthy campus experience need to be addressed. Various forms of personal expression, including speech, inevitably became objects of examination.

This has led to tensions between diversity in its many manifestations and the defense of robust personal expression. For example, some 350 colleges and universities have adopted speech codes, mainly restricting hate speech. Although courts have generally ruled these codes to be unconstitutional, the issue of campus speech restrictions remains a contested topic (Gould, 2010).

Anti-diversity expressive acts continue to occur regularly on college campuses. Hardly a week goes by without a display of a noose, a charge of sexually-inappropriate remarks, a swastika drawn on a Jewish student’s residence hall door, an internet ethnic slur, or a Build the Wall scrawled upon some campus structure. In such cases, diversity managerialists find themselves caught in the crossfire of personal inclusionist values, legal limitations on action, and responsibilities for institutional protection.

Some managerialists have tried to find a sustainable middle ground. They often follow the course of taking a public stand against expressions of hate while at the same time defending the constitutional right of “free” expression. But such neither-fish-nor-foul strategies, particularly in the internet age, are increasingly ringing hollow, especially to diversity advocates. Campus leaders face the challenge of coming up with better strategies. The ideas that I will propose later for stimulating civic engagement may help.

Fundamental Questions

In *Free Speech on Campus*, Sigal Ben-Porath argues: “The protection of free speech in an educational institution can and should be treated as an imperative, yet it also needs to be expressed in flexible ways that can respond to new and evolving challenges related to speech (Ben-Porath, 2017, pp. 3-4).” Each of these four strands of diversity raises a particular set of challenges to speech and other forms of expression. While I recognize the dangers of over-simplifying, let me propose one fundamental speech question that each diversity strand raises.

Interculturalism – With their emphasis on voluntarism and the self-editing of speech, interculturalists raise the question: how can we create a more respectful campus climate by educating students, staff, faculty, and administrators to become more sensitive in their use of language, with a particular emphasis on the intergroup implications of language?

Equity and Inclusionism – With their stronger focus on historically-rooted inequality, equity-oriented inclusionists pose the question: what steps can be taken to create more equitable and inclusive campus environments, even if such steps involve further restrictions and sanctions on speech and other forms of expression?

Critical Theory – With their deeper, more skeptical analysis of the structures of inequality, critical theorists pose the question: what actions can be taken, including actions involving changes to the current legal system, to combat the inherently inequitable aspects of a system based on the knee-jerk defense of group power-maintaining “free” speech?

Managerialism – Given their necessary roles in protecting their institutions, diversity managerialists must address the question: how can we balance the imperatives of diversity and the existence of a juridical system that, at least currently, restricts some of our preferred courses of inclusive action?

Keeping in mind these questions, let us take a closer look at some diversity-speech/expression intersections on college campuses. There are myriad intersections, such as invited speakers, hostile workplace environments, speech codes, student-professor relations, and student organizations. I will briefly explore three examples.

Microaggressions

The term, microaggression, has become a higher education buzz word. I find the concept useful and explore it in many of my workshops. However, I also recognize the concept’s limitations and, even more important, the dangers of rigidly applying it. And I have watched the term become increasingly perilous, mainly as a result of that trinity of language toxicity: misuse, abuse, and overuse.

We all say and do stuff that may have an adverse impact on others, often without knowing it. It’s certainly interculturally laudable to try to become more reflective and self-edited in our actions and words. But laudable can morph into ludicrous if people transform a principle into a fetish. The current fixation on preventing microaggressions at all costs is becoming such a fetish.

In his book, *Microaggression in Everyday Life: Race, Gender, and Sexual Orientation* (Sue, 2010), Derald Wing Sue included a well-known microaggressions list. He also indicated that we should consider the context in which those expressions are used. One of those listed expressions is “Where are you from?,” a question I ask quite frequently. (As a cruise lecturer, I meet people from all over the world and want to know where they are from.)

Then why is this seemingly harmless question on Sue’s list? Because some people in some situations do not accept the first response and add “But where are you really from?,” suggesting that the respondent has been hiding her true identity. A common example is Asian Americans answering with their U.S. city or state, then being pressed about their

“real” origins, insinuating that they are inherently foreign. So what’s the solution? Simple. Don’t ask people the “where are you really from” follow-up question. It’s wrong-minded and it’s insulting.

Another statement on Sue’s no-no list is “You speak English very well.” Certainly you should not say that when conversing with another American, such as one of a different skin color, because it implies surprise that this person speaks good English despite the color of her skin. But the statement is perfectly fine when complimenting someone from another country for whom English is not his native language.

When I conducted doctoral dissertation research in Brazil, I was absolutely delighted when someone complimented me on my Portuguese, which I didn't begin learning until my mid-20's. So I am highly impressed when an outsider becomes truly proficient in English, a language with 18,000 rules of grammar and a bafflingly non-phonetic spelling "system." That's why English is one of the few languages of spelling bees. So I sometimes honor such achievers by complimenting them on their English, while also recognizing that this compliment should not be used in certain other contexts.

Unfortunately, I've seen some diversity trainers go one step further – one inane step further – telling participants that they ought to totally avoid using any of the expressions on Sue's list. In other words, we should rigidly avoid perfectly good, basic, useful statements and questions out of the abject fear that someone, somewhere might take offense. This is how the laudable principle of avoiding offense can become transformed into an obsessive, dysfunctional, and counter-productive fetish.

Teaching about microaggressions can advance intercultural understanding and can further inclusion when it helps us become aware of more equitable ways to treat people and to self-edit in order to avoid marginalizing others. However, that should not reach the level of sanctioning people simply because they err in their use of gender pronouns or criticizing them for employing a group label that does not happen to accord with some individual's personal preference (obviously this does not apply to historically-grounded negative group epithets).

Naming of Campus Structures

Another diversity-expression tension involves the struggle over public monuments. This phenomenon dates back to Ancient Rome, when those who had fallen from political favor often suffered the public eradication of their names, a process that became known as *damnatio memoriae*.

The current phase of this age old struggle has been going on for nearly a quarter of a century. In 1996, Native Americans entered Custer National Battlefield and erected unauthorized temporary displays providing indigenous perspectives on the Battle of Little Bighorn. Seven years later, in 2003, the site was renamed Little Bighorn National Monument, recognizing all who had died there, including native people.

A similar controversy occurred with the 1997 opening of the Franklin Delano Roosevelt Memorial in Washington, D.C., when disability advocates noted that there was not one image of Roosevelt in a wheelchair. The fact that he succeeded despite his infantile paralysis had been rendered invisible. After protests, including a division within the Roosevelt family, a statue of Roosevelt in a wheelchair was added.

College campuses are now the site of controversies over monuments and names on structures. To address these tensions, Yale University developed diversity-informed guidelines for the renaming of campus structures and spaces. The Yale report states: "In its building names and its campus symbols, the University communicates values, confers honor, and expresses gratitude to those who have contributed to its mission. . . . One of the values the University rightly communicates is the importance of genuine inclusiveness . . . (Yale University, 2016, p.3)."

The Yale guidelines have been adopted by other campuses, such as the University of Mississippi. On a campus laden with Confederate monuments, the Mississippi approach has placed less emphasis on name changing and more on creating displays that provide better social and historical context for understanding the significance of those structures.

One of the most revealing of the recent name-driven tensions involved the law school at the University of California, Berkeley. The law school building bore the name Boalt Hall in honor of San Francisco attorney John Henry Boalt. Then, in 2017, Charles Reichmann, a law school lecturer, published a law review article that drew attention to the fact that Boalt had been a major force behind the country's 1882 Chinese Exclusion Act. In November, 2018, after months of controversy and discussion, with input from faculty, students, and alumni, a recommendation was made to remove Boalt's name from the building (Watanabe, 2018). Instructively, that aspirational diversity-related recommendation came from the law school's dean, Erwin Chemerinsky, one of the nation's foremost First Amendment scholars and co-author of the book, *Free Speech on Campus* (Chemerinsky & Gillman, 2017).

Diversity Statements

One final example of the higher education diversity-speech intersection involves the emergence of diversity statements, particularly for applicants for faculty positions. According to some estimates, more than 250 colleges and universities now require faculty applicants to write individual diversity statements. (Another 250 schools, in this case, religious higher education institutions, require faith statements, either composed by applicants or created by the institution to be signed by employees.)

From an aspirational perspective, these institutions are being transparent about the values that they prize. But by requiring such statements those institutions are also limiting speech. Certainly applicants can say whatever they want. But in de facto terms they know that they will be judged on the basis of those words, so they had best take heed of their language use. In fact, some organizations have protested against diversity statements as – you probably guessed – an invasion of “free” speech.

But let’s put this into context. De facto speech limitation already exist. They’re called student teaching evaluations. Professors know that students will evaluate them. They also know that those evaluations will become evidence when it’s time to be judged for promotion. Inevitably such knowledge influences teaching behavior, including speech. It influenced my teaching, hopefully for the better. Every professor I have ever talked to about this issue admits the same.

Diversity statements are so new to the campus hiring process that we have little concrete evidence about their effectiveness or what impact they are having on speech. My admittedly limited evidence comes from the following: the observation of campus meetings in which administrators orient faculty on the use of diversity statements; discussions with professors who find themselves mentoring their graduate students on how to prepare good diversity statements; and a few brief exploratory articles about diversity statements (Flaherty, 2018; Lam & Finn, 2018; Reyes, 2018).

I was a bit skeptical when I first learned about diversity statements. On the other hand, I tend to be skeptical about most things. However, over the past three years I have moved to a more positive position on those statements. They make transparent that the university

values diversity and will make it one aspect of evaluation. Moreover, these statements appear to be spurring constructive faculty discussions of diversity. But there is no doubt that, like student evaluations, they affect speech.

Exploring the Intersection

So there you have it. Four strands of the diversity movement, rooted in American society at large and penetrating college campuses, where they intersect in myriad ways with issues of robust speech and abundant expression. This raises the question: where should we go from here?

As I stated at the beginning, my main goal during my fellowship period is to contribute to civic engagement, freed from the conversation-distorting dominance of the diversity-vs.-free speech metanarrative. A related concern is the profligate use of the term “free speech” as well as its corollary, knee-jerk assertions of censorship. I believe that the current misuse and overuse of such terms actually impede and contaminate civic engagement by creating confusion, contributing to polarization, and summarily discounting the speech-related perspectives of diversity advocates.

Fortunately, some scholars have already begun to make efforts to dismantle the polarizing diversity-vs.-free speech metanarrative, using formulations that treat diversity and speech as aspirationally complementary imperatives. (Unfortunately, while arguing against this polarity, some of them continue to use the polarity-reinforcing term, “free” speech.)

In her splendid *Free Speech on Campus*, Sigal Ben-Porath, chair of the University of Pennsylvania’s Committee on Open Expression (note the better word Open rather than Free), posits the concept of “inclusive freedom” as an avenue for enhancing both equity and speech (Ben-Porath, 2017). Philosopher Eamonn Callan imaginatively pairs the concepts of “dignity safety” and “intellectual safety” in an effort to detoxify the discussion of safe spaces (Callan, 2016). In his laudably aspirational *Safe Spaces, Brave Spaces: Diversity and Free Expression in Education*, former Harvard law professor John Palfrey argues for the importance of both “safe spaces” and “brave spaces” on college campuses (Palfrey, 2017).

Psychologist Lisa Feldman Barrett posits the distinction between “abusive” and “offensive” speech in her provocative *How Emotions Are Made: The Secret Life of the Brain* (Barrett, 2017). In his excellent *Speak Freely: Why Universities Must Defend Free Speech*, political scientist Keith Whittington distinguishes between “thick” and “thin” versions of safe spaces, indicating that there is value to both types, while adding “but they need to be properly situated (Whittington, 2018, p. 71).”

My basic concern, a concern that has been growing throughout my fellowship period, is that the repeated verbal inconsistency – trumpeting the existence of “free” speech even while presenting evidence of limitations on that speech – creates an obstacle to civic engagement. In particular, it impedes the development of aspirational, non-juridical civic engagement concerning the complexities of the intersection between the imperatives of robust speech and inclusive diversity.

So the final dimension of my fellowship journey has involved experimentation with alternate ways to spur civic engagement through aspirational conversations about the topic of diversity and speech. Clearly there is value for students and other campus denizens to be exposed to the First Amendment as well as our current system of permitting and prohibiting speech. But they would also benefit from aspirational civic conversations liberated from the severe constraints created by focusing on laws and court decisions.

I want campus conversations that seek to envision the best of all possible worlds in which we both support robust speech and seek inclusive diversity. What kind of campus would higher education participants like to see? What balance of diversity and speech imperatives can they envision? What are some of the complications of attempting to balance these two imperatives?

Experiments in Civic Engagement

So my challenge was to come up with new formats for civic engagement about the imperatives of diversity and speech. Non-juridical formats, I should add – that is, formats that do not begin with the First Amendment, laws, and court decisions. Those topics are certainly important, but as a starting point for civic engagement they short-circuit aspirational dialogue. Following are two approaches that I have used this past year.

Posing aspirational questions – In September, 2018, I gave a public lecture on changing the diversity-speech metanarrative for the Indaba program of the University of Maryland, College Park. The audience consisted of higher education faculty, administrators, and students, drawn mainly from Student Affairs. Much as I have done in this paper, I laid out my argument that the diversity movement was not anti-free speech, but rather was part of the long U.S. historical tradition of creating speech restrictions for the greater societal good. I then had them gather in small groups to discuss three aspirational questions about the diversity-speech intersection:

- In order to foster greater campus equity and inclusion, what further limitations on speech should be considered?
- In order to foster abundant and robust speech, in what respects should personal and group discomfort, offense, and maybe even pain be recognized as inevitable aspects of campus life?
- Beyond simply conforming to the law, what actions should college administrators take in order to address the valuable but sometimes clashing imperatives of robust speech and equitable inclusion?

I conducted no formal evaluation of the session. I merely wanted to see if these three questions would help them carry on engaged *aspirational* conversations. They did. Discussions were lively. Afterward numerous participants thanked me for the opportunity of engaging in this type of conversation about speech rather than merely talking about laws, court decisions, and university regulations.

Aspirational University Simulation – A more audacious attempt to spur civic engagement around the diversity-speech intersection involved developing a new simulation. I call it “Inclusive Diversity and Abundant Speech: An Intersection of Values at Aspirational University.”

In this simulation, I first ask participants to write down one value they hold about inclusive diversity and one they hold about abundant speech. I then ask them to combine the two statements into one. When circumstances permit, I post the statements.

At this point I announce that they are members of the founding administration of Aspirational University, the first institution of higher education in the new nation

of NewBeginningsLand. The country currently has no constitution (therefore, no First Amendment), no laws on speech, and no concept of academic freedom or governance. Therefore, participants must start from scratch in establishing, implementing, and modifying campus regulations. These include regulations related to diversity and speech. Participants cannot take refuge in established campus policy; they are campus policy.

We then brainstorm the various facets of campus life in which the diversity-speech intersection may play out. Participants usually come up with more than a dozen intersections such as curriculum, student-professor relations, invited speakers, artistic expression, student organizations, and athletic teams.

Next I ask them to look at their posted diversity-speech statements and draw upon them to enunciate one foundational principle for addressing speech at Aspirational University. This principle may also refer to diversity. At that point the fun begins, when they are asked to apply that principle to a series of campus issues. I indicate that they should address the following questions:

- What action would you take in each case?
- What might be some of the unintended consequences of your action and how would you deal with those consequences?
- How might you revise your campus speech principles and regulations in light of this case and your decisions?

Much to my dismay, the first few times I tried the simulation, participants gravitated to the same course of action: bring the combatants together and try to talk it out. In other words, as decision-makers, they punted. So I modified the simulation by saying that in each of these cases they had already brought the combatants together and it had not worked. The combatants refused to budge. Now they, as the campus governing body, had to make a decision and take action.

To create cases, I draw upon actual incidents that have occurred on U.S. college campuses over the last half decade. I say “draw upon,” because I do not import cases rigidly. Rather I modify them to better stimulate discussion. My goal is not for participants to “solve” actual incidents, but rather to get them more civically engaged in the discussion of the many options and dilemmas arising from diversity-speech intersections.

Nor do I follow a set order of cases. Rather I base my case choices on what happens in discussions of the previous case. In this way I can select cases that expand upon themes that discussants have just raised or cases that complicate the decisions they have made in the previous cases. I have no concern about running out of material. Today’s campus life keeps on giving by continuously providing new incidents and situations. I now have several dozen cases to draw upon, and my folio keeps growing.

I first tried out my simulation with student government leaders at the University of California, San Diego, during my week-long fellowship residency there in May, 2018. Overall it has been used some dozen times in various settings, including on four college campuses. I also used it with a class of advanced professionals at the Summer Institute for Intercultural Communication.

I even tried the simulation once in an online class setting, an interesting if somewhat frustrating experience. The conversation seemed to be muted by the absence of the dynamics of same-room presence. Or maybe it was my inexperience in facilitating online discussions. However, in their post-simulation online discussion, students demonstrated a serious contemplation of the complexities of making decisions involving the diversity-speech intersection. This included a recognition of the inevitability of unintended consequences,

My most rewarding experience came in September, 2018, with two classes of sophomores in the Civics living-learning program at the University of Maryland, College Park. In those two 75-minute sessions, I divided the dozen or so students into administrative teams of 3-5 people and had them address each case in their small groups before presenting their decisions to the entire class. In the plenary discussion, students became so engaged in the discussions that I had to cut them short in order to move on to other cases.

That experience convinced me that I may be onto something. Students eagerly and intelligently unpacked the issues of diversity and speech without relying on the Constitution, laws, and court decisions. Aspirational civic engagement was happening right in front of my eyes.

Finally, I have received support from my university’s Center for Ideas and Society through its Academic Book Club program, which brings together small groups of faculty

and students to discuss a common book in a four-session format. I selected Heather MacDonald's new book, *The Diversity Delusion: How Race and Gender Pandering Corrupt the University and Undermine Our Culture* (MacDonald, 2018). I chose this book because it provides a vigorous aspirational critique of higher education diversity efforts, including in areas of speech. To help focus the discussion, I am posing two questions.

- In what respects do you consider MacDonald's arguments to be valid or invalid, particularly in regard to speech and other forms of expression on campus?
- If you were invited to participate in a public forum about her book, in which MacDonald herself was present and would be able to respond, how would you address her arguments?

Conclusion

So where do I go from here? I know that I want to pursue the idea of furthering civic engagement around the intersection of diversity and speech, an idea that was not part of my original proposal. This includes continuing to experiment with and further develop my Aspirational University simulation.

I also want to further the discussion of the use of language, particularly the overuse and what I see as the misuse of terms like "free" speech and censorship. If people, especially those in the legal profession, would restrain their use of "free" speech as a misleading surrogate for "legally-protected" speech, it would contribute greatly to reducing public misunderstanding of our speech system. It would also facilitate a better informed, more thoughtful, and less polarized civic engagement about speech and other forms of expression.

But how do I pursue this effort? As an emeritus professor, I hold no academic appointment, so I lack a built-in platform to pursue my ideas. Fortunately I continue to be active as a public lecturer, including on college campuses, and have already accepted invitations to speak on the diversity-speech issue. In addition, I serve on the faculties of several entities: the Harvard Summer Institute for Higher Education; the Federal Executive Institute; and the Summer Institute for Intercultural Communication. So there should be opportunities to pursue my goals.

Speech issues are not going away. Neither is diversity. I believe that their intersection is fundamentally changing the American paradigm of discourse and expression. As a former professional journalist and long-time media analyst (Cortés, 2000), I have a deep belief in the vital importance of abundant, robust speech. As a nearly half-century participant in the diversity movement, I also believe in the importance of carefully considering the many complexities raised by diversity advocates.

Speech-and-diversity is not an either-or issue. We need to resist that polarity. Yet inevitably there will be tensions at the intersection of speech and diversity. We become a better civic society when we address that intersection and those tensions aspirationally, not just juridically, and with nuance.

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Appendix

Components of Diversity

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- 1) Groupness – People are both individuals and members of multiple groups.
- 2) Impact – Those groups influence (but do not determine) the lives of people who belong to them.
- 3) Intersectionality – Each individual is partially shaped by the constellation of groups to which she or he belongs.
- 4) Patterns – Because groups have patterns (often known as group culture or experience), members of different groups have patterned differences (sometimes known as cultural regularities).
- 5) Positionality – Because of those patterns, members of groups tend to view the world and approach different situations from the perspectives of those groups.
- 6) Generalizations – Learning about group patterns provides clues to (but they should not become assumptions about) individuals who belong to these groups.
- 7) Concerning diversity:
 - Think in generalizations, not stereotypes.
 - Use generalizations as clues, not as assumptions.
 - Think in intersections, not silos.