

The University & The Study of Duty

As a public institution, the University of Michigan has a promise to ensure the safety and security of all students and their identities, as well as protect each student's First Amendment rights--specifically their right to free speech. These responsibilities come into contention when one group of students' right to free speech impedes on another group of students' feeling of safety. In the fall of 2016, as well as sporadically since then, flyers for white supremacy groups and anti-black/anti-Islamic messages were found on campus. President Schlissel, in an open letter to the Michigan community, acknowledged the detrimental effect hateful speech has on the culture of constructive dialogue he hoped to have on campus. At the same time, university administration decided not to take action in removing these messages as to protect the fundamental right of freedom of expression, which includes speech that is offensive or biased. The university community was very divisive on this policy, as seen by the sampling of opinions in class. Within the philosophy 361 students, 31% agreed with this policy while 69% did not. However, even with a majority of dissatisfaction (assuming that the sample of philosophy students loosely represents the larger university community), they continued this policy with similar events after fall 2016. This obvious difference in moral reasoning shows the variety of interpretation of this conflict between responsibilities: in the end, the decision comes down to which is deemed more important--freedom of expression or protection against hate speech. In this paper, I will be analyzing how different philosophers would be able to justify or criticize the University policy on moral grounds. I will be looking at two philosophers in particular: Immanuel Kant, a deontologist, and John Rawls, a social contract theorist. **Through this paper, I aim to show how and why Kant would agree with the University policy from a duty-based perspective, using hypothetical vs. categorical imperatives and maxims, while Rawls would disagree with the policy from the perspective of the veil of ignorance thought experiment and special conception principle: however, Rawls conclusion provides a more specific basis of how to determine the morally correct reason because it takes the wellbeing of U of M students into account in a specific situation, unlike Kant's conclusion.**

First, I will outline Kant's view on duty-based moral reasoning, and more specifically, his distinction between categorical and hypothetical imperatives, universalizable maxims, and their

application to the University policy. Then, I will examine Rawls's social contract theory and, more specifically how his veil of ignorance and special conception principle leads to the conclusion that the university should take a more active role in protecting the security of students. After establishing the philosophical basis of the two arguments for and against the policy, I will show how Rawls's argument more accurately aligns with the responsibilities of the University, specifically as a public university. I will also consider objections to this view, specifically other avenues of interpretation of Rawls's special conception.

Immanuel Kant argued that morality was based in a duty-based system for autonomous actors, and did not depend on a need for intrinsic, non-moral goods (such as pleasure, as consequentialists would argue). Practical rationality plays a role in crafting these duties, or imperatives, that "rule some actions in and others out".¹ There are two types of imperatives: categorical and hypothetical. Categorical imperatives would be those which "represent an action as objectively necessary of itself, without reference to another end" while hypothetical imperatives are actions that act "as a means to achieving something else that one wills".² Kant contends that these two ideas are closely tied together and that behind a hypothetical imperative lies a categorical imperative. He notes that "he who wills the end necessarily, insofar as he is rational, wills the indispensable means". This means that if the means are unacceptable, the end is not moral and must be given up. If we apply this idea to the University of Michigan policy, we see can craft a categorical imperative as well as a hypothetical imperative. Here, our categorical imperative would be "ensure a safe space for students" while the hypothetical imperative would be "take down the racist posters and messages". However, this hypothetical imperative contradicts another important categorical imperative present in this situation, which is "respect the freedom of expression". Thus, the hypothetical imperative, which is simply a means to a moral end (as morality, under Kant's view, is fueled by categorical imperatives) is deemed unacceptable. Now, either the hypothetical imperative must be changed or the end of respecting freedom of expression must be given up. Within the university, it is more logical to give up this means of protecting students from offensive messages than it does to simply undermine a very important factor in the moral grounds of public institutions, which is respecting the freedom of expression and not censoring specific opinions. When the hypothetical imperative is "no University administrator can

¹ Peter Railton, Philosophy 361-Lecture 14

² Russ Shafer-Landau, *Ethical Theory: An Anthology*, Wiley-Blackwell, 2013, pg 490

remove the messages”, at first it seems like this would be unacceptable as it would contradict the end to ensure the safety in identity of students. However, this contradiction is much less direct, as other students can still remove the posters and the University administration came out with a statement that they did not agree with these flyers. In this way, the means does not contradict any of the ends, and thus the ends do not have to be given up. Using this system of hypothetical and categorical imperatives, Kant would see the University policy as practically rational.

Another aspect of Kant’s view are the maxims of our actions, which are our subjective purposes in specific contexts for said actions. Morality, a rational requirement, demands to be applied to these maxims, as with anything that is willed by humans. The common framework for a maxim is “I will *A* in *B* in order to realize or produce *C*” where “*A*” is some act type, “*B*” is some type of circumstance, and “*C*” is some type of end to be realized or achieved by *A* in *B*”.³ However, Kant asserts that we must “act only in accordance with that maxim through which you can at the same time will that it become a universal law”.⁴ For example, an example before relating back to the University case study, is the simple maxim “I will not lie to my friends and family to get what I want”. This maxim is universalizable and thus is a legitimate ground for moral reasoning because there are no contradictions present: if everyone followed this maxim, no one would have a contradiction in their personal will that would allow them to not want to do this. Alternatively, “I will lie to my friends to take their money” has the contradiction because we would not want someone taking our money. Applying this to the University case, we must see if we can universalize the maxims associated with taking down the messages versus keeping them up. The maxim for keeping the posters up would be “The University will not take the posters down on campus in order to protect the freedom of expression”. This can be universalized because there are no apparent contradictions in will. Even if the posters were filled with hate speech, you could take the posters down yourself or put your own posters up to combat the other flyers. Alternatively, “The University will take the posters down on campus in order to keep students from being offended”. There is a contradiction here, because if the posters were ours that we put up, and the University policy was to take down any poster that offended anyone, then almost no posters would be put up, and if one group of people put up those posters they would

³ Robert Johnson and Adam Cureton, “Kant’s Moral Philosophy.” *Stanford Encyclopedia of Philosophy*, Stanford University, 7 July 2016, plato.stanford.edu/entries/kant-moral/.

⁴ Russ Shafer-Landau, pg 439

not want this policy to be universal. Thus, the University policy passes Kant's Universal Law of Nature and is the correct moral decision.

John Rawls, on the other hand, is a social contract theorist. One of the pillars of Rawls work is his "Veil of Ignorance" thought experiment. In this thought experiment, Rawls suggests that we should make political decisions not knowing our particular positions in the society regarding our wealth, race, talents, tastes, abilities, and social class. He contends that by being ignorant of our circumstances we can make objective decisions about how our communities should operate. He writes that "somehow we must nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage": his answer to this conundrum is the veil of ignorance.⁵ If this thought experiment is applied to the University case, Rawls will come to a different conclusion than Kant would have. By using this thought experiment Rawls would argue that we would want to take down flyers that are deeply offensive or racist to a specific group of people since we would not know which group of people we would be in this hypothetical community we would want policies in place that would not allow any group to be the victim of pointed offensive language and sentiments. Rawls would argue that the University policy is in the wrong because it does not follow the idea that everyone would be raised up to a higher quality of life with this. Rawls would weigh the outcome of the thought experiment (the original position) with the maximin strategy because "the person choosing has a conception of the good such that he cares very little, if anything, for what he might gain above the minimum stipend that he can, in fact, be sure of by following the maximin rule".⁶ Using this strategy to weigh payoffs, the University policy does not have the best payoffs because it does not give the highest minimum possible payoff--taking down the posters has higher minimum payoff because everyone in the university community would be better off not having the racist messages, even if some individuals payoffs would not change, those who feel attacked by them would increase. Therefore, the original position would support a community in which the University policy *would* take down offensive, racist messages.

Rawls's veil of ignorance within his original position is supplemented by the special conception principle. Within this special conception principle, the first principle states that each person should have "equal rights to the most extensive basic liberty compatible with a similar liberty

⁵ Russ Shafer-Landau, pg 587

⁶ Russ Shafer-Landau, pg 590

for others.”⁷ This principle takes priority over the second principle, of which there are two parts. The second principle states that social and economic inequalities are to be sanctioned so that (a) they are reasonably expected to be to everyone's advantage and so that (b) they are attached to positions of equal opportunity or open to all. These principles can be applied to the University case as well. In this case, the equal rights would be the rights to protection as well as the rights to freedom of expression. Within the first principle, the contention between freedom of expression and protection from offensive messages still exists. However, in (b) (which takes precedence over (a)), the inequality in the seeming favoritism of black student populations and Muslim students over potential white supremacist groups on campus is acceptable as they are helping those that are worst off--which is what (b) asks for. It can be objectively stated that underrepresented minorities and victims of Islamophobia are worse off within societies as compared to white students (and also white supremacy groups) due to the consequences of institutionalized racism. (A) also undermines the University policy as removing the racist messages would be to everyone's advantage as no one would really lose from the posters being taken down (as the groups that put them up have already made their point as their message has gotten exposure). In this way, this other pillar of Rawls's social contract theory states that the most moral decision that would be best for the University community would be for University administration to take down the messages.

While Kant and Rawls both provide a moral basis for agreeing or disagreeing with the University policy, Rawls's argument accounts for the specific context in which the issue is taking place, unlike Kant's broader duty-based rules for deciding morality. Kant's universalizable maxim of “The University will not take the posters down on campus in order to protect the freedom of expression” does not take into account the desires of the student population. Most students (as seen in the poll in class) would agree that this maxim, while universalizable, does not apply well within U of M because even though there are no contradictions in this logic, the weight of importance between freedom of expression in this specific circumstance and protecting identities of students is not taken into account as it is in Rawls's moral conclusion with the veil of ignorance. With Rawls's conclusion, the context of the University is taken into account and this leads to the moral conclusion being the same conclusion the student body decides. Kant's imperatives also are simply broad moral conclusions

⁷ Peter Railton, Philosophy 361-Lecture 18

that do not take into account the context of the University--for example, the imperative “no University administrator can remove the messages” while having acceptable means does not apply to certain situations. For example, if there was a message that incited violence or threatened a specific person or group with violent intent, the University would have a responsibility to take down such message. As a public university with a responsibility to protect its students and treat them equally, as well as a reputation of giving extra opportunities to underrepresented minorities (such as Affirmative Action), these maxims would not apply without exceptions. Thus, Rawls provides a more holistic moral conclusion that aligns with the University’s responsibilities as a public university, unlike Kant’s conclusion for the policy.

By examining the special conception principle, one may find objections to Rawls’s conclusion. In part *(b)*, one can argue that keeping up the posters would be more to everyone’s advantage. This group may argue that these posters inform the public of everyone’s opinions and that if the group who administered the flyers were students, these students would lose out by the posters getting pulled and thus the policy is not to everyone’s advantage. There are also objections outside of Rawls’s theory itself. Kantians would object to Rawls’s outcome by saying that morality should not be context specific and that it should be based on a set of rules that apply in all situations. Rawls’s moral outcomes only apply in the situation of the University. If the government or news channels were to stop all types of hate speech or contradictory opinions this would obviously not be in the best interest of the society, and here the veil of ignorance and the special conception principle would probably lead to not taking down the posters as the populations in consideration are different. This means that Rawls’s rule is not applicable in all scenarios, while Kant’s is, and this lack of applicability makes it a weaker moral conclusion.

While the above objections, both within Rawls’s special conception principle and from Kant, are valid, the assumptions they operate on are not legitimate. To address Kant’s objection first: if there was a maxim that stated “do not lie” (under any circumstances), but you would had to tell a lie to save 10 lives, almost everyone would tell a lie to save the lives. Moral intuitions are at the base of our moral codes, and Kant’s argument that all moral rules must be universalizable does not follow our moral intuitions. To the objection within Rawls’s special conception principle: Rawl would respond by saying that the need to be heard can be weighted less by a society than the need to be protected against

hate speech and thus everyone would benefit more from a lack of hate speech than unhindered freedom of expression.

After taking both Kant's argument for a deontological method of moral decision making and comparing it to Rawls's argument for a social contract based conclusion, it is clear that both arguments can be used by opposing parties to support or criticize the university policy on racist flyers on campus. However, Rawls's argument is context specific, and this makes it follow our moral intuitions better than universalizable rules allow us to do. In addition, maxims and imperatives do not provide for the highest worst-case outcome for everyone (which occurs under Rawls's maximin method) which means they do not increase everyone's well being. As a public institution, the University of Michigan has responsibilities to uphold freedom of expression on campus, but it also has the duty to protect the wellbeing of students. The University also has the mission to only do things that follow its purpose of bringing its students and community up to a higher standard, to encourage learning and discourse, and to be a positive force within Ann Arbor and the nation. To be this positive force, it must lift all of its students up, and the university policy is contradictory to this mission.