

While working at PEN America this summer, I found myself constantly reassessing how to address hateful speech. In keeping with the principles of free expression that underpin PEN's founding doctrine, I found myself tacitly on the side of speech that I would not normally deem defensible. While PEN America's definition of hateful speech is not itself unique, the organization's approach to dealing with harmful language -- through forceful condemnation that nonetheless recognizes the legal imperative to protect all speech which does not rise to the high bar of incitement -- became increasingly compelling to me as my time there went on. I soon familiarized myself with a crucial rationale for protecting all speech, even that which we know to be harmful. It became evident to me that two key components of PEN America's 1922 charter, the promise that members "do their utmost to dispel all hatreds", while also "[opposing] any form of suppression of freedom of expression", do not form an incongruous mission. Rather, the work that PEN America does is a delicate balancing act of hope and pragmatism, one that I had the privilege to gain intimate knowledge of through the months of June, July, and early August, 2021.

As my spring semester was drawing to a close, I began to mentally prepare for the summer of work that awaited me. I read PEN America's Campus Free Speech Guide, as I would be working in the Free Expression Programs department, under Free Expression and Education director Jonathan Friedman. Familiarizing myself with this area of PEN's work, I noticed a large degree of heterogeneity in the cases with which the organization was concerned, and in the actors for whom PEN came to the defense: Often, PEN America advocated on behalf of people belonging to historically marginalized groups, like Sami Schalk, an associate professor of Gender and Women's Studies at the University of Wisconsin-Madison -- and queer, disabled, woman of color

-- who was subject to horrific online abuse and threats to her safety, or in the example of a Latinx professor at Georgia Southern University, whose book was burned by students for its mention of white privilege. In other cases, PEN stood up for the right to free expression of less sympathetic actors -- for those coming from a perspective of social justice -- like controversial conservative speakers who were disinvited from campus events, or had their lectures at college campuses forcefully shut down. What emerges is an image of advocacy that some might call incongruous; some of the beneficiaries of PEN's work are considered vulnerable while others are decidedly not. As I looked over case studies published in the 2019 "Chasm in the Classroom" report, my ethical disposition told me that only some individuals' expression rights were "worthy" of defense. This realization provoked a crisis of purpose in me: Would I willingly safeguard language that I believed deleterious to principles of diversity, equity, and inclusion?

As the child of a writer, as a queer individual, and the descendent of Holocaust survivors, I grew up immersed in the belief that words can hold enormous, if not destructive power. In my second year of political studies, I took a seminar on the history of genocide, and found countless examples of the metastatic qualities of language. An example that stuck with me in particular was the stoking of ethnic hatred by *Radio Mille Collines* in Rwanda, and how words gave way to acts of carnage. I thought of the anti-immigrant rhetoric Donald Trump espoused in the runup to domestic terror attacks against primarily Latinx communities in Ohio and Texas in 2019. I thought too about the decades leading up to the Nazi takeover in Germany; how language became a servant to ideology, and how this led ultimately to the deaths of my ancestors and the rupture of so many lives. From my lived experience, I understood the pernicious nature of homophobic and misogynistic language, how it was wielded against me and people I knew, not

as a clear cut, fatal blow, but as an incremental weapon. It could materialize as a death by a thousand cuts, without anyone having given much afterthought to its constituent parts.

For these reasons then, I found the defense of certain language and speakers an unattractive prospect to say the least. When I encountered the mention of an individual or a free expression issue that I found difficult to realize the value in defending, I reminded myself of a line from “Chasm in the Classroom”: “PEN America believes that it is better to permit the expression of noxious ideas than to create an opening for repression. Even so, students are right to demand that hateful speech be met with a strong response from campus leaders, who have an ethical responsibility to uphold values like equity and inclusion”.

I agreed with the overall premise of the statement, but found myself focusing on the claim of “an opening for repression”. What was this repression that could ensue from legal challenges to hate speech? Was its risk merely overstated? I thought of conservative “slippery slope” defenses, wielded to argue against any kind of oversight or regulation. After my work at PEN began however, I soon realized that the risk of repression, of the purposeful misuse of anti-hate speech or extremism clauses, was far from a hypothetical scenario. It was a phenomenon taking place in numerous countries around the world, some of them blatantly autocratic, and others, like our own, flirting with authoritarianism.

Arriving at PEN America’s New York office on Broadway, I was nervous, keen to make a good impression, enticed by the great quantity of books lining the walls. There were numerous posters, the faces of James Baldwin, Anna Politkovskaya, and other champions at the crossroads of

human rights and writing, looking down at me. My first project was researching the abuse of hate speech legislation by governments abroad. As the afternoon progressed, a coffee cup before me filled and emptied repeatedly, I learned that these cases were not isolated. In Brazil, a movement called *Escola sem Partido*, literally “non-partisan school”, had gained increasing strength with the rise of authoritarian president Jair Bolsonaro. Ostensibly to counter “ideological indoctrination” and “hatred” towards Brazil’s national history, *Escola sem Partido*’s proliferation led to a series of brazen affronts to institutional autonomy and the free expression of professors in Brazilian public universities. This included, but was not limited to, the defunding by up to 30% of the annual budgets of Brazilian public universities, and expanded executive powers enabling the president to personally appoint deans and rectors. In Turkey, resurrected penal codes like Article 301, criminalized “denigrating Turkishness” or speech that reflects animosity towards Turkey’s “national image” or “national heroes”. In Putin’s Russia, “anti-extremism” clauses were used to suppress academic work that details Soviet participation in the Holodomor genocide.

Ultimately, my task was to put these phenomena abroad into conversation with an American context. In the feverish nightmare that was the Trump presidency for those of us who valued truth and believed in the sanctity of words, it was easy to cast off things the former president said as merely the disjointed ramblings of a lunatic. It was often more difficult to take his words seriously, to see them in the context of an organized rhetorical strategy. As I poured over tweets and public statements made by the executive and those in his inner circle, I encountered over and over again references to Black Lives Matter, and the George Floyd protests of spring and summer 2020, as a “hate group” or “act of hatred”. The ubiquity of these characterizations, and

the sense that they were the frantic attempt to shift a narrative by an incompetent and embattled administration, may have made them possible to ignore. They proved to be extremely powerful however, in stoking the flames of an already raging American culture war. What Trump and his advisors did was blur the lines between hatred and social justice. For a large enough swath of the American population, this false equivalency was compelling.

As my work at PEN America went on, I became more aware of the dangers of the subjectivity of hate. For those who have experienced some form of marginalization, or are conscious of others who have, there is a large degree of consensus about what “hatred” as speech and action looks like. Largely, in its most pernicious forms, it targets those who are already vulnerable. It is the reinforcement of existing power structures, imbalances that leave some people gasping for breath, and others with a knee on their necks. A government with autocratic aspirations, and a contempt for justice or challenges to authority, will invariably repurpose the language we know for their own devices.

Through my work on academic freedom and authoritarianism, I identified a catalyzing moment in the Trump administration’s abuse of the language of anti-hate speech legislation: The publication of Nikole Hannah-Jones’ *The 1619 Project* in 2019, a *New York Times Magazine* initiative that sought to “reframe” the teaching of American history by positioning the legacy of slavery and the experience of black Americans “at the very center of our national narrative”, was followed by a fierce backlash from conservative voices. At the time, the most prominent of them was Trump, who in September 2021 issued a directive to all federal agencies calling for an end to anti-bias training. Its opening line referred to said training as “divisive, anti-American

propaganda”. Weeks later, when pressed on his decision to issue the memorandum, during the first general election Presidential debate, the former president called training that draws from “critical race theory” or that addressed white privilege, “racist”, and amounting to a “radical revolution”. This followed comments Trump made earlier that month, in which he referred to critical race theory (CRT) as “toxic propaganda” that will “destroy our country”. It became clear to me then definitively, that a legal mechanism to deal with hate speech would be simply too dangerous. Like countless other leaders with authoritarian tendencies, Trump weaponized anti-hate speech discourse; he repeatedly spoke about “hate” against the country, its vaguely defined values, even against himself. I became increasingly wary of the possibility of vesting legal powers to curb speech, especially in the hands of those who redefined the nomenclature we knew by their own ideological terms. This, in short, was a position I heard echoed throughout my time at PEN.

When introduced to PEN America’s Chief Executive Officer Suzanne Nossel, I asked her how her family’s experience of fleeing Nazi Germany had informed her own conception of addressing hate. She told me that fundamentally, it affirmed just how precipitous the decline into authoritarianism can be. It stressed for her the belief that giving a government the power to curb speech is perilous, particularly when considering how quickly the hands of power can change. We sat together in her office, Nossel, Friedman, and myself, all three the descendants of Jews who survived Nazi persecution. I considered the flipside of the argument: What if, sometimes, curbs on speech are necessary to protect the truth about a vulnerable demographic from historical revisionism and erosion? I asked the question, citing the example of Germany’s post-World War II anti-Holocaust denial legislation. It certainly presented the image of a quick fix, my superiors

agreed, but that sense of safety could be a seductive illusion: Neo-Nazi activity was not dispelled, but rather, forced underground, where it continued to multiply in the margins of German society, reaching pivotal moments of strength throughout the second half of the 20th century and finding renewed popularity in the 2010s. I could not disagree. After all, I had lived in Germany as a teenager and had seen first hand the significant rise of neo-fascist, far-right nationalist, and anti-immigrant platforms in 2016. I remembered walking through my neighborhood, in the western industrial city of Essen, taking note of Lonsdale sports jackets, and articles of clothing incorporating the number 18, hidden Neo-Nazi messages designed to fall outside the purview of the country's legal code. It seemed then, that at its best, legislation curbing hateful speech could be a well intentioned effort to protect historical facts about a marginalized group. Ultimately though, it often failed in its intentions, and could even bolster violent groups by feeding into their narrative of self-victimhood. A simplistic psychological argument goes as follows: The feeling of being suppressed engenders a dangerous and growing frustration. At its very worst, attempts to curb "hateful" speech were bad-faith tools of ideological censorship.

In June 2021, Yale history professor Timothy D. Snyder wrote in a New York Times op-ed decrying the spate of draconian "anti-CRT" bills that swept through US state legislatures, that such efforts are a subversion of the original logic of memory law. No longer intended to protect facts about the marginalized, they merely safeguard "the feelings of the powerful". As the summer progressed, I closely followed these shocking legal developments that now affect the free expression rights of public K-12 and, in some cases, higher education staff, in states like Iowa, Texas, Idaho, Oklahoma, Arizona, and several others. In real time, they became the bulk of

the research that I was tasked with at PEN. I had the rare, and sombre privilege of watching the abuse of anti-hate speech legislation I had read about in June become an ever more entrenched reality, not in faraway regimes, but here in the United States. I understood the nuance of PEN America's position, and within it, the efforts to avoid either these unintended consequences, or loosely disguised power grabs. It began to supplement my thinking about what to do when faced with hateful speech.

A fundamental principle of PEN America's work on free expression issues is that of countering speech with more speech. If there were a single line that I remember being spoken in the office, it was that, a mantra not emblazoned on any wall, but worn faithfully on the sleeve of all those who I worked with. This position, I have learned, is not one that sparks inspiration, or receives praise from every listener. To many people who I know, who like myself, feel righteous anger in the face of enormous injustices, this may not be the answer they are looking for. For those of us who have seen the detrimental toll that language has taken on people we love, on those in our communities, and even on ourselves, a human instinct for a quick and definitive justice takes over. Seeing around us that the playing field is not even -- that the speech of someone in a position of power may not *require* the same protection as someone who is not -- we inevitably question the effectiveness of "more speech". Ultimately, there is not a quick solution to these questions, and determining how to walk this line is something that I know the staff of PEN America do with the utmost sense of gravity. While the organization has encountered backlash from groups on both the right and left, it remains steadfast in its deference to this principle. Countering hateful speech with more speech is in part a pragmatic solution: It recognizes that the bar for incitement which criminalizes certain speech is extremely high under the First

Amendment. It operates within the confines of the legal system which we live under. That is not to say, however, that this solution is free from a normative, or an aspirational quality.

Countering hateful speech with more speech, is not a negation of the dangerous power of language. To the contrary, it affirms that words also have the propensity to usher change, to challenge existing structures, not to nullify hate -- an impossible act -- but to push back forcefully against it. This is, I have learned, a hopeful position, hope being -- as the great writer and academic Masha Gessen said to my class last year -- a prerequisite for continuance. Faced with hatred, there are no quick fixes. We cannot bury it, or our heads, in the sand, for these solutions can bring no lasting remedy. Rather, we must keep fighting with our mighty and hopeful pens.